

**CITY OF SAN ANTONIO  
SAN ANTONIO METROPOLITAN HEALTH DISTRICT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council

**FROM:** Fernando A. Guerra, MD, MPH, Director of Health

**SUBJECT:** ORDINANCE AUTHORIZING THE EXECUTION OF PROFESSIONAL SERVICES AGREEMENTS WITH COMMUNITY PARTNERS IN SUPPORT OF THE STEPS TO A HEALTHIER SAN ANTONIO PROGRAM

**DATE:** February 24, 2005

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes the Interim City Manager to execute professional services agreements totaling \$678,825.00 with eight (8) community partners (The American Cancer Society, \$153,195.00; The American Lung Association of Texas, \$13,450.00; The South Texas Asthma Coalition, \$29,500.00; The San Antonio - Bexar County Metropolitan Planning Organization, \$88,200.00; The Bexar County Community Health Collaborative, \$66,825.00; University Health System - Texas Diabetes Institute, \$151,555.00; The Social and Health Research Center "Bienestar Program," \$30,000.00; and the San Antonio Independent School District, \$146,100.00) in support of the Steps to A Healthier San Antonio Program (Steps-SA) within the San Antonio Metropolitan Health District (SAMHD) for the period September 22, 2004 through September 21, 2005. In addition, the ordinance authorizes payment for said services.

Staff recommends approval.

**BACKGROUND INFORMATION**

Ordinance 100128, passed and approved on December 9, 2004, authorized the acceptance of a \$1,000,000.00 cooperative agreement award from the U.S. Department of Health and Human Services (DHHS) establishing Steps-SA within the SAMHD. Steps-SA is an initiative to combat chronic disease, primarily asthma, diabetes and obesity along with the risk factors of lack of physical activity, poor nutrition and tobacco use among residents and employees within the school attendance zone of the San Antonio Independent School District.

As required by the DHHS cooperative agreement, the SAMHD has developed professional services agreements with eight (8) community partners assisting in the development of Steps-SA.

The American Cancer Society (ACS) shall be a member of the Steps-SA Consortium and Leadership Team. ACS shall establish the American Cancer Society San Antonio Leadership Institute providing the San Antonio Independent School District (SAISD) with a powerful

infrastructure for quality sustainability in coordinated school health programming. ACS shall also develop a plan to execute a tobacco education program for mothers of young children and pregnant women in the target area, entitled "Make Yours a Freshstart Family," and develop and execute a targeted media promotion campaign to drive calls to the telephone tobacco cessation hotline, referred to as the "Texas Tobacco Quitline."

The American Lung Association of Texas (ALAT) shall be a member of the Steps-SA Consortium and Leadership Team. Additionally, ALAT shall offer the "Counting on You" asthma education program presentation in at least 50 different Head Start and other daycare sites, work with SAISD staff to provide a minimum of thirty (30) "Open Airways for Schools" curriculums to elementary schools, offer a presentation to school coaches concerning "Asthma in Physical Activity at the School," consult with the SAISD and local daycares in the target area concerning policies for filing asthma plans for asthmatic students with school nurses and provide pertinent Camp Broncho information to SAISD staff and work with that same staff to make it possible for ten students to attend by way of scholarship.

The South Texas Asthma Coalition (STAC) shall be a member of the Steps-SA Consortium and Leadership Team. STAC shall plan and schedule a workshop for School Nurses and School Health Coordinators on the subject "Improving Asthma Management in Your School," collaborate with the ALAT, the Steps-SA Consortium, SAISD and local daycares in the target area concerning policies for filing asthma plans for asthmatic students with school nurses and seek ways to assess whether school absenteeism is related to asthmatic events.

The San Antonio – Bexar County Metropolitan Planning Organization (MPO) shall be a member of the Steps-SA Consortium and Leadership Team. MPO shall recruit and hire a full-time Steps-SA Active Transportation Coordinator tasked to assist transportation and neighborhood planners and the Steps-SA Consortium in identifying and directing available infrastructure resources to the target area which will enable greater and safer access for increased levels of physical activity. Additionally this person shall create and implement a comprehensive bicycle and pedestrian data collection program and design and implement an Active Transportation Program for Children in the target area that is fully coordinated with the Steps-SA Consortium, San Antonio Independent School District (SAISD), other community groups and the MPO's transportation planning partners.

The Bexar County Community Health Collaborative (BCCHC) shall be a member of the Steps-SA Consortium and Leadership Team. BCCHC shall conduct two free Fit City Festival community outreach events in the SAISD region, the purpose of which is to increase awareness of fitness and nutrition resources and motivate individuals to improve their health. BCCHC shall encourage physical activity and track the health impact of exercise on Walk San Antonio participants by performing monthly body composition analysis. Residents in the SAISD attendance area shall be able to check in at approximately 15 dedicated sites, where a coordinator shall track their weight, percentage of body fat, percentage of muscle, percentage of water, BMI and number of minutes exercised each month.

The University Health System – Texas Diabetes Institute (TDI) shall be a member of the Steps-SA Consortium and Leadership Team. TDI shall develop and disseminate a Health Care Provider Tool Kit to include information regarding treatment and prevention of diabetes, obesity, tobacco cessation, asthma, and overall fitness issues. The tool kit shall be adapted for the San Antonio health care providers within the target area, such as physicians, nurses, pharmacists and dietitians. Additionally TDI shall provide seminars and educational materials to parish nurses and community based health personnel within the target area and provide comprehensive self-management training for patients in the target area with diabetes and/or other metabolic conditions.

The Social and Health Research Center (S&HRC) shall be a member of the Steps-SA Consortium and Leadership Team. S&HRC will conduct the Bienestar program in five elementary schools in the target area to improve self care of diabetic students and to improve nutrition and weight control while exhibiting increased physical activity among students in identified schools.

The San Antonio Independent School District (SAISD) shall be a member of the Steps-SA Consortium and Leadership Team. The SAISD shall expand the instruction of “The Great Body Shop”, which is a comprehensive school health and substance abuse prevention curriculum, for SAISD students in grades K-8. Also, SAISD shall implement a district-wide employee wellness program. Furthermore, SAISD understands that community partners associated with Steps-SA will be required to negotiate with SAISD staff concerning the planning and implementation of various interventions within the school setting. SAISD agrees to consult with community partners, the Steps-SA Consortium and assigned Steps-SA staff regarding the planning and implementation of said interventions.

### **POLICY ANALYSIS**

Passage of this ordinance will continue the long-standing practice of partnering with local organizations to support local public health programs of the City.

### **FISCAL IMPACT**

Execution of these professional services agreements will place no demand on the City General Fund.

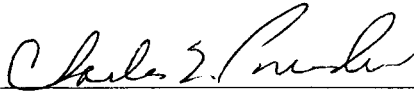
### **COORDINATION**

The City Attorney’s Office and the Human Resources Department, Risk Management Division, have reviewed all attached professional services agreements with partner organizations. The Finance Department has been apprised of these contracts.

Attachments:

Professional Services Agreements

- Attachment I: The American Cancer Society
- Attachment II: The American Lung Association of Texas
- Attachment III: The South Texas Asthma Coalition
- Attachment IV: The San Antonio-Bexar County Metropolitan Planning Organization
- Attachment V: The Bexar County Community Health Collaborative
- Attachment VI: University Health System – Texas Diabetes Institute
- Attachment VII: The Social and Health Research Center “Bienestar Program”
- Attachment VIII: San Antonio Independent School District



Fernando A. Guerra, MD, MPH  
Director of Health



Frances A. Gonzalez  
Assistant City Manager



J. Rolando Bono  
Interim City Manager



## **AN ORDINANCE**

**AUTHORIZING THE EXECUTION OF EIGHT PROFESSIONAL SERVICES AGREEMENTS TOTALING \$678,825.00 TO SUPPORT THE STEPS TO A HEALTHIER SAN ANTONIO PROGRAM IN THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT FOR THE PERIOD SEPTEMBER 22, 2004 THROUGH SEPTEMBER 21, 2005, AS FOLLOWS: THE AMERICAN CANCER SOCIETY (ACS) \$153,195.00, THE AMERICAN LUNG ASSOCIATION OF TEXAS (ALAT) \$13,450.00, THE SOUTH TEXAS ASTHMA COALITION (STAC) \$29,500.00, THE SAN ANTONIO – BEXAR COUNTY METROPOLITAN PLANNING ORGANIZATION (MPO) \$88,200.00, THE BEXAR COUNTY COMMUNITY HEALTH COLLABORATIVE (BCCHC) \$66,825.00, UNIVERSITY HEALTH SYSTEM – TEXAS DIABETES INSTITUTE (TDI) \$151,555.00, THE SOCIAL AND HEALTH RESEARCH CENTER (S&HRC) “BIENESTAR PROGRAM” \$30,000.00, AND THE SAN ANTONIO INDEPENDENT SCHOOL DISTRICT (SAISD) \$146,100.00; AND AUTHORIZING PAYMENTS FOR CONTRACTUAL SERVICES.**

\* \* \* \* \*

**WHEREAS**, the San Antonio Metropolitan Health District (SAMHD) delivers various comprehensive public health services to protect the health of all residents within the jurisdiction of the District; and

**WHEREAS**, Ordinance 100128, passed and approved on December 9, 2004, authorized the acceptance of the \$1,000,000.00 cooperative agreement award from the U.S. Department of Health and Human Services (DHHS) establishing the Steps to A Healthier San Antonio Program within the SAMHD; and

**WHEREAS**, the SAMHD assembled a group of interested partners to collaborate in a local community-level effort to combat chronic disease, primarily asthma, diabetes and obesity by addressing the risk factors of tobacco use, nutrition and physical activity; and

**WHEREAS**, the SAMHD has developed professional services agreements with eight (8) community partners assisting in the development of the Steps-SA program: The American Cancer Society (ACS), The American Lung Association of Texas (ALAT), The South Texas Asthma Coalition (STAC), the San Antonio – Bexar County Metropolitan Planning Organization (MPO), the Bexar County Community Health Collaborative (BCCHC), University Health System – Texas Diabetes Institute (TDI), the Social and Health Research Center (S&HRC) “Bienestar Program,” and the San Antonio Independent School District (SAISD); and

**WHEREAS**, it is now necessary to authorize the execution of said professional services agreements with each community partner as required by the DHHS cooperative agreement;  
**NOW THEREFORE:**

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

**SECTION 1.** The Interim City Manager, or his designee, is hereby authorized to execute professional services agreements for the period September 22, 2004 through September 21, 2005, with the following eight (8) community partners in the amounts indicated:

<b>Subcontractor</b>	<b>Amount</b>	<b>Attachment No</b>
American Cancer Society	\$153,195.00	I
American Lung Association of Texas	13,450.00	II
South Texas Asthma Coalition	29,500.00	III
San Antonio-Bexar County Metropolitan Planning Organization	88,200.00	IV
Bexar County Community Health Collaborative	66,825.00	V
University Health System – Texas Diabetes Institute	151,555.00	VI
Social and Health Research Center “Bienestar Program”	30,000.00	VII
San Antonio Independent School District	146,100.00	VIII
<b>Total</b>	<b>\$678,825.00</b>	

**SECTION 2.** Payment is authorized to the subcontractors listed above from SAP Contract No. 40000823, SAP Fund No. 26022000 entitled “Department of Health and Human Services,” Funds Center 3606620000, Internal Order 136000000255, SAP GL No. 5201040 entitled “Fees to Professional Contractors.”

**SECTION 3.** The Director of Finance may, subject to concurrence by the Interim City Manager or the Interim City Manager’s designee, correct allocation to specific internal order numbers, account numbers and fund numbers as necessary to carry out the purpose of this ordinance.

**SECTION 4.** This ordinance shall be effective on and after the tenth day after passage hereof.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

**M A Y O R**

ATTEST:

City Clerk

APPROVED AS TO FORM: \_\_\_\_\_

City Attorney

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 (SAMHD); acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_ and The American Cancer Society by and through its Chief Operating Officer, Christopher H. Torti (hereinafter referred to as "ACS"), 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. "ACS" and "SAMHD" are defined in the preamble of this Agreement and include their successors. "Director" shall mean the acting director of City's San Antonio Metropolitan Health District (City). "STEPS-SA" shall be defined as the overall local program "Steps to A Healthier San Antonio". "Steps-SA staff" shall be defined as those persons hired by SAMHD for the purpose of day-to-day program oversight with funding from the Steps to A Healthier US Cooperative Agreement with the Centers for Disease Control and the US Department of Health and Human Services. "Steps-SA Consortium" shall be defined as the primary advisory group of the Steps-SA program consisting of Steps-SA staff, partnering organizations, contractors, and interested community based organizations. "Target Area," shall be defined as the geographic school attendance zone of the San Antonio Independent School District (SAISD) in San Antonio, Texas, and all individuals who reside, work or attend school in that area.

## **II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 22, 2004 and terminate on September 21, 2005.

2.2 City shall have the option to renew and extend the term of this Agreement four times, with each renewal or extension being for a term of one year. Each renewal or extension shall be evidenced by passage of a subsequent City ordinance.

2.3 The American Cancer Society (ACS) agrees and understands that City has projected costs for this Contract and that City expects to pay all obligations of this Contract from projected revenue sources, but that all obligations of City are subject to annual appropriation by City Council in future years, after September 30, 2005. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Contract, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such

obligations, following City's failure to pay such obligations due to lack of funding shall terminate this contract and neither Contractor nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Contract.

2.4 ACS further agrees and understands that the City expects to pay all obligations of this contract 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 contract, then this contract shall terminate and neither City nor ACS shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this contract.

### **III. SCOPE OF SERVICES**

3.1 In order to be an effective partner in STEPS-SA, ACS shall select specific individuals as primary and secondary representatives to the Steps-SA Consortium, the primary advisory group for Steps-SA. Both representatives may participate in the Consortium concurrently, but at least one shall be present at all Consortium meetings, events and planning sessions. The ACS shall supply contact information to Steps-SA staff regarding both representatives and both shall be tasked by the ACS to ensure full representation and participation of the ACS in all Consortium meetings, events and planning sessions. In the event that there is a change in the individuals assigned by ACS as representative(s) to the Steps-SA Consortium, the ACS shall notify Steps-SA staff within 72 hours of the time such change has taken place.

3.1.1 As an identified community partner with SAMHD on Steps-SA, ACS's chosen representatives shall also actively participate in overall organization of the Steps-SA Consortium through the Steps-SA Leadership Team. These representatives shall serve on the Steps-SA Leadership Team with the same requirements and expectations as indicated in section 3.1 above.

3.2 The ACS shall establish the American Cancer Society San Antonio Leadership Institute (SALI) and shall establish criteria to assist the San Antonio Independent School District (SAISD) in the recruitment of a team from the SAISD to the SALI. The SALI shall provide the SAISD with a powerful infrastructure for quality sustainability in coordinated school health programming, by providing long-term changes to the school system. The SAISD SALI Team shall be made up at least 5, and not more than 15, school district staff, community members, and members of the School Health Advisory Council.

The timetable for providing services shall be as follows:

- 3.2.1 By November 30, 2004, the ACS shall develop an Action Plan for the SALI to include action steps and timelines for year 1 activities.
- 3.2.2 By January 31, 2005, the ACS shall recruit at least 6 individuals for the SALI Core Leadership Team.
- 3.2.3 By January 31, 2005, the ACS shall also recruit at least 4 individuals to the SALI Advisory Team.
- 3.2.4 By February 15, 2005, the ACS shall convene a meeting of the Core Leadership Team and the Advisory Team.

- 3.2.5 By February 28, 2005, the ACS, in partnership with SAISD, shall conduct an informational session for the SAISD SALI Team.
- 3.2.6 Between February 1, 2005 and April 30, 2005 the SALI Core Leadership Team shall conduct at least three planning meetings. The Advisory Team shall also conduct at two meetings.
- 3.2.7 By May 31, 2005 the Core Leadership Team shall develop the program of study and weeklong activities for the first SALI Summer Institute.
- 3.2.8 By June 30, 2005 the Core Leadership Team shall finalize the agenda and all materials for the first SALI Summer Institute.
- 3.2.9 Between July 1, 2005 and August 31, 2005 the ACS and the Core Leadership Team shall conduct the first week-long Summer Institute.

3.3 The ACS shall develop a plan to execute a tobacco education program for mothers of young children and pregnant women, entitled "Make Yours A Freshstart Family" (MYFSF). A committee of volunteers with specific interest and expertise shall be developed to manage the program and a core group of volunteers shall be utilized as trainers.

The timeline and steps for development during year 1 of "Make Yours A Freshstart Family" shall be as follows:

- 3.3.1 Between February 1, 2005 and May 31, 2005, ACS shall identify and recruit the MYFSF Oversight Committee. The committee shall be made up of no more than eight members. The ACS shall identify and recruit at least 4 MYFSF trainers. In addition, the ACS shall identify at least ten sites to conduct the MYFSF program.
- 3.3.2 By May 31, 2005, the ACS shall complete the MYFSF train-the-trainer program.
- 3.3.3 By August 31, 2005, the ACS shall conduct the first MYFSF training sessions within the identified sites.
- 3.3.4 By October 31, 2005, the ACS shall conduct a second MYFSF training.

3.4 The ACS shall develop and execute a targeted media promotion campaign to drive calls to the telephone tobacco cessation hotline, referred to as the "Texas Tobacco Quitline". The ACS shall establish a committee of communication professionals to develop a localized media campaign. A volunteer media buyer shall be secured to work on the project. The timeline for Quitline promotion shall be as follows:

- 3.4.1 Between January 1, 2005 and July 31, 2005, the ACS shall recruit and convene a Quitline committee of communication professionals to develop and manage a localized media promotional campaign for the Texas Tobacco Quitline. The media campaign shall target individuals in the Steps-SA Target Area.
- 3.4.2 By July 31, 2005, the Quitline committee shall produce a plan to purchase and place media promoting the Quitline.
- 3.4.3 By August 31, 2005, the ACS in coordination with the Steps-SA Consortium shall develop an outreach and education plan targeting churches, worksites and community organizations within the STEPS Target Area. The outreach and education plan shall focus on driving calls to the Quitline.
- 3.4.4 Beginning September 1, 2005 through November 30, 2005, the ACS shall execute the localized media promotional campaign and the targeted outreach and education plan.

3.5 The ACS shall provide progress reports to Steps-SA staff as required for inclusion in a periodic newsletter or to be posted on the internet and made available to the various stakeholders of the Steps-SA project and the general public. Frequency and structure of required reports shall up to the discretion of the Steps-SA Leadership Team and staff.

