

**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 ACCEPTING A GRANT AWARD FOR THE HEALTHY START INITIATIVE PROJECT

DATE: September 1, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the City Manager to accept an award in the amount of \$750,000.00 from the Department of Health and Human Services, Health Resources & Services Administration (HRSA) for the San Antonio Metropolitan Health District (SAMHD) to continue the Healthy Start Initiative for the period June 1, 2005 through May 31, 2006, adopt the project budget, approve the personnel complement, and authorize payments for contractual services.

Staff recommends approval.

BACKGROUND INFORMATION

The San Antonio Healthy Start Initiative brings together community leaders to identify and address issues associated with perinatal health disparities in Bexar County. In addition, the project increases public awareness of these problems through community health education, and provides extensive outreach, recruitment, case management and health education interventions to at risk women and families within a specific target community in San Antonio. In order to promote longer interconceptional periods and prevent relapses of risky behaviors, project services are extended for mother and infant through the infant's second year of life.

The Healthy Start Initiative targets fifteen (15) zip codes: 78154, 78202, 78203, 78205, 78207, 78210, 78211, 78215, 78217, 78218, 78219, 78220, 78239, 78244, and 78254. Program goals include the following:

- Reduce the overall infant mortality rate within the target community
- Enhance the community's perinatal service system
- Increase the proportion of pregnant women in the target area who receive prenatal care in the first trimester
- Decrease the proportion of infants born within the targeted community weighing under 2,500 grams
- Increase the proportion of African American clients recruited into the program

- Increase the number of children within the targeted community who are up to date with their immunizations by age 2
- Ensure that every woman participating in the Healthy Start Initiative is screened for perinatal depression
- Ensure that every woman participating in the Healthy Start Initiative receives postpartum/interconceptional care

The objectives for the Healthy Start Initiative were chosen based on the needs of the targeted community, the availability of baseline data, and the capacity of community organizations to affect perinatal health behavior change. The project objectives support several Texas Department of State Health Services (TDSHS) strategic performance measures including: reduction in teen births, early prenatal care, and children fully immunized by age two, as well as related objectives of the national program Healthy People 2010.

To accomplish these goals and objectives, SAMHD's Healthy Start Initiative is incorporating the proven strategies of outreach and recruitment, case management and health education. This new grant cycle (See Attachment II) will allow SAMHD to continue to consolidate and augment current population-based programs related to prenatal and infant health into a more coordinated and efficient initiative tied closely with Healthy Start. Additionally, the grant supports better cooperation and linkages with other maternal and child health providers in the community to improve patient access and decrease barriers to health care. This grant will also support funding for an independent program evaluation (See Attachment III), outreach services in the target area, evaluation of the current database, software consultation, and data validation. The personnel complement will consist of thirteen (13) personnel positions (See Attachment I), the same as last year, to administer and implement this project.

POLICY ANALYSIS

Passage of this ordinance will continue the long-standing practice of utilizing Federal and State aid to support the local public health programs of the City.

FINANCIAL IMPACT

HRSA will provide a grant award of \$750,000.00 to continue the fifth year of the project. This ordinance will place no demand on the City General Fund.

COORDINATION

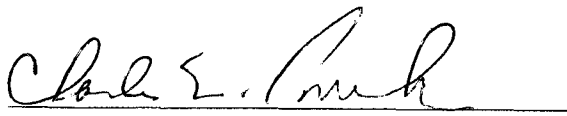
The City Attorney's Office and the Human Resources Department, Risk Management Division have reviewed and approved the HRSA Notice of Grant Award. The Office of Management and Budget and the Finance Department have approved the project budget.

SUPPLEMENTARY COMMENTS

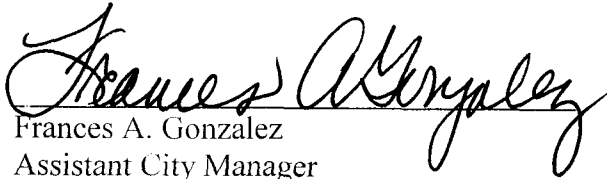
Provisions of the Ethics Ordinance do not apply.

