City of Austin Health and Human Services
Social Service Contracts
Client Eligibility Requirements

UNLESS OTHERWISE STATED IN THE CONTRACT WORK STATEMENT, THESE REQUIREMENTS APPLY TO ALL CLIENTS SERVED WITH CITY SOCIAL SERVICES FUNDING.

1. GENERAL

1.1. Eligibility requirements for clients served under *state or federal* grant contracts will be determined by the grantor.

1.2. Agency must maintain a record of client eligibility (e.g. client file or electronic record) that includes documentation of:

1.2.1. Annual certification of client eligibility

1.2.2. Services provided to client

1.3. Agency must recertify client when notified of a change in family circumstances (e.g. family income, residence, and/or family composition)

1.4. Unless specified by Grant/Funding Source, re-certification of clients is required not less than once every 12 months (unless required earlier by a change in family circumstances)

1.5. For people who are experiencing homelessness, residency requirements and income requirements do not apply

1.6. Other Client populations:

1.6.1. Clients in programs serving victims of violence are not subject to residency or income requirements

1.6.2. Eligibility exceptions for any other type of clients and/or documentation situations must be described in Contract Work Statement with the approval of the City Contract Manager

1.6.3. Date of receipt by agency must be indicated on all documentation in client file

2. IDENTITY

2.1. Client must provide proof of identity in order to receive City-funded services, documented by:

2.1.1. A government –issued identification; or

2.1.2. A signed Self-Declaration of Identity supported by client residency documentation. Self Declaration of Identity is *only permissible for clients who are homeless, survivors of violence, or lack documentation of immigration status*

3. RESIDENCY

3.1. City-funded clients must be a resident of the City of Austin (Full Purpose Jurisdiction) and/or Travis County

3.2. Residence must be documented by proof of address that includes client name (e.g. City utility bill, lease, letter from landlord, etc.)

3.3. Residency eligibility must be verified by one or more of the following sources:

3.3.1. Austin GIS Jurisdictions Web Map (http://www.austintexas.gov/gis/JurisdictionsWebMap/)

3.3.2. Travis County Appraisal District website (http://www.traviscad.org)

3.3.3. U.S. Postal Service website (verification of County only) (www.usps.com)

4. INCOME

4.1. Client intake form must reflect wages/income of all family members 18 years old or older living in the household

4.2. Determination of Family Size:

4.2.1. For the purposes of determining eligibility for City-funded services, a family unit consists of:

4.2.1.1. A person living alone:

4.2.1.2. An adult living alone

4.2.1.3. A minor child living alone or with others who are not responsible for the child's support

4.2.1.4. Two or more persons living together who are wholly or partially responsible for the support of the other person/people:

4.2.1.4.1. Two persons in a domestic partnership, or legal or common-law marriage

4.2.1.4.2. One or both legal parents and minor children

4.2.1.4.3. One or both adult caretakers of minors and the caretaker(s)'s minor children.

Note: a caretaker is one or both adults(s) who performs parental functions (provision of food, clothing, shelter, and supervision) for a minor.

4.3. Family income must be 250% or less of current Federal Poverty Income Guidelines to be eligible for City-funded services; agency must update its FPIG categories when Federal figures change. Income inclusions and exclusions are based on Section 6.4 of Title 10 of the Texas Administrative Code and are as follows:

(A) Included Income:

1) Temporary Assistance for Needy Families (TANF);
2) Money, wages and salaries before any deductions;
3) Net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);
4) Regular payments from social security, including Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI);
5) Railroad retirement;
6) Unemployment compensation;
7) Strike benefits from union funds;
8) Worker's compensation;
9) Training stipends;
10) Alimony;
11) Military family allotments;
12) Private pensions;
13) Government employee pensions (including military retirement pay);
14) Regular insurance or annuity payments; and
15) Dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.

(B) Excluded Income:

City of Austin Health and Human Services
Social Service Contracts
Client Eligibility Requirements

If an income source is not excluded in this subsection, it must be included when determining income eligibility.

1) From non-farm or farm self-employment net receipts must be used (i.e., receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses); and
2) From gambling or lottery winnings net income must be used.
3) Capital gains;
4) Any assets drawn down as withdrawals from a bank;
5) Balance of funds in a checking or savings account;
6) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));
7) Proceeds from the sale of property, a house, or a car;
8) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;
9) Tax refunds, Earned Income Tax Credit refunds, the economic impact payments from the Internal Revenue Service under section 103 of the American Taxpayer Act;
10) Jury duty compensation;
11) Gifts, loans, and lump-sum inheritances;
12) One-time insurance payments, or compensation for injury;
13) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;
14) Reimbursements (for mileage, gas, lodging, meals, etc.);
15) Employee fringe benefits such as food or housing received in lieu of wages;
16) The value of food and fuel produced and consumed on farms;
17) The imputed value of rent from owner-occupied non-farm or farm housing;
18) Federal non-cash benefit programs such as Medicare, Medicaid, Supplemental Nutrition Assistance Program (SNAP); Women, Infants, and Children Supplemental Nutrition Program (WIC); school lunches; and housing assistance (Medicare deduction from Social Security Administration benefits should not be counted as income);
19) Combat zone pay to the military;
20) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits (GI Bill), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
21) Child support payments received by the payee (amount paid by payor is included income);
22) Income of Household members under 18 years of age including payment to Children under the age of 18 made payable to a person over the age of 18;
23) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;
24) AmeriCorps Program payments, allowances, earnings, and in-kind aid;
25) Depreciation for farm or business assets;
26) Reverse mortgages;
27) Payments for care of Foster Children. This includes payments to a host Household for individuals in Extended Foster Care;
28) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
29) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));
30) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable

disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));

31) Allowances, earnings, and payments to individuals participating in programs under the Workforce Innovation and Opportunity Act (29 U.S.C. 3101));
32) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));
33) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));
34) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
35) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));
36) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);
37) The first $2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407 - 1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;
38) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);
39) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);
40) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);
41) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802 - 05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811 - 16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);
42) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));
43) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));
44) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);
45) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a));
46) Payments of up to $100,000 a year from an account established under the Achieving a Better Life Experience Act of 2014 or the ABLE Act of 2014 (P.L. 113-295) to a qualified beneficiary that are expended on qualified disability expenses;
47) Temporary Assistance for Needy Families under the Low-Income Household Water Assistance Program (LIHWAP) only, and
48) Any other items which are excluded by virtue of federal or state legislation or by adopted federal regulations that have taken effect. The Department will, from time to time, provide on its website updated links to such federal or state exclusions. Notwithstanding such information, a Subrecipient may rely on any adopted federal or state exclusion on and after the date on which it took effect.
49) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income, within 30 days of the application date.

City of Austin Health and Human Services
Social Service Contracts
Client Eligibility Requirements

4.4. Client income amounts must reflect *Gross Income*, before any deductions

4.5. If any adult family member has no income, a Self-Declaration of No Income form is required for that individual

4.6. Income documentation requirement:

4.6.1. Programs providing financial assistance to or on behalf of clients (including but not limited to rent, utilities, arrears, child care, tuition, occupational training): the client file must include primary eligibility sources; declaration of eligibility for another program (e.g., TANF, Free/Reduced/School Lunch Program) is not adequate documentation of eligibility

4.6.2. Programs which do not provide financial assistance to or on behalf of clients: the client file must include primary eligibility sources -or- a S*elf-Declaration of Income* form

Any question about eligibility criteria not addressed here or for which the contractor needs clarification must be referred to the grantee's City contract manager. The City has final authority to declare an individual eligible or not eligible for City-funded services based on the criteria in this document.

City of Austin

Social Services Compensation Terms

1. The Grantee shall expend City funds according to the approved budget categories described in Exhibit B.1, Program Budget and Narrative, or Exhibit A.1, Program Work Statement (Deliverables), as applicable.

2. **Request for Payment**

Payment to the Grantee shall be due 30 calendar days following receipt by the City of the Grantee's fully and accurately completed payment request, using the City's contract management system. The payment request must be submitted to the City no later than 11:59 p.m. Central Standard Time 25 calendar days following the end of the month covered by the payment request. **If the 25th calendar day falls on a weekend or holiday, as outlined in Section 8.24, the deadline to submit the payment request is extended to no later than 11:59 p.m. Central Standard Time of the 1st weekday immediately following the weekend or holiday.**

3. **Documentation**

3.1. FOR DELIVERABLE AGREEMENTS: **Grantee must provide the City with supporting documentation as described in Exhibit A.1, Program Work Statement (Deliverables) for each monthly Payment Request where an agreement deliverable is being submitted.**

3.2. FOR REIMBURSEABLE AGREEMENTS: **Grantee must provide the City with supporting documentation for each monthly payment request which includes, but is not limited to, a report of City Agreement expenditures generated from the Grantee's financial management system.**

3.2.1. Appropriate supporting documentation includes a General Ledger Detail report from the Grantee's financial management system that meets all of the following specifications:

3.2.1.1 produced from the Grantee's accounting system with no manual changes or adjustments
3.2.1.2 submitted in PDF format
3.2.1.3 includes date the report was created
3.2.1.4 demonstrates specific expenses that match the reimbursement being requested
3.2.1.5 demonstrates that City of Austin funds are maintained in a separate numbered bank account or standalone general operating account that includes *only* City expenses and reimbursements

4. **Right of Final Approval.**

The City retains right of final approval of any supporting documentation submitted before a payment request is approved for processing. Failure to provide supporting documentation acceptable to the City may result in delay or rejection of the payment request. The City reserves the right to modify the required supporting documentation, as needed.

4.1 Unless otherwise expressly authorized in the Agreement, the Grantee shall pass through all Subagreement and other authorized expenses at actual cost without markup.

