

**CITY OF SAN ANTONIO  
INTERDEPARTMENTAL MEMORANDUM  
SAN ANTONIO METROPOLITAN HEALTH DISTRICT**

**TO:** Mayor and City Council

**FROM:** Fernando A. Guerra, M.D., M.P.H., Director of Health

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES TO:** Frances A. Gonzalez, Assistant to the City Manager; City Attorney's Office; Office of Management and Budget, Risk Management Division; Finance Department; Project; File

**SUBJECT:** ORDINANCE TO ENCUMBER FUNDS FOR THE BIOTERRORISM PREPAREDNESS LABORATORY RENOVATION

**DATE:** August 7, 2003

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes the City Manager to approve the use of \$524,000.00 of grant funds from the Texas Department of Health (TDH) to renovate 4,000 square feet of facility space at Brooks City-Base for expansion of the San Antonio Metropolitan Health District (SAMHD) Bioterrorism Preparedness Laboratory. The ordinance further authorizes the encumbrance of these funds.

Staff recommends approval.

**BACKGROUND INFORMATION**

Due to the terrorist attacks on New York City and Washington D.C. in September 2001, Congress made funds available to all states through the Centers for Disease Control and Prevention (CDC) in order to strengthen local public health infrastructure and emergency preparedness. These funds were distributed in Texas through the Texas Department of Health (TDH).

On August 1, 2002, the City Manager was authorized to accept and execute the TDH Public Health State Support Project 2002/2003 Contract Change Notice 05 for \$1,898,122.00 to fund the Bioterrorism Preparedness Program of the SAMHD. These funds are being used for new initiatives specifically designed to upgrade the response capability of our public health system. Of this funding, \$165,000.00 has been budgeted to support a new Bioterrorism Safety Laboratory.

On September 26, 2002 the City Manager was authorized to accept and execute the TDH Public Health State Support Project 2002/2003 Contract Change Notice 08 supporting initial funding of \$518,394.00 for the Laboratory Bioterrorism Preparedness Program of the SAMHD. Of this funding, \$359,000.00 was budgeted to build a new Bioterrorism Safety Laboratory to meet the standards for bioterrorism safety as set forth by the CDC and the Texas Laboratory Response Network. The Laboratory Bioterrorism Preparedness Program is an effort whereby staff from the SAMHD Laboratory Division are developing protocol and infrastructure for the rapid detection of toxins and organisms that may be introduced in the community through acts of bioterrorism.

On June 19, 2003 the City Manager was authorized to accept and execute a Cooperative Research and Development Agreement (CRADA) with the United States Air Force (USAF) Institute for Operational Health. Through the CRADA a suitable location for the new Bioterrorism Safety Laboratory (BSL) has been identified at Brooks City-Base, which offers 4,000 square feet of space, security, a safe location away from the downtown core, and partnering with the USAF. The Brooks Development Authority (BDA) will provide SAMHD the services of design and construction of the laboratory, which will take approximately 6 to 12 months to complete. The laboratory will be a Biosafety Level Three (BSL 3) facility, which is only one step below that of the laboratory at the CDC. The TDH has concurred with combining the funds of \$165,000.00 and \$359,000.00 (Total: \$524,000.00) as well as the location of the BSL 3 Laboratory at Brooks City-Base (USAF controlled space). However the \$524,000.00 of the TDH FY 2003 funds must be transferred for accounting and disbursement purposes by August 31, 2003. Therefore, it is now necessary to encumber these funds for use in this project.

### **POLICY ANALYSIS**

Encumbering these funds for use in this project will ensure the grant funds from TDH will continue the long-standing practice of utilizing Federal and State aid to support the local public health programs of the City.

### **FISCAL IMPACT**

This ordinance will combine funds previously received of \$165,000.00 from the Bioterrorism Preparedness Program and \$359,000.00 from the Laboratory Bioterrorism Preparedness Program, to be placed in a new fund and activity, for a total of \$524,000.00 to renovate 4,000 square feet of facility space at Brooks City-Base for expansion of the SAMHD Bioterrorism Preparedness Laboratory. These funds need to be transferred for accounting and disbursement purposes by August 31, 2003, making it necessary to encumber these funds for use in this project. Acceptance of this fund transfer and encumbrance will place no demands on the City's General Fund.


### **COORDINATION**

The City Attorney's Office, the Office of Management and Budget, Risk Management Division, and Asset Management Department have reviewed the original contracts with TDH, the CRADA

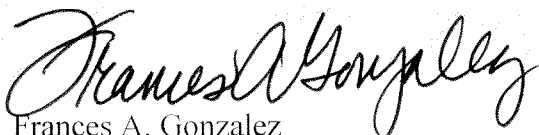
with the USAF, and the memorandum of agreement with the BDA. The Finance Department has approved the proposed program budget and method of encumbrance.

**SUPPLEMENTARY COMMENTS**

Provisions of the Ethics Ordinance do not apply.




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



Frances A. Gonzalez  
Assistant to the City Manager

APPROVED BY:



Terry M. Brechtel  
City Manager

USAF CRADA NUMBER 03-HSW-09

## COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

BETWEEN

AIR FORCE INSTITUTE FOR OPERATIONAL HEALTH

AND

SAN ANTONIO METROPOLITAN HEALTH DISTRICT

## ARTICLE 1. PREAMBLE

- 1.1 This Cooperative Research and Development Agreement (*Agreement*) for performing the work described in the Work Plan attached hereto as Appendix A is entered into pursuant to 15 U.S.C. § 3710a (as amended) and Air Force Policy Directive 61-3 and Air Force Instruction 61-302 by and between the City of San Antonio, through the San Antonio Metropolitan Health District, (hereinafter referred to as "*Collaborator*"), located at 332 West Commerce Street, San Antonio, Texas, and the United States of America as represented by the Department of the Air Force, Air Force Materiel Command (AFMC), 311<sup>th</sup> Human Systems Wing, Air Force Institute for Operational Health (AFIOH), Surveillance Directorate (AFIOH/SD), (hereinafter referred to as the "*Air Force Activity*"), located at Brooks City-Base, Texas. The terms and conditions of this *Agreement* are set forth as follows.