Attachments:

- Attachment I: Department of Health and Human Services Healthy Start Initiative Budget and Personnel Complement
- Attachment II: Department of Health and Human Services HRSA Notice of Grant Award in the amount of \$750,000.00
- Attachment III: Program Evaluation for SAMHD "Health Start Initiative" with Business Associate Agreement



Fernando A. Guerra, MD, MPH
Director of Health



Frances A. Gonzalez
Assistant City Manager



J. Rolando Bono
City Manager

Attachment I
Department of Health and Human Services (DHHS)
HRSA Healthy Start Initiative Project
Fund 26022000
Fund Center 3606610000
DHHS HRSA Grant No. 2 H49MC00101-05-00

ESTIMATED REVENUES	SAP GL No.	CURRENT AMOUNT
HRSA Healthy Start Initiative	4501100	\$ 750,000
Total Estimated Revenues		<u>750,000</u>

APPROPRIATIONS

Healthy Start Initiative

Activity: 36-06-61

06/01/05 to 05/31/06

Cost Center 3606610002

Internal Order 136000000276

Regular Salaries & Wages	5101010	374,414
Language Skill Pay	5101050	4,800
Retirement Benefits - Soc. Sec.	5103005	28,643
Retirement Benefits - TMRS	5105010	43,544
Group Health Insurance (Flex)	5405040	85,800
Life Insurance	5103010	674
Workers' Disability Compensation	5405020	4,044
Personal Leave Buy Back Pay	5103035	2,500
Communications: Telephones	5403010	16,000
Mail & Parcel Post Service	5205010	3,000
Cellular Phones - Air Time	5403040	6,219
Rental of Facilities	5206010	45,958
Travel - Official	5207010	12,750
Travel - Other	5203090	2,700
Education	5103065	5,500
Car Expense Allowance	5103055	17,584
Alarm and security services	5208530	480
Fees to Professional Contractors	5201040	23,284
Automatic Data Processing Services	5403520	12,647
Membership Dues & Licenses	5203050	4,570
Binding, Printing & Reproduction	5203060	6,000
Advertising & Publication	5203040	4,300
Office Supplies	5302010	8,820
Food	5304020	2,875
Other Commodities	5304080	12,716
Indirect Cost	5406530	20,178
Total Appropriations		<u>\$ 750,000</u>

Class No.	PERSONNEL COMPLEMENT	PREVIOUS POSITIONS	ADD (DEDUCT)	REVISED POSITIONS
	Activity No. 36-06-61			
	Cost Center 3606610002			
	Internal Order 136000000276			
0009	Senior Office Assistant	1	0	1
0040	Administrative Assistant I (.5 FTE)	1	(1)	0
0046	Management Analyst	1	(1)	0
0206	Health Program Manager	1	0	1
0239	Public Health Aide	1	0	1
0284	Health Program Supervisor (.5 FTE)	0	1	1
0865	Special Project Officer	5	(1)	4
0870	Special Project Coordinator (.5 FTE)	1	0	1
0906	Social Services Manager	1	0	1
0985	Case Aide	1	2	3
	Total Personnel:	<u>13</u>	<u>0</u>	<u>13</u>