4.2 Federal excise taxes, state taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

5. Payment.

5.1 All requests accepted and approved for payment by the City will be paid within 30 calendar days of the City's receipt of the deliverables or of the invoice, whichever is later. Requests for payment received without the information required in Section 3 of this Exhibit B.3 cannot be processed, will be returned to the Grantee, and City will make no payment in connection with such request.

5.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.

5.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Grantee to such extent as may be necessary on account of;

5.3.1 delivery of unsatisfactory services by the Grantee;

5.3.2 third party claims, which are not covered by the insurance which the Grantee is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

5.3.3 failure of the Grantee to pay Subgrantees, or for labor, materials or equipment,

5.3.4 damage to the property of the City or the City's agents, employees or Grantees, which is not covered by insurance required to be provided by the Grantee;

5.3.5 reasonable evidence that the Grantee's obligations will not be completed within the time specified in the Agreement, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

5.3.6 failure of the Grantee to submit proper payment requests with all required attachments and supporting documentation;

5.3.7 failure of the Grantee to comply with any material provision of the Agreement; or

5.3.8 identification of previously reimbursed expenses determined to be unallowable after payment was made.

5.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City. Payment will be made by check unless the parties mutually agree to payment by electronic transfer of funds.

6. Non-Appropriation. The awarding or continuation of this Agreement is dependent upon the availability of funding and authorization by Council. The City's payment obligations are payable only and solely from funds appropriated and available for this Agreement. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available and any deliverables delivered but unpaid shall be returned to the Grantee. The City shall provide the Grantee written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement. In the event of non- or inadequate appropriation of funds, there will be no penalty or removal fees charged to the City.

7. Travel Expenses All approved travel, lodging, and per diem expenses in connection with the Agreement for which reimbursement may be claimed by the Grantee under the terms of the Agreement will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (Rates) as published and maintained on the Internet at:

http://www.gsa.gov/portal/category/21287

No amounts in excess of the Travel Policy or Rates shall be paid. No reimbursement will be made for expenses not actually incurred. Airline fares other than coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

8. Final Payment and Close-Out

8.1 The making and acceptance of final payment will constitute:

8.1.1 a waiver of all claims by the City against the Grantee, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Grantee to comply with the Agreement or the terms of any warranty specified herein, regardless of when the cause for a claim is discovered (4) arising from the Grantee's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

8.1.2 a waiver of all claims by the Grantee against the City other than those previously asserted in writing and not yet settled.

9. Financial Terms

9.1 The City agrees to pay Grantee for services rendered under this Agreement and to reimburse Grantee for actual, eligible expenses incurred and paid in accordance with all terms and conditions of this Agreement. The City shall not be liable to Grantee for any costs incurred within the current Program Period by Grantee which are not reimbursable as set forth in Section 10 of this Exhibit.

9.2 The City's obligation to pay is subject to the timely receipt of complete and accurate reports as set forth in Section 3 of the Agreement, and any other deliverable required under this Agreement.

9.3 Payments to the Grantee will immediately be suspended upon the occasion of any late, incomplete, or inaccurate report, audit, or other required report or deliverable under this Agreement, and payments will not be resumed until the Grantee is in full compliance.

9.4 The City shall not be liable to Grantee for any costs which have been paid under other agreements or from other funds. In addition, the City shall not be liable for any costs incurred by Grantee which were: a) incurred prior to the effective date of this Agreement or outside the Term of the Agreement as referenced in Section 2.1 of the Agreement b) outside of the applicable Program Period in which costs are being requested for reimbursement, or c) not billed to the City within 5 business days before the due date for the Grantee's annual Contract Progress Report or Contract Closeout Summary Report, whichever is applicable. Exceptions to this are for items of cost required by the City's contract, such as audit expenses and insurance.

9.5 Grantee agrees to refund to the City any funds paid under this Agreement which the City determines have resulted in overpayment to Grantee or which the City determines have not been spent by Grantee in accordance with the terms of this Agreement. Refunds shall be made by Grantee within 30 calendar days after a written refund request is submitted by the City. The

City may, at its discretion, offset refunds due from any payment due Grantee, and the City may also deduct any loss, cost, or expense caused by Grantee from funds otherwise due.

9.6 Grantee shall deposit and maintain all funds received under this Agreement in either a separate numbered bank account or a general operating account, either of which shall be supported with the maintenance of a separate accounting with a specific chart which reflects specific revenues and expenditures for the monies received under this Agreement. The Grantee's accounting system must identify the specific expenditures, or portions of expenditures, against which funds under this Agreement are disbursed. Grantee must be able to produce an accounting system-generated report of exact expenses or portions of expenses charged to the City for any given time period.

9.7 Grantee is required to utilize an online Agreement management system for billing and reporting in accordance with the City's guidelines, policies, and procedures. Grantee is responsible for all data entered/edited under its unique username, as well as all required but omitted data.