3.6 In addition to the regular reports required in section 3.5 preceding, ACS agrees to submit quarterly reports to Steps-SA staff on activities and services called for in the contract. ACS shall supply report in format requested by Steps-SA staff. Expected due dates of quarterly reports shall be: January 15, 2005, April 15, 2005, July 15, 2005, and September 15, 2005. The due dates for the quarterly reports may be amended by Steps-SA staff as needed.

#### **IV. COMPENSATION TO CONTRACTOR**

4.1 In consideration of ACS's performance in a satisfactory and efficient manner, as determined solely by City, of all services and activities set forth herein, City agrees to reimburse ACS up to the maximum amount of \$153,195.00 which is budgeted for such payment, as set forth and incorporated herein is the budget which is attached as Exhibit A.

4.2 The ACS agrees to submit statements of monthly itemized costs and in-kind expenses to the City associated with this contract. 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 from the ACS. Invoices shall be due 15 days after the end of the monthly report period. The ACS shall submit to the City a monthly billing invoice to request payment of expenses incurred on or before the 15<sup>th</sup> day of each month. Additional documentation requirements of costs and in-kind expenses associated with this contract may be amended in writing by Steps-SA staff as needed.

4.2.1 ACS understands that documentation of in-kind expenses is a requirement for payment associated with this contract. ACS further understands that the format for said documentation of in-kind expenses is set at the discretion of Steps-SA staff.

4.3 The ACS agrees to provide any and all documentation required for inclusion in any report concerning STEPS-SA. All services required under this contract shall be performed to City's satisfaction, and City shall not be liable for any payment under this Contract 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.

4.4 City shall not be obligated or liable under this Contract to any party, other than ACS for payment of any monies or provision of any goods or services.

#### **V. OWNERSHIP OF DOCUMENTS**

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

proprietary claim by Contractor.

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

## **VI. RECORDS RETENTION**

6.1 Contractor 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 at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Contractor 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, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention.

6.3 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City shall 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 City upon thirty (30) calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

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

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

7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new Contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets

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

7.4.4 Performing unsatisfactorily

7.5 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement is terminated, Contractor shall 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 Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor 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 Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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



7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

### **VIII. NOTICE**

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

If intended for City, to:

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

If intended for Contractor, to:

Christopher H. Torti	Chris.Torti@cancer.org
Chief Operating Officer	
American Cancer Society, Texas Division Inc.	
2433 Ridgpoint Dr. - A	
Austin, TX 78754	
512-919-1885 phone	512-919-1844 fax

### **IX. ACCOUNT OF FUNDS BY ACS**

9.1 ACS understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this CONTRACT 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 CONTRACT.

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

- (A) that maintenance of said records shall be in compliance with all terms, provisions and requirements of this CONTRACT and with all generally accepted accounting principles; and
- (B) that ACSs' 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 Contract, ACS 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 CONTRACT for a minimum of four (4) years from the completion services. ACS shall have access to the records at all times upon reasonable notice.

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

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

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

9.5 Upon termination of this CONTRACT, 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, ACS 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 CONTRACT, 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 Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the San Antonio Metropolitan Health Department may review and approve all ACS'S systems of internal accounting and administrative controls prior to the release of funds hereunder.

9.7 If ACS expends \$250,000.00 or more of City dollars, then during the term of this Contract, the ACS 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 ACS'S fiscal year or termination of this Contract, whichever is earlier. ACS understands and agrees to furnish the San Antonio Metropolitan Health Department with a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to ACS in Article IV of this Contract is \$250,000.00 or more, then the ACS 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 ACS 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 ACS pay for such audit from non-City resources. If ACS expends less than \$250,000.00 of City dollars, then during the term of this Contract, the ACS shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of ACS'S fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by ACS attesting

to the correctness of said financial statement.

## **X. INSURANCE REQUIREMENTS**

10.1 Prior to the commencement of any work under this AGREEMENT, ACS shall furnish an original completed Certificate(s) of Insurance to the City's San Antonio Metropolitan Health District and City's Risk Management Division, and shall be clearly labeled "American Cancer Society Services Agreement", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. 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 directly from the agent to the City. The City shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to City's San Antonio Metropolitan Health District and the City Risk Management's Division, and 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 coverage 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, but in no instance shall City allow modification whereupon City may incur increased risk.

10.3 ACS's financial integrity is of interest to the City; therefore, subject to ACS's right to maintain reasonable deductibles in such amounts as are approved by the City, ACS shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at ACS's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNTS
1. Workers' Compensation ** Employers' Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (public) 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. Explosion, collapse, underground *g. Broad form property damage, to include fire legal liability	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
3. Business Automobile Liability	Combined Single Limit for Bodily Injury and

a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Property Damage of \$1,000,000 per occurrence
4. Medical Malpractice Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). ACS 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 in Section 10.6 herein within 10 days of the requested change. ACS shall pay any costs incurred resulting from said changes.

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

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under AGREEMENT 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 and employers' liability policies shall provide a waiver of subrogation in favor of the City.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, ACS shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if ACS knows of said change in advance, or ten (10) days notice after the change, if the ACS did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio  
San Antonio Metropolitan Health District  
Risk Management Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

10.7 If ACS fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of ACS to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon ACS'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 ACS to stop work hereunder, and/or withhold any payment(s) which become due to ACS hereunder until ACS demonstrates compliance with the requirements hereof.

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

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

## **XI. INDEMNIFICATION**

11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY 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 CONTRACTOR's activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, Contractor or subcontractor of CONTRACTOR, 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. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the**

right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

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

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

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of Contractor. Contractor and its employees shall perform all necessary work.

12.2 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

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

### **XIII. INDEPENDENT CONTRACTOR**

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, Contractors, subcontractors and Contractors; that the doctrine of respondent superior shall not apply as between City and Contractor, 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 venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

### **XIV. SBEDA**

14.1 City's SBEDA, Non-Discrimination and Affirmative Action Policies. ACS agrees and acknowledges that it is City's policy that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts (SBEDA Policy). ACS agrees that ACS will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. ACS further agrees that ACS will abide by all applicable terms and provisions of City's Non-Discrimination Policy, CITY'S SBEDA Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development and the City Clerk's Office.

14.2 GFEP Required. If the Contractor's Fee paid to ACS pursuant to this contract will equal or exceed a total of \$200,000.00, then ACS shall have submitted to CITY a Good Faith Effort Plan (GFEP) indicating ACS's utilization of Small, Minority and Woman-owned Business Enterprises at the time of its proposal to seek this CONTRACT. If CITY approved the GFEP, and ACS subsequently changes or does not utilize one or more of the subcontractors listed on its GFEP, ACS shall submit a request for approval of this change to the original affirmed list of subcontractors. If CITY approved the GFEP, and CITY subsequently finds material deficiencies in any aspect of the GFEP, ACS shall submit a written report to City's Department of Economic Development. The ACS shall also submit a Supplemental GFEP indicating efforts to resolve any

deficiencies. A denied Supplemental GFEP, by City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by ACS. Failure to obtain an approved Supplemental Good Faith Effort Plan, within sixty (60) days of initial denial shall constitute a default and may result in withholding of ACS's Fee or suspension of this CONTRACT until all deficiencies are resolved. Failure to cure all deficiencies within another sixty (60) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by ACS which can, at the option of the Director, result in forfeiture of the entirety of this CONTRACT.

## **XV. CONFLICT OF INTEREST**

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

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

## **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval by the City Council, as evidenced by passage of an ordinance.

## **XVII. SEVERABILITY**

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**

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

### **XIX. COMPLIANCE**

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

### **XX. NONWAIVER OF PERFORMANCE**

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**

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

### **XXIII. PARTIES BOUND**

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**

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. ENTIRE AGREEMENT**

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 \_\_\_\_\_, 2005.

**CITY:**  
**CITY OF SAN ANTONIO**

**ACS:**  
**THE AMERICAN CANCER SOCIETY**

\_\_\_\_\_  
Frances A. Gonzalez  
Assistant City Manager

\_\_\_\_\_  
Christopher H. Torti  
Chief Operating Officer

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Andrew Martin  
City Attorney

## EXHIBIT A

### AMERICAN CANCER SOCIETY Steps to a Healthier San Antonio Project

#### American Cancer Society / Steps to a Healthier San Antonio Budget Summary

PROJECT	COST	Steps Funded	In-Kind
San Antonio School Leadership Institute	\$77,900	\$71,900	\$ 6,000
Make Yourself A Freshstart Family	\$25,000	\$17,820	\$ 7,180
Quitline- Tobacco Cessation & Support, Telephone Support Promotion Campaign	\$ 81,837	\$ 63,475	\$ 18,362
<b>TOTAL</b>	<b>\$ 184,737</b>	<b>\$ 153,195</b>	<b>\$ 31,452</b>

#### San Antonio School Leadership Institute Detailed Budget

ITEM	COST	Steps Funded	In-Kind
<u>Personnel</u> : Intern -\$6000 Part-time staff - \$22,000	\$28,000	\$22,000	\$ 6,000
<u>Facilities/Meals/AV</u> 10 days/year x 15 people x \$150 = \$15,000	\$15,000	\$15,000	
<u>Faculty Travel</u> – out-of-town faculty required for each session. \$300/day x 5 days x 5 people = \$7500	\$7,500	\$7,500	
<u>Equipment for home-based part-time staff</u> Laptop & Software Printer, etc = \$3400 Telephone = \$1200 Supplies \$500 Technical support, mileage = \$2000	\$6,300	\$6,300	
<u>Supplies/ Rental for Institute and Booster sessions</u>	\$6,000	\$6,000	
<u>Other program support</u> Childcare \$10 x 65 hours x 4 people - \$2600 Stipend for faculty - \$2000 x 4 = \$8000 Evaluation support - \$2500 Miscellaneous support - \$2000	\$15,100	\$15,100	
<b>SUB-TOTAL</b>	<b>\$77,900</b>	<b>\$71900</b>	<b>\$6,000</b>

**Make Yourself a Freshstart Family**  
Detailed Budget

ITEM	COST	Steps Funded	In-Kind
<u>Program Material</u> Training manual, office coordinator's guide, program guide, video, patient booklets, self study guide	\$7,500	\$7,230	\$ 270
<u>Train the Trainer</u> 2 faculty at \$300 each	\$ 600	\$ 600	
<u>Two training sessions for health professionals</u> \$200 persons x \$10.00 /person	\$2,000	\$2,000	
<u>Staff time and training</u> Program support	\$9,200	\$4,000	\$5,200
<u>Overage Quitline Calls</u> First 450 Texas calls are free. 10 calls x \$57 x 10 months	\$5,700	\$3,990	\$1,710
<b>SUB-TOTAL</b>	<b>\$25,000</b>	<b>\$17,820</b>	<b>\$7,180</b>

**Quitline- Tobacco Cessation & Support, Telephone Support Promotion Campaign**  
Detailed Budget

ITEM	COST	Steps Funded	In-Kind
<u>Purchased Media</u> 6 Billboards @ \$3200/one month run La Prensa Ad : 8 x \$400 SA Express-News: 4 x \$800 Neighborhood papers: 4 papers x 2 ads x \$325 3 street signs/ 1 month run Univision PSA PSA Production PSA Placement	\$ 19,200 \$ 3,200 \$ 3,200 \$ 2,600 \$ 7,500  \$ 2,000 \$ 9,500	\$ 19,200 \$ 3,200 \$ 3,200 \$ 2,600 \$ 7,500  \$ 2,000 \$ 9,500	
<u>Overage calls for October-December 2004</u> 75 calls x 3 months x \$57	\$ 12,825	\$ 4,275	\$ 8,550
<u>Personnel</u> Program Manager @ 15% Communications Director @ 20% Administrative Assistant @ 10% Benefits	\$ 4,800 \$ 9,000 \$ 2,600 \$ 5,412	\$ 12,000	\$ 9,812
<b>SUB-TOTAL</b>	<b>\$ 81,837</b>	<b>\$ 63,475</b>	<b>\$ 18,362</b>

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 (SAMHD); acting by and through its Interim City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, and the American Lung Association of Texas (ALAT) by and through its Regional Executive Director, Linda Bower (hereinafter referred to as "ALAT"), 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. "ALAT" and "SAMHD" are defined in the preamble of this Agreement and include their successors. "Director" shall mean the acting Director of Health of the City's San Antonio Metropolitan Health District. "Steps-SA" shall be defined as the overall local program "Steps to A Healthier San Antonio". "Steps-SA staff" shall be defined as those persons hired by SAMHD for the purpose of day-to-day program oversight with funding from the Steps to A Healthier US Cooperative Agreement with the Centers for Disease Control and the US Department of Health and Human Services. "Steps-SA Consortium" shall be defined as the primary advisory group of the Steps-SA program consisting of Steps-SA staff, partnering organizations, contractors, and interested community based organizations. "Steps-SA Leadership Team" shall be defined as the group responsible for strategic planning, outreach and evaluation of Steps-SA and consists of the Director or his designate, Steps-SA staff, community partners receiving contracted funding through Steps-SA, and other community groups determined to be major stakeholders in the project. "Target Area," shall be defined as the geographic school attendance zone of the San Antonio Independent School District (SAISD) in San Antonio, Texas, and all individuals who reside, work or attend school in that area.

### **II. TERM**

2.1 Unless terminated earlier in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 22, 2004 and terminate on September 21, 2005.

2.2 City shall have the option to renew and extend the term of this Agreement four times, with each renewal or extension being for a term of one year. Each renewal or extension shall be evidenced by passage of a subsequent City ordinance.

2.3 ALAT agrees and understands that City has projected costs for this Contract and that City expects to pay all obligations of this Contract from projected revenue sources, but that all obligations of City are subject to annual appropriation by City Council in future years, after September 30, 2005. Accordingly, if City shall fail to appropriate sums to pay any of City's

obligations under the terms of this Contract, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such obligations, following City's failure to pay such obligations due to lack of funding shall terminate this contract and neither Contractor nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Contract.

2.4 ALAT further agrees and understands that the City expects to pay all obligations of this contract 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 contract, then this contract shall terminate and neither City nor ALAT shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this contract.

### **III. SCOPE OF SERVICES**

ALAT's services hereunder shall include the following:

3.1 In order to be an effective partner in STEPS-SA, the ALAT shall select specific individuals as primary and secondary representatives to the Steps-SA Consortium, the primary advisory group for Steps-SA. Both representatives may participate in the Consortium concurrently, but at least one representative shall be present at all Consortium meetings, events and planning sessions. This participation is required for coordination of Steps-SA Consortium activities involving all partners associated with Steps-SA and their interaction with ALAT staff and programming. The ALAT shall supply contact information to Steps-SA staff regarding both representatives, and both representatives shall be tasked by the ALAT to ensure full representation and participation of the ALAT in all Consortium meetings, events and planning sessions. In the event that there is a change in the individuals assigned by ALAT as representative(s) to the Steps-SA Consortium, the ALAT shall notify Steps-SA staff within 72 hours of the time such change has taken place.

3.1.1 As an identified community partner with SAMHD on Steps-SA, ALAT's chosen representatives shall also actively participate in strategic planning, outreach and evaluation of Steps-SA through the Steps-SA Leadership Team. These representatives shall serve on the Steps-SA Leadership Team with the same requirements and expectations as indicated in section 3.1 above.

3.1.2 ALAT understands that it is required to collaborate with Steps-SA staff regarding evaluation and outcome measures of the effectiveness of all programs funded by Steps-SA. ALAT further understands that methodology and procedure regarding evaluation of outcome measures associated with all programs funded by Steps-SA shall be determined in collaboration with Steps-SA staff and the Steps-SA Leadership Team.

3.2 ALAT shall use ALAT staff and volunteers to offer the "Counting on You" asthma education program presentation in at least 50 different Head Start and other daycare sites within the Target Area of this grant. "Counting on You" is defined as a comprehensive asthma education program aimed at educating child care providers, parents and other caregivers on how to best manage a child's asthma. This program was developed in response to requests from childcare providers who were experiencing an increase in the number of children with asthma and wanted information on how to properly care for these children.

3.2.1 The program shall teach caregivers about asthma's signs, symptoms, triggers, treatments and medicating techniques. With this new information, childcare providers will gain the skills and confidence to better help children cope with their asthma. The program shall also teach providers to enable other children to understand the disease and lend a helping hand to their classmates with asthma.

3.2.2 Through the program, childcare providers shall become more prepared to work in partnership with parents as they learn to manage their child's asthma. In addition to the information received, there shall be a nebulizer workshop, and materials shall be distributed for use at the childcare centers. The materials shall include: books, an indoor air quality checklist, a poster and a video.

3.2.3 There shall be a minimum of 8 Parent Meetings inviting parents from daycare sites and schools in the Target Area. The meetings shall be asthma management forums allowing for parent involvement.

3.3 ALAT staff shall work with San Antonio Independent School District Key Administrative Staff to provide a minimum of thirty (30) "Open Airways for Schools" curriculums to elementary schools. ALAT Staff shall also assist in asthma management school nurse in-services and provide additional training on the Open Airways for Schools module. The program shall be utilized in at least 30 elementary schools in the first year of operation, with an ultimate goal that all 51 elementary schools within the Target Area shall utilize the Open Airways for Schools curriculum each school year as a matter of practice.

3.3.1 The Parties understand that asthma is the most common serious chronic illness of childhood and the number one reason for school absenteeism. The Parties further understand that Open Airways for Schools seeks to empower children with asthma, ages 8-11, by teaching them how to prevent and manage their asthma. The curriculum shall incorporate an interactive teaching approach utilizing group discussion, stories, games and role-play to promote children's active involvement in the learning process. Open Airways for Schools shall be taught by a school nurse or other trained volunteer instructor. The program shall be conducted over six 40-minute sessions.

3.4 ALAT shall use ALAT staff and volunteers to offer a presentation to school coaches concerning "Asthma in Physical Activity at the School." ALAT shall work cooperatively with the South Texas Asthma Coalition, the STEPS-SA consortium, the San Antonio Independent School District (SAISD) and physical education instructors in the Target Area to offer a workshop or series of workshops in the Target Area. The goal of the workshop shall be to provide tools to coaches of physical education and extracurricular activities regarding safe participation of the child with asthma in school sports and/or physical activities. This workshop shall be done with the "Asthma and Physical Activity in the School" resource available from the National Heart, Lung and Blood Institute or with some other equally effective resource as decided upon by ALAT and the STEPS-SA Consortium.