1. DATE ISSUED: 06/08/2005		2. PROGRAM CFDA: 93.926		DEPARTMENT OF HEALTH AND HUMAN SERVICES HEALTH RESOURCES AND SERVICES ADMINISTRATION  NOTICE OF GRANT AWARD AUTHORIZATION (Legislation/Regulation) Public Health Service Act, Section 751 Public Health Service Act: Title III, Part D, Section 330H ; 42 U.S.C. 254c-8																																							
3. SUPERCEDES AWARD NOTICE dated: except that any additions or restrictions previously imposed remain in effect unless specifically rescinded.																																											
4. GRANT NUMBER: 2 H49MC00101-05-00		5. FORMER GRANT NUMBER:																																									
6. PROJECT PERIOD: FROM: 07/01/2001 THROUGH: 05/31/2009																																											
7. BUDGET PERIOD: FROM: 06/01/2005 THROUGH: 05/31/2006																																											
8. TITLE OF PROJECT (OR PROGRAM): HEALTHY START INITIATIVE																																											
9. GRANTEE NAME AND ADDRESS: SAN ANTONIO CITY DEPARTMENT OF FINANCE 332 W. Commerce Street STE 300 SAN ANTONIO, TX 78205-2409			10. DIRECTOR: (PROGRAM DIRECTOR/PRINCIPAL INVESTIGATOR) Sharon K Shumpert SAN ANTONIO CITY DEPARTMENT OF FINANCE San Antonio Healthy Start 1325 N Flores St San Antonio, TX 78212-4900																																								
11. APPROVED BUDGET: (Excludes Direct Assistance) <input checked="" type="checkbox"/> Grant Funds Only <input type="checkbox"/> Total project costs including grant funds and all other financial participation <table> <tr><td>a. Salaries and Wages:</td><td>\$ 435,427.00</td></tr> <tr><td>b. Fringe Benefits:</td><td>\$ 143,691.00</td></tr> <tr><td>c. Total Personnel Costs:</td><td>\$ 579,118.00</td></tr> <tr><td>d. Consultant Costs:</td><td>\$ 0.00</td></tr> <tr><td>e. Equipment:</td><td>\$ 0.00</td></tr> <tr><td>f. Supplies:</td><td>\$ 37,219.00</td></tr> <tr><td>g. Travel:</td><td>\$ 31,034.00</td></tr> <tr><td>h. Construction/Alteration and Renovation:</td><td>\$ 0.00</td></tr> <tr><td>i. Other:</td><td>\$ 48,912.00</td></tr> <tr><td>j. Consortium/Contractual Costs:</td><td>\$ 33,539.00</td></tr> <tr><td>k. Trainee Related Expenses:</td><td>\$ 0.00</td></tr> <tr><td>l. Trainee Stipends:</td><td>\$ 0.00</td></tr> <tr><td>m. Trainee Tuition and Fees:</td><td>\$ 0.00</td></tr> <tr><td>n. Trainee Travel:</td><td>\$ 0.00</td></tr> <tr><td>o. TOTAL DIRECT COSTS:</td><td>\$ 729,822.00</td></tr> <tr><td>p. INDIRECT COSTS: (Rate: % of S&W/TADC)</td><td>\$ 20,178.00</td></tr> <tr><td>q. TOTAL APPROVED BUDGET:</td><td>\$ 750,000.00</td></tr> <tr><td> i. Less Non-Federal Resources:</td><td>\$ 0.00</td></tr> <tr><td> ii. Federal Share:</td><td>\$ 750,000.00</td></tr> </table>			a. Salaries and Wages:	\$ 435,427.00	b. Fringe Benefits:	\$ 143,691.00	c. Total Personnel Costs:	\$ 579,118.00	d. Consultant Costs:	\$ 0.00	e. Equipment:	\$ 0.00	f. Supplies:	\$ 37,219.00	g. Travel:	\$ 31,034.00	h. Construction/Alteration and Renovation:	\$ 0.00	i. Other:	\$ 48,912.00	j. Consortium/Contractual Costs:	\$ 33,539.00	k. Trainee Related Expenses:	\$ 0.00	l. Trainee Stipends:	\$ 0.00	m. Trainee Tuition and Fees:	\$ 0.00	n. Trainee Travel:	\$ 0.00	o. TOTAL DIRECT COSTS:	\$ 729,822.00	p. INDIRECT COSTS: (Rate: % of S&W/TADC)	\$ 20,178.00	q. TOTAL APPROVED BUDGET:	\$ 750,000.00	i. Less Non-Federal Resources:	\$ 0.00	ii. Federal Share:	\$ 750,000.00	12. AWARD COMPUTATION FOR FINANCIAL ASSISTANCE a. Authorized Financial Assistance This Period \$ 750,000.00 b. Less Unobligated Balance from Prior Budget Periods i. Additional Authority \$ 0.00 ii. Offset \$ 0.00 c. Unawarded Balance of Current Year's Funds \$ 0.00 d. Less Cumulative Prior Award(s) This Budget Period \$ 0.00 e. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION \$ 750,000.00		
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ii. Federal Share:	\$ 750,000.00																																										
13. RECOMMENDED FUTURE SUPPORT: (Subject to the availability of funds and satisfactory progress of project) <table border="1"> <thead> <tr> <th>YEAR</th> <th>TOTAL COSTS</th> </tr> </thead> <tbody> <tr> <td>06</td> <td>\$ 750,000.00</td> </tr> <tr> <td>07</td> <td>\$ 750,000.00</td> </tr> <tr> <td>08</td> <td>\$ 750,000.00</td> </tr> </tbody> </table>						YEAR	TOTAL COSTS	06	\$ 750,000.00	07	\$ 750,000.00	08	\$ 750,000.00																														
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06	\$ 750,000.00																																										
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08	\$ 750,000.00																																										
14. APPROVED DIRECT ASSISTANCE BUDGET: (In lieu of cash) a. Amount of Direct Assistance \$ 0.00 b. Less Unawarded Balance of Current Year's Funds \$ 0.00 c. Less Cumulative Prior Awards(s) This Budget Period \$ 0.00 d. AMOUNT OF DIRECT ASSISTANCE THIS ACTION \$ 0.00																																											
15. PROGRAM INCOME SUBJECT TO 45 CFR PART 74, SUBPART F OR 45 CFR 92.25 SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES: A=Additional Cost B=Deduction C=Finance Non-Federal D=Cost Sharing or Matching E=Other [A] Estimated Program Income: \$ 0.00																																											
16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY HRSA, IS ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING: a. The grant program legislation cited above. b. The grant program regulation cited above. c. This award notice including terms and conditions, if any, noted below under REMARKS. d. 45 CFR Part 74 or 45 CFR Part 92 as applicable. In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.																																											
REMARKS: (Other Terms and Conditions Attached [X] Yes [] No) This action reflects a new document number. Please refer to this number when contacting or submitting drawdown requests to the Payment Management System. Reporting on the PMS 272 should reflect this number for all disbursements related to this project period.																																											
Electronically signed by Janice Gordon, Grants Management Officer on: 06/08/2005																																											
17. OBJ. CLASS: 41.51		18. CRS-EIN: 1746002070A1		19. FUTURE RECOMMENDED FUNDING:																																							
FY-CAN	CFDA	DOCUMENT NO.	AMT. FIN. ASST.	AMT. DIR. ASST.	SUBPROGRAM CODE																																						
05-3898020	93.926	H49MC00101B0	\$ 750,000.00	\$ 0.00	N/A																																						