9.8 Grantee shall expend the City budget in a reasonable manner in relation to Agreement time elapsed and/or Agreement program service delivery schedule. If cumulative expenditures are not within acceptable amounts, the City may require the Grantee to: 1) submit an expenditure plan, and/or 2) amend the Agreement budget amount to reflect projected expenditures, as determined by the City.

9.9 Grantee may move up to 25% or $50,000, whichever is less, cumulatively of their annual program budget between existing line items only without a formal amendment. The City retains the right of final approval of changes to the program budget without a formal amendment.

10. Allowable and Unallowable Costs

The City shall make the final determination of whether a cost is allowable or unallowable under this Agreement.

10.1 Reimbursement Only. Expenses and/or expenditures shall be considered reimbursable only if incurred during the current Program Period identified in the attached Program Exhibits, directly and specifically in the performance of this Agreement, and in conformance with the Agreement Exhibits. Grantee agrees that, unless otherwise specifically provided for in this Agreement, payment by the City under the terms of this Agreement is made on a reimbursement basis only; Grantee must have incurred and paid costs prior to those costs being invoiced and considered allowable under this Agreement and subject to payment by the City. Expenses incurred during the Program Period may be paid up to 30 days after the end of the Program Period and included in the Final Payment Request for the Program Period, which shall be due no later than 11:59 p.m. CST 5 calendar days before the due date for the Grantee's annual Contract Progress Report or Contract Closeout Summary Report, whichever is applicable.

10.1.1 To be allowable under this Agreement, a cost must meet all of the following general criteria:

10.1.1.1 Be clearly identified in the Program Budget and Narrative for the applicable Program Period
10.1.1.2 Be reasonable for the performance of the activity under the Agreement
10.1.1.3 Conform to any limitations or exclusions set forth in this Agreement
10.1.1.4 Be consistent with policies and procedures that apply uniformly to both government- financed and other activities of the organization
10.1.1.5 Be determined and accounted in accordance with generally accepted accounting principles (GAAP)
10.1.1.6 Be adequately documented

10.2 The City's prior written authorization is required in order for the following to be considered allowable costs. Inclusion in the budget within this Agreement constitutes "written authorization." The item shall be specifically identified in the budget. The City shall have the authority to make the final determination as to whether an expense is an allowable cost.

10.2.1 Alteration, construction, or relocation of facilities;
10.2.2 Cash payments, including cash equivalent gift cards such as Visa, MasterCard, and American Express;
10.2.3 Equipment and other capital expenditures;
10.2.4 Interest, other than mortgage interest as part of a pre-approved budget under this Agreement;
10.2.5 Organization costs (costs in connection with the establishment or reorganization of an organization);
10.2.6 Purchases of tangible, nonexpendable property, including fax machines, stereo systems, cameras, video recorder/players, microcomputers, software, printers, microscopes, oscilloscopes, centrifuges, balances and incubator, or any other item having a useful life of more than one year and an acquisition cost, including freight, of over $5,000;
10.2.7 Selling and marketing; or
10.2.8 Travel/training outside Travis County.

10.3 The following types of expenses are specifically **not allowable** with City funds under this Agreement. The City shall have the authority to make the final determination as to whether an expense is an allowable cost.

10.3.1 Alcoholic beverages;
10.3.2 Bad debts;
10.3.3 Compensation of trustees, directors, officers, or advisory board members, other than those acting in an executive capacity.
10.3.4 Contingency provisions (funds) *(Self-insurance reserves and pension funds are allowable);*
10.3.5 Defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringement;
10.3.6 Deferred costs;
10.3.7 Depreciation;
10.3.8 Donations and contributions, including donated goods or space;
10.3.9 Entertainment costs, other than expenses related to client incentives;
10.3.10 Fines and penalties (including late fees);
10.3.11 Fundraising and development costs;
10.3.12 Goods or services for officers' or employees' personal use;
10.3.13 Housing and personal living expenses for organization's officers or employees;
10.3.14 Idle facilities and idle capacity;
10.3.15 Indirect Costs;
10.3.16 Litigation-related expenses (including personnel costs) in action(s) naming the City as a Defendant;
10.3.17 Lobbying or other expenses related to political activity;
10.3.18 Losses on other agreements or casualty losses;
10.3.19 Public relations costs, except reasonable, pre-approved advertising costs related directly to services provided under this Agreement;
10.3.20 Taxes, other than payroll and other personnel-related levies; or
10.3.21 Travel outside of the United States of America.

11. <u>Ownership of Property</u>.

11.1 Ownership title to all capital acquisition, supplies, materials or any other property purchased with funds received under this Agreement and in accordance with the provisions of the Agreement, purchased with City funds shall convey to the Grantee 2 years after purchase, unless notified by the City in writing.

11.1.1 If the services funded by this Agreement are provided in a facility owned by the City or leased from Travis County, ownership title to all capital acquisition, supplies, materials or any other property purchased with funds received under this Agreement shall remain with the City.