3.5 ALAT shall consult with the SAISD and local daycares in the Target Area concerning policies for filing asthma plans for asthmatic students with school nurses. Additionally, ALAT shall work with the STEPS-SA Consortium and the SAISD concerning methods to determining whether school absenteeism is related to asthmatic events. Progress on both of these policy consultations shall be reported to the STEPS Consortium on a monthly basis.

3.6 ALAT shall provide Camp Broncho 2005 brochures and other pertinent camp information to key SAISD Administration, elementary and middle school nurses. The Parties understand that Camp Broncho is a medically-supervised summer camping program designed for moderate to severe asthmatic children between the ages of 8-12. Children who attend are able to participate in educational courses that help them to better manage their asthma, be fully involved in camp activities and interact with other children who face similar challenges. The Parties further understand that the program is designed to allow each child to put all of the tools together and discover a new dimension of wellness in a supervised environment.

3.6.1 The Parties understand that Children best suited for the program have frequent absenteeism, ER visits and/or hospital stays within the past year, and may exhibit low self-esteem due to the challenges that their asthma poses. Other indicators include being non compliant to their asthma medicine plan, obesity, fear or reluctance to exercise, and expressing a fear of dying from an asthma attack.

3.6.2 The ALAT shall provide the Target Area with ten full scholarships for the Summer 2005 asthma camp session. A *Recommendation Form* shall be provided to all interested parties. Awards shall be made by assessing the severity of the child's asthma, school absenteeism (due to asthma), and any ER and/or hospital stays in the past year. The ten most *at risk* children shall be awarded the scholarships without regard to race, ethnicity, nationality, or religion. The Scholarship Award shall cover the room, board, and activity fees at Camp Broncho for each child that receives the award, but shall not include transportation to or from the camp location, camp clothes, medicines, or the necessary camp physical required by all campers.

#### **IV. COMPENSATION TO ALAT**

4.1 In consideration of ALAT's performance in a satisfactory and efficient manner, as determined solely by City, of all services and activities set forth herein, City agrees to reimburse ALAT up to the maximum amount of \$13,450.00 which is budgeted for such payment, as set forth and incorporated herein is the budget which is attached as Exhibit A.

4.2 The ALAT agrees to submit statements showing monthly itemized costs and documented in-kind expenses to the City associated with this contract. 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 from the ALAT. Invoices shall be due 15 days after the end of the monthly report period. The ALAT shall submit to the City a monthly billing invoice to request payment of expenses incurred on or before the 15<sup>th</sup> day of each month. Additional documentation requirements of costs and documented in-kind expenses associated with this contract may be amended by Steps-SA staff as needed.

4.2.1 The ALAT understands that documentation of a minimum 25% in-kind expenses over the life of the contract is a requirement for payment associated with this contract. The ALAT further understands that the format for said documentation of in-kind expenses is set at the discretion of Steps-SA staff.

4.3 ALAT agrees to provide any and all documentation required for inclusion in any report concerning STEPS-SA. All services required under this contract shall be performed to City's



satisfaction, and City shall not be liable for any payment under this Contract 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.

4.4 City shall not be obligated or liable under this Contract to any party, other than ALAT for payment of any monies or provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

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

5.2 ALAT 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 data, writings, documents, curriculum or information as City desires, without restriction. ALAT may retain rights to use any data and/or material produced as a result of this contract upon written request to the Director after said data and/or material has been provided to the City.

## **VI. RECORDS RETENTION**

6.1 ALAT 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 at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 ALAT 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, ALAT shall retain the records until the resolution of such litigation or other such questions. ALAT acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require ALAT to return said documents to City prior to or at the conclusion of said retention.

6.3 ALAT shall notify City, immediately, in the event ALAT receives any requests for information from a third party, which pertain to the documentation and records referenced herein. ALAT understands and agrees that City shall 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 City upon thirty (30) 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 ALAT 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. ALAT shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If ALAT 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 ALAT'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 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets

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

7.4.4 Performing unsatisfactorily

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, ALAT 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 ALAT, or provided to ALAT, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by ALAT 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 ALAT's sole cost and expense. Payment of compensation due or to become due to ALAT is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, ALAT 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 ALAT 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 ALAT of any and all right or claims to collect moneys that ALAT 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, ALAT shall cease all operations of work being performed by ALAT 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 ALAT for any default hereunder or other action.

## **VIII. NOTICE**

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

### If intended for City, to:

City Clerk

City of San Antonio

P.O. Box 839966

San Antonio, Texas 78283-3966

**AND** City of San Antonio

Director, San Antonio Metropolitan Health District

332 W. Commerce, Suite 307

San Antonio, Texas 78205

### If intended for ALAT, to:

American Lung Association of Texas

Attn: Linda Bower, Regional Executive Director

8207 Callaghan Rd. Suite 140

San Antonio, Texas 78230

Email: lbower@texaslung.org

## **IX. ACCOUNT OF FUNDS BY CONTRACTOR**

9.1 ALAT understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this CONTRACT 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 CONTRACT.

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

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

(B) that ALATs' 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 Contract, ALAT 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 CONTRACT for a minimum of four (4) years from the completion services. ALAT shall have access to the records at all times upon reasonable notice.

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

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

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

9.5 Upon termination of this CONTRACT, 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, ALAT 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 CONTRACT, 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 Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the San Antonio Metropolitan Health Department may review and approve all ALAT'S systems of internal accounting and administrative controls prior to the release of funds hereunder.

9.7 If ALAT expends \$250,000.00 or more of City dollars, then during the term of this Contract, the ALAT 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

ALAT's fiscal year or termination of this Contract, whichever is earlier. ALAT understands and agrees to furnish the San Antonio Metropolitan Health Department with a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to ALAT in Article IV of this Contract is \$250,000.00 or more, then the ALAT 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 ALAT 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 ALAT pay for such audit from non-City resources. If ALAT expends less than \$250,000.00 of City dollars, then during the term of this Contract, the ALAT shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of ALAT's fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by ALAT attesting to the correctness of said financial statement.

## **X. INSURANCE REQUIREMENTS**

10.1 Prior to the commencement of any work under this AGREEMENT, ALAT shall furnish an original completed Certificate(s) of Insurance to the City's San Antonio Metropolitan Health District and City's Risk Management Division, and shall be clearly labeled "American Lung Association Services Agreement", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. 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 directly from the agent to the City. The City shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to City's San Antonio Metropolitan Health District and the City Risk Management's Division, and 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 coverage 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, but in no instance shall City allow modification whereupon City may incur increased risk.

10.3 ALAT's financial integrity is of interest to the City; therefore, subject to ALAT's right to maintain reasonable deductibles in such amounts as are approved by the City, ALAT shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at ALAT's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation **	Statutory

Employers' Liability **	\$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (public) 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. Explosion, collapse, underground *g. Broad form property damage, to include fire legal liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
4. Medical Malpractice Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). ALAT 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 in Section 10.6 herein within 10 days of the requested change. ALAT shall pay any costs incurred resulting from said changes.

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

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under AGREEMENT 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 and employers' liability policies shall provide a waiver of

subrogation in favor of the City.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, ALAT shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if ALAT knows of said change in advance, or ten (10) days notice after the change, if the ALAT did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

**City of San Antonio  
San Antonio Metropolitan Health District  
Risk Management Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

10.7 If ALAT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of ALAT to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon ALAT'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 ALAT to stop work hereunder, and/or withhold any payment(s) which become due to ALAT hereunder until ALAT demonstrates compliance with the requirements hereof.

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

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

## **XI. INDEMNIFICATION**

11.1 ALAT covenants and agrees to **FULLY INDEMNIFY 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 ALAT's activities under this AGREEMENT, including any acts or omissions of ALAT, any agent, officer, director, representative, employee, ALAT or subcontractors of ALAT, 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. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH**

**INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. 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. ALAT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or ALAT known to ALAT related to or arising out of ALAT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at ALAT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving ALAT of any of its obligations under this paragraph.**

**11.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by ALAT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. ALAT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

**11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by ALAT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. ALAT 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 ALAT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and ALAT 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 ALAT, 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 ALAT or any subcontractor under worker's compensation or other employee benefit acts.**

## **XII. ASSIGNMENT AND SUBCONTRACTING**

**12.1 ALAT shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of ALAT. ALAT and its employees shall perform all necessary work.**



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

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

### **XIII. INDEPENDENT CONTRACTORS**

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

### **XIV. SBEDA**

14.1 City's SBEDA, Non-Discrimination and Affirmative Action Policies. ALAT agrees and acknowledges that it is City's policy that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts (SBEDA Policy). ALAT agrees that ALAT will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. ALAT further agrees that ALAT will abide by all applicable terms and provisions of City's Non-Discrimination Policy, CITY'S SBEDA Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development and the City Clerk's Office.

14.2 GFEP Required. If the Contractor's Fee paid to ALAT pursuant to this contract will equal or exceed a total of \$200,000.00, then ALAT shall have submitted to CITY a Good Faith Effort Plan (GFEP) indicating ALAT's utilization of Small, Minority and Woman-owned

Business Enterprises at the time of its proposal to seek this CONTRACT. If CITY approved the GFEP, and ALAT subsequently changes or does not utilize one or more of the subcontractors listed on its GFEP, ALAT shall submit a request for approval of this change to the original affirmed list of subcontractors. If CITY approved the GFEP, and CITY subsequently finds material deficiencies in any aspect of the GFEP, ALAT shall submit a written report to City's Department of Economic Development. The ALAT shall also submit a Supplemental GFEP indicating efforts to resolve any deficiencies. A denied Supplemental GFEP, by City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by ALAT. Failure to obtain an approved Supplemental Good Faith Effort Plan, within sixty (60) days of initial denial shall constitute a default and may result in withholding of ALAT's Fee or suspension of this CONTRACT until all deficiencies are resolved. Failure to cure all deficiencies within another sixty (60) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by ALAT which can, at the option of the Director, result in forfeiture of the entirety of this CONTRACT.

#### **XV. CONFLICT OF INTEREST**

15.1 ALAT 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, ALAT 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. ALAT further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and ALAT, and subject to approval by the City Council, as evidenced by passage of an ordinance.

#### **XVII. SEVERABILITY**

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**

ALAT warrants and certifies that ALAT 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**

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

#### **XX. NONWAIVER OF PERFORMANCE**

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**

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

### **XXIII. PARTIES BOUND**

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**

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. ENTIRE AGREEMENT**

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 \_\_\_\_\_, 2005.

**CITY:**  
**CITY OF SAN ANTONIO**

**ALAT:**  
**THE AMERICAN LUNG**  
**ASSOCIATION OF TEXAS**

\_\_\_\_\_  
Frances A. Gonzalez  
Assistant City Manager

\_\_\_\_\_  
Linda Bower  
Regional Executive Director

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Andrew Martin  
City Attorney

## EXHIBIT A

### PROJECT BUDGET

American Lung Association of Texas

Budget Period: September 22, 2004 through September 21, 2005

#### Curriculum and Materials

“Counting on You” presentations to Head Start Parents	
250 sets of material X \$30	\$ 7,500
“Open Airways” asthma education kits	
100 nurses X \$30	3,000
“Asthma in Physical Activity in Schools”	
300 copies X \$1.00 each	300

#### Scholarships

Scholarships for ten children unable to afford cost of attending “Camp Broncho”	2,650
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<b>Total</b>	<b>\$13,450</b>
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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 (SAMHD); acting by and through its Interim City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, and the South Texas Asthma Coalition by and through Autumn Dawn Galbreath, MD, MBA, (hereinafter referred to as "STAC"), 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. "STAC" and "SAMHD" are defined in the preamble of this Agreement and include their successors. "Director" shall mean the acting Director of Health of the City's San Antonio Metropolitan Health District. "Steps-SA" shall be defined as the overall local program "Steps to A Healthier San Antonio". "Steps-SA staff" shall be defined as those persons hired by SAMHD for the purpose of day-to-day program oversight with funding from the Steps to A Healthier US Cooperative Agreement with the Centers for Disease Control and the US Department of Health and Human Services. "Steps-SA Consortium" shall be defined as the primary advisory group of the Steps-SA program consisting of Steps-SA staff, partnering organizations, contractors, and interested community based organizations. "Steps-SA Leadership Team" shall be defined as the group responsible for strategic planning, outreach and evaluation of Steps-SA and consists of the Director or his designate, Steps-SA staff, community partners receiving contracted funding through Steps-SA, and other community groups determined to be major stakeholders in the project. "Target Area," shall be defined as the geographic school attendance zone of the San Antonio Independent School District in San Antonio, Texas, and all individuals who reside, work or attend school in that area.

## **II.    TERM**

2.1 Unless terminated earlier in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 22, 2004 and terminate on September 21, 2005.

2.2 City and STAC shall have the option to renew and extend the term of this Agreement four times, with each renewal or extension being for a term of one year. Each renewal or extension shall be evidenced by passage of a subsequent City ordinance.

2.3 STAC agrees and understands that City has projected costs for this Contract and that City expects to pay all obligations of this Contract from projected revenue sources, but that all obligations of City are subject to annual appropriation by City Council in future years, after

September 30, 2005. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Contract, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such obligations, following City's failure to pay such obligations due to lack of funding shall terminate this contract and neither Contractor nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Contract.

2.4 STAC further agrees and understands that the City expects to pay all obligations of this contract 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 contract, then this contract shall terminate and neither City nor STAC shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this contract.

### **III. SCOPE OF SERVICES**

STAC's services hereunder shall include the following:

3.1 In order to be an effective partner in STEPS-SA, the STAC shall select specific individuals as primary and secondary representatives to the STEPS-SA Consortium. Both representatives may participate in the Consortium concurrently, but at least one shall be present at all Consortium meetings, events and planning sessions. The STAC shall supply contact information to STEPS-SA staff regarding both representatives and both shall be tasked by the STAC to ensure full representation and participation of the STAC in all Consortium meetings, events and planning sessions. In the event that there is a change in the individuals assigned by STAC as representative(s) to the STEPS-SA Consortium, the STAC shall notify STEPS-SA staff within 72 hours of the time such change has taken place.

3.1.1 As an identified community partner with SAMHD on Steps-SA, STAC's chosen representatives shall also actively participate in strategic planning, outreach and evaluation of Steps-SA through the Steps-SA Leadership Team. These representatives shall serve on the Steps-SA Leadership Team with the same requirements and expectations as indicated in section 3.1 above.

3.2 STAC shall plan and schedule a workshop for School Nurses and School Health Coordinators on the subject "Improving Asthma Management in Your School." The purpose of the program shall be to: (1) Enhance the quality of asthma management in the school; (2) Improve communication between schools and healthcare providers; and (3) Address policy issues related to asthma management in local schools.

3.2.1 Sessions shall be taught by physicians, nurses, respiratory therapists and social workers with expertise in childhood asthma.

3.2.2 Lectures shall be given about asthma signs, symptoms and assessments with separate tracks for healthcare professionals and non-healthcare participants.

3.2.3 A list of all those attending and the schools and organizations that they represent shall be provided to STEPS-SA along with a copy of any event evaluation tools and results.

3.3 STAC shall collaborate with the American Lung Association (ALAT), the STEPS-SA Consortium, SAISD and local daycares in the Target Area concerning policies for filing asthma plans for asthmatic students with school nurses. Additionally, STAC shall collaborate with the ALAT, STEPS-SA Consortium and the San Antonio Independent School District (SAISD) concerning methods to determining whether school absenteeism is related to asthmatic events. Progress on both of these policy consultations shall be reported to the STEPS Consortium on a monthly basis.

3.4 STAC shall collaborate with the ALAT and the SAISD to identify asthmatic students present in each school as well as those asthmatic students who do not have a spacer (holding chamber) and/or a peak flow meter at school. Additionally, STAC shall purchase and provide spacers (holding chambers) and/or peak flow meters to asthmatic students in said schools determined not to possess such devices.

3.4.1 STAC understands that it will collaborate with SAISD and the Steps-SA Consortium in providing "back to school" in-service training to school nurses before distributing the spacers and peak flow meters. This collaboration shall take place during August and September of 2005.

3.4.2 The Parties understand that spacers, or holding chambers, and peak flow meters provided to identified students shall be kept at school and used by the student under the direction and guidance of the school nurse until the end of the school year. The Parties further understand that students who are provided spacers, or holding chambers, and peak flow meters will have the option of taking them home at the end of the school year.

3.4.3 STAC understands that it is required to collaborate with Steps-SA staff regarding evaluation and outcome measures of the effectiveness of the program to distribute spacers and peak flow meters to identified students in Target Area schools. STAC further understands that methodology and procedure regarding evaluation of outcome measures associated with the distribution of spacers and peak flow meters to identified students shall be determined in collaboration with Steps-SA staff and the Steps-SA Leadership Team.

#### **IV. COMPENSATION TO STAC**

4.1 In consideration of STAC's performance in a satisfactory and efficient manner, as determined solely by City, of all services and activities set forth herein, City agrees to reimburse STAC up to the maximum amount of \$29,500.00 which is budgeted for such payment.

4.2 The STAC agrees to submit itemized costs to the City associated with this contract. Additional documentation requirements of expenses associated with this contract to be reimbursed to the STAC may be amended by STEPS-SA staff in consultation with STAC as needed.

4.3 STAC agrees to provide any and all documentation required for inclusion in any report concerning STEPS-SA. All services required under this contract shall be performed to City's satisfaction, and City shall not be liable for any payment under this Contract 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.

4.4 City shall not be obligated or liable under this Contract to any party, other than STAC for payment of any monies or provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all data, writings, documents, curriculum or information in whatsoever form and character produced by STAC 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 STAC.

5.2 STAC 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 data, writings, documents, curriculum or information as City desires, without restriction. STAC may retain rights to use any data and/or material produced as a result of this contract.

## **VI. RECORDS RETENTION**

6.1 STAC 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 at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 STAC 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, STAC shall retain the records until the resolution of such litigation or other such questions. STAC acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require STAC to return said documents to City prior to or at the conclusion of said retention.