## ARTICLE 2. DEFINITIONS

- 2.1 As used in this *Agreement*, the following terms shall have the following meanings and such meanings shall be applicable to both the singular and plural forms of the terms. All other terms of this *Agreement* shall be ascribed their plain, commonly accepted definitions.
- 2.2 "*Created*" in relation to any copyrightable work means when the work is fixed in any tangible medium of expression for the first time, as provided for at 17 U.S.C. § 101.
- 2.3 "*Effective Date*" means the earlier of: (a) the date of the last signature of the duly authorized representatives of the parties and the *Reviewing Official*; or (b) thirty (30) days after the receipt of a signed copy of this *Agreement* by the *Reviewing Official* without that official taking any action thereon.
- 2.4 "*Government*" means the Government of the United States of America.
- 2.5 "*Special Purpose License*" means a license to the *Government* conveying a nonexclusive, nontransferable, irrevocable, worldwide, royalty-free license to practice and have practiced an *Invention* for or on behalf of the *Government* for research or other government purposes and conveying a nonexclusive, nontransferable, irrevocable, worldwide, royalty-free

license to use, duplicate, prepare derivative works, distribute or disclose copyrighted works or *Proprietary Information* in whole or in part and in any manner and to have or permit others to do so, for research or other government purposes. Research or other government purposes include competitive procurement but do not include the right to have or permit others to practice an *Invention* or use, duplicate, prepare derivative works, distribute or disclose copyrighted works or *Proprietary Information* for commercial purposes.

2.6 “*Invention*” means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. § 2321 *et seq*).

2.7 “*Made*” in relation to any *Invention* means the conception or first actual reduction to practice of such *Invention*.

2.8 “*Proprietary Information*” means information which embodies trade secrets or which is confidential technical, business or financial information provided that such information:

- i) is not generally known, or is not available from other sources without obligations concerning its confidentiality;
- ii) has not been made available by the owners to others without obligation concerning its confidentiality;
- iii) is not described in an issued patent or a published copyrighted work or is not otherwise available to the public without obligation concerning its confidentiality; or
- iv) can be withheld from disclosure under 15 U.S.C. § 3710a(c)(7)(A) & (B) and the Freedom of Information Act, 5 U.S.C. § 552 *et seq*; and
- v) is identified as such by labels or markings designating the information as proprietary.

2.9 “*Reviewing Official*” means the authorized representative of the Department of the Air Force who is identified on the signature page of this *Agreement*.

2.10 “*Under*” as used in the phrase “*Under this Agreement*” means within the scope of work to be performed as described in the Work Plan.

### ARTICLE 3. WORK PLAN

3.1 Appendix A sets forth the nature and scope of the work to be performed *Under this Agreement*, including any equipment, maintenance and other support, and any associated reporting requirements.

3.2 The *Collaborator* may inspect *Government* property identified in Appendix A prior to use. Such property may be repaired or modified at the *Collaborator's* expense only after obtaining the written approval of the *Air Force Activity*. Any repair or modification of the property shall not affect the title of the *Government*. Unless *Air Force Activity* hereafter otherwise agrees, the *Collaborator* shall, at no expense to the *Air Force Activity*, return all *Government* property after termination or expiration of this *Agreement* in the condition in which it was received, normal wear and tear excepted.

- 3.3 The parties agree to confer and consult with each other prior to publication or other public disclosure of the results of work *Under this Agreement* to ensure that no *Proprietary Information* or military critical technology or other controlled information is released. Prior to submitting a manuscript for publication or before any other public disclosure, each party will offer the other party ample opportunity to review such proposed publication or disclosure, to submit objections, and to file applications for patents in a timely manner.

#### ARTICLE 4. FINANCIAL OBLIGATIONS

- 4.1 The *Collaborator* will pay the *Air Force Activity* as set forth in each Statement of Work (see paragraph 4.1 of Work Plan) executed *Under this Agreement*.
- 4.2 Payments by the *Collaborator* to the *Air Force Activity* under this Article shall be made payable to:

AFIOH/SDE  
Reference: USAF CRADA 03-HSW-09, SOW \_\_\_\_\_  
2730 Louis Bauer Drive  
Brooks City-Base TX 78235-5132

and mailed to the following address:

311 HSW/XPA  
ATTN: Office of Research and Technology Applications  
2510 Kennedy Circle  
Brooks City-Base TX 78235-5115

Payments shall reference this *Agreement* by USAF CRADA number, SOW number, and by the names of the parties and shall state the purpose of the payments.

- 4.3 Royalty or other income from patents shall be payable in accordance with any separate patent license hereafter entered into by the parties pursuant to Article 5.

#### ARTICLE 5. PATENTS

- 5.1 **Disclosure of *Inventions*.** Each party shall report to the other party, in writing, each *Invention Made Under this Agreement*, promptly after the existence of each such *Invention*, in the exercise of reasonable diligence, becomes known.
- 5.2 **Rights in *Inventions*.** Each party shall separately own any *Invention Made* solely by its respective employees *Under this Agreement*. *Inventions Made* jointly by the *Air Force Activity* and the *Collaborator's* employees shall be jointly owned by both parties. The *Collaborator* shall have an option to choose an exclusive license for a prenegotiated field of use at a reasonable royalty rate, subject to the conditions set forth in 15 U.S.C. § 3710a(b)(1)(A), (B) & (C), in any *Invention Made* in whole or in part by *Air Force Activity* employees *Under this Agreement*. The *Collaborator* shall exercise the option to obtain a

license by giving written notice thereof to the *Air Force Activity* within three (3) months after disclosure of the *Invention* under paragraph 5.1. The royalty rate, field of use and other terms and conditions of the license shall be set forth in a separate license agreement and shall be negotiated promptly after notice is given. The *Collaborator* hereby grants to the *Government*, in advance, a *Special Purpose License* in any *Invention Made* by the *Collaborator* employees *Under this Agreement*.