11.2 Written notification must be given to the City within 5 calendar days of delivery of nonexpendable property (defined as anything that has a life or utility of more than 1 year and an acquisition cost, including freight, of over $5,000) in order for the City to effect identification and recording for inventory purposes. Grantee shall maintain adequate accountability and control over such property, maintain adequate property records, perform an annual physical inventory of all such property, and report this information in the Annual Agreement Progress Report, due as indicated in Section 4.2.3 of the Agreement, as well as in the Agreement Closeout Summary Report, as indicated in Section 4.2.4 of the Agreement.

11.3 In the event Grantee's services are retained under a subsequent agreement, and should Grantee satisfactorily perform its obligations under this Agreement, Grantee shall be able to retain possession of non-expendable property purchased under this Agreement for the duration of the subsequent agreement.

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION,
ISRAEL VERIFICATION, INTERESTED PARTIES, CONFLICTS OF INTEREST

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

(B) (1) Not to engage in any discriminatory employment practice defined in this chapter.

(2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.

(3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.

(4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.

(5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.

(6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.

(7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of $2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer,

demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:
Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:
The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this _____ day of _____, _____

CONTRACTOR _____

Authorized Signature _____

Title _____

PROHIBITION OF BOYCOTT OF ISRAEL VERIFICATION

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract:

A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2271.001.

B. If the Grantee qualifies as a "company", then the Principal Artist verifies that he:
   i. does not "boycott Israel"; and
   ii. will not "boycott Israel" during the term of this Contract.

C. The Grantee's obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

INTERESTED PARTIES DISCLOSURE (FORM 1295)

As a condition to entering the Contract, the Business Entity constituting the Grantee must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring City Council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will verify the "Certificate of Interested Parties" with the Texas Ethics Commission prior to execution of the Agreement. The Grantee is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

CHAPTER 176 CONFLICT OF INTEREST DISCLOSURE

In accordance with Chapter 176 of the Texas Local Government Code, Grantee must file a Conflict of Interest Questionnaire (Questionnaire) with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Offer, or other writing related to a potential Contract with the City, and update the questionnaire not later than seven (7) business days after becoming aware of an event that would make a statement in the questionnaire incomplete or inaccurate. Grantee has a continuing obligation to file the Questionnaire in accordance with the requirements of Chapter 176 of the Texas Local Government Code once it becomes aware of a need to do so. The Questionnaire is available on line at the following website for the City Clerk:

http://www.austintexas.gov/department/conflict-interest-questionnaire

There are statutory penalties for failure to comply with Chapter 176.

HOMELESS MANAGEMENT INFORMATION SYSTEM
(HMIS) REPORTING REQUIREMENTS

Organizations receiving funding from the City of Austin (City) for homelessness prevention and homeless services are required to utilize the local Homeless Management Information System (HMIS) to track and report client information for individuals who are at risk of homelessness or who are experiencing homelessness. A high level of data quality is required. The Ending Community Homelessness Coalition (ECHO) currently serves as the local HMIS administrator.

Requirements Include:

- All settings for client records will be in accordance with HMIS policies and procedures in order to reduce duplication of records and improve service coordination.
- HMIS user-licenses must be acquired for staff responsible for entering data into City-funded programs.
- Organizations may use City funds for HMIS utilization.
- Organizations must execute an ECHO HMIS Memorandum of Understanding.
- Data quality report(s) submitted monthly must have an overall grade for compliance of 96% or higher for all data."
- Participation in Point-in-Time Count (or PIT), Housing Inventory Count (or HIC), Longitudinal Systems Analysis (or LSA), and other required HUD reporting requirements.
- Participation in the required annual training for each licensed user, as well as attendance at required City-sponsored training(s) regarding HMIS and the Contract Database System.
- Organization performance reporting should align with requirements for HMIS data collection, entry, and reporting. The City may request additional HMIS reports to support contractual requirements.

City of Austin Data Expectations

The City will review periodic reporting submitted by an organization to evaluate levels of compliance with the requirements listed above and any City-feedback regarding organization's use of the HMIS system.

If data quality reports fall below minimum standards, payments may be withheld until reports improve to a grade of 96% or higher.

These requirements also pertain to all Subcontractors serving people who are at-risk of homelessness or experiencing homelessness in accordance with this Agreement.

The City reserves the right to view client-level data entered into HMIS in accordance with the HMIS Release of Information, as well as reconcile the information entered by an organization and its subcontractors with any documentation that has been collected.

EXHIBIT E
BUSINESS ASSOCIATE AGREEMENT PROVISIONS

This Business Associate Agreement ("Agreement"), is made by and between the Grantee (Business Associate) and the City of Austin, a Texas home-rule municipal corporation ("Covered Entity") (collectively the "Parties") to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 ("Privacy Rule") and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. Parts 160, 162 and 164, Subpart C ("Security Rule"), and the Health Information Technology for Economic and Clinical Health ("HITECH") Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated thereunder, and any applicable state confidentiality laws. The Privacy Rule, the Security Rule, and amendments codified and promulgated by the HITECH Act are referred to collectively herein as "HIPAA Rules."