6.3 STAC shall notify City, immediately, in the event STAC receives any requests for information from a third party, which pertain to the documentation and records referenced herein. STAC understands and agrees that City shall 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 City upon thirty (30) 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 STAC 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. STAC shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If STAC 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 STAC 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 contract against STAC'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 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets

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

7.4.4 Performing unsatisfactorily

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, STAC 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 STAC, or provided to STAC, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by STAC 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 STAC's sole cost and expense. Payment of compensation due or to become due to STAC is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, STAC 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 STAC 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 STAC of any and all right or

claims to collect moneys that STAC 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, STAC shall cease all operations of work being performed by STAC 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 STAC for any default hereunder or other action.

## **VIII. NOTICE**

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

### If intended for City, to:

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

### If intended for STAC, to:

The South Texas Asthma Coalition  
Attn: Autumn Dawn Galbreath, MD, MBA  
Mail Code 7870  
7703 Floyd Curl Drive  
San Antonio, Texas 78229-3900  
Email: galbreath@uthscsa.edu

## **IX. ACCOUNT OF FUNDS BY CONTRACTOR**

9.1 STAC understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this CONTRACT 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 CONTRACT.

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

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

(B) that STACs' 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 Contract, STAC 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 CONTRACT for a minimum of four (4) years from the completion services. STAC shall have access to the records at all times upon reasonable notice.

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

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

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

9.5 Upon termination of this CONTRACT, 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, STAC 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 CONTRACT, 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 Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the San Antonio Metropolitan Health Department may review and approve all STAC'S systems of internal accounting and administrative controls prior to the release of funds hereunder.

9.7 If STAC expends \$250,000.00 or more of City dollars, then during the term of this Contract, the STAC 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 STAC'S fiscal year or termination of this Contract, whichever is earlier. STAC understands and agrees to furnish the San Antonio Metropolitan Health Department with a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to STAC in Article IV of this Contract is \$250,000.00 or more, then the STAC 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 STAC 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 STAC pay for such audit from non-City resources. If STAC expends less than \$250,000.00 of City dollars, then during the term of this Contract, the STAC shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of STAC'S fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by STAC attesting to the correctness of said financial statement.

## **X. INSURANCE REQUIRMENTS**

10.1 Prior to the commencement of any work under this AGREEMENT, STAC shall furnish an original completed Certificate(s) of Insurance to the City's San Antonio Metropolitan Health District and City's Risk Management Division, and shall be clearly labeled "Imaging Services Agreement", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. 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 directly from the agent to the City. The City shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to City's San Antonio Metropolitan Health District and the City Risk Management's Division, and 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 coverage 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, but in no instance shall City allow modification whereupon City may incur increased risk.

10.3 STAC's financial integrity is of interest to the City; therefore, subject to STAC's right to maintain reasonable deductibles in such amounts as are approved by the City, STAC shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at STAC's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation ** Employers' Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations *b. Independent contractors c. Products/completed operations	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

d. Personal Injury e. Contractual Liability *f. Explosion, collapse, underground *g. Broad form property damage, to include fire legal liability	
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence
4. Medical Malpractice Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). STAC 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 in Section 10.6 herein within 10 days of the requested change. STAC shall pay any costs incurred resulting from said changes.

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

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under AGREEMENT 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 and employers' liability policies shall provide a waiver of subrogation in favor of the City.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, STAC shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if STAC knows of said change in advance, or ten (10) days notice after the change, if the STAC did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

**City of San Antonio  
San Antonio Metropolitan Health District  
Risk Management Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

10.7 If STAC fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of STAC to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon STAC'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 STAC to stop work hereunder, and/or withhold any payment(s) which become due to STAC hereunder until STAC demonstrates compliance with the requirements hereof.

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

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

**XI. INDEMNIFICATION**

11.1 STAC covenants and agrees to **FULLY INDEMNIFY 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 STAC's activities under this AGREEMENT, including any acts or omissions of STAC, any agent, officer, director, representative, employee, STAC or subcontractors of STAC, 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. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.** 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. STAC shall advise the CITY in writing within 24 hours of any claim or demand

against the CITY or STAC known to STAC related to or arising out of STAC's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at STAC's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving STAC of any of its obligations under this paragraph.

11.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by STAC to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. STAC further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by STAC in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. STAC 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 STAC fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and STAC 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 STAC, 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 STAC or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 STAC shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of STAC. STAC and its employees shall perform all necessary work.

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



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

### **XIII. INDEPENDENT CONTRACTOR**

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

### **XIV. SBEDA**

14.1 City's SBEDA, Non-Discrimination and Affirmative Action Policies. STAC agrees and acknowledges that it is City's policy that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts (SBEDA Policy). STAC agrees that STAC will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. STAC further agrees that STAC will abide by all applicable terms and provisions of City's Non-Discrimination Policy, CITY'S SBEDA Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development and the City Clerk's Office.

14.2 GFEP Required. If the Contractor's Fee paid to STAC pursuant to this contract will equal or exceed a total of \$200,000.00, then STAC shall have submitted to CITY a Good Faith Effort Plan (GFEP) indicating STAC's utilization of Small, Minority and Woman-owned Business Enterprises at the time of its proposal to seek this CONTRACT. If CITY approved the GFEP, and STAC subsequently changes or does not utilize one or more of the subcontractors listed on its GFEP, STAC shall submit a request for approval of this change to the original affirmed list of subcontractors. If CITY approved the GFEP, and CITY subsequently finds material deficiencies in any aspect of the GFEP, STAC shall submit a written report to City's Department of Economic Development. The STAC shall also submit a Supplemental GFEP indicating efforts to resolve any deficiencies. A denied Supplemental GFEP, by City's Department of Economic Development, will constitute failure to satisfactorily resolve any

deficiencies by STAC. Failure to obtain an approved Supplemental Good Faith Effort Plan, within sixty (60) days of initial denial shall constitute a default and may result in withholding of STAC's Fee or suspension of this CONTRACT until all deficiencies are resolved. Failure to cure all deficiencies within another sixty (60) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by STAC which can, at the option of the Director, result in forfeiture of the entirety of this CONTRACT.

#### **XV. CONFLICT OF INTEREST**

15.1 STAC 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, STAC 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. STAC further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and STAC, and subject to approval by the City Council, as evidenced by passage of an ordinance.

#### **XVII. SEVERABILITY**

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**

STAC warrants and certifies that STAC 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**

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

## **XX. NONWAIVER OF PERFORMANCE**

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**

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

### **XXIII. PARTIES BOUND**

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**

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. INCORPORATION OF EXHIBITS**

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

### **XXVI. ENTIRE AGREEMENT**

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 \_\_\_\_\_, 2005.

**CITY:**  
**CITY OF SAN ANTONIO**

**STAC:**  
**THE SOUTH TEXAS ASTHMA COALITION**

\_\_\_\_\_  
Frances A. Gonzalez  
Assistant City Manager

\_\_\_\_\_  
Autumn Dawn Galbreath, MD, MBA

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Andrew Martin  
City Attorney

**EXHIBIT A****PROJECT BUDGET**

South Texas Asthma Coalition  
Budget Period: September 22, 2004 through September 21, 2005

## Materials

Spacers or "Holding Chambers"

700 units X \$15

\$ 10,500

Peak Flow Meters

1100 units X \$15

16,500

## Asthma Education Workshop

Partial funding for 250 attending school nurses @ \$10 each

2,500

**Total****\$29,500**

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 Interim City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, and The San Antonio – Bexar County Metropolitan Planning Organization (MPO) by and through its Director Joanne Walsh (hereinafter referred to as "MPO"), 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. "MPO and "SAMHD" are defined in the preamble of this Agreement and include their successors. "Director" shall mean the acting Director of Health of the City's San Antonio Metropolitan Health District. "Steps-SA" shall be defined as the overall local program "Steps to A Healthier San Antonio". "Steps-SA staff" shall be defined as those persons hired by SAMHD for the purpose of day-to-day program oversight with funding from the Steps to A Healthier US Cooperative Agreement with the Centers for Disease Control and the US Department of Health and Human Services. "Steps-SA Consortium" shall be defined as the primary advisory group of the Steps-SA program consisting of Steps-SA staff, partnering organizations, contractors, and interested community based organizations. "Steps-SA Leadership Team" shall be defined as the group responsible for strategic planning, outreach and evaluation of Steps-SA and consists of the Director or his designate, Steps-SA staff, community partners receiving contracted funding through Steps-SA, and other community groups determined to be major stakeholders in the project. "Target Area," shall be defined as the geographic school attendance zone of the San Antonio Independent School District (SAISD) in San Antonio, Texas, and all individuals who reside, work or attend school in that area. "Active Transportation" shall be defined as bicycle and pedestrian or related active modes of transportation. "Safe Routes to Schools Program" shall be defined as workshops conducted with SAISD and other schools promoting physical activity through cycling and walking. Walkable Community Workshops are defined as workshops with neighborhood associations to promote physical activity through cycling and walking. "Regional Bicycle Master Plan" shall be defined as the regional plan for implementing on and off-road bicycle facilities throughout San Antonio and Bexar County

### **II.   TERM**

2.1 Unless terminated earlier in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 22, 2004 and terminate on September 21, 2005.

2.2 City shall have the option to renew and extend the term of this Agreement four times, with each renewal or extension being for a term of one year. Each renewal or extension shall be evidenced by passage of a subsequent City ordinance.

2.3 MPO agrees and understands that City has projected costs for this Contract and that City expects to pay all obligations of this Contract from projected revenue sources, but that all obligations of City are subject to annual appropriation by City Council in future years, after September 30, 2005. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Contract, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such obligations, following City's failure to pay such obligations due to lack of funding shall terminate this contract and neither Contractor nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Contract.

2.4 MPO further agrees and understands that the City expects to pay all obligations of this contract 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 contract, then this contract shall terminate and neither City nor MPO shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this contract.

### **III. SCOPE OF SERVICES**

3.1 In order to be an effective partner in STEPS-SA, the MPO shall select specific individuals as primary and secondary representatives to the Steps-SA Consortium, the primary advisory group for Steps-SA. Both representatives may participate in the Consortium concurrently, but at least one representative shall be present at all Consortium meetings, events and planning sessions. This participation is required for coordination of Steps-SA Consortium activities involving all partners associated with Steps-SA and their interaction with MPO staff and programming. The MPO shall supply contact information to Steps-SA staff regarding both representatives, and both representatives shall be tasked by the MPO to ensure full representation and participation of the MPO in all Consortium meetings, events and planning sessions. In the event that there is a change in the individuals assigned by MPO as representative(s) to the Steps-SA Consortium, the MPO shall notify Steps-SA staff within 72 hours of the time such change has taken place.

3.1.1 As an identified community partner with SAMHD on Steps-SA, MPO's chosen representatives shall also actively participate in strategic planning, outreach and evaluation of Steps-SA through the Steps-SA Leadership Team. These representatives shall serve on the Steps-SA Leadership Team with the same requirements and expectations as indicated in section 3.1 above.

3.1.2 MPO understands that it is required to collaborate with Steps-SA staff regarding evaluation and outcome measures of the effectiveness of all programs funded by Steps-SA. MPO further understands that methodology and procedure regarding evaluation of outcome measures associated with all programs funded by Steps-SA shall be determined in collaboration with Steps-SA staff and the Steps-SA Leadership Team.

3.2 The MPO shall recruit and hire a full-time STEPS-SA Active Transportation Coordinator (hereinafter referred to as the "Coordinator") by January 1, 2005 or as soon as possible thereafter. The Coordinator's task shall be to assist transportation and neighborhood planners, and the STEPS-SA Consortium in identifying and directing available infrastructure resources to the Target Area which will enable greater and safer access for increased levels of physical activity. This person shall coordinate with selected schools, neighborhood associations, community organizations, businesses, transportation planning agencies and other governmental entities to identify needed infrastructure improvements within the Target Area to improve access, usage and safety of walking trails, bike paths, sidewalks, and streets in the Target Area. A minimum of 75% of the Coordinator's time shall be spent working on projects and activities within the geographic school attendance zone of the SAISD..

3.3 The Coordinator shall work with the STEPS-SA Consortium, San Antonio Independent School District (SAISD), other community groups and the MPO's transportation planning partners in order to create and implement a comprehensive bicycle and pedestrian data collection program. Data collection shall complement the Safe Routes to Schools and Walkable Community Workshop programs as well as the Regional Bicycle Master Plan. Among data collected shall be the degree of bicycle and pedestrian activity such as number of minutes ridden or walked or other similar measures. The intent shall be to collect data showing changes in active transportation over time. Specific data items and format shall be agreed upon with STEPS-SA staff before collection begins.

3.4 The Coordinator shall design and implement an Active Transportation Program for Children in the Target Area that is fully coordinated with the STEPS-SA Consortium, San Antonio Independent School District (SAISD), other community groups and the MPO's transportation planning partners. Programs that promote healthier lifestyles include but are not limited to Safe Routes to Schools and Hike and Bike activities. The Active Transportation Program for children shall incorporate the Safe Routes to Schools concept for at least three (3) schools in the Target Area during the first year. Hike and Bike activities shall be integrated with the San Antonio Police Department Schools Services Division's Bike Rodeo program. Other Hike and Bike safety presentations shall be conducted at various times throughout the year within the Target Area.

3.5 The Coordinator shall work with the STEPS-SA Consortium, San Antonio Independent School District (SAISD), other community groups, and the MPO's transportation planning partners to design and implement an Active Transportation Program for Adults. The adult program shall include, but not be limited to, the Walkable Community Workshop program and year-round Hike and Bike activities.

3.6 The Coordinator shall provide progress reports to STEPS-SA staff as required for inclusion in a periodic newsletter or to be posted on the internet and made available to the various stakeholders of the STEPS-SA project and the general public. Frequency and structure of required reports shall up to the discretion of the STEPS-SA Leadership Team and staff.



3.7 In addition to the regular progress reports required in section 3.6 preceding, MPO agrees to submit quarterly reports to STEPS-SA staff on activities and services called for in the contract. MPO shall supply reports in the format requested by STEPS-SA staff. Expected due dates of quarterly reports shall be: January 15, 2005, April 15, 2005, July 15, 2005, and September 15, 2005. The due dates for the quarterly reports may be amended by STEPS-SA staff as needed.

3.8 The Coordinator's tasks and activities associated with the Children and Adult Active Transportation programs may occasionally occur in areas adjacent to or outside the designated Target Area. Only events and activities occurring within the designated Target Area shall be calculated and included in any program effectiveness measures.

#### **IV. COMPENSATION TO MPO**

4.1 In consideration of MPO's performance in a satisfactory and efficient manner, as determined solely by City, of all services and activities set forth herein, City agrees to reimburse MPO up to the maximum amount of \$88,200.00 which is budgeted for such payment, as set forth and incorporated herein in the budget which is attached as Exhibit A.

4.2 The MPO agrees to submit statements showing monthly itemized costs and documented in-kind expenses to the City associated with this contract. 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 from the MPO. Invoices shall be due 15 days after the end of the monthly report period. The MPO shall submit to the City a monthly billing invoice to request payment of expenses incurred on or before the 15<sup>th</sup> day of each month. Additional documentation requirements of costs and documented in-kind expenses associated with this contract may be amended by Steps-SA staff as needed.

4.2.1 The MPO understands that documentation of a minimum 25% in-kind expenses over the life of the contract is a requirement for payment associated with this contract. The MPO further understands that the format for said documentation of in-kind expenses is set at the discretion of Steps-SA staff.

4.3 MPO agrees to provide any and all documentation required for inclusion in any report concerning STEPS-SA. All services required under this contract shall be performed to City's satisfaction, and City shall not be liable for any payment under this Contract 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.

4.4 City shall not be obligated or liable under this Contract to any party, other than MPO for payment of any monies or provision of any goods or services.

#### **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all data, writings, documents, curriculum or information in whatsoever form and character produced by MPO 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 MPO.

5.2 MPO 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 data, writings, documents, curriculum or information as City desires, without restriction. MPO may retain rights to use any data and/or material produced as a result of this contract after said data and/or material has been provided to the City. Prior to delivery to and acceptance by the City, the MPO shall publicly use materials and/or data only after submitting a written request to the Director.

## **VI. RECORDS RETENTION**

6.1 MPO 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 at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 MPO 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, MPO shall retain the records until the resolution of such litigation or other such questions. MPO acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require MPO to return said documents to City prior to or at the conclusion of said retention.

6.3 MPO shall notify City, immediately, in the event MPO receives any requests for information from a third party, which pertain to the documentation and records referenced herein. MPO understands and agrees that City shall 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 thirty (30) 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 MPO 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. MPO shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If MPO 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 MPO'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 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets

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

7.4.4 Performing unsatisfactorily

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, MPO 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 MPO, or provided to MPO, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by MPO 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 MPO's sole cost and expense. Payment of compensation due or to become due to MPO is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, MPO 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 MPO 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 MPO of any and all right or claims to collect moneys that MPO 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, MPO shall cease all operations of work being performed by MPO or any of its subcontractors for which reimbursement shall be sought pursuant to this Agreement. It is understood by the Parties that MPO may be required to continue work, which is set forth in Article III Scope of Services pursuant this Agreement, as part of other ongoing transportation planning efforts after the termination of this Agreement. In no event shall any of said work by MPO be paid for by CITY with funding set forth in Section IV hereunder after the termination of 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 MPO for any default hereunder or other action.

### **VIII. NOTICE**

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

If intended for City, to:

City Clerk

City of San Antonio

P.O. Box 839966

San Antonio, Texas 78283-3966

**AND** City of San Antonio

Director, San Antonio Metropolitan Health District

332 W. Commerce, Suite 307

San Antonio, Texas 78205

If intended for MPO, to:

San Antonio – Bexar County MPO

Attn: Joanne Walsh, Director

1021 San Pedro, #2200

San Antonio, Texas 78212

Email: [walsh@sametroplan.org](mailto:walsh@sametroplan.org)

### **IX. ACCOUNT OF FUNDS BY MPO**

9.1 MPO understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this CONTRACT 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 CONTRACT.

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

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

(B) that MPOs' 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 Contract, MPO 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 CONTRACT for a minimum of four (4) years from the completion services. MPO shall have access to the records at all times upon reasonable notice.

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

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

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

9.5 Upon termination of this CONTRACT, 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, MPO 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 CONTRACT, 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 Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the San Antonio Metropolitan Health Department may review and approve all MPO'S systems of internal accounting and administrative controls prior to the release of funds hereunder.