- 5.3 **Filing Patent Applications.** The *Collaborator* shall have the first option to file a patent application on any *Invention Made Under this Agreement*, which option shall be exercised by giving notice in writing to the *Air Force Activity* within three (3) months after disclosure of the *Invention* under paragraph 5.1, and by filing a patent application in the US Patent and Trademark Office within six (6) months after written notice is given. If the *Collaborator* elects not to file or not to continue prosecution of a patent application on any such *Invention* in any country or countries, the *Collaborator* shall notify the *Air Force Activity* thereof at least three (3) months prior to the expiration of any applicable filing or response deadline, priority period or statutory bar date. In any country in which the *Collaborator* does not file, or does not continue prosecution of, or make any required payment on, an application or patent on any such *Invention*, the *Air Force Activity* may file, or continue prosecution of, or make any required payment on, an application or patent, and the *Collaborator* agrees, upon request by the *Air Force Activity*, to assign to the *Government* all right, title, and interest of the *Collaborator* in any such application or patent and to cooperate with the *Air Force Activity* in executing all necessary documents and obtaining cooperation of its employees in executing such documents related to such application or patent. The party filing an application shall provide a copy thereof to the other party.

**Note:** Any patent application filed on any *Invention Made Under this Agreement* shall include in the patent specification thereof the statement: "This invention was made in the performance of a Cooperative Research and Development Agreement with the Department of the Air Force. The Government of the United States has certain rights to use the invention."

- 5.4 **Patent Expenses.** Unless otherwise agreed, the party filing an application shall pay all patent application preparation and filing expenses and issuance, postissuance and patent maintenance fees associated with that application.
- 5.5 **Third Party Inventions.** The *Air Force Activity* may use support and research services of one or more contractors in performing its obligations under the Work Plan of Appendix A. The *Collaborator* is hereby advised that the Federal Acquisition Regulations Patents Rights clause 52.227-11 or -12 applicable to the contract with the contractor grants to the contractor the first option to retain ownership of and to file a patent application on any *Invention* conceived or first reduced to practice by employees of the contractor, either solely or jointly with others, in the performance of the contract. With respect to such *Invention*, the provisions of this Article 5 are modified as follows: The *Air Force Activity* may grant to the *Collaborator* a nonexclusive license in and to any *Invention Made* under the Work Plan of Appendix A jointly by contractor and *Air Force Activity* employees; and the *Air Force Activity* may grant to the *Collaborator* an exclusive license, subject to a

nonexclusive royalty-free license retained by the contractor, in and to any such jointly *Made Invention* in the event that the contractor does not exercise its option and assigns its undivided interest in and to such jointly *Made Invention* to the *Government*. For *Inventions Made* solely by employees of the contractor and for which the contractor does not exercise its option and assigns its interest to the *Government*, the *Air Force Activity* does not have statutory authority under 15 U.S.C. § 3710a(b)(1) to grant in advance to the *Collaborator* an option for an exclusive or nonexclusive license, but may grant an exclusive or nonexclusive license on application by the *Collaborator* pursuant to Air Force Instruction 51-303. The *Collaborator* hereby waives any option under 15 U.S.C. § 3710a(b)(1) to take an exclusive license in any such *Invention Made* in whole or in part by employees of the contractor *Under this Agreement*.

- 5.6 **Trade Secrets.** Nothing in this Article 5 shall preclude the parties from opting to protect an *Invention Made Under this Agreement* as a trade secret under the provisions of Article 7 in lieu of a patent.

## ARTICLE 6. COPYRIGHTS

- 6.1 The *Collaborator* shall own the copyright in all works *Created* in whole or in part by the *Collaborator Under this Agreement*, which are copyrightable under Title 17, United States Code. The *Collaborator* shall mark any such works with a copyright notice showing the *Collaborator* as an owner and shall have the option to register the copyright at the *Collaborator's* expense.
- 6.2 The *Collaborator* hereby grants in advance to the *Government* a *Special Purpose License* in all copyrighted works *Created Under this Agreement*. The *Collaborator* will prominently mark each such copyrighted work subject to the *Special Purpose License* with the words: "This work was created in the performance of a Cooperative Research and Development Agreement with the Department of the Air Force. The Government of the United States has certain rights to use this work."
- 6.3 The *Collaborator* shall furnish to the *Air Force Activity*, at no cost to the *Air Force Activity*, three (3) copies of each work *Created* in whole or in part by the *Collaborator Under this Agreement*.

## ARTICLE 7. PROPRIETARY INFORMATION

- 7.1 Neither party to this *Agreement* shall deliver to the other party any *Proprietary Information* not developed *Under this Agreement*, except with the written consent of the receiving party. Unless otherwise expressly provided in a separate document, such *Proprietary Information* shall not be disclosed by the receiving party except under a written agreement of confidentiality to employees and contractors of the receiving party who have a need for the information in connection with their duties *Under this Agreement*. The *Government* shall not be liable for release of unmarked information.



- 7.2 *Proprietary Information* developed *Under this Agreement* shall be owned by the developing party, and any jointly developed *Proprietary Information* shall be jointly owned. The *Government* shall have a *Special Purpose License* to use, duplicate and disclose, in confidence, and to authorize others to use, duplicate and disclose, in confidence, for government purposes, any such *Proprietary Information* developed *Under this Agreement* solely by the *Collaborator*. The *Collaborator* may use, duplicate and disclose, in confidence, and authorize others on its behalf to use, duplicate and disclose, in confidence, any such *Proprietary Information* developed *Under this Agreement* solely by the *Air Force Activity*. *Proprietary Information* developed *Under this Agreement* shall be exempt from the Freedom of Information Act, 5 U.S.C. § 552 *et seq*, as provided at 15 U.S.C. § 3710a(c)(7)(A) & (B). The exemption for *Proprietary Information* developed jointly by the parties or solely by the *Air Force Activity* shall expire not later than five (5) years from the date of development of such *Proprietary Information*. The *Air Force Activity* understands that the *Collaborator*, as a municipal body, is subject to the Texas Government Code, Chapter 552, the Texas Public Information Act, and the *Collaborator* shall not be held liable for proprietary information that is subject to this act.