Terms and Conditions

Failure to comply with the special remarks and condition(s) may result in a draw down restriction being placed on your Payment Management System account or denial of future funding.

Grant Conditions:

1. Due Date: 06/30/2005

By the above due date, the revised Standard Form 424A (SF 424A) and matching budget narrative must be provided, including Evaluation costs as part of the Other category total.

2. Due Date: 06/30/2005

By the above due date, a revised Financial Status Report (FSR) must be submitted showing \$824,639 as the Total federal funds authorized with an unobligated balance of \$24,674.97 for the 6/1/03-5/31/04 budget period. These funds are restricted and may not be used unless authorized in writing by the Division of Grants Management Operations.

Grant Specific Terms:

1. The FSR shows an unobligated balance of \$256,575 for the 7/1/01-5/31/02 budget period. If, however, these funds have already been expended, then you will need to request retroactive approval for the carryover since carryovers are not automatic. The request should be in letter form and include: (1) the grant number (item 4 on the Notice of Grant Award—NGA), (2) the purpose for which the funds were needed, and (3) a categorical budget for the amount of the unobligated balance that was used (we suggest using the 5161-1 application budget forms (SF 424A) to facilitate providing this information).

Approval will always be reflected on an NGA signed by the Grants Management Officer.

Program Terms:

1. The management Team, including key personnel, must reflect the cultural diversity of the Community to be served.
2. Each project is expected to establish a plan to recover, to the maximum extent feasible, third party revenues to which it is entitled for services provided; garner all other available Federal, state, local, and private funds; and charge beneficiaries according to their ability to pay for services without creating a barrier to those services. Where third-party payors, including Government agencies, are authorized or are under legal obligation to pay all or a portion of charges for health care services, "all such sources must be billed for covered services, and every effort must be made to obtain payment. Each service provider receiving Federal funds, either directly or indirectly, must have a procedure to identify all persons served who are eligible for third-party reimbursement."
3. All MCHB discretionary grant projects are expected to incorporate a carefully designed and well-planned evaluation protocol capable of demonstrating and documenting measurable progress toward achieving the stated goals. The measurement of progress toward goals should focus on systems, health and performance indicators, rather than solely on the intermediate process measures.
4. In accordance with the requirements of the "Government Performance and Results Act (GPRA) of 1993" (Public Law 103-62), MCHB has established measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance. Performance measures and data elements for all MCHB-funded grant programs including Healthy Start have been finalized. As previously communicated all Healthy Start projects are expected to participate in the MCHB reporting requirements system.

Standard Terms:

1. The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state the percentage of the total costs of the program or project which will be financed with Federal money, the dollar amount of Federal funds for the project or program, and percentage and a dollar amount of the total costs of the project or

program that will be financed by nongovernmental sources.

2. Recipients and sub-recipients of Federal funds are subject to the strictures of the Medicare and Medicaid anti-kickback statute (42 U.S.C. 1320a - 7b(b) and should be cognizant of the risk of criminal and administrative liability under this statute, specifically under 42 U.S.C. 1320 7b(b) Illegal remunerations which states, in part, that whoever knowingly and willfully:

(A) Solicits or receives (or offers or pays) any remuneration (including kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring (or to induce such person to refer) an individual to a person for the furnishing or arranging for the furnishing of any item or service, OR

(B) In return for purchasing, leasing, ordering, or recommending purchasing, leasing, or ordering, or to purchase, lease, or order, any goods, facility, services, or item

....For which payment may be made in whole or in part under subchapter XIII of this chapter or a State health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

3. The HHS Appropriations Act requires that to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.
4. Items that require prior approval from the awarding office as indicated in 45 CFR Part 74.25 [Note: 74.25 (d) HRSA has not waived cost-related or administrative prior approvals for recipients unless specifically stated on this Notice of Grant Award] or 45 CFR Part 92.30 must be submitted in writing to the Grants Management Officer (GMO). Only responses to prior approval requests signed by the GMO are considered valid. Grantees who take action on the basis of responses from other officials do so at their own risk. Such responses will not be considered binding by or upon the HRSA.