9.7 If MPO expends \$250,000.00 or more of City dollars, then during the term of this Contract, the MPO 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 MPO'S fiscal year or termination of this Contract, whichever is earlier. MPO understands and agrees to furnish the San Antonio Metropolitan Health Department with a copy of the audit

report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to MPO in Article IV of this Contract is \$250,000.00 or more, then the MPO 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 MPO 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 MPO pay for such audit from non-City resources. If MPO expends less than \$250,000.00 of City dollars, then during the term of this Contract, the MPO shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of MPO'S fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by MPO attesting to the correctness of said financial statement.

#### **X. INSURANCE REQUIREMENTS**

CITY and the MPO acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

This agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this agreement shall be in Bexar County, Texas. This agreement is made and is to be performed in Bexar County, Texas and is governed by the laws of the State of Texas.

#### **XI. ASSIGNMENT AND SUBCONTRACTING**

11.1 MPO shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of MPO. MPO and its employees shall perform all necessary work.

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

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

## **XII. INDEPENDENT CONTRACTOR**

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

## **XIII. SBEDA**

13.1 City's SBEDA, Non-Discrimination and Affirmative Action Policies. MPO agrees and acknowledges that it is City's policy that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts (SBEDA Policy). MPO agrees that MPO shall not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. MPO further agrees that MPO shall abide by all applicable terms and provisions of City's Non-Discrimination Policy, CITY'S SBEDA Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development and the City Clerk's Office.

13.2 GFEP Required. If the Contractor's Fee paid to MPO pursuant to this contract shall equal or exceed a total of \$200,000.00, then MPO shall have submitted to CITY a Good Faith Effort Plan (GFEP) indicating MPO's utilization of Small, Minority and Woman-owned Business Enterprises at the time of its proposal to seek this CONTRACT. If CITY approved the GFEP, and MPO subsequently changes or does not utilize one or more of the subcontractors listed on its GFEP, MPO shall submit a request for approval of this change to the original affirmed list of subcontractors. If CITY approved the GFEP, and CITY subsequently finds material deficiencies in any aspect of the GFEP, MPO shall submit a written report to City's Department of Economic Development. The MPO shall also submit a Supplemental GFEP indicating efforts to resolve any deficiencies. A denied Supplemental GFEP, by City's Department of Economic Development, shall constitute failure to satisfactorily resolve any deficiencies by MPO. Failure to obtain an approved Supplemental Good Faith Effort Plan, within sixty (60) days of initial denial shall constitute a default and may result in withholding of MPO's Fee or suspension of this CONTRACT until all deficiencies are resolved. Failure to cure

all deficiencies within another sixty (60) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by MPO which can, at the option of the

#### **XIV. CONFLICT OF INTEREST**

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

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

#### **XV. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and MPO, and subject to approval by the City Council, as evidenced by passage of an ordinance.

#### **XVI. SEVERABILITY**

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.

#### **XVII. LICENSES/CERTIFICATIONS**

MPO warrants and certifies that MPO 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**

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

#### **XIX. NONWAIVER OF PERFORMANCE**

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.

#### **XX. 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.

#### **XXI. LEGAL AUTHORITY**

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

#### **XXII. PARTIES BOUND**

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**

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. ENTIRE AGREEMENT**

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 \_\_\_\_\_, 2005.

**CITY:**  
**CITY OF SAN ANTONIO**

**MPO:**  
**SAN ANTONIO – BEXAR COUNTY**  
**METROPOLITAN PLANNING**  
**ORGANIZATION**

\_\_\_\_\_  
Frances A. Gonzalez  
Assistant City Manager

\_\_\_\_\_  
Joanne Walsh  
Director, SA-BC MPO

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Andrew Martin  
City Attorney

## EXHIBIT A

### PROJECT BUDGET

San Antonio – Bexar County Metropolitan Planning Organization  
Budget Period: September 22, 2004 through September 21, 2005

Staffing	FTE	
Hike & Bike Coordinator, salary and benefits	0.75	\$40,000
Baseline Survey of Pedestrian & Bicycle Activity		
Supplies, development of survey instrument, coordination of survey implementation		34,200
Supplies		
Office Supplies, postage, printing, audio-visual, etc.		5,000
Bicycle helmets as program incentives		9,000
	<b>Total</b>	<b>\$88,200</b>

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 (SAMHD); acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, and The Bexar County Community Health Collaborative by and through its Executive Director, Joan Miller (hereinafter referred to as "BCCHC"), 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. "BCCHC" and "SAMHD" are defined in the preamble of this Agreement and include their successors. "Director" shall mean the acting Director of Health of the City's San Antonio Metropolitan Health District. "Steps-SA" shall be defined as the overall local program "Steps to A Healthier San Antonio". "Steps-SA staff" shall be defined as those persons hired by SAMHD for the purpose of day-to-day operations with funding from the Steps to A Healthier US Cooperative Agreement with the Centers for Disease Control and the US Department of Health and Human Services. "Steps-SA Consortium" shall be defined as the primary advisory group of the Steps-SA program consisting of Steps-SA staff, partnering organizations, contractors, and interested community based organizations. "Steps-SA Leadership Team" shall be defined as the group responsible for strategic planning, outreach and evaluation of Steps-SA and consists of the Director or his designate, Steps-SA staff, community partners receiving contracted funding through Steps-SA, and other community groups determined to be major stakeholders in the project. "Target Area," shall be defined as the geographic school attendance zone of the San Antonio Independent School District (SAISD) in San Antonio, Texas, and all individuals who reside, work or attend school in that area.

## II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 22, 2004 and terminate on September 21, 2005.

2.2 City shall have the option to renew and extend the term of this Agreement four times, with each renewal or extension being for a term of one year. Each renewal or extension shall be evidenced by passage of a subsequent City ordinance.

2.3 BCCHC agrees and understands that City has projected costs for this Contract and that City expects to pay all obligations of this Contract from projected revenue sources, but that all obligations of City are subject to annual appropriation by City Council in future years, after September 30, 2005. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Contract, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such obligations, following City's failure to pay such obligations due to lack of funding shall terminate this contract and neither BCCHC nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Contract.

2.4 BCCHC further agrees and understands that the City expects to pay all obligations of this contract 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 contract, then this contract shall terminate and neither City nor BCCHC shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this contract.

### **III. SCOPE OF SERVICES**

3.1 In order to be an effective partner in STEPS-SA, the BCCHC shall select specific individuals as primary and secondary representatives to the Steps-SA Consortium, the primary advisory group for Steps-SA. Both representatives may participate in the Consortium concurrently, but at least one representative shall be present at all Consortium meetings, events and planning sessions. This participation is required for coordination of Steps-SA Consortium activities involving all partners associated with Steps-SA and their interaction with BCCHC staff and programming. The BCCHC shall supply contact information to Steps-SA staff regarding both representatives, and both representatives shall be tasked by the BCCHC to ensure full representation and participation of the BCCHC in all Consortium meetings, events and planning sessions. In the event that there is a change in the individuals assigned by BCCHC as representative(s) to the Steps-SA Consortium, the BCCHC shall notify Steps-SA staff within 72 hours of the time such change has taken place.

3.1.1 As an identified community partner with SAMHD on Steps-SA, BCCHC's chosen representatives shall also actively participate in strategic planning, outreach and evaluation of Steps-SA through the Steps-SA Leadership Team. These representatives shall serve on the Steps-SA Leadership Team with the same requirements and expectations as indicated in section 3.1 above.

3.1.2 BCCHC understands that it is required to collaborate with Steps-SA staff regarding evaluation and outcome measures of the effectiveness of all programs funded by Steps-SA. BCCHC further understands that methodology and procedure regarding evaluation of outcome measures associated with all programs funded by Steps-SA shall be determined in collaboration with Steps-SA staff and the Steps-SA Leadership Team.

3.2 BCCHC shall conduct two free Fit City Festival community outreach events in the SAISD region, the purpose of which is to increase awareness of fitness and nutrition resources and motivate individuals to improve their health. The Fit City Festivals shall be planned, coordinated, promoted and implemented by wellness and marketing staff from the YMCA of Greater San Antonio, the managing partner of BCCHC's Fit City/Fit Schools program. The community events shall include such activities as body composition analysis, fitness

demonstrations, healthy cooking classes, health walks, proper stretching techniques and information on where families can exercise. The YMCA staff shall finalize organizational plans two months in advance of each festival and implement promotional plans one month prior. A minimum of 500 people shall attend the events, 200 of whom shall sign up for Walk San Antonio.

3.3 BCCHC shall encourage physical activity and track the health impact of exercise on Walk San Antonio participants by performing monthly body composition analysis. Residents in the SAISD region are able to check in at approximately 15 dedicated sites, where a coordinator shall track their weight, percentage of body fat, percentage of muscle, percentage of water, BMI and number of minutes exercised each month. The sites include churches, community centers, businesses, schools, YMCAs and other convenient sites. The analysis shall be performed by staff from the YMCA of Greater San Antonio, the managing partner of BCCHC's Fit City/Fit Schools program. Participants receive a printout of their results immediately following the check-in, as well as an incentive item (water bottle, sports towel) for completing a log of minutes exercised. Composite data reports shall be prepared by the middle of the month for the preceding month. Between October 2004 and September of 2005, some 2,500 check-ins shall be performed.

#### **IV. COMPENSATION TO BCCHC**

4.1 In consideration of the Health Collaborative performance in a satisfactory and efficient manner, as determined solely by City, of all services and activities set forth herein, City agrees to reimburse the Health Collaborative \$66,825, which is budgeted for such payment, as set forth and incorporated herein in the budget which is attached as Exhibit A.

4.2 The BCCHC agrees to submit statements showing monthly itemized costs and documented in-kind expenses to the City associated with this contract. 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 from the BCCHC. Invoices shall be due 15 days after the end of the monthly report period. The BCCHC shall submit to the City a monthly billing invoice to request payment of expenses incurred on or before the 15<sup>th</sup> day of each month. Additional documentation requirements of costs and documented in-kind expenses associated with this contract may be amended by Steps-SA staff as needed.

4.2.1 The BCCHC understands that documentation of a minimum of 25% in-kind expenses over the life of the contract is a requirement for payment associated with this contract. The BCCHC further understands that the format for said documentation of in-kind expenses is set at the discretion of Steps-SA staff.

4.3 BCCHC agrees to provide any and all documentation required for inclusion in any report concerning STEPS-SA. All services required under this contract shall be performed to City's satisfaction, and City shall not be liable for any payment under this Contract 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.

4.4 City shall not be obligated or liable under this Contract to any party, other than the Health Collaborative for payment of any monies or provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

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

5.2 BCCHC 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 BCCHC 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 at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 BCCHC 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, BCCHC shall retain the records until the resolution of such litigation or other such questions. BCCHC acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require BCCHC to return said documents to City prior to or at the conclusion of said retention.

6.3 BCCHC shall notify City, immediately, in the event BCCHC receives any requests for information from a third party, which pertain to the documentation and records referenced herein. BCCHC understands and agrees that City shall 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 City upon thirty (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 BCCHC 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. BCCHC shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If BCCHC 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 BCCHC'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 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets

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

7.4.4 Performing unsatisfactorily

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, BCCHC 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 BCCHC, or provided to BCCHC, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by BCCHC 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 BCCHC's sole cost and expense. Payment of compensation due or to become due to BCCHC is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, BCCHC 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 BCCHC 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 BCCHC of any and all right or claims to collect moneys that BCCHC 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, BCCHC shall



cease all operations of work being performed by BCCHC 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 BCCHC for any default hereunder or other action.

### **VIII. NOTICE**

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

If intended for City, to:

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

If intended for BCCHC, to:

Bexar County Community Health Collaborative  
Attn: Joan Miller, Executive Director  
Address: 527 N. Leona, MS12-2  
San Antonio, Texas 78207  
Phone Number: (210) 481-2573  
Email: [jmmiller@healthcollaborative.net](mailto:jmmiller@healthcollaborative.net)

### **IX. ACCOUNT OF FUNDS BY BCCHC**

9.1 BCCHC understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this CONTRACT 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 CONTRACT.

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

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

(B) that BCCHCs' 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 Contract, BCCHC 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 CONTRACT for a minimum of four (4) years from the completion services. BCCHC shall have access to the records at all times upon reasonable notice.

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

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

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

9.5 Upon termination of this CONTRACT, 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, BCCHC 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 CONTRACT, 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 Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the San Antonio Metropolitan Health Department may review and approve all BCCHC'S systems of internal accounting and administrative controls prior to the release of funds hereunder.

9.7 If BCCHC expends \$250,000.00 or more of City dollars, then during the term of this Contract, the BCCHC 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 BCCHC'S fiscal year or termination of this Contract, whichever is earlier. BCCHC understands and agrees to furnish the San Antonio Metropolitan Health Department with a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to BCCHC in Article IV of this Contract is \$250,000.00 or more, then the BCCHC 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 BCCHC 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 BCCHC pay for

*f. Explosion, collapse, underground *g. Broad form property damage, to inc 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
4. Medical Malpractice Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). BCCHC 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 in Section 10.6 herein within 10 days of the requested change. BCCHC shall pay any costs incurred resulting from said changes.

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

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under AGREEMENT 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 and employers' liability policies shall provide a waiver of subrogation in favor of the City.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, BCCHC shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if BCCHC knows of said change in advance, or ten (10) days notice after the change, if the BCCHC did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio  
San Antonio Metropolitan Health District  
Risk Management Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

10.7 If BCCHC fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of BCCHC to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon BCCHC'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 BCCHC to stop work hereunder, and/or withhold any payment(s) which become due to BCCHC hereunder until BCCHC demonstrates compliance with the requirements hereof.

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

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

## **XI. INDEMNIFICATION**

**11.1 BCCHC covenants and agrees to FULLY INDEMNIFY 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 BCCHC's activities under this AGREEMENT, including any acts or omissions of BCCHC, any agent, officer, director, representative, employee, BCCHC or subcontractor of BCCHC, 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. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. 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. BCCHC shall advise the CITY in writing**

such audit from non-City resources. If BCCHC expends less than \$250,000.00 of City dollars, then during the term of this Contract, the BCCHC shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of BCCHC'S fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by BCCHC attesting to the correctness of said financial statement.

## **X. INSURANCE REQUIREMENTS**

10.1 Prior to the commencement of any work under this AGREEMENT, BCCHC shall furnish an original completed Certificate(s) of Insurance to the City's San Antonio Metropolitan Health District and City's Risk Management Division, and shall be clearly labeled "BCCHC Agreement", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. 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 directly from the agent to the City. The City shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to City's San Antonio Metropolitan Health District and the City Risk Management's Division, and 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 coverage 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, but in no instance shall City allow modification whereupon City may incur increased risk.

10.3 BCCHC's financial integrity is of interest to the City; therefore, subject to BCCHC's right to maintain reasonable deductibles in such amounts as are approved by the City, BCCHC shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at BCCHC's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNTS
1. Workers' Compensation ** Employers' Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (public) Liability include coverage for the following: a. Premises operations *b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	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

within 24 hours of any claim or demand against the CITY or BCCHC known to BCCHC related to or arising out of BCCHC's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at BCCHC's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving BCCHC of any of its obligations under this paragraph.

11.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by BCCHC to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. BCCHC further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by BCCHC in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. BCCHC 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 BCCHC fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and BCCHC 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 BCCHC, 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 BCCHC or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 BCCHC shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of BCCHC. BCCHC and its employees shall perform all necessary work.

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

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

### **XIII. INDEPENDENT CONTRACTOR**

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

### **XIV. SBEDA**

14.1 City's SBEDA, Non-Discrimination and Affirmative Action Policies. BCCHC agrees and acknowledges that it is City's policy that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts (SBEDA Policy). BCCHC agrees that BCCHC will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. BCCHC further agrees that BCCHC will abide by all applicable terms and provisions of City's Non-Discrimination Policy, CITY'S SBEDA Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development and the City Clerk's Office.

14.2 GFEP Required. If the Contractor's Fee paid to BCCHC pursuant to this contract will equal or exceed a total of \$200,000.00, then BCCHC shall have submitted to CITY a Good Faith Effort Plan (GFEP) indicating BCCHC's utilization of Small, Minority and Woman-owned Business Enterprises at the time of its proposal to seek this CONTRACT. If CITY approved the GFEP, and BCCHC subsequently changes or does not utilize one or more of the subcontractors listed on its GFEP, BCCHC shall submit a request for approval of this change to the original affirmed list of subcontractors. If CITY approved the GFEP, and CITY subsequently finds material deficiencies in any aspect of the GFEP, BCCHC shall submit a written report to City's Department of Economic Development. The BCCHC shall also submit a Supplemental GFEP indicating efforts to resolve any deficiencies. A denied Supplemental GFEP, by City's

Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by BCCHC. Failure to obtain an approved Supplemental Good Faith Effort Plan, within sixty (60) days of initial denial shall constitute a default and may result in withholding of BCCHC's Fee or suspension of this CONTRACT until all deficiencies are resolved. Failure to cure all deficiencies within another sixty (60) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by BCCHC which can, at the option of the Director, result in forfeiture of the entirety of this CONTRACT.

#### **XV. CONFLICT OF INTEREST**

15.1 BCCHC 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, BCCHC 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. BCCHC further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and BCCHC, and subject to approval by the City Council, as evidenced by passage of an ordinance.

#### **XVII. SEVERABILITY**

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**

BCCHC warrants and certifies that BCCHC 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**

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

## **XX. NONWAIVER OF PERFORMANCE**

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**

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

### **XXIII. PARTIES BOUND**

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**

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. ENTIRE AGREEMENT**

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 \_\_\_\_\_, 2005.