## ARTICLE 8. TERM, MODIFICATION, EXTENSION TERMINATION AND DISPUTES

- 8.1 **Term and Extension.** The term of this *Agreement* is for a period of sixty (60) months, commencing on the *Effective Date* of this *Agreement*. This *Agreement* shall expire at the end of this term unless both parties hereto agree in writing to extend it further. Expiration of this *Agreement* shall not affect the rights and obligations of the parties accrued prior to expiration.
- 8.2 **Modification.** Any modifications shall be by mutual written agreement signed by the parties' representatives authorized to execute this *Agreement* and attached hereto. A copy of any modifications will be forwarded to the *Reviewing Official* for informational purposes.
- 8.3 **Termination.** Either party may terminate this *Agreement* for any reason upon delivery of written notice to the other party at least one (1) month prior to such termination. Termination of this *Agreement* shall not affect the rights and obligations of the parties accrued prior to the date of termination of this *Agreement*. In the event of termination by either party, each party shall be responsible for its own costs incurred through the date of termination, as well as its own costs incurred after the date of termination and which are related to the termination. If the *Air Force Activity* terminates this *Agreement*, it shall not be liable to the *Collaborator* or its contractors or subcontractors for any costs resulting from or related to the termination, including, but not limited to, consequential damages or any other costs.
- 8.4 **Disputes.** All disputes arising out of, or related to, this *Agreement* shall be resolved in accordance with this Article.
- 8.4.1 The parties shall attempt to resolve disputes between themselves. Resolution attempts must be documented and kept on file by the local technology transfer focal point for the *Air Force Activity*. Either party may refer in writing any

dispute which is not disposed of by agreement of the parties to the *Reviewing Official* for decision.

- 8.4.2 *Reviewing Official.* The *Reviewing Official* shall within sixty (60) days of the receipt of the dispute, notify the parties of the decision. This decision shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, either party submits to the *Reviewing Official*, a written appeal addressed to the Office of the Assistant Secretary of the Air Force (Acquisition), Deputy Assistant Secretary (Science, Technology, and Engineering).
  - 8.4.3 Office of the Assistant Secretary of the Air Force (Acquisition), Deputy Assistant Secretary (Science, Technology, and Engineering). The decision of the Assistant Secretary of the Air Force (Acquisition), Deputy Assistant Secretary (Science, Technology, and Engineering), or his duly authorized representative, on the appeal shall be final and conclusive
  - 8.4.4 Nothing in Article 8 will limit any other remedy under law available to the *Collaborator* or to the *Air Force Activity*.
- 8.5 Continuation of Work. Pending the resolution of any such dispute, work under this *Agreement* will continue as elsewhere provided herein.

## ARTICLE 9. REPRESENTATIONS AND WARRANTIES

- 9.1 The *Air Force Activity* hereby represents and warrants to the *Collaborator* as follows:
- 9.1.1 **Mission.** The performance of the activities specified by this *Agreement* are consistent with the mission of the *Air Force Activity*.
  - 9.1.2 **Authority.** All prior reviews and approvals required by regulations or law have been obtained by the *Air Force Activity* prior to the execution of the *Agreement*. The *Air Force Activity* official executing this *Agreement* has the requisite authority to do so.
  - 9.1.3 **Statutory Compliance.** The *Air Force Activity*, prior to entering into this *Agreement*, has (1) given special consideration to entering into cooperative research and development agreements with small business firms and consortia involving small business firms; (2) given preference to business units located in the United States which agree that products embodying an *Invention Made Under this Agreement* or produced through the use of such *Invention* will be manufactured substantially in the United States; and (3) taken into consideration, in the event this *Agreement* is made with an industrial organization or other person subject to the control of a foreign company or government, whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements with such foreign country.

9.2 The *Collaborator* hereby represents and warrants to the *Air Force Activity* as follows:

9.2.1 **Corporate Organization.** The *Collaborator*, as of the date hereof, is a public institution of the City of San Antonio, County of Bexar, and the State of Texas.

9.2.2 **Statement of Ownership.** The *Collaborator* is not a foreign owned or a subsidiary of a foreign-owned entity. The *Collaborator* has the right to be assigned all *Inventions Made* and copyrightable works *Created* by its employees and its subcontractors *Under this Agreement*.

9.2.3 **Authority.** The *Collaborator* official executing this *Agreement* has the requisite authority to enter into this *Agreement* and the *Collaborator* is authorized to perform according to the terms thereof.

## ARTICLE 10. LIABILITY

10.1 **Property.** All property is to be furnished "as is." Except as otherwise provided in this *Agreement* or the attached Work Plan, no party to this *Agreement* shall be liable to any other party for any property of that other party consumed, damaged or destroyed in the performance of this *Agreement*, unless it is due to the gross negligence or willful misconduct of the party or an employee or agent of the party. Excluding agreed upon repairs or modifications, the *Collaborator* shall, at no expense to the *Air Force Activity*, return such facilities after termination or expiration of this *Agreement* in the condition in which they were received, normal wear and tear excepted.

10.2 **Collaborator Employees.** To the extent permitted by Texas law, the *Collaborator* agrees to indemnify and hold harmless and defend the *Government*, its employees and agents, against any liability or loss for any claim made by an employee or agent of the *Collaborator*, or persons claiming through them, for death, injury, loss or damage to their person or property arising in connection with this *Agreement*, except to the extent that such death, injury, loss or damage arises solely from the negligence of the *Air Force Activity* or its employees particularly as it pertains to the Texas Tort Claims Act of 1970.