In addition to the prior approval requirements identified in Part 74.25, HRSA requires grantees to seek prior approval for significant rebudgeting of project costs. Significant rebudgeting occurs when, under a grant where the Federal share exceeds \$100,000, cumulative transfers among direct cost budget categories for the current budget period exceed 25 percent of the total approved budget (inclusive of direct and indirect costs and Federal funds and required matching or cost sharing) for that budget period or \$250,000, whichever is less. For example, under a grant in which the Federal share for a budget period is \$200,000, if the total approved budget is \$300,000, cumulative changes within that budget period exceeding \$75,000 would require prior approval). For recipients subject to 45 CFR Part 92, this requirement is in lieu of that in 45 CFR 92.30(c)(1)(ii) which permits an agency to require prior approval for specified cumulative transfers within a grantee's approved budget. [Note, even if a grantee's proposed rebudgeting of costs falls below the significant rebudgeting threshold identified above, grantees are still required to request prior approval, if some or all of the rebudgeting reflects either a change in scope, a proposed purchase of a unit of equipment exceeding \$25,000 (if not included in the approved application) or other prior approval action identified in Parts 74.25 and 92.30 unless HRSA has specifically exempted the grantee from the requirement(s).]

5. Payments under this award will be made available through the DHHS Payment Management System (PMS). PMS is administered by the Division of Payment Management, Financial Management Services, Program Support Center, which will forward instructions for obtaining payments. Inquiries regarding payment should be directed to: Payment Management, DHHS, P.O. Box 6021, Rockville, MD 20852, <http://www.dpm.psc.gov/> or Telephone Number: 1-877-614-5533.
6. The DHHS Inspector General maintains a toll-free hotline for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. Such reports are kept confidential and callers may decline to give their names if they choose to remain anonymous. Contact: Office of Inspector General, Department of Health and Human Services, Attention: HOTLINE, 330 Independence Avenue Southwest, Cohen Building, Room 5140, Washington, D. C. 20201, Email: Htips@os.dhhs.gov or Telephone: 1-800-447-8477 (1-800-HHS-TIPS).
7. Submit audits, if required, in accordance with OMB Circular A-133, to: Federal Audit Clearinghouse Bureau of the Census 1201 East 10th Street Jefferson, IN 47132 PHONE: (310) 457-1551, (800)253-0696 toll free <http://harvester.census.gov/sac/facconta.htm>

Reporting Requirements:

1. **Due Date: Within 90 days of Budget End Date**
Financial Status Report SF-269a/short form at (<http://www.psc.gov/forms/sf>) is due within 90 days after expiration of the budget period. This report should NOT reflect cumulative reporting from budget period to budget period and submitted to the HRSA Division of Grants Management Operations, 5600 Fishers Lane, RM 11A-16, Rockville, MD 20857-0001.
2. **Due Date: Within 90 days of Budget End Date**
Within 90 days of the end of the budget period submit to the Division of Grants Management Operations a progress report containing a schedule of actual revenues and expenses for the previous budget period. This schedule should itemize expenses by type in accordance with the categories on the SF 424A , Section B consistent with the detail provided in the approved grant application. Revenues should be itemized by revenue source. There is no suggested format for the narrative portion of the progress report. However the narrative should be consistent with the expenses reported in the schedule discussed above.

Failure to comply with these reporting requirements will result in deferral or additional restrictions of future funding decisions.

Contacts:

Program Contact: For assistance on programmatic issues, please contact Benita Baker at:

HRSA/MCHB/DHSPS
5600 Fishers Lane RM 18-12
Rockville, MD 20857-0001
Phone: (301)443-1461
Email: bbaker@hrsa.gov

Division of Grants Management Operations: For assistance on grants administration issues, please contact Joyce Sagami at:

HRSA/OFAM/DGMO/HSB
5600 Fishers Lane, Room 11A-16
Rockville, MD 20857-0001
Phone: (301)594-4253
Email: jsagami@hrsa.gov

Responses to reporting requirements, conditions, and requests for post award amendments must be mailed to the attention of the Office of Grants Management contact indicated above. All correspondence should include the Federal grant number (item 4 on the award document) and program title (item 8 on the award document). Failure to follow this guidance will result in a delay in responding to your request.