**CITY:**  
**CITY OF SAN ANTONIO**

**BCCHC:**  
**BEXAR COUNTY COMMUNITY**  
**HEALTH COLLABORATIVE**

\_\_\_\_\_  
Frances A. Gonzalez  
Assistant City Manager

\_\_\_\_\_  
Joan Miller  
Executive Director

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Andrew Martin  
City Attorney

**EXHIBIT A****PROJECT BUDGET**

Bexar County Community Health Collaborative  
Budget Period: September 22, 2004 through September 21, 2005

<b>Walk San Antonio</b>	<b>\$ 44,325</b>
Personnel	FTE
Coordinator of Community Outreach and Education	1.00
Administrative Assistant	0.20
Fringe Benefits 22% of salary for 1 FTE Coordinator & .20 Administrative Assistant for FICA, SS, Med and employer stipend for health insurance	
Travel	
Mileage for Coordinator to service sites.	
Supplies / Incentive Items	
Monthly Incentive Items	
Walk San Antonio Manuals	
Activity Log Books	
<b>Media / Promotion</b>	<b>\$ 22,500</b>
20,000 bilingual fliers, community newspaper ads; radio station remote	
Sound system, décor, tables, supplies for six weekend events	
Grassroots marketing, event-day staff, media buying and event management	
Promotional items	
<b>Total</b>	<b>\$66,825</b>

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 Interim City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_ and the University Health System - Texas Diabetes Institute by and through its CEO/President (hereafter referred to as "TDI"), 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. "TDI" and "SAMHD" are defined in the preamble of this Agreement and include their successors. "Director" shall mean the acting Director of Health of the City's San Antonio Metropolitan Health District. "Steps-SA" shall be defined as the overall local program "Steps to A Healthier San Antonio". "Steps-SA staff" shall be defined as those persons hired by SAMHD for the purpose of day-to-day program oversight with funding from the Steps to A Healthier US Cooperative Agreement with the Centers for Disease Control and the US Department of Health and Human Services. "Steps-SA Consortium" shall be defined as the primary advisory group of the Steps-SA program consisting of Steps-SA staff, partnering organizations, contractors, and interested community based organizations. "Steps-SA Leadership Team" shall be defined as the group responsible for strategic planning, outreach and evaluation of Steps-SA and consists of the Director or his designate, Steps-SA staff, community partners receiving contracted funding through Steps-SA, and other community groups determined to be major stakeholders in the project. "Target Area," shall be defined as the geographic school attendance zone of the San Antonio Independent School District (SAISD) in San Antonio, Texas, and all individuals who reside, work or attend school in that area.

### **II. TERM**

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 22, 2004 and terminate on September 21, 2005.

2.2 City and TDI shall have the option to renew and extend the term of this contract annually throughout the term of the original cooperative agreement. This renewal and extension shall be evidenced by passage of subsequent City ordinances as required.

2.3 TDI agrees and understands that City has projected costs for this Contract and that City expects to pay all obligations of this Contract from projected revenue sources, but that all obligations of City are subject to annual appropriation by City Council in future years, after

September 30, 2005. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Contract, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such obligations, following City's failure to pay such obligations due to lack of funding shall terminate this contract and neither TDI nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Contract.

2.4 TDI further agrees and understands that the City expects to pay all obligations of this contract 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 contract, then this contract shall terminate and neither City nor TDI shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this contract.

### **III. SCOPE OF SERVICES**

3.1 In order to be an effective partner in STEPS-SA, the TDI shall select specific individuals as primary and secondary representatives to the Steps-SA Consortium, the primary advisory group for Steps-SA. Both representatives may participate in the Consortium concurrently, but at least one representative shall be present at all Consortium meetings, events and planning sessions. This participation is required for coordination of Steps-SA Consortium activities involving all partners associated with Steps-SA and their interaction with TDI staff and programming. The TDI shall supply contact information to Steps-SA staff regarding both representatives, and both representatives shall be tasked by the TDI to ensure full representation and participation of the TDI in all Consortium meetings, events and planning sessions. In the event that there is a change in the individuals assigned by TDI as representative(s) to the Steps-SA Consortium, the TDI shall notify Steps-SA staff within 72 hours of the time such change has taken place.

3.1.1 As an identified community partner with SAMHD on Steps-SA, TDI's chosen representatives shall also actively participate in strategic planning, outreach and evaluation of Steps-SA through the Steps-SA Leadership Team. These representatives shall serve on the Steps-SA Leadership Team with the same requirements and expectations as indicated in section 3.1 above.

3.1.2 TDI understands that it is required to collaborate with Steps-SA staff regarding evaluation and outcome measures of the effectiveness of all programs funded by Steps-SA. TDI further understands that methodology and procedure regarding evaluation of outcome measures associated with all programs funded by Steps-SA shall be determined in collaboration with Steps-SA staff and the Steps-SA Leadership Team.

3.2 TDI shall develop and disseminate a Health Care Provider Tool Kit to include information regarding treatment and prevention of diabetes, obesity, tobacco cessation, asthma, and overall fitness issues. The tool kit shall incorporate both medical and community service resources as well as approved standards of care and shall be adapted utilizing information and resources available through the various STEPS grant partners. The tool kit shall be adapted for the San Antonio health care providers within the target area, such as physicians, nurses, pharmacists and dieticians.

The timetable for the Health Care Provider Tool Kit shall be as follows:

- 3.2.1 By January, 2005 TDI shall conduct target population focus groups comprised of at least 8-10 (per 1-2 groups) individuals in order to gather community perspectives on the content of the tool kit.
- 3.2.2 By February 2005 TDI shall develop the Health Care Provider Tool Kit to fit the needs of the community.
- 3.2.3 By March, 2005 TDI shall establish tool kit content validity via consultation with STEPS partners, Medical Directors of the Texas Diabetes Institute, and members of the Texas Diabetes Council Standards of Care Committee.
- 3.2.4 By March, 2005 TDI shall develop a list of local diabetes and chronic disease care professionals to receive the tool kit.
- 3.2.5 Between April and July, 2005 TDI shall begin dissemination of the tool kits to identified health care providers within the target area.
- 3.2.6 By April, 2005 TDI shall conduct at least 3 in-service trainings for educators/dietitians within the target area on the use of the tool kit.
- 3.2.7 By July, 2005 TDI shall administer pre and post surveys to at least 20% of all health care providers using the tool kit to determine number of referrals made for patients with acute complications associated with Asthma, Diabetes and Obesity.

3.3 TDI shall provide Professional Health Promotion Training Seminars and Educational Materials to Parish Nurses and Community Based Health Personnel within the target area. Comprehensive health promotion training shall be implemented in order to promote health and wellness in children and adolescents throughout the designated area. The training and educational materials shall consist of the following major topic areas: Smoking Prevention/Cessation, Safety/Injury Prevention including, bicycle safety and helmets, Nutrition/Healthy Eating Habits, Exercise and Physical Fitness, and Stages of Change, readiness to learn and goal setting.

The timetable for the Professional Health Promotion Training Seminars shall be as follows:

- 3.3.1 By March, 2005 TDI shall develop educational materials and training for parish nurses and community based health personnel based on cultural appropriateness.
- 3.3.2 By May, 2005 TDI shall conduct at least two focus groups in the target area to determine appropriateness of the educational materials and training content.
- 3.3.3 By June, 2005 TDI shall establish health promotion content validity via consultation with STEPS partners and University Health System/Community Health Division Medical Director and preventive medicine committee.
- 3.3.4 By July, 2005 TDI shall conduct at least 3 health promotion training sessions to at least 25 individuals within the target area, as well as administer pre and post surveys to all participants.

3.4 TDI shall provide Comprehensive Self-Management Training for patients in the target area with diabetes and/or other metabolic conditions. The training shall be adapted by TDI's patient education department and shall entail psychosocial aspects of changing behavior, coping with illness, stress management and survival skills (medication regimes, acute and chronic complications, meal planning and fitness training).

The timetable for the Self-Management Training shall be as follows:

- 3.4.1 By March, 2005\_TDI shall adapt Self-Management Training Curriculum to fit the specific needs of individuals within the target area.
- 3.4.2 By April, 2005 TDI shall conduct at least 3 focus groups in the target area to determine appropriateness of Self-Management Training Curriculum.
- 3.4.3 By May, 2005 TDI shall establish self-management training curriculum content validity via consultation with STEPS partners and University Health System/Texas Diabetes Institute physician and educator staff.
- 3.4.4 By June, 2005 TDI shall develop a marketing plan for the Self-Management Training courses within the target area.
- 3.4.5 By July, 2005 TDI shall begin implementation of the marketing plan for the Self-Management Training.
- 3.4.6 By August, 2005 TDI shall conduct Self-Management Training Courses to at least 100 individuals within the target area.
- 3.4.7 By September, 2005 TDI shall conduct pre and post training evaluations to all participants within the Self-Management Training Courses to determine changes in access to preventive complication screenings and services.

3.5 TDI shall provide progress reports to STEPS-SA staff as required for inclusion in a periodic newsletter or to be posted on the internet and made available to the various stakeholders of the STEPS-SA project and the general public. Frequency and structure of required reports shall up to the discretion of the STEPS-SA Leadership Team and staff.

3.6 In addition to the regular reports required in section 3.5, TDI agrees to submit quarterly reports to STEPS-SA staff on activities and services called for in the contract. TDI shall supply report in format requested by STEPS-SA staff. Expected due dates of quarterly reports shall be: January 15, 2005, April 15, 2005, July 15, 2005, and September 15, 2005. The dues dates for the quarterly reports may be amended by STEPS-SA staff as needed.

#### **IV. COMPENSATION TO TDI**

4.1 In consideration of TDI's performance in a satisfactory and efficient manner, as determined solely by City, of all services and activities set forth herein, City agrees to reimburse TDI up to the maximum amount of \$151,555.00 which is budgeted for such payment, as set forth and incorporated in the budget which is attached as Exhibit A.

4.2 The TDI agrees to submit statements showing monthly itemized costs and documented in-kind expenses to the City associated with this contract. 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 from the TDI. Invoices shall be due 15 days after the end of the monthly report period. The TDI shall submit to the City a monthly billing invoice to request payment of expenses incurred on or before the 15<sup>th</sup> day of each month. Additional documentation requirements of costs and documented in-kind expenses associated with this contract may be amended by Steps-SA staff as needed.

4.2.1 The TDI understands that documentation of in-kind expenses is a requirement for payment associated with this contract. The TDI further understands that the format for said documentation of in-kind expenses is set at the discretion of Steps-SA staff.

4.3 TDI agrees to provide any and all documentation required for inclusion in any report concerning STEPS-SA. All services required under this contract shall be performed to City's satisfaction, and City shall not be liable for any payment under this Contract 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.

4.4 City shall not be obligated or liable under this Contract to any party, other than TDI for payment of any monies or provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by TDI 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 TDI.

5.2 TDI 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 TDI 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 at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 TDI 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, TDI shall retain the records until the resolution of such litigation or other such questions. TDI acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require TDI to return said documents to City prior to or at the conclusion of said retention.

6.3 TDI shall notify City, immediately, in the event TDI receives any requests for information from a third party, which pertain to the documentation and records referenced herein. TDI understands and agrees that City shall 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 City upon thirty (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 TDI 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. TDI shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If TDI 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 TDI'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 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets

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

7.4.4 Performing unsatisfactorily

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, TDI 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 TDI, or provided to TDI, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by TDI 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 TDI's sole cost and expense. Payment of compensation due or to become due to TDI is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, TDI 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 TDI 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 TDI of any and all right or claims to collect moneys that TDI 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, TDI shall cease all operations of work being performed by TDI 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 TDI for any default hereunder or other action.

### **VIII. NOTICE**

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

If intended for City, to:

City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**AND** City of San Antonio  
Director, San Antonio Metropolitan Health District  
332 W. Commerce, Suite 307  
San Antonio, Texas 78205

If intended for TDI, to:

Theresa de la Haya  
Vice President of Community Health Division/Texas Diabetes Institute  
701 S. Zarzamora  
San Antonio, TX 78207  
(210) 358-7403  
tdelahaya@university-health-sys.com

## **IX. ACCOUNT OF FUNDS BY TDI**

9.1 TDI understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this CONTRACT 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 CONTRACT.

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

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

(B) that TDIs' 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 Contract, TDI 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 CONTRACT for a minimum of four (4) years from the completion services. TDI shall have access to the records at all times upon reasonable notice.

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

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

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

9.5 Upon termination of this CONTRACT, 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, TDI 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 CONTRACT, 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 Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the San Antonio Metropolitan Health Department may review and approve all TDI'S systems of internal accounting and administrative controls prior to the release of funds hereunder.

9.7 If TDI expends \$250,000.00 or more of City dollars, then during the term of this Contract, the TDI 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 TDI'S fiscal year or termination of this Contract, whichever is earlier. TDI understands and agrees to furnish the San Antonio Metropolitan Health Department with a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to TDI in Article IV of this Contract is \$250,000.00 or more, then the TDI 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 TDI 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 TDI pay for such audit from non-City resources. If TDI expends less than \$250,000.00 of City dollars, then during the term of this Contract, the TDI shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of TDI'S fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by TDI attesting to the correctness of said financial statement.

#### **X. STATEMENT OF MUTUAL IMMUNITY**

CITY and the TDI acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, §101.001 et seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

This agreement shall be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this agreement shall be in Bexar County, Texas. This agreement is made and is to be performed in Bexar County, Texas and is governed by the laws of the State of Texas.

#### **XI. ASSIGNMENT AND SUBCONTRACTING**

11.1 TDI shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of TDI. TDI and its employees shall perform all necessary work.

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

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

## **XII. INDEPENDENT CONTRACTOR**

TDI covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that TDI 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 TDI, 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 venturers between City and TDI. 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 TDI under this Agreement and that the TDI has no authority to bind the City.

## **XIII. SBEDA**

13.1 City's SBEDA, Non-Discrimination and Affirmative Action Policies. TDI agrees and acknowledges that it is City's policy that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts (SBEDA Policy). TDI agrees that TDI will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. TDI further agrees that TDI will abide by all applicable terms and provisions of City's Non-Discrimination Policy, CITY'S SBEDA Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development and the City Clerk's Office.

13.2 GFEP Required. If the Contractor's Fee paid to TDI pursuant to this contract will equal or exceed a total of \$200,000.00, then TDI shall have submitted to CITY a Good Faith Effort Plan (GFEP) indicating TDI's utilization of Small, Minority and Woman-owned Business Enterprises at the time of its proposal to seek this CONTRACT. If CITY approved the GFEP, and TDI subsequently changes or does not utilize one or more of the subcontractors listed on its GFEP, TDI shall submit a request for approval of this change to the original affirmed list of subcontractors. If CITY approved the GFEP, and CITY subsequently finds material deficiencies in any aspect of the GFEP, TDI shall submit a written report to City's Department of Economic Development. The TDI shall also submit a Supplemental GFEP indicating efforts to resolve any deficiencies. A denied Supplemental GFEP, by City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by TDI. Failure to obtain an approved Supplemental Good Faith Effort Plan, within sixty (60) days of initial denial shall constitute a default and may result in withholding of TDI's Fee or suspension of this

CONTRACT until all deficiencies are resolved. Failure to cure all deficiencies within another sixty (60) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by TDI which can, at the option of the Director, result in forfeiture of the entirety of this CONTRACT.

#### **XIV. CONFLICT OF INTEREST**

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

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

#### **XV. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and TDI, and subject to approval by the City Council, as evidenced by passage of an ordinance.

#### **XVI. SEVERABILITY**

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.

#### **XVII. LICENSES/CERTIFICATIONS**

TDI warrants and certifies that TDI 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**

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

### **XIX. NONWAIVER OF PERFORMANCE**

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.

### **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**

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

### **XXIII. PARTIES BOUND**

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**

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. ENTIRE AGREEMENT**

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 \_\_\_\_\_, 2005.

**CITY:**  
**CITY OF SAN ANTONIO**

**TDI:**  
**UNIVERSITY HEALTH SYSTEM-**  
**TEXAS DIABETES INSTITUTE**

\_\_\_\_\_  
Frances A. Gonzalez  
Assistant City Manager

\_\_\_\_\_  
CEO/President

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Andrew Martin  
City Attorney



## EXHIBIT A

### STEPS to a Healthier US Initiative

University Health System

Grant Period: from 09/01/04 – 08/31/05

PROJECT YEAR 1

I. PERSONNEL	Base Salary	% Time	Total Cost	STEPS Support	In – Kind Support
Position					
Director	80,000	25	16,000		16,000
Principle Investigator	50,000	19	9,375	6,000	3,375
Licensed Dietician (2 FTE)	45,000	100	90,000	82,000	8,000
Health Educator	36,000	13	4,500	4,500	
Admin. Asst	25,000	10	2,500	2,500	
Fitness Manager	50,000	25	12,500		12,500
Dietician	45,000	25	11,250		11,250
RN (Safety/Injury)	50,000	25	12,500	10,748	12,500
Total Fringe Benefits for all positions at <u>22%</u>			34,898	20,900	13,998
Personnel & Fringe Benefits Subtotal			193,523	115,900	77,623
<b>II. OTHER DIRECT COSTS</b>					
OFFICE OPERATIONS					
Supplies			6,500	1,500	5,000
Duplicating			9,462	3,537	5,925
Telephone			1,000		1,000
Postage			1,200		1,200
Equipment Rental			2,400		2,400
HEALTH PROMOTION EDUC. MAT.			10,000		10,000
COMMUNICATIONS / MARKETING			2,228	2,228	
PROVIDER TOOL KIT DEVELOPMENT			10,000	9,000	1,000
DIABETES SELF MANAGEMENT CURR.			5,325	5,325	
TRAVEL (staff)			1,857	287	1,570
Other Direct Costs Subtotal			49,972	21,877	27,095
<b>III. EQUIPMENT</b>					
<b>IV. CONSULTANT/CONTRACTUAL AGREEMENTS</b>					
<b>V. INDIRECT COST (10%)</b>					
			24,350	13,778	10,572
<b>VI. TOTAL</b>					
			\$267,845	\$151,555	112,173

## ATTACHMENT VII

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 (SAMHD) acting by and through its Interim City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, and the Social and Health Research Center (S&HRC) Bienestar Program by and through its Executive Director, Robert P. Treviño (hereinafter referred to as "S&HRC"), 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. "S&HRC" and "SAMHD" are defined in the preamble of this Agreement and include their successors. "Director" shall mean the acting Director of Health of the City's San Antonio Metropolitan Health District. "Steps-SA" shall be defined as the overall local program "Steps to A Healthier San Antonio". "Steps-SA staff" shall be defined as those persons hired by SAMHD for the purpose of day-to-day operations with funding from the Steps to A Healthier US Cooperative Agreement with the Centers for Disease Control and the US Department of Health and Human Services. "Steps-SA Consortium" shall be defined as the primary advisory group of the Steps-SA program consisting of Steps-SA staff, partnering organizations, contractors, and interested community based organizations. "Steps-SA Leadership Team" shall be defined as the group responsible for strategic planning, outreach and evaluation of Steps-SA and consists of the Director or his designate, Steps-SA staff, community partners receiving contracted funding through Steps-SA, and other community groups determined to be major stakeholders in the project. "Target Area," shall be defined as the geographic school attendance zone of the San Antonio Independent School District (SAISD) in San Antonio, Texas, and all individuals who reside, work or attend school in that area.

### II.   TERM

2.1    Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 22, 2004 and terminate on September 21, 2005.

2.2    City shall have the option to renew and extend the term of this Agreement four times, with each renewal or extension being for a term of one year. Each renewal or extension shall be evidenced by passage of a subsequent City ordinance.

2.3    S&HRC agrees and understands that City has projected costs for this Contract and that City expects to pay all obligations of this Contract from projected revenue sources, but that all obligations of City are subject to annual appropriation by City Council in future years, after

September 30, 2005. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Contract, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such obligations, following City's failure to pay such obligations due to lack of funding shall terminate this contract and neither S&HRC nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Contract.

### **III. SCOPE OF SERVICES**

3.1 In order to be an effective partner in STEPS-SA, the S&HRC shall select specific individuals as primary and secondary representatives to the Steps-SA Consortium, the primary advisory group for Steps-SA. Both representatives may participate in the Consortium concurrently, but at least one representative shall be present at all Consortium meetings, events and planning sessions. This participation is required for coordination of Steps-SA Consortium activities involving all partners associated with Steps-SA and their interaction with S&HRC staff and programming. The S&HRC shall supply contact information to Steps-SA staff regarding both representatives, and both representatives shall be tasked by the S&HRC to ensure full representation and participation of the S&HRC in all Consortium meetings, events and planning sessions. In the event that there is a change in the individuals assigned by S&HRC as representative(s) to the Steps-SA Consortium, the S&HRC shall notify Steps-SA staff within 72 hours of the time such change has taken place.

3.1.1 As an identified community partner with SAMHD on Steps-SA, S&HRC's chosen representatives shall also actively participate in strategic planning, outreach and evaluation of Steps-SA through the Steps-SA Leadership Team. These representatives shall serve on the Steps-SA Leadership Team with the same requirements and expectations as indicated in section 3.1 above.

3.1.2 S&HRC understands that it is required to collaborate with Steps-SA staff regarding evaluation and outcome measures of the effectiveness of all programs funded by Steps-SA. S&HRC further understands that methodology and procedure regarding evaluation of outcome measures associated with all programs funded by Steps-SA shall be determined in collaboration with Steps-SA staff and the Steps-SA Leadership Team.

3.2 The S&HRC shall provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the City and in compliance with agreements made between S&HRC and the San Antonio Independent School District affixed hereto and incorporated herein for all purposes as Attachment I.

3.3 S&HRC shall provide progress reports to STEPS-SA staff as required for inclusion in a periodic newsletter or to be posted on the internet and made available to the various stakeholders of the STEPS-SA project and the general public. Frequency and structure of required reports shall be at the discretion of the STEPS-SA Leadership Team and staff.

3.4 In addition to the regular reports required in section 3.4, S&HRC agrees to submit quarterly reports to STEPS-SA staff on activities and services called for in the contract. S&HRC shall supply report in format requested by STEPS-SA staff. Expected due dates of quarterly reports shall be: January 15, 2005, April 15, 2005, July 15, 2005, and September 15, 2005. The due dates for the quarterly reports may be amended by STEPS-SA staff as needed.

#### **IV. COMPENSATION TO S&HRC**

4.1 In consideration of S&HRC's performance in a satisfactory and efficient manner, as determined solely by City, of all services and activities set forth herein, City agrees to reimburse S&HRC up to the maximum amount of **\$30,000.00** which is budgeted for such payment, as set forth and incorporated herein is the budget which is attached as Exhibit A.

4.2 The S&HRC agrees to submit statements showing monthly itemized costs and documented in-kind expenses to the City associated with this contract. 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 from the S&HRC. Invoices shall be due 15 days after the end of the monthly report period. The S&HRC shall submit to the City a monthly billing invoice to request payment of expenses incurred on or before the 15<sup>th</sup> day of each month. Additional documentation requirements of costs and documented in-kind expenses associated with this contract may be amended by Steps-SA staff as needed.

4.2.1 The S&HRC understands that documentation of a minimum of 25% in-kind expenses over the life of the contract is a requirement for payment associated with this contract. The S&HRC further understands that the format for said documentation of in-kind expenses is set at the discretion of Steps-SA staff.

4.3 S&HRC agrees to provide any and all documentation required for inclusion in any report concerning STEPS-SA. All services required under this contract shall be performed to City's satisfaction, and City shall not be liable for any payment under this Contract 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.

4.4 City shall not be obligated or liable under this Contract to any party, other than S&HRC for payment of any monies or provision of any goods or services.

4.5 The Contractor must create a separate account within the Contractor's accounting system for any city funds secured by Contractor in order to show a delineation of City Fund debits and credits from the General Ledger.

#### **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all writings, documents or information in whatsoever form and character produced by S&HRC pursuant to the provisions of this Agreement are the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by S&HRC, except for all instructional material which is copyrighted by S&HRC.

5.2 S&HRC 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 except for said S&HRC instructional material as set forth in section 5.1 above.

## **VI. RECORDS RETENTION**

6.1 S&HRC 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 at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 S&HRC 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, S&HRC shall retain the records until the resolution of such litigation or other such questions. S&HRC acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require S&HRC to return said documents to City prior to or at the conclusion of said retention.

6.3 S&HRC shall notify City, immediately, in the event S&HRC receives any requests for information from a third party, which pertain to the documentation and records referenced herein. S&HRC understands and agrees that City shall 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 City upon thirty (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 S&HRC 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. S&HRC shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If S&HRC 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 S&HRC

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 S&HRC'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 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.
- 7.4.2 Bankruptcy or selling substantially all of company's assets
- 7.4.3 Failing to perform or failing to comply with any covenant herein required
- 7.4.4 Performing unsatisfactorily

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, S&HRC 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 S&HRC, or provided to S&HRC, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by S&HRC 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 S&HRC's sole cost and expense. Payment of compensation due or to become due to S&HRC is conditioned upon delivery of all such documents, if requested.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, S&HRC 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 S&HRC 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 S&HRC of any and all right or claims to collect moneys that S&HRC 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, S&HRC shall cease all operations of work being performed by S&HRC 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 S&HRC for any default hereunder or other action.

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or

upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

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

If intended for S&HRC, to:

Social & Health Research Center  
Attn: Roberto P. Treviño  
1302 S. St. Mary's  
San Antonio, Texas 78210-1226  
Phone Number: (210)533-8886  
Email: [Shrct@msn.com](mailto:Shrct@msn.com) / [rtrevino@sahrc.org](mailto:rtrevino@sahrc.org)

#### **IX. ACCOUNT OF FUNDS BY S&HRC**

9.1 S&HRC understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this CONTRACT 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 CONTRACT.

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

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

(B) that S&HRCs' 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 Contract, S&HRC 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 CONTRACT for a minimum of four (4) years from the completion services. S&HRC shall have access to the records at all times upon reasonable notice.

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

(A) have not been spent by S&HRC strictly in accordance with the terms of this CONTRACT; or

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

9.5 Upon termination of this CONTRACT, 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, S&HRC 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 CONTRACT, 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 Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the San Antonio Metropolitan Health Department may review and approve all S&HRC's systems of internal accounting and administrative controls prior to the release of funds hereunder.

9.7 If S&HRC expends \$250,000.00 or more of City dollars, then during the term of this Contract, the S&HRC 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 S&HRC's fiscal year or termination of this Contract, whichever is earlier. S&HRC understands and agrees to furnish the San Antonio Metropolitan Health Department with a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to S&HRC in Article IV of this Contract is \$250,000.00 or more, then the S&HRC 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 S&HRC 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 S&HRC pay for such audit from non-City resources. If S&HRC expends less than \$250,000.00 of City dollars, then during the term of this Contract, the S&HRC shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of S&HRC's fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by S&HRC attesting to the correctness of said financial statement.

## **X. INSURANCE REQUIREMENTS**

10.1 Prior to the commencement of any work under this AGREEMENT, S&HRC shall furnish an original completed Certificate(s) of Insurance to the City's San Antonio Metropolitan Health District and City's Risk Management Division, and shall be clearly labeled "Imaging Services Agreement", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. 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 directly from the agent to the City. The City shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to City's San Antonio Metropolitan Health District and the City Risk Management's Division, and 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 coverage 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, but in no instance shall City allow modification whereupon City may incur increased risk.

10.3 S&HRC's financial integrity is of interest to the City; therefore, subject to S&HRC's right to maintain reasonable deductibles in such amounts as are approved by the City, S&HRC shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at S&HRC's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNT
Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Broad Form Contractual Liability c. Products/completed operations d.* Broad form property damage, to include fire legal liability of \$50,000 e. Personal Injury	For Bodily Injury and Property Damage of \$1,000,000 per occurrence \$1,000,000 general aggregate or its equivalent in umbrella or excess liability coverage

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). S&HRC 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 in Section 10.6 herein within 10 days of the requested change. S&HRC shall pay any costs incurred resulting from said changes.

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

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under AGREEMENT 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 and employers' liability policies shall provide a waiver of subrogation in favor of the City.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, S&HRC shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if S&HRC knows of said change in advance, or ten (10) days notice after the change, if the S&HRC did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio  
San Antonio Metropolitan Health District  
Risk Management Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

10.7 If S&HRC fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of S&HRC to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon S&HRC'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 S&HRC to stop work hereunder, and/or withhold any payment(s) which become due to S&HRC hereunder until S&HRC demonstrates compliance with the requirements hereof.

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

10.9 It is agreed that S&HRC's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this AGREEMENT.

## **XI. INDEMNIFICATION**

11.1 S&HRC covenants and agrees to **FULLY INDEMNIFY 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 S&HRC's activities under this AGREEMENT, including any acts or omissions of S&HRC, any agent, officer, director, representative, employee, S&HRC or subcontractor of S&HRC, 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. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. 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. S&HRC shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or S&HRC known to S&HRC related to or arising out of S&HRC's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at S&HRC's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving S&HRC of any of its obligations under this paragraph.

11.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by S&HRC to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. S&HRC further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

11.3 Defense Counsel - City shall 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 S&HRC, 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 S&HRC or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 S&HRC shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of S&HRC. S&HRC and its employees shall perform all necessary work.

12.2 Except as otherwise stated herein, S&HRC 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, S&HRC shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor contractor, assignee, transferee or subcontractor.

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

## **XIII. INDEPENDENT CONTRACTOR**

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

## **XIV. SBEDA**

14.1 City's SBEDA, Non-Discrimination and Affirmative Action Policies. S&HRC agrees and acknowledges that it is City's policy that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts (SBEDA Policy). S&HRC agrees that S&HRC will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. S&HRC further agrees that S&HRC will abide by all applicable terms and provisions of City's Non-Discrimination Policy, CITY'S SBEDA Policy and City's Equal Opportunity

Affirmative Action Policy, these policies being available in City's Department of Economic Development and the City Clerk's Office.

14.2 GFEP Required. If the Contractor's Fee paid to S&HRC pursuant to this contract will equal or exceed a total of \$200,000.00, then S&HRC shall have submitted to CITY a Good Faith Effort Plan (GFEP) indicating S&HRC's utilization of Small, Minority and Woman-owned Business Enterprises at the time of its proposal to seek this CONTRACT. If CITY approved the GFEP, and S&HRC subsequently changes or does not utilize one or more of the subcontractors listed on its GFEP, S&HRC shall submit a request for approval of this change to the original affirmed list of subcontractors. If CITY approved the GFEP, and CITY subsequently finds material deficiencies in any aspect of the GFEP, S&HRC shall submit a written report to City's Department of Economic Development. The S&HRC shall also submit a Supplemental GFEP indicating efforts to resolve any deficiencies. A denied Supplemental GFEP, by City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by S&HRC. Failure to obtain an approved Supplemental Good Faith Effort Plan, within sixty (60) days of initial denial shall constitute a default and may result in withholding of S&HRC's Fee or suspension of this CONTRACT until all deficiencies are resolved. Failure to cure all deficiencies within another sixty (60) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by S&HRC which can, at the option of the Director, result in forfeiture of the entirety of this CONTRACT.

#### **XV. CONFLICT OF INTEREST**

15.1 S&HRC 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, S&HRC 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. S&HRC further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and S&HRC, and subject to approval by the City Council, as evidenced by passage of an ordinance.

## **XVII. SEVERABILITY**

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**

S&HRC warrants and certifies that S&HRC 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**

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

## **XX. NONWAIVER OF PERFORMANCE**

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**

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

## **XXIII. PARTIES BOUND**

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**

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. ENTIRE AGREEMENT**

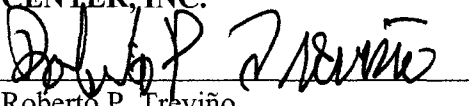
This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall 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 \_\_\_\_\_, 2005.

**CITY:**  
**CITY OF SAN ANTONIO**

\_\_\_\_\_  
Frances A. Gonzalez  
Assistant City Manager

**S&HRC:**  
**SOCIAL & HEALTH RESEARCH**  
**CENTER, INC.**

  
\_\_\_\_\_  
Roberto P. Treviño  
Executive Director

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Andrew Martin  
City Attorney

## ATTACHMENT I

### **SOCIAL AND HEALTH RESEARCH CENTER BIENESTAR PROGRAM SCOPE OF WORK FOR STEPS TO A HEALTHIER SAN ANTONIO**

#### Primary Endpoints

- Improve Youth Risk Behavior Survey scores from baseline to follow-up

#### SAISD Elementary Schools

- 5 elementary schools: Bonham, Collins Garden, Franklin, Huppertz, and Margil
- k-5 grade coordinated health programs

#### Targeted Population

- 1,932 students
- 322 parents
- 83 teachers
- 46 cafeteria staff
- 5 after school caretakers
- 2,388 total

#### Programs Implemented

- health class and P.E. k-5<sup>th</sup> grades
- school food service k-5<sup>th</sup> grades
- after-school health club k-5<sup>th</sup> grades
- parent activities k-5<sup>th</sup> grades

#### Evaluation Components (pre-post)

- Youth Risk Behavior Survey (diet, physical activity and overweight components) in 5 elementary schools described above.

#### Timeline

- Sept 21 – Oct 21, 2004: recruitment of students; training of teacher and cafeteria supervisors; and preparation for implementation.
- Oct 21 – May 30 2005: program implementation
- Mar. 2005: YRBS collection
- 2005 – 2009: repeat timeline as described above every year for the duration of the grant period.

#### Cost-Benefits

- \$30,000 shall serve 2,388 clients at a rate of \$12.50/client/year.
- The Bienestar, in a randomized controlled trial, has shown to decrease fasting capillary glucose, increase fitness levels and increase dietary fiber intake significantly.



**EXHIBIT A****DETAILED FOR INITIAL BUDGET PERIOD**

FROM

THROUGH

**DIRECT COSTS ONLY**

PERSONNEL (Applicant Organization)		TYPE APPT. (months)	% EFFORT ON PROJ.	INST. BASE SALARY	DOLLAR AMOUNT REQUESTED (omit cents)		
NAME	ROLE ON PROJECT				SALARY REQUESTED	FRINGE BENEFITS	TOTALS
Roberto P. Treviño	Principle Investigator	12	100	120,000	0	0	In-Kind
Irene Hernandez	Program Coordinator	12	100	45,000	0	0	In-Kind
Xavier Guerra	Cafeteria Coordinator	12	100	27,040	0	0	In-Kind
TBN – FT	Health Educator	12	70	17,680	12,450	3,037	15,487
<b>SUBTOTALS including Additional sheet</b>					<b>\$12,376</b>	<b>3,037</b>	<b>15,487</b>
CONSULTANT COSTS							
EQUIPMENT (Itemize)							
SUPPLIES (Itemize by category)							
Supplies							
Intervention Material: \$ 198							
198							
Travel							
None							
PATIENT CARE COSTS		INPATIENT					
		OUTPATIENT					
ALTERNATIONS AND RENOVATIONS (Itemize by category)							
OTHER EXPENSES (Itemize by category)				Mileage Reimbursement:			
Projected Participants and Teachers				\$1,000			
Health Books Manuals \$12,965							
Postage \$350							
14,315							
SUBTOTAL DIRECT COSTS FOR INITIAL BUDGET PERIOD						\$30,000	
CONSTRUCTION/ CONTRACTUAL COSTS		DIRECT COSTS					
		INDIRECT COSTS					
TOTAL DIRECT COSTS FOR INITIAL BUDGET PERIOD (ITEM 7A, Face Page)						\$30,000	

**BUDGET FOR ENTIRE PROPOSED PERIOD OF SUPPORT  
DIRECT COSTS ONLY**

BUDGET CATEGORY TOTALS-		INITIAL PERIOD (from Form page 4)	BUDGET ADDITIONAL YEARS OF SUPPORT REQUESTED			
			2nd	3 <sup>rd</sup>	4 <sup>th</sup>	5th
PERSONNEL: <i>Salary and fringe benefits</i> <i>Applicant organization only</i>		15,487				
CONSULTANT COSTS						
EQUIPMENT						
SUPPLIES		198				
TRAVEL						
PATIENT CARE COSTS	INPATIENT					
	OUTPATIENT					
ALTERATIONS AND RENOVATIONS						
OTHER EXPENSES		14,315				
SUBTOTAL DIRECT COSTS		30,000				
CONSORTIUM/CONTRACT ACTUAL COSTS	DIRECT					
	INDIRECT					
TOTAL DIRECT COSTS		30,000				

**TOTAL DIRECT COSTS FOR ENTIRE PROPOSED PERIOD OF SUPPORT (item 8a, Face Page)**

**→ \$30,000**

JUSTIFICATION: Follow the budget justification instructions exactly. Use continuation as needed.

Dr. Robert Treviño. Dr. Robert P. Treviño (In-kind Services) – Principle Investigator – will have primary responsibilities for the overall evaluation of the proposed project and will ensure that objectives of the Bienestar Health Program are met. Dr. Treviño will work closely with the program coordinator to ensure fidelity of intervention implementation and work closely with the Data Manager to ensure that collection and analysis of process and outcome values. Dr. Treviño will devote 50% of his time toward the project.

Mrs. Irene Hernandez – Program Coordinator(In-kind Services) – will be responsible for coordinating daily activities of the intervention. Among her responsibilities will be to supervise the health education staff, to ensure fidelity of intervention implementation, to ensure collection of process and outcome values and develop up-to-date reports to be presented to the advisory committee members during the monthly meetings. She will collaborate with school's Parent Coordinators to assure parent participation in the parent health activities. Mrs. Hernandez will devote 50% of her time toward the project.