10.3 **No Warranty.** Except as specifically stated in article 9, or in a later *Agreement*, the parties make no express or implied warranty as to any matter whatsoever, including the conditions of the research or any *Invention* or other intellectual property, or product, whether tangible or intangible, made, or developed *Under this Agreement*, or the merchantability, or fitness for a particular purpose of the research or any *Invention* or other intellectual property, or product. The parties further make no warranty that the use of any *Invention* or other intellectual property or product contributed, made or developed *Under this Agreement* will not infringe any other United States or foreign patent or other intellectual property right. In no event will any party be liable to any other party for punitive, exemplary, or consequential damages.

10.4 **Other Liability.** The *Government* shall not be liable to any party to this *Agreement*, whether directly or by way of contribution or indemnity, for any claim made by any person or other entity for personal injury or death or for property damage or loss, arising in any

way from this *Agreement*, including, but not limited to, the later use, sale or other disposition of research and technical developments, whether by resulting products or otherwise, whether made or developed *Under this Agreement* or contributed by either party pursuant to this *Agreement*, except as provided under the Federal Tort Claims Act (28 U.S.C. § 2671 *et seq*) or other Federal law where sovereign immunity has been waived.

## ARTICLE 11. GENERAL TERMS AND PROVISIONS

- 11.1 **Disposal of Toxic or Other Waste.** The *Collaborator* shall be responsible for removal and disposal from *Air Force Activity* premises of toxic or other material provided or generated by the *Collaborator* in the course of performing this *Agreement*, except that, for purposes of this *Agreement*, removal and disposal of hazardous materials and wastes in amounts and of types typically produced during operation of the *Air Force Activity* facilities described in the Work Plan will be the responsibility of the *Air Force Activity*. Removal and disposal of hazardous materials and wastes over and above amounts and different from types typically produced during operation of the *Air Force Activity* facilities described in the Work Plan will be the responsibility of the *Collaborator*. The *Collaborator* shall obtain at its own expense all necessary permits and licenses as required by local, state, and Federal law and regulation and shall conduct such removal and disposal in a lawful and environmentally responsible manner.
- 11.2 **Force Majeure.** Neither party shall be in breach of this *Agreement* for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that party. In the event such a force majeure event occurs, the party unable to perform shall promptly notify the other party and shall in good faith maintain such part performance as is reasonably possible and shall resume full performance as soon as is reasonably possible.
- 11.3 **Relationship of the Parties.** The parties to this *Agreement* and their employees are independent contractors and are not agents of each other, joint venturers, partners or joint parties to a formal business organization of any kind. Neither party is authorized or empowered to act on behalf of the other with regard to any contract, warranty or representation as to any matter, and neither party will be bound by the acts or conduct of the other. Each party will maintain sole and exclusive control over its own personnel and operations.
- 11.4 **Publicity/Use of Name Endorsement.** Any public announcement of this *Agreement* shall be coordinated among the *Collaborator*, the *Air Force Activity* and the public affairs office supporting the *Air Force Activity*. By entering into this *Agreement*, the *Air Force Activity* or the *Government* does not directly or indirectly endorse any product or service provided, or to be provided, by the *Collaborator*, its successors, assignees, or licensees. The *Collaborator* shall not in any way imply that this *Agreement* is an endorsement of any such product or service.
- 11.5 **No Benefits.** No member of, or delegate to the United States Congress, or resident commissioner, shall be admitted to any share or part of this *Agreement*, nor to any benefit

that may arise therefrom; but this provision shall not be construed to extend to this *Agreement* if made with a corporation for its general benefit.

- 11.6 **Governing Law.** The construction, validity, performance, and effect of this *Agreement* for all purposes shall be governed by the laws applicable to the *Government*.
- 11.7 **Waiver of Rights.** Any waiver shall be in writing and provided to all other parties. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any party hereto.
- 11.8 **Severability.** The illegality or invalidity of any provision of this *Agreement* shall not impair, affect or invalidate the other provisions of this *Agreement*.
- 11.9 **Assignment.** Neither this *Agreement* nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by any party without the prior written consent of all other parties.
- 11.10 **Controlled Information.** The parties understand that information and materials provided pursuant to or resulting from this *Agreement* may be export controlled, classified, or unclassified sensitive and protected by law, executive order or regulation. Nothing in this *Agreement* shall be construed to permit any disclosure in violation of those restrictions.

## ARTICLE 12. NOTICES

12.1. Notices specified in this *Agreement* shall be deemed made if given and addressed as set forth below.

A. Send formal notices under this *Agreement* by prepaid certified U.S. Mail to:

*Air Force Activity:* 311 HSW/XPA  
ATTN: Office of Research and Technology Applications  
2510 Kennedy Circle  
Brooks City-Base TX 78235-5115

*Collaborator:* San Antonio Metropolitan Health District  
ATTN: Fernando A. Guerra, M.D., M.P.H.  
332 W. Commerce Street  
San Antonio TX 78205-2489

B. Send correspondence on technical matters by prepaid ordinary U.S. Mail to:

*Air Force Activity:* AFIOH/SDE  
ATTN: Lt Col John Hickman  
2730 Louis Bauer Drive  
Brooks City-Base TX 78235-5132

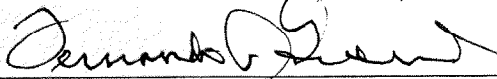
*Collaborator:* San Antonio Metropolitan Health District  
ATTN: Mr. Roger Pollock  
332 W. Commerce Street  
San Antonio TX 78205-2489

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate through their duly authorized representatives as follows:

**COLLABORATOR**

*San Antonio Metropolitan Health District*

FERNANDO A. GUERRA, M.D., M.P.H.