ATTACHMENT III

STATE OF TEXAS

§

PROGRAM EVALUATION FOR SAMHD "HEALTHY START INITIATIVE"

COUNTY OF BEXAR

§

This Agreement is entered into by and between the City of San Antonio, hereinafter referred to as "City", on behalf of the San Antonio Metropolitan Health District (SAMHD), and Vanessa Miller, hereinafter referred to as "Contractor".

I. PURPOSE

- 1.1 To formalize an agreement whereby Contractor will provide City with an evaluation of the SAMHD Healthy Start Initiative for the period June 1, 2005 through May 31, 2006. Healthy Start is a project to eliminate disparities in perinatal health funded by the Maternal and Child Health Bureau of the Health Resources and Services Administration (HRSA). It is anticipated that, with the concurrence of both parties, this agreement will be renewed in subsequent years as long as sufficient funding is obtained for this project and an evaluation component is needed.

II. SERVICES TO BE PERFORMED

Contractor hereby agrees to conduct a program evaluation in accordance with the evaluation framework described in the SAMHD Health Start grant proposal to HRSA and includes the following:

- 2.1 Provide technical assistance to SAMHD regarding the design of a data collection, management, and reporting system that will be sufficient for monitoring and evaluating the accomplishment of project goals and objectives.
- 2.2 Train SAMHD staff and the staff of participating agencies on the evaluation method(s) that will be used for measuring the accomplishment of project goals and objectives.
- 2.3 Develop, maintain, and update an evaluation operations manual to be distributed to all parties of the project that will serve as a guide for project data collection and management activities.
- 2.4 Provide technical assistance on the development of a project operations manual.
- 2.5 Conduct on-going spatial and statistical analysis of project data with the data collection support of SAMHD to ensure timely reporting of project outcomes.
- 2.6 Conduct an on-going process evaluation using qualitative analysis of program objectives and activities as a means to obtain perspective of recipients on project services and of providers on project management and objectives.
- 2.7 Provide a social contextual framework for explaining disparities in perinatal and women's health.
- 2.8 Incorporate any new evaluation standards, criteria, and/or procedures that may be dictated by HRSA's Maternal and Child Health Bureau as a requirement of the grant.
- 2.9 Provide a written quarterly progress report to SAMHD outlining all Healthy Start evaluation activities conducted by the contractor. The format for the quarterly reports shall be determined by the contractor, and will be due to SAMHD following each quarter in September, December, March, and June.

III. CONSIDERATION

- 3.1 In consideration of the above-described activities provided by Contractor in connection with the activities performed under this Agreement, City agrees to pay Contractor an amount not to exceed \$23,284.00 (twenty three thousand two hundred and eighty four and no/100 dollars). Contractor and City agree and understand that this is a

contract for payment of services delivered by the Contractor described in Section II above at the intervals described in 3.2 of this Section. No payments of Contractor's project related travel expenses will be made.

- 3.2 City agrees to pay for services of Contractor in three installments upon receipt of an invoice submitted in accordance with Section XVI below. Payments to Contractor will be due according to the following schedule:

September 1, 2005.	\$ 5821.00
December 1, 2005.	\$ 5821.00
March 1, 2006	\$ 5821.00
May 31, 2006.	\$ 5821.00

IV. LOCATION WHERE SERVICES ARE TO BE PERFORMED

- 4.1 The program evaluation performed by the Contractor will include the entire geographical area of the project. The chief evaluator of the project will work from and the data collection, management and reporting system for the evaluation will be housed principally at SAMHD.

V. TERM

- 5.1 The term of this agreement will be from June 1, 2005 through May 31, 2006.

VI. COMPLIANCE

- 6.1 Contractor agrees to conduct services under this agreement in compliance with all Federal, State and local laws, as applicable, including the Health Insurance Portability and Accountability Act (HIPAA).

VII. INSURANCE

- 7.1 Any and all employees, representatives, agents or volunteers of Contractor while engaged in the performance of any work required by the City or any work related to a Lease of space, License Contract, or Concession Contract with the City shall be considered employees, representatives, agents or volunteers of Contractor only and not of the City. Any and all claims that may result from any obligation for which Contractor may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of Contractor.
- 7.2 Prior to the commencement of any work under this Contract, Contractor shall furnish an original completed Certificate(s) of Insurance to the (appropriate Department Director) and City Clerk's Office, 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, and which shall furnish and contain all required information reference or indicated thereon. The original certificate(s) 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 Contract until such certificate shall have been delivered to the City's (appropriate Department Director) and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.
- 7.3 The City reserves the right to review the insurance requirements of this section during the effective period of the Contract and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Contract, but in no instance will the City allow modification whereupon the City may incur increased risk.
- 7.4 A Contractor's financial integrity is of interest to City, therefore, subject to right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect for the duration of the Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written, on an

occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the City, as approved by the Risk Manager, in the following types and amounts:

1. Professional Liability (Claims Made Form)	\$500,000 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.
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- 7.5 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). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 7.7 herein within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.
- 7.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Contractor shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Contractor knows of said change in advance, or ten (10) days notice after the change, if the Contractor 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
Metropolitan Health District
P.O. Box 839966
San Antonio, Texas 78283-3966**

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

- 7.7 If Contractor 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 Contract; 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 Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof. (Note: This is not applicable to Tenants.)
- 7.8 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Contract.
- 7.9 It is agreed that Contractor'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 contract.