Mr. Xavier Guerra – Nutritionist(In-kind Services) – will be responsible for reproduction and distribution of health curriculum manuals (including transparencies, testing instruments, test keys, material for activities) and will be responsible for organizing the teacher's sessions. He will be working closely with schools cafeteria staff to teach recipes and overall guidelines for preparing healthy meals, purchasing foods with high health value and to read food labels. Mr. Guerra will be involved to provide individual diet consults for parents as well individual student nutritional data and therapy recommendations. He will also be responsible for measuring, from teachers, the level of fidelity between program designs and program implementation and measuring from students their level of response toward the learning material. He will

be available to teachers and coaches for dietetic educational support. Devoted of project time effort will be 100%.

\$15,487 is requested for (1) Full Time – Parent Health information home delivery specialist – they will be responsible for coordinating and delivering the parent health education activities. They will also be responsible for supervising the after school health program, parents attend these meetings too. They will ensure that each health club meeting is carried out during the school year. The after school program consist of nutritional health knowledge and exercise activities. All health educators will be guided by the program coordinator to implement these components to enhance health knowledge of young children and their parents. They will all maintain schedules for all program activities and meetings that are to take place during the school year. They will also be assisting the physical education teachers to implement the Bienestar Health Curriculum. Devoted effort on project is 70%.

Fringe Benefits are included in amounts requested for each individual listed above. Included in fringe benefits payroll tax (.0765) and Health Insurance averaging 15-19%.

**Equipment: None**

**Supplies:**

Intervention Material:

Xeroxing paper will be needed to print all Intervention material: Consent forms for participation, contract forms, intake forms, procedure manuals, Portfolios, and transparencies. Program will be utilizing poster boards, markers, pencils, ink, and toner. Office supplies kept at a minimal: pens, tape, binder clips, printer ink cartridges, fax paper, Laser Jet Toner, Diskettes storage boxes, wallet folders, manila file folder, typewriter ribbon, correction ribbon.

Total \$198

All cost on supplies are on a discount bases. Prices are below estimated value of products requested. No annual fees or tax will be included (tax exempt) in any of the purchases to be made.

**Other Expenses:**

Mileage reimbursement will be available for health educators and evaluation assistants, assisting all participating school through out projected period. Mileage reimbursement rate is at .32 cents. Estimated cost \$ 1,000

Postage will be needed to send out brochures, surveys, Bienestar News letters, and daily mail, services provided regular postage, certified, and express. Estimated amount: \$350.

Manuals will be estimated at rate of per students per school from Kindergarten through the five grade (2,100). Each student will receive a health class manual and each instructor will receive a teacher's guide per grade level. Two physical education activity pads will be distributed per school. An estimated 10 cafeteria program student work books will be given to each school and one instructors guide. Limited Bienestar family times newsletters will be handed to each school participating in the program.

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 (SAMHD); acting by and through its Interim City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, and San Antonio Independent School District (SAISD) by and through Dr. Ruben D. Olivarez, Superintendent (hereinafter referred to as "SAISD"), 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. "SAISD" and "SAMHD" are defined in the preamble of this Agreement and include their successors. "Director" shall mean the acting Director of Health of the City's San Antonio Metropolitan Health District. "Steps-SA" shall be defined as the overall local program "Steps to A Healthier San Antonio". "Steps-SA staff" shall be defined as those persons hired by SAMHD for the purpose of day-to-day with funding from the Steps to A Healthier US Cooperative Agreement with the Centers for Disease Control and the US Department of Health and Human Services. "Steps-SA Consortium" shall be defined as the primary advisory group of the Steps-SA program consisting of Steps-SA staff, partnering organizations, contractors, and interested community based organizations. "Steps-SA Leadership Team" shall be defined as the group responsible for strategic planning, outreach and evaluation of Steps-SA and consists of the Director or his designate, Steps-SA staff, community partners receiving contracted funding through Steps-SA, and other community groups determined to be major stakeholders in the project. "Target Area," shall be defined as the geographic school attendance zone of the San Antonio Independent School District in San Antonio, Texas, and all individuals who reside, work or attend school in that area.

### **II. TERM**

2.1 Unless terminated earlier in accordance with the provisions of this Agreement, the term of this Agreement shall commence on September 22, 2004 and terminate on September 21, 2005.

2.2 City shall have the option to renew and extend the term of this Agreement four times, with each renewal or extension being for a term of one year. Each renewal or extension shall be evidenced by passage of a subsequent City ordinance.

2.3 SAISD agrees and understands that City has projected costs for this Contract and that City expects to pay all obligations of this Contract from projected revenue sources, but that all obligations of City are subject to annual appropriation by City Council in future years, after September 30, 2005. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Contract, and due to the unavailability and/or failure to

appropriate funds City shall not have the funds to pay such obligations, following City's failure to pay such obligations due to lack of funding shall terminate this contract and neither SAISD nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Contract.

2.4 SAISD further agrees and understands that the City expects to pay all obligations of this contract 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 contract, then this contract shall terminate and neither City nor SAISD shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this contract.

### **III. SCOPE OF SERVICES**

SAISD's services hereunder shall include the following:

3.1 In order to be an effective partner in STEPS-SA, the SAISD shall select specific individuals as primary and secondary representatives to the Steps-SA Consortium, the primary advisory group for Steps-SA. Both representatives may participate in the Consortium concurrently, but at least one representative shall be present at all Consortium meetings, events and planning sessions. This participation is required for coordination of Steps-SA Consortium activities involving all partners associated with Steps-SA and their interaction with SAISD staff and programming. The SAISD shall supply contact information to Steps-SA staff regarding both representatives, and both representatives shall be tasked by the SAISD to ensure full representation and participation of the SAISD in all Consortium meetings, events and planning sessions. In the event that there is a change in the individuals assigned by SAISD as representative(s) to the Steps-SA Consortium, the SAISD shall notify Steps-SA staff within 72 hours of the time such change has taken place.

3.1.1 As an identified community partner with SAMHD on Steps-SA, SAISD's chosen representatives shall also actively participate in strategic planning, outreach and evaluation of Steps-SA through the Steps-SA Leadership Team. These representatives shall serve on the Steps-SA Leadership Team with the same requirements and expectations as indicated in section 3.1 above.

3.1.2 SAISD understands that it is required to collaborate with Steps-SA staff regarding evaluation and outcome measures of the effectiveness of all programs funded by Steps-SA. SAISD further understands that methodology and procedure regarding evaluation of outcome measures associated with all programs funded by Steps-SA shall be determined in collaboration with Steps-SA staff and the Steps-SA Leadership Team.

3.1.3 SAISD understands that community partners associated with Steps-SA will be required to negotiate with SAISD staff concerning the planning and implementation of various interventions within the school setting. SAISD agrees to consult with community partners, the Steps-SA Consortium and assigned Steps-SA staff regarding the planning and implementation of said interventions.

3.2 The SAISD shall expand the instruction of "The Great Body Shop", which is a comprehensive school health and substance abuse prevention curriculum, for SAISD students in grades K-8. The SAISD shall be responsible for teacher training and purchase of the Texas Education Agency approved materials. In addition, the SAISD shall purchase pedometers for students in physical education classes so that teachers may monitor physical activity of students during the class day.

3.3 The SAISD shall implement a district-wide employee wellness program. The SAISD shall provide employee wellness training for SAISD campus or department representatives. Each representative shall provide the opportunity for each SAISD employee to participate in the employee wellness program on each campus. In addition, the SAISD shall purchase promotional items for employees who participate in the employee wellness program and monitor their participation and wellness. The SAISD shall work closely with the Steps-SA Consortium for employee wellness support and technical assistance. The SAISD shall reproduce the District Employee Wellness Manual for each SAISD campus or department.

3.4 SAISD shall provide progress reports to Steps-SA staff as required for inclusion in a periodic newsletter or to be posted on the internet and made available to the various stakeholders of the Steps-SA project and the general public. Frequency and structure of required reports will up to the discretion of the Steps-SA Leadership Team and staff.

3.5 In addition to the regular reports required in section 3.4, SAISD agrees to submit quarterly reports to Steps-SA staff on activities and services called for in the contract. SAISD shall supply the reports in the format requested by Steps-SA staff. Expected due dates of quarterly reports shall be: January 15, 2005, April 15, 2005, July 15, 2005, and September 15, 2005. The dues dates for the quarterly reports may be amended by Steps-SA staff as needed.

#### **IV. COMPENSATION TO SAISD**

4.1 In consideration of SAISD's performance in a satisfactory and efficient manner, as determined solely by City, of all services and activities set forth herein, City agrees to reimburse SAISD up to the maximum amount of \$146,100.00 which is budgeted for such payment, as set forth and incorporated herein is the budget which is attached as Exhibit A.

4.2 The SAISD agrees to submit statements showing monthly itemized costs and documented in-kind expenses to the City associated with this contract. 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 from the SAISD. Invoices shall be due 15 days after the end of the monthly report period. The SAISD shall submit to the City a monthly billing invoice to request payment of expenses incurred on or before the 15<sup>th</sup> day of each month. Additional documentation requirements of costs and documented in-kind expenses associated with this contract may be amended by Steps-SA staff as needed.

4.2.1 The SAISD understands that documentation of in-kind expenses is a requirement for payment associated with this contract. The SAISD further understands that the format for said documentation of in-kind expenses is set at the discretion of Steps-SA staff.

4.3 SAISD agrees to provide any and all documentation required for inclusion in any report concerning STEPS-SA. All services required under this contract shall be performed to City's satisfaction, and City shall not be liable for any payment under this Contract for services which are unsatisfactory and which have not been approved by City. The payment for services provided hereunder will not be paid until required reports, data, and documentation have been received and approved by the City.

4.4 City shall not be obligated or liable under this Contract to any party, other than SAISD for payment of any monies or provision of any goods or services.

## **V. OWNERSHIP OF DOCUMENTS**

5.1 Any and all data, writings, documents, curriculum or information in whatsoever form and character produced by SAISD 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 SAISD.

5.2 SAISD 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 data, writings, documents, curriculum or information as City desires, without restriction. SAISD may retain rights to use any data and/or material produced as a result of this contract upon written request to the Director after said data and/or material has been provided to the City.

## **VI. RECORDS RETENTION**

6.1 SAISD 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 at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 SAISD 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, SAISD shall retain the records until the resolution of such litigation or other such questions. SAISD acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require SAISD to return said documents to City prior to or at the conclusion of said retention.

6.3 SAISD shall notify City, immediately, in the event SAISD receives any requests for information from a third party, which pertain to the documentation and records referenced herein. SAISD 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 City upon thirty (30) 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 SAISD 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. SAISD shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If SAISD 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 SAISD'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 Failure to comply with the terms and conditions stated in Article XIV. SBEDA.

7.4.2 Bankruptcy or selling substantially all of company's assets

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

7.4.4 Performing unsatisfactorily

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, SAISD 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 SAISD, or provided to SAISD, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by SAISD 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 SAISD's sole cost and expense. Payment of compensation due or to become due to SAISD is conditioned upon delivery of all such documents, if requested.



7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, SAISD 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 SAISD 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 SAISD of any and all right or claims to collect moneys that SAISD 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, SAISD shall cease all operations of work being performed by SAISD 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 SAISD for any default hereunder or other action.

### **VIII. NOTICE**

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

If intended for City, to:

City Clerk

City of San Antonio

P.O. Box 839966

San Antonio, Texas 78283-3966

**AND** City of San Antonio

Director, San Antonio Metropolitan Health District

332 W. Commerce, Suite 307

San Antonio, Texas 78205

If intended for SAISD, to:

San Antonio Independent School District

Attn: Tony Juarez

Address 141 Lavaca

San Antonio, Texas 78210

Email: [ajuarez@saisd.net](mailto:ajuarez@saisd.net)

### **IX. ACCOUNT OF FUNDS BY SAISD**

9.1 SAISD understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this CONTRACT 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 CONTRACT.

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

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

(B) that SAISDs' 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 Contract, SAISD 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 CONTRACT for a minimum of four (4) years from the completion services. SAISD shall have access to the records at all times upon reasonable notice.

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

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

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

9.5 Upon termination of this CONTRACT, 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, SAISD 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 CONTRACT, 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 Contract or at any time during the term of this Contract, the City's Director of Finance, the City Auditor, or a person designated by the Director of the San Antonio Metropolitan Health Department may review and approve all SAISD'S systems of internal accounting and administrative controls prior to the release of funds hereunder.

9.7 If SAISD expends \$250,000.00 or more of City dollars, then during the term of this Contract, the SAISD 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 SAISD'S fiscal year or termination of this Contract, whichever is earlier. SAISD understands and agrees to furnish the San Antonio Metropolitan Health Department with a copy of the audit

report within a period not to exceed fifteen (15) days upon receipt of the report. If the amount of funds to be paid to SAISD in Article IV of this Contract is \$250,000.00 or more, then the SAISD 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 SAISD 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 SAISD pay for such audit from non-City resources. If SAISD expends less than \$250,000.00 of City dollars, then during the term of this Contract, the SAISD shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) days immediately succeeding the end of SAISD'S fiscal year or termination of this Contract, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by SAISD attesting to the correctness of said financial statement.

## X. INSURANCE REQUIRMENTS

10.1 Prior to the commencement of any work under this AGREEMENT, SAISD shall furnish an original completed Certificate(s) of Insurance to the City's San Antonio Metropolitan Health District and City's Risk Management Division, and shall be clearly labeled "SAISD Agreement", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. 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 directly from the agent to the City. The City shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to City's San Antonio Metropolitan Health District and the City Risk Management's Division, and 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 coverage 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, but in no instance will City allow modification whereupon City may incur increased risk.

10.3 SAISD's financial integrity is of interest to the City; therefore, subject to SAISD's right to maintain reasonable deductibles in such amounts as are approved by the City, SAISD shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at SAISD's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

TYPE	AMOUNTS
Workers' Compensation **	Statutory
Employers' Liability **	\$1,000,000/\$1,000,000/\$1,000,000
Commercial General Liability	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
Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	As required by Texas State Law applicable to public Schools
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). SAISD 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 in Section 10.6 herein within 10 days of the requested change. SAISD shall pay any costs incurred resulting from said changes.

10.5 SAISD 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 as respects operations and activities of, or on behalf of, the named insured performed under AGREEMENT 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 and employers' liability policies will provide a waiver of subrogation in favor of the City.

10.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, SAISD shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if SAISD knows of said change in advance, or ten (10) days notice after the change, if the SAISD did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

**City of San Antonio  
San Antonio Metropolitan Health District  
Risk Management Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

10.7 If SAISD fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of SAISD to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon SAISD'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 SAISD to stop work hereunder, and/or withhold any payment(s) which become due to SAISD hereunder until SAISD demonstrates compliance with the requirements hereof.

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

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

## **XI. INDEMNIFICATION**

11.1 City and SAISD acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001 et.seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

12.1 SAISD shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of SAISD. SAISD and its employees shall perform all necessary work.

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

12.3 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 SAISD 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 SAISD 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 SAISD shall in no event release SAISD from any obligation under

the terms of this Agreement, nor shall it relieve or release SAISD from the payment of any damages to City, which City sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

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

### **XIV. SBEDA**

14.1 City's SBEDA, Non-Discrimination and Affirmative Action Policies. SAISD agrees and acknowledges that it is City's policy that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts (SBEDA Policy). SAISD agrees that SAISD will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. SAISD further agrees that SAISD will abide by all applicable terms and provisions of City's Non-Discrimination Policy, CITY'S SBEDA Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development and the City Clerk's Office.

14.2 GFEP Required. If the Contractor's Fee paid to SAISD pursuant to this contract will equal or exceed a total of \$200,000.00, then SAISD shall have submitted to CITY a Good Faith Effort Plan (GFEP) indicating SAISD's utilization of Small, Minority and Woman-owned Business Enterprises at the time of its proposal to seek this CONTRACT. If CITY approved the GFEP, and SAISD subsequently changes or does not utilize one or more of the subcontractors listed on its GFEP, SAISD shall submit a request for approval of this change to the original affirmed list of subcontractors. If CITY approved the GFEP, and CITY subsequently finds material deficiencies in any aspect of the GFEP, SAISD shall submit a written report to City's Department of Economic Development. The SAISD shall also submit a Supplemental GFEP indicating efforts to resolve any deficiencies. A denied Supplemental GFEP, by City's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by SAISD. Failure to obtain an approved Supplemental Good Faith Effort Plan, within sixty (60) days of initial denial shall constitute a default and may result in withholding of SAISD's Fee or suspension of this CONTRACT until all deficiencies are resolved. Failure to cure all deficiencies within another sixty (60) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by SAISD which can, at the option of the Director, result in forfeiture of the entirety of this CONTRACT.

## **XV. CONFLICT OF INTEREST**

15.1 SAISD 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, SAISD 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. SAISD further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

## **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and SAISD, and subject to approval by the City Council, as evidenced by passage of an ordinance.

## **XVII. SEVERABILITY**

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**

SAISD warrants and certifies that SAISD 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**

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

## **XX. NONWAIVER OF PERFORMANCE**

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**

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

## **XXIII. PARTIES BOUND**

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**

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. ENTIRE AGREEMENT**

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 \_\_\_\_\_, 2005.

**City:**  
**CITY OF SAN ANTONIO**

**SAISD:**  
**SAN ANTONIO INDEPENDENT  
SCHOOL DISTRICT**

\_\_\_\_\_  
Frances A. Gonzalez  
Assistant City Manager

\_\_\_\_\_  
Ruben D. Olivarez  
Superintendent of Schools  
San Antonio Independent School District

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Andrew Martin  
City Attorney

**EXHIBIT A****Steps to a Healthier San Antonio  
PROJECT BUDGET**

San Antonio Independent School District  
Budget Period: September 22, 2004 through September 21, 2005

Curriculum		
423 sets of student curriculum "The Great Body Shop"		\$ 99,100
Program Supplies		
Pedometers (Great Body Shop Health Education Curriculum)		15,000
Promotional Items & Incentives (Employee Wellness)		9,000
Stipends		
Teacher/School Nurse Training (Employee Wellness)		
\$100/day X 100 staff		10,000
Teacher training (Great Body Shop Health Education Curriculum)		
\$100/day X 121 Teachers		12,000
Binding Printing and Reproduction		
Reproduction of Employee Wellness Manuals		1,000
	<b>Total</b>	<b>\$146,100</b>