(Signature)

Public Health Director

332 W. Commerce Street, Suite 307  
San Antonio TX 78205-2489

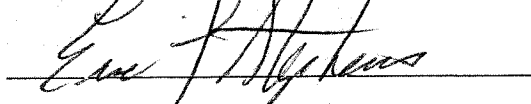
6/26/03

(Date Signed)

**AIR FORCE ACTIVITY**

*Air Force Institute for Operational Health*

ERIC L. STEPHENS



(Signature)

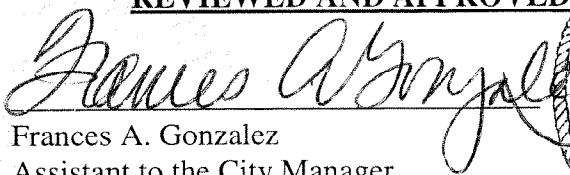
Director

2513 Kennedy Circle  
Brooks City-Base TX 78235-5116

6/20/03

(Date Signed)

**REVIEWED AND APPROVED BY CITY OF SAN ANTONIO OFFICIAL:**

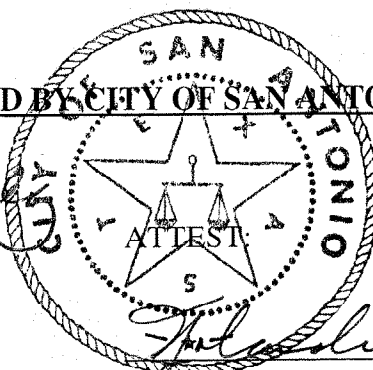


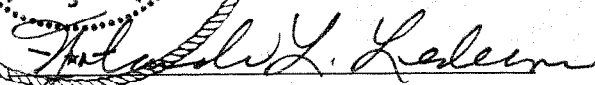
Frances A. Gonzalez  
Assistant to the City Manager

APPROVED AS TO FORM:



Andrew Martin  
City Attorney



  
Yolanda L. Ledesma  
Acting City Clerk

July 1, 2003  
Date Signed

**REVIEWED AND APPROVED BY AIR FORCE REVIEWING OFFICIAL:**

THOMAS W. TRAVIS  
Colonel, USAF, MC, CFS  
Commander, 311<sup>th</sup> Human Systems Wing



(Signature)

16 July 2003  
(Date)

## APPENDIX A

### Work Plan

- 1.0 **Title:** Development of Laboratory Technologies and Techniques for Public Health
- 2.0 **Objective:** Research will be conducted to develop best practices and new techniques in the application of emerging technologies for public health, medical and health surveillance, and testing. Specifically, techniques will be developed for processing and analyzing test samples in the laboratory with the accuracy and sensitivity necessary to fully characterize the potential for human and environmental risk. The partners will share new methods of sample analysis, quality assurance, unique methodologies, and will collaborate in the investigation and resolution of disease outbreaks, both in the local community and worldwide. Newly developed techniques require verification by more than one laboratory. The parties can provide this research validation under this CRADA. During the course of work performed related to this CRADA, patentable inventions, copyrightable works, and proprietary information are expected to be generated.
- 3.0 **Background:** The *Collaborator* performs a wide array of medical and environmental tests for various requestors. Testing on air and water quality, blood borne and food pathogens, and surveillance testing on various pathogens is accomplished as the needs arise. This unique laboratory is an integral part of the Texas Laboratory Response Network and supports public health throughout South Texas. In this capacity, it operates a Biosafety Level Three facility capable of testing high priority specimens with a preliminary turn around time, depending on the organism, ranging from 24 hours to 14 days. Final confirmation of a particular specimen can range from three days to 21 days. As part of Texas' Homeland Security Plan, the *Collaborator* accepts samples from federal, state, and local law authorities, fire departments, other laboratories, and other public agencies. The laboratory provides a surge capability to other state laboratories in the event of a dramatic increase in testing or when another laboratory facility is incapacitated or inundated with an unknown pathogen. The laboratory operates on a 24-hour a day, 7-days a week (24/7) basis and is networked into hospital, military, local, and research laboratories for assistance and exchanging best practices, training, and methodologies.

The *Air Force Activity*'s mission is to enhance mission effectiveness, protect health, improve readiness, and reduce costs through the assessment and management of risks to human health and safety, operational performance, and the environment. The *Air Force Activity* supports a fit and ready force by providing its customers with evidence-based information and analysis through state-of-the-art medical surveillance, analytical epidemiology and preventive medical consultation in deployed and non-deployed environments. There is an Air Force requirement for real-time, rapid identification of biological covert release and naturally emerging pathogens that threaten force health protection and readiness. The *Air Force Activity* is tasked with the development of state-of-the-art tools for the identification of biological threat agents using molecular techniques. The *Air Force Activity* supports the identification, design, development, improvement, expansion, testing, production, fielding, training, and sustainment of critical laboratory and analytical methods and programs such as Biological Augmentation Teams, the Biological Defense Laboratory, and Joint Biological Agent Identification and Diagnostic Systems.



#### 4.0 Technical Tasks:

4.1 The parties will conduct research studies of mutual interest *Under this Agreement*. Each study will be accomplished in accordance with its own Statement of Work (SOW). The SOW will be in the format set forth in Appendix B to this *Agreement*. The specific terms of the individual SOWs will be negotiated by the parties. The objective of the specific research study will be particularly described in the SOW. Each research study will support the general research objective set forth in paragraph 2.0. Each SOW will be separately executed by the *Collaborator* and the Director, Surveillance Directorate (AFIOH/SD). A copy of each SOW will be forwarded to the Office of Research and Technology Application (311 HSW/XPA) and the Commander, 311<sup>th</sup> Human Systems Wing (311 HSW/CC), in turn, for information purposes. The SOW, together with this *Agreement*, will constitute the entire agreement between the parties as to the particular research study. Each SOW will incorporate the terms of this *Agreement* by reference and will be independent of any other SOW executed *Under this Agreement*.

#### 4.2 *Collaborator* Tasks:

4.2.1 The *Collaborator* may transfer resources in the form of funds, personnel, services, intellectual property, facilities, supplies and equipment, to the *Air Force Activity* for the performance of research and development as set forth in the SOW.

4.2.2 The *Collaborator* will structure any resources provided to the *Air Force Activity* so as to fully reimburse the *Air Force Activity* for the value of resources expended by the *Air Force Activity* in furtherance of work under the SOW.

4.2.3 The *Collaborator* may accomplish repairs or modifications at the *Collaborator's* expense to the west wing of the basement, building 125, Brooks City-Base, for laboratory facilities and administrative offices. Any repairs or modifications may be accomplished only after receiving the written approval of the *Air Force Activity*. Any repair or modification of such facilities shall not affect the title to the property.

4.2.4 The *Collaborator* may locate laboratory equipment in the west wing of building 125, Brooks City-Base. The *Collaborator* will move the equipment into and out of this facility at its own expense unless otherwise agreed to by both parties.

4.2.5 The *Collaborator* will reimburse the *Air Force Activity* for utilities and rent based on occupied square footage. Both parties agree that these reimbursements may be in the form of goods and/or services-in-kind of equal value.

4.2.6 The *Collaborator* will provide the *Air Force Activity* with a copy of

technical publications describing newly developed techniques that are produced as a result of the activities *Under this Agreement*. Both parties will comply with Article 3.3 of this *Agreement* prior to publication or other public disclosure of the results of work *Under this Agreement*.

#### 4.3 *Air Force Activity* Tasks:

- 4.3.1 The *Air Force Activity* may provide personnel, services, intellectual property, facilities and equipment to the *Collaborator* for the performance of research and development as set forth in the SOW. Where the *Air Force Activity* has received funds from the *Collaborator*, the *Air Force Activity* shall maintain separate and distinct accounts, records, and other evidence supporting expenditures under the SOW.
- 4.3.2 The *Air Force Activity* may make unique research equipment and analysis instrumentation available to the *Collaborator* for the conduct of research *Under this Agreement*.
- 4.3.3 The *Air Force Activity* may make available personnel for consultation, testing of proposed methodology, and other technical requirements, as necessary.
- 4.3.4 The *Air Force Activity* may provide laboratory space on the west wing of the basement of building 125, Brooks City-Base, specifically rooms B-57, B-59, B-60, B-61, B-62, B-63, B-64, B-65, B-66, B-67, and B-68. The *Collaborator* will be responsible for day-to-day operations and the *Air Force Activity* will have reasonable access to these rooms.

5.0 **Desired Benefits:** Collaborative research endeavors of this type are mutually beneficial to the involved parties and the benefits are in many ways intangible because they increase research expertise and knowledge. The parties will engage and use research to develop best practices and techniques in the application of emerging technologies for public health. Scientific discussions will foster new ideas for additional collaborative ventures and stimulate new research initiatives that address unanswered scientific questions and solve significant laboratory sampling and testing problems. Additional benefits, such as royalty income from licensed intellectual property, may result from particular research projects.

#### 6.0 **Other:**

- 6.1 **Assignment of Personnel.** If the SOW contemplates the assignment of one party's personnel to the other party's facilities, then the assigned personnel shall remain employees of the assigning party and will not be considered as employees of the

other party for any purpose, including but not limited to any requirements to provide workers' compensation, payment of salary or other benefits, or withholding of taxes. Assigned personnel will observe the other party's security, safety, health, and environmental facility regulations. Assigned personnel can be denied access or removed by the other party from its facilities at its discretion. Unless otherwise provided in the SOW, each party shall provide financial support to its respective personnel in the performance of this *Agreement*, including salary, reimbursement for travel, and other expenses as appropriate.

6.2 **Laboratory CONOPS.** The *Collaborator* shall develop and provide to the *Air Force Activity* a Concept of Operations for the day-to-day operation of the laboratory in the basement of the west wing of building 125, Brooks City-Base, before the premises are occupied. The *Collaborator* shall appoint a facility manager as the single point of contact for maintenance issues.

7.0 **Milestones:** Dates for completion of work will be set forth in the SOW. Periodic conferences shall be held between the parties for the purpose of reviewing the progress of the particular cooperative effort. It is understood that the nature of these cooperative efforts is such that completion within the period of performance specified, or within the resources allotted, cannot be guaranteed. Accordingly, it is agreed that all cooperative research and development performed by either party is to be performed on a best-effort basis.

#### 8.0 **Reports:**

8.1 **Progress Reports.** As provided in the SOW, the parties will prepare and exchange written reports on the progress of their work, results obtained, problems encountered, and recommendations for further research and development. To the extent reasonable, further detail concerning the contents of the reports shall be provided upon request, if necessary, for the other party to fully understand the results achieved. Written progress reports will be exchanged at least every three (3) months.

8.2 **Final Report.** As provided in the SOW, the parties will prepare and exchange a final report at the completion of the cooperative effort performed *Under this Agreement*, on the progress of their work, results obtained, problems encountered, and recommendations for further research and development. To the extent reasonable, further detail concerning the contents of the report(s) shall be provided upon request, if necessary, for the other party to fully understand the results achieved. Final reports will be exchanged within two (2) months after work under the SOW ends.

## **APPENDIX B**

### **Statement of Work**

#### **A. Identification**

- A.1 Title: [STUDY TITLE].
- A.2 The *Air Force Activity* and the *Collaborator* desire to collaborate in research and development and will cooperate in support of the tasking entitled [Study Title] (the Study).
- A.3 This Statement of Work (SOW) is executed under authority of the Stevenson-Wydler Technology Innovation Act of 1980 as amended by the Federal Technology Transfer Act (15 U.S.C. 3701 et seq.) and the CRADA between the parties dated [date] entitled "Development of Laboratory Technologies and Techniques for Public Health" and hereby incorporates all of the terms and provisions of the CRADA. Together, the CRADA and this SOW constitute the entire Agreement of the Parties. In the case of a conflict between the provisions of this SOW and the CRADA, the terms and provisions of the latter shall control.