VIII. INDEMNITY

- 8.1 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 Contract, 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 Contract, 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 Contract. 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 promptly advise the City in writing of any claim or demand against the City or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract 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.

- 8.2 It is the EXPRESS INTENT of the parties to this Contract, 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.

IX. RELATIONSHIP OF THE PARTIES

- 9.1 City and Contractor agree that Contractor is an independent Contractor and that neither has authority to bind the other or hold out to third parties that it has the authority to bind the other.
- 9.2 Contractor also agrees that each and every person that performs services under this agreement does so on Contractor's behalf and as Contractor's agent and at all times and for all purposes remains an employee of Contractor.

X. TERMINATION

- 10.1 City and Contractor understand and agree that either party may terminate this agreement. Either party shall have the option of terminating this contract, without cause, by giving the other party no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty days following the day on which the notice is received by the other party.

XI. CONFIDENTIAL INFORMATION

- 11.1 Contractor understands and agrees that during the term of this agreement, it will have access to confidential information, and in accordance therewith, agrees to abide by all statutes governing such matters.
- 11.2 Contractor shall establish a method to secure the confidentiality of records and other information related to activities performed under this agreement in accordance with the applicable Federal, State and Local rules and regulations. This provision shall not be construed as limiting City's right of access to records or any other information produced as a result of this agreement.

XII. DEBARMENT

- 12.1 Contractor certifies that Contractor is not debarred from entering into this agreement as defined by Federal debarment guidelines.

XIII. LEGAL AUTHORITY

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

XIV. AMENDMENT

- 14.1 This agreement constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of this agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 14.2 Amendments or modifications to this agreement may be initiated by either party hereto provided a thirty (30) days written notice is given to the other party.

XV. ASSIGNING INTEREST

- 15.1 Contractor shall refrain from transferring or assigning any interest in this agreement without the prior written consent of the City.

XVI. BILLING

- 16.1 Contractor shall use generally accepted accounting principles, as recognized by the American Institute of Certified Public Accountants.
- 16.2 Contractor shall submit invoices to City in accordance with the schedule set out in Section 3.2 of this agreement. Each invoice shall outline the work completed during the previous period in accordance with the stated scope of work for the contract year described in Section II above and the amount due and owing. The total payments hereunder shall not exceed \$23,284.00.
- 16.3 All payments due by City hereunder shall be mailed to:

Vanessa Miller
574 Calvert Ct.
Lewisville, TX 75067-3215

Or at such other address on file with the City Clerk as Contractor may provide from time to time in writing to City.

XVII. CERTIFICATIONS

- 17.1 Contractor certifies that each and every person designated to provide services under this agreement has the requisite license or certification necessary to provide said service.

XVIII. CONFLICT OF INTEREST

- 18.1 Contractor acknowledges that it is informed that the City of San Antonio City Charter prohibits contracts between City and any local public official, such as a City officer or employee, and that the prohibition extends to an officer or employee of City boards and commissions and to contracts involving a business entity in which the official has

a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. Contractor certified, and this Agreement is made in reliance thereon, that to the best of its knowledge neither it, its individual officers, employees or agents, nor any person having a substantial interest in this agreement is an officer or employee of the City or any of its agencies.

XIX. RECORDS

- 19.1 Contractor and its agents if any, shall properly, accurately and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to or resulting from this agreement and shall make such materials available at their respective offices at all reasonable times and as often as City may deem necessary, during the term of this agreement for the purpose of accounting and audit inspections by City, or any designated representatives to audit, examine and make excerpts and/or copies of same. In the event that an overpayment is discovered by such audit, Contractor shall remit the overpaid amount to City within thirty (30) days of notice thereof.
- 19.2 Except as may be required by the Texas Open Records Act or other applicable law, access to records related to, or generated as a result of, this agreement shall be limited to Contractor, City or the duly designated representative of each.
- 19.3 Upon termination of this agreement, all documents or records produced as a result of the performance of duties hereunder shall be transferred to the City for maintenance by the San Antonio Metropolitan Health District. Contractor may maintain a file copy.