RECITALS

WHEREAS, Business Associate provides services outlined in Exhibit E of the Master Services Agreement to or on behalf of Covered Entity ("Services"); and

WHEREAS, in connection with these Services, Covered Entity discloses to Business Associate certain protected health information ("PHI") as defined by 45 C.F.R. §160.103 that is subject to protection under the HIPAA Rules; and

WHEREAS, the HIPAA Rules require that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received, maintained, or transmitted in the course of providing Services to or on behalf of Covered Entity.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Definitions. Terms used in this Agreement but not otherwise defined shall have the meaning ascribed by the Privacy Rule and the Security Rule. Specific definitions include the following:

1. Business Associate. "Business Associate" shall have the same meaning as the term "business associate" in 45 C.F.R. §160.103 and in reference to the party to this agreement shall mean Grantee.

2. Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" in 45 C.F.R. §160.103 and in reference to the party to this agreement shall mean the City of Austin

3. Required by Law. "Required by Law" shall mean a mandate contained in law that compels a use or disclosure of PHI.

4. Sensitive Personal Information. "Sensitive Personal Information" shall mean an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: a) social

security number; driver's license number or government-issued identification number or account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or b) information that identifies an individual and relates to: the physical or mental health or condition of the individual; the provision of health care to the individual; or payment for the provision of health care to the individual.

B. Purposes for which PHI May Be Disclosed to Business Associate. In connection with the Services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may disclose PHI to Business Associate for the purpose of providing a social service.

C. Obligations of Covered Entity. If deemed applicable by Covered Entity, Covered Entity shall:

1. provide Business Associate a copy of its Notice of Privacy Practices ("Notice") produced by Covered Entity in accordance with 45 C.F.R. §164.520 as well as any changes to such Notice;

2. provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate's permitted or required uses and/or disclosures;

3. notify Business Associate of any restriction to the use and/or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI;

4. not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity;

5. notify Business Associate of any amendment to PHI to which Covered Entity has agreed, that affects a designated record set, as defined in 45 C.F.R. §164.501 ("Designated Record Set"), as maintained by Business Associate;

6. if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual's right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI; and

7. direct, review, and control notification made by the Business Associate to individuals regarding a breach, as defined in 45 C.F.R. §164.402 ("Breach"), of their unsecured PHI, as defined in 45 C.F.R. §164.402 ("Unsecured PHI"), in accordance with the requirements set forth in 45 C.F.R. §164.404.

D. Obligations of Business Associate. Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the HIPAA Rules applicable to business associates, including:

1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 except as necessary to provide Services described above, to or on behalf of Covered Entity and shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by Covered Entity. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities, in which case Business Associate shall:

   (a) provide information and training to members of its workforce using or disclosing PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement;

   (b) obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (a) the PHI 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; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been Breached; and

   (c) agree to notify Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules.

2. Data Aggregation. In the event that Business Associate works for more than one "Covered Entity," as that term is defined generally in the HIPAA rules, Business Associate is permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Rules.

3. De-identified Information. Business Associate may use and disclose de-identified health information if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules. Moreover, Business Associate shall review and comply with the requirements defined under Section E. "Permitted Uses and Disclosures by Business Associate" of this Agreement.

4. Safeguards.

   (a) Business Associate shall maintain appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to ensure that PHI is not used or disclosed other than as provided by this Agreement or as Required by Law. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.

(b) Business Associate shall assure that all PHI be secured when accessed by Business Associate's employees, agents, or subcontractors, as defined in 45 C.F.R. §160.103 ("Subcontractors"). Any access to PHI by Business Associate's employees, agents, or subcontractors shall be limited to legitimate business needs while working with PHI. Any personnel changes by Business Associate that eliminates the legitimate business needs for access to PHI by Business Associate's employees, agents or contractors – either by revision of duties or termination – shall be immediately reported to Covered Entity. Such reporting shall be made no later than the third business day after the personnel change becomes effective.

5. Minimum Necessary. Business Associate shall ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and the use of limited data sets when possible.

6. Disclosure to Agents and Subcontractors. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if Business Associate discloses PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions, conditions, and requirements as apply to Business Associate under this Agreement. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the agent or subcontractor in providing the Services as if they were Business Associate's own acts, failures, or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

7. Individual Rights Regarding Designated Record Sets. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees as follows:

(a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that Designated Record Set as directed by Covered Entity to meet the requirements of 45 C.F.R. §164.524. If the PHI is in electronic format, the Individual shall have a right to obtain a copy of such information in electronic format, and if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the individual in accordance with Section 13405(c) of the HITECH Act. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible, but not later than **30 days** following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in

meeting this deadline by responding to the Individual's request within **15 days** following receipt of the 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 health information may be charged. If Covered Entity maintains the requested records, Covered Entity, rather than Business Associate, shall permit access according to its policies and procedures implementing the Privacy Rule.

(b) Individual Right to Amendment. Business Associate agrees to make amendments to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.526.

(c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI, whether PHI is in paper or electronic format, in accordance with 45 C.F.R. §164.528 and Section 13405 (c) of the HITECH Act, and to make this information available to Covered Entity 30 days following Covered Entity's request for such information, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures in compliance with 45 CFR §164.528.

8. Internal Practices, Policies, and Procedures, and Audit. Except as otherwise specified herein, Business Associate shall make available its internal practices, policies, books, records, and procedures relating to the use and disclosure of PHI, received from or on behalf of Covered Entity to the Secretary of the U.S. Department of Health and Human Services, or his or her designee ("Secretary"), or his or her agents for the purpose of determining Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests for PHI by or on behalf of any and all federal, state, and local government authorities.

9. Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of Privacy Practices of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.

10. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's

PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.

11. Knowledge of HIPAA Rules. Business Associate agrees to review and understand the HIPAA Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA Rules, as well as any applicable amendments.

12. Incident Notification. To the extent feasible, Business Associate will use commercially reasonable efforts to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with U.S. Department of Health and Human Services ("HHS") Guidance published at 74 Federal Register 19006 (April 17, 2009) or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology (also known as "NIST") concerning the protection of identifiable data, such as PHI. Business Associate will report, as required by 45 C.F.R. §164.314(a)(2)(i)(C), incidents, as defined by 45 C.F.R. 164.304 ("Incident"), to Covered Entity, including promptly reporting any successful Incident of which it becomes aware and at the request of the Covered Entity, will identify: the date of the Incident, scope of Incident, Business Associate's response to the Incident, and the identification of the party responsible for causing the Incident.

13. Information Breach Notification for PHI. Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary and the Individual in case of a security Breach of Unsecured PHI. Where Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses or discloses unsecured paper or electronic PHI, immediately following the "discovery" (within the meaning of 45 C.F.R. §164.410(a)) of a Breach, use, or disclosure of such information other than as provided for under this Agreement, Business Associate shall notify Covered Entity of such Breach. Initial notification of the Breach does not need to be in compliance with 45 C.F.R. §164.404(c); however, Business Associate must provide Covered Entity with all information necessary for Covered Entity to comply with 45 C.F.R. §164.404(c) without reasonable delay, and in no case later than **three days** following the discovery of the Breach. Business Associate shall be liable for the costs associated with such Breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.

14. Breach Notification to Individuals. Business Associate's duty to notify Covered Entity of any Breach does not permit Business Associate to notify those Individuals whose PHI has been breached by Business Associate without the express written permission of Covered Entity to do so. Any and all notification to those Individuals whose PHI has been breached shall be made by the Business Associate under the direction, review, and control of Covered Entity. The Business Associate will notify Covered Entity via telephone with follow-up in writing to include: name of Individuals whose PHI was breached; information breached; date of Breach; and form of Breach. The cost of the notification will be paid by the Business Associate.

15. Data Breach Notification and Mitigation Under Other Laws. In addition, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI and referred to hereinafter as "Individually Identifiable Information") and Sensitive Personal Information subject to Section 521.053 of the Texas Business and Commerce Code that, if misused, disclosed, lost or stolen, would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information and Sensitive Personal Information is lost, stolen, used or disclosed in violation of one or more State laws, Business Associate shall promptly: (i) notify the Covered Entity within **15 calendar days** of such misuse, disclosure, loss or theft; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (iii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iv) cooperate with Covered Entity regarding the obligations of Covered Entity and Business Associate to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (v) assist with the implementation of any decision by any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach. This requirement shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI, Individually Identifiable Information, or Sensitive Personal Information.

E. Permitted Uses and Disclosures by Business Associate. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity as specified in this Business Associate Agreement or in a Master Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity, or the minimum necessary policies and procedures of the Covered Entity. Also, Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with the HIPAA Rules.

1. Use. Business Associate will not, and will ensure that its directors, officers, employees, contractors, and other agents do not use PHI other than as permitted or required by Business Associate to perform the Services or as required by law, but in no event in any manner that would constitute a violation of the Privacy Rule or Security Rule if used by Covered Entity.

2. Disclosure. Business Associate will not, and will ensure that its directors, officers, employees, contractors, and other agents do not disclose PHI other than as permitted pursuant to this arrangement or as required by law, but in no event disclose PHI in any manner that would constitute a violation of the Privacy Rule or Security Rule if disclosed by Covered Entity.

3. Right Title and Interest. Business Associate acknowledges and agrees that Covered Entity owns all right, title, and interest in and to all PHI, and that such right, title, and interest will be vested in Covered Entity. Neither Business Associate nor any of its

employees, agents, consultants or assigns will have any rights in any of the PHI, except as expressly set forth above. Business Associate represents, warrants, and covenants that it will not compile and/or distribute analyses to third parties using any PHI without Covered Entity's express written consent. The respective rights and obligations of Business Associate under this Section E.3 shall survive the termination of this Agreement.

F. Application of Security and Privacy Provisions to Business Associate.

1. Security Measures. Sections 164.308, 164.310, 164.312, 164.314 and 164.316 of Title 45 of the Code of Federal Regulations dealing with the administrative, physical and technical safeguards, as well as policies, procedures and documentation requirements that apply to Covered Entity shall in the same manner apply to Business Associate. Any additional security requirements contained in Subtitle D of the HITECH Act that apply to Covered Entity shall also apply to Business Associate. Pursuant to the foregoing requirements in this Subsection F.1, the Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, has access to, or transmits. Business Associate will also ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect such information. Business Associate will ensure that PHI contained in portable devices or removable media is encrypted.

2. Annual Guidance. For the first year beginning after the date of the enactment of the HITECH Act and annually thereafter, the Secretary shall annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the sections referred to in Subsection F.1 "Security Measures" of this Agreement and the security standards in Subpart C of Part 164 of Title 45, Code of Federal Regulations. Business Associate shall, at their own cost and effort, monitor the issuance of such guidance and comply accordingly.

3. Privacy Provisions. The enhanced HIPAA privacy requirements, including but not necessarily limited to accounting for certain PHI disclosures for treatment, restrictions on the sale of PHI, restrictions on marketing and fundraising communications, and payment and health care operations contained in Subtitle D of Title XIII of Division A of the HITECH Act that apply to the Covered Entity, shall equally apply to the Business Associate.

4. Application of Civil and Criminal Penalties. If Business Associate violates any security or privacy provision specified in Section 13404(a) and (b) of the HITECH Act, Sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner that such Sections apply to Covered Entity if it violates such provisions.

G. Term and Termination.

1. Term. This Agreement shall be effective as of the Effective Date of the Master Services Agreement and shall be terminated when all PHI provided to Business Associate by Covered Entity or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

2. Termination without Cause. Either Party shall have the right to terminate this Agreement for any reason upon **30 days** written notice.

3. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

   (a) Provide an opportunity for Business Associate to cure the breach or end the violation within **30 days** of written notice of such breach, or terminate this Agreement and the Master Services Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or

   (b) Immediately terminate this Agreement and Master Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

4. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity or maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof and shall agree to extend the protections of this Agreement to such PHI, and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI. This Section shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI.

H. No Warranty. PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

I. Miscellaneous.

1. INDEMNIFICATION. TO THE EXTENT PERMITTED BY LAW, BUSINESS ASSOCIATE AGREES TO INDEMNIFY AND HOLD HARMLESS COVERED ENTITY FROM AND AGAINST ALL CLAIMS, DEMANDS, LIABILITIES, JUDGMENTS OR CAUSES OF ACTION OF ANY NATURE FOR ANY RELIEF, ELEMENTS OF RECOVERY OR DAMAGES RECOGNIZED BY LAW (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES, DEFENSE COSTS, AND EQUITABLE RELIEF), FOR ANY DAMAGE OR LOSS INCURRED BY COVERED ENTITY ARISING OUT OF, RESULTING FROM, OR ATTRIBUTABLE TO ANY ACTS OR OMISSIONS OR OTHER CONDUCT OF BUSINESS ASSOCIATE OR ITS AGENTS IN CONNECTION WITH THE PERFORMANCE OF THEIR DUTIES UNDER THIS AGREEMENT. THIS INDEMNITY SHALL APPLY

EVEN IF COVERED ENTITY IS ALLEGED TO BE SOLELY OR JOINTLY NEGLIGENT OR OTHERWISE SOLELY OR JOINTLY AT FAULT; PROVIDED, HOWEVER, THAT IF A TRIER OF FACT FINDS COVERED ENTITY NOT TO BE SOLELY OR JOINTLY NEGLIGENT OR OTHERWISE SOLELY OR JOINTLY AT FAULT, THIS INDEMNITY SHALL NOT BE CONSTRUED TO LIMIT COVERED ENTITY'S RIGHTS, IF ANY, TO COMMON LAW INDEMNITY.

a. Covered Entity shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of Business Associate. Covered Entity shall provide Business Associate with timely notice of the existence of such proceedings and such information, documents, and other cooperation as reasonably necessary to assist Business Associate in establishing a defense to such action.

b. These indemnities shall survive termination of this Agreement, and Covered Entity reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

2. Mitigation. If Business Associate violates this Agreement or either of the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.

3. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.

4. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly delivered in accordance with the requirements of the Master Services Agreement between the City and Grantee.

5. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, to allow Covered Entity to comply with the requirements of the HIPAA Rules.

5. Choice of Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Texas, without regard to applicable conflict of laws principles.

6. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.

7. Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.

8. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

9. Equitable Relief. Any disclosure or misappropriation of PHI by Business Associate in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further disclosure or breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

10. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

11. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.

12. Regulatory References. A citation in this Agreement to the Code of Federal Regulations, the Federal Register, or any other federal guidance or policy shall mean the cited section or reference as they may be amended from time to time.