#### **B. Description of Work.**

- B.1 [List Major Specific Tasks].
- B.2 [Identify all intellectual property (inventions, patents, trade secrets, software, data, copyrights, proprietary information, etc.) that are expected to be developed during work under the SOW and state with particularity the rights to be acquired by each party in any such intellectual property so developed].
- B.3 All performance under this SOW will cease at either the completion of all work, unilateral or mutual termination, or [date], whichever occurs first.

#### **C. Resources Provided by *Collaborator*.**

- C.1 The *Collaborator* will furnish the following research resources. The estimated total value of these resources is [estimate dollars]: [List]
  - C.1.1 Equipment Use: [List as appropriate].
  - C.1.2 Consumable Supplies: [List as appropriate].
  - C.1.3 Services of Personnel: [List as appropriate].
  - C.1.4 Loan of Equipment: [List as appropriate and identify ultimate disposition thereof].

- C.1.5 Travel: [List as appropriate].
- C.1.6 Funds: [Specify detailed funds transfer from collaborating party, i.e., date, amounts, totals].
- C.1.7 Background Intellectual Property: [List as appropriate].
- C.1.8 Other:
- C.2 **Financial Obligation.** The continued performance of research by the *Air Force Activity* under this Agreement is conditioned on the payment of funds to the *Air Force Activity* by the collaborating party as specified below. The *Air Force Activity* shall not be obligated to perform any of the research specified herein or to take any other action required by this *Agreement* if the agreed-to funds are not transferred as required. The expiration/termination of this *Agreement* does not extinguish the obligation to pay any funds which have been earned or are due and owed at the date of expiration/termination.
- C.3 **Payment Schedule.** [Detail the Payment of all Funds, i.e., types, time, amounts, to whom paid, how paid, etc].
- C.4 The Payment Schedule is subject to modification by mutual consent of all parties in the event unforeseen circumstances delay initiation of this project, including delays due to: insufficient volunteer enrollment, actions from responsible review or regulatory authorities, lack of equipment or malfunctions, or insufficient support personnel.
- D. **Resources Provided by the *Air Force Activity*.** [Detail the provision of resources by the organization and estimate the value of resources in dollars. This would include the personal services such as the labor of the investigators, etc.]
- E. **Reports.** The *Air Force Activity* agrees to report in a timely manner the results of any research conducted within the resources to the *Collaborator*. The *Air Force Activity* agrees to provide all data supporting research results to the *Collaborator* [detail the reports that are required and the dates of submission].
- F. **Other.**

G. **Signatories.**

**COLLABORATOR**

*San Antonio Metropolitan Health District*

FRANK T. BLALOCK

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*(Signature)*

Assistant Public Health Director

332 W. Commerce, Suite 307  
San Antonio TX 78205-2489

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*(Date Signed)*

**AIR FORCE ACTIVITY**

*Air Force Institute for Operational Health  
Surveillance Directorate*

JAMES S. NEVILLE  
Colonel, USAF, MC, FS

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*(Signature)*

Director

2350 Gillingham Drive  
Brooks City-Base TX 78235-5103

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*(Date Signed)*

**Memorandum of Agreement**

**ATTACHMENT II**

**Between**

**Brooks Development Authority (BDA)  
and  
San Antonio Metropolitan Health District (Metro Health)**

Metro Health will occupy approximately 4,000 sq. ft. of Building 125 on Brooks City-Base as a subtenant of the U.S. Air Force. Metro Health has requested that BDA, through its agents, provide the following services to Metro Health, as these services relate to the construction of laboratory facilities to be located in Building 125:

1. Architectural and engineering design of facility, and
2. Contracting and construction management of any tenant improvements.

This agreement is subject to grant funds from the Texas Department of Health (TDH), in the approximate amount of \$690,000.00, which will be used to finance the referenced tenant's improvements. The BDA hereby agrees to abide by the financial management and accounting requirements as determined by the TDH and the City in the management and expenditure of these grant funds.

Upon authorization by the San Antonio City Council these funds will be transferred to the BDA for its accounting and disbursement. A total of \$524,000.00 FY 2003 funds have been appropriated by the San Antonio City Council and are immediately available for use in this project. For FY 2004, \$166,000.00 has been formally offered by TDH for this project and will be disbursed on or about October 1, 2003 provided the San Antonio City Council passes an ordinance accepting the annual TDH contract.

Upon receipt of funds, BDA and Metro Health will enter into formal agreements for the design and construction of the laboratory facilities.

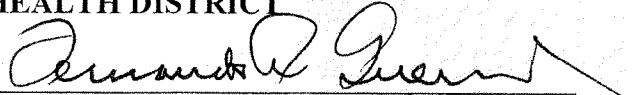
Dated this 31<sup>st</sup> day of July, 2003.

**BROOKS DEVELOPMENT AUTHORITY**



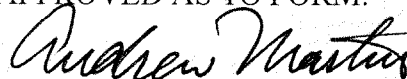
Howard W. Peak  
Chairman

**SAN ANTONIO METROPOLITAN  
HEALTH DISTRICT**



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

APPROVED AS TO FORM:



Andrew Martin *AK*  
City Attorney

**ATTACHMENT III**  
**Bioterrorism Preparedness Laboratory Renovation**  
**Fund No. 26-016100**

<u>INDEX</u>	<u>ESTIMATED REVENUES</u>	<u>OBJECT CODE</u>	<u>CURRENT BUDGET</u>
080283	TDH Grant		\$ 524,000
	Total Estimated Revenues		<u>524,000</u>

**APPROPRIATIONS**

**Bioterrorism Preparedness Laboratory Renovation**

Activity: 36-10-07

09/01/02 to 8/31/04

775239	Fees to Prof. Contractors	02-160	524,000
	Total Appropriations		<u>\$ 524,000</u>

Fund Only Index # 003043