XX. RIGHTS TO MATERIAL

- 20.1 All records, data, finished or unfinished reports, studies, charts, schedules, documents, surveys, drawings, maps, models, photographs, designs, plans or other appended documentation pertaining to this Project, and any responses, inquiries, correspondence and related material submitted by Contractor in connection therewith, shall, upon receipt, become the property of City.

XXI. SECTARIAN ACTIVITY

- 21.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XXII. POLITICAL ACTIVITY

- 22.1 None of the performances rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XXIII. NOTICES

- 23.1 Notices to City required or appropriate under this agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

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

AND

Director, San Antonio Metropolitan Health District
City of San Antonio
332 W. Commerce
San Antonio, Texas 78205

Or to such other address as may have been designated in writing by the City of San Antonio, from time to time. Notices to Contractor shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to Contractor at:

Vanessa Miller
574 Calvert Ct.
Lewisville, TX 75067-3215

Or at such other address on file with the City Clerk as Contractor may provide from time to time in writing to City.

XXIV. SEVERABILITY

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

XXV. LITIGATION

- 25.1 Special Provisions: Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.
- 25.2 During the term of this agreement, if Contractor files and/or pursues an adversarial proceeding against the City then, at the City's option, this agreement and all access to the funding provided for hereunder may terminate if Contractor is in violation of 26.1.
- 25.3 Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.
- 25.4 For purposes of this Article, "adversarial proceedings" include any cause of action filed by the Contractor in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

XXVI. TEXAS LAW

26.1 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.

XXVII. CAPTIONS

27.1 The captions contained in this agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this agreement.

XXVIII. FULL AGREEMENT

28.1 This agreement, the authorizing ordinance and any exhibits 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.

EXECUTED THIS _____ day of September, 2005.

CITY OF SAN ANTONIO

VANESSA MILLER

Frances A. Gonzalez
Assistant City Manager

By: _____
Vanessa Miller, BA, BS, MSN, APRN, ABD

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Business Associate Agreement

This Business Associate Agreement ("Agreement") dated September 1, 2005 (the "Effective Date"), is entered into by and between the City of San Antonio ("Health Care Provider") and Vanessa Miller ("Business Associate").

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

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

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

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

"Privacy Standards" shall mean the Standards for Privacy of Individually Identifiable Health Information as codified in 45 CFR Parts 160 and 164.

"Security Standards" shall mean the Security Standards for the Protection of Electronic Protected Health Information as codified in 45 CFR Parts 160 and 164.

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

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

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

4. **Disclosure of PHI.** Business Associate may disclose PHI as necessary to perform its obligations under the Business Arrangement and as permitted by law, provided that Business Associate shall in such case: (a) obtain reasonable assurances from any person to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity; (b) agree to immediately notify Health Care Provider of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards or the Security Standards; and (c) obtain reasonable assurances that all disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. In addition, Business Associate may disclose PHI as required by law. If Business

Associate discloses PHI received from Health Care Provider, or created or received by Business Associate on behalf of Health Care Provider, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Health Care Provider any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within five (5) days of the Business Associate becoming aware of such use or disclosure. Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Health Care Provider in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI in violation of this Agreement.

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

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

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

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

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

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

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

12. **Term and Termination.**

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

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

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

- (a) Business Associate shall fail to observe or perform any material covenant or agreement contained in this Agreement for ten (10) days after written notice thereof has been given to Business Associate by Health Care Provider; or
- (b) A violation by Business Associate of any provision of the Privacy Standards, Security Standards, or other applicable federal or state privacy law.

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

12.5 Upon termination of this Agreement for any reason, Business Associate agrees either to return to Health Care Provider or to destroy all PHI received from Health Care Provider or otherwise through the performance of services for Health Care Provider, that is in the possession or control of Business Associate or its agents. In the case of information for which it is not feasible to "return or destroy," Business Associate shall continue to comply with the covenants in this Agreement with respect to such PHI and shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment. Termination of this Agreement shall be cause for Health Care Provider to terminate the Business Arrangement.

13. **Miscellaneous.**

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

HEALTH CARE PROVIDER:

BUSINESS ASSOCIATE:

13.2 **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

13.3 **Assignment.** Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Health Care Provider shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Health Care Provider, without the prior approval of Business Associate.

13.4 **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Health Care Provider relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangement or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangement comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

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

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

14. **Indemnification**

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

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

CITY OF SAN ANTONIO

VANESSA MILLER

By: _____
Fernando A. Guerra, MD, MPH
Title: Director of Health

By: _____
Vanessa Miller, BA, BS, MSN, APRN, ABD

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney