

AN ORDINANCE 2006 - 01 - 26 - 0130

AUTHORIZING THE EXECUTION OF A CONTRACT TOTALING \$353,133.00 WITH THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES FOR THE TUBERCULOSIS PREVENTION AND CONTROL PROGRAM OF THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT FOR THE PERIOD JANUARY 1, 2006 THROUGH DECEMBER 31, 2006; ADOPTING THE PROGRAM BUDGET; APPROVING THE PERSONNEL COMPLEMENT; AND AUTHORIZING PAYMENTS.

* * * * *

WHEREAS, the Texas Department of State Health Services (TDSHS) provides annual assistance to the City to support core public health activities provided by the San Antonio Metropolitan Health District (SAMHD); and

WHEREAS, TDSHS has issued Public Health State Support Project 2006/2007 Contract 7460020708 2007 and will issue contract changes throughout the term of the contract in order to renew grant programs when their terms expire; and

WHEREAS, TDSHS has now offered Attachment No. 01 included in this contract which renews support for the ongoing Tuberculosis (TB) Prevention and Control Program in the SAMHD which investigates, diagnoses and manages suspected cases of tuberculosis as well as confirmed cases; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee is authorized to execute a contract totaling \$353,133.00 with the Texas Department of State Health Services for the Tuberculosis Prevention and Control Program of the San Antonio Metropolitan Health District (SAMHD) for the period January 1, 2006 through December 31, 2006. A copy of said contract is attached hereto and incorporated herein for all purposes as Attachment II.

SECTION 2. Fund 26016000, Fund Center 3607140000, Cost Center 3607140003, Internal Order 136000000298 entitled "2006 Special TB Team Program", is hereby designated for use in accounting for the fiscal transactions of this program.

SECTION 3. The sum of \$353,133.00 is hereby appropriated in the above-designated fund, GL Account No. 4501100, and the budget which is attached hereto and incorporated herein for all purposes as Attachment I, is approved and adopted for entry on the City books.

SECTION 4. Payments in an aggregate amount not to exceed \$17,686.00 are hereby authorized for x-ray interpretation services at the SAMHD Tuberculosis Clinic during the period January 1,

MH/mgc
Item # 19
01/26/06

2006 through December 31, 2006. These payments will be made from Fund 26016000, Cost Center 3607140003, Internal Order 136000000298, GL 5201040, on a fee-for-service basis.

SECTION 5. The seven (7) personnel positions set out in Attachment I are authorized for the activity shown thereon.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers and Internal order numbers as necessary to carry out the purpose of this Ordinance.

SECTION 7. Should the grant awarded be in an amount other than that budgeted for, or should the grant contain terms and conditions different than those currently existing, acceptance of the grant, budget and corresponding personnel complement will be subject to subsequent City Council ordinance.

SECTION 8. This ordinance shall become effective on and after February 5, 2006.

PASSED AND APPROVED this 26th day of January, 2006.



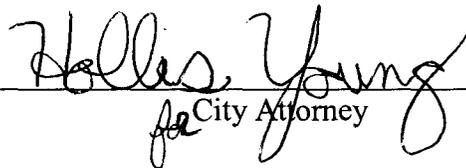
M A Y O R

PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM:


for City Attorney

ATTACHMENT I
Fund Group ID #26016108 - Public Health Support 2006/2007 - Federal
Fund 26016000
Fund Center 3607140000
TDSHS Contract No. 7460020708 2007

<u>ESTIMATED REVENUES</u>	SAP GL No.	CURRENT BUDGET
Attachment #01	4501100	\$ 353,133
TB Patient Co-Pay	4502230	<u>22,500</u>
Total Estimated Revenues		\$ <u><u>375,633</u></u>

APPROPRIATIONS

Special TB Team Program
Activity 36-07-14 01/01/2006 to 12/31/2006
Cost Center 3607140003
Internal Order 136000000298

Regular Salaries & Wages	5101010	\$ 196,491
Social Security	5103005	15,032
Life Insurance	5103010	448
Personal Leave Buy Back Pay	5103035	500
Car Expense Allowance	5103055	16,752
Group Health Insurance	5104030	52,400
TMRS	5105010	13,440
Fees to Professional Contractors	5201040	17,686
Temporary Services	5202010	6,200
Mail and Parcel Post Service	5205010	500
Rental of Facilities	5206010	22,500
Travel-Official	5207010	500
Office Supplies	5302010	2,200
Chemicals, Medical & Drugs	5304040	3,005
Photographic Supplies	5304045	100
Tools, Apparatus & Acc.	5304050	250
Communications: Telephones	5403010	3,000
Pagers/Mobile Phones	5403030	1,440
ADP Services	5403520	3,600
Workers' Disability Comp.	5405020	1,200
Liability, Hazard, & Fid. Insurance	5405030	1,000
Indirect Cost	5406530	<u>17,389</u>
Total 36-07-14:		\$ <u><u>375,633</u></u>

PERSONNEL COMPLEMENT:

Activity 36-07-14
Cost Center 3607140003
Internal Order 136000000298

	Previous Positions	Add (Deduct)	Revised Positions
0010 Office Assistant	2	(2)	0
0040 Administrative Asst I	0	1	1
0067 Administrative Aide	1	0	1
0244 Senior Public Health Nurse	1	1	2
0267 Licensed Vocational Nurse	4	(4)	0
0282 Health Program Specialist	1	0	1
0282 Health Program Specialist (.50 FTE)	1	(1)	0
0985 Case Aide	4	(2)	2
TOTAL	<u>14</u>	<u>(7)</u>	<u>7</u>



CONTRACT FOR PUBLIC HEALTH SERVICES

DSHS DOCUMENT NO. 7460020708 2007

Contract Issued by: (RECEIVING AGENCY)	DEPARTMENT OF STATE HEALTH SERVICES 1100 WEST 49 TH STREET AUSTIN, TEXAS 78756-3199	PF
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Legal Authority to Contract: Chapters 12 and 121, Health and Safety Code.

Venue: The provisions of this Contract shall be interpreted in accordance with Texas law. Venue for any court disputes shall be in Travis County, Texas.

PERFORMING AGENCY NAME: SAN ANTONIO METROPOLITAN HEALTH DISTRICT

MAILING ADDRESS: 332 W COMMERCE ST STE 307 SAN ANTONIO TX 78205-2489

STREET ADDRESS: 332 W COMMERCE ST STE 307 SAN ANTONIO TX 78205-2489

NAME OF AUTHORIZED CONTRACTING ENTITY:
(If different from PERFORMING AGENCY)

PAYEE DATA (If not the same as PERFORMING AGENCY or AUTHORIZED CONTRACTING ENTITY; must be on file with the Texas State Comptroller's Office.):

NAME: CITY OF SAN ANTONIO

ADDRESS: P O BOX 839966 SAN ANTONIO TX 78283-
(City, State, Zip)

State of Texas Vendor Identification No. (14 digits)
17460020708024

PAYEE AGENCY Fiscal Year Ending Month: September

PAYEE BUSINESS INFORMATION FOR STATISTICAL REPORTING: Please check the categories that apply to your business.

- Small Business - A corporation, sole proprietorship, or other legal entity formed for the purpose of making a profit which is independently owned and operated and has fewer than 100 employees or has less than \$1,000,000 in annual gross receipts.
- Historically Underutilized Business (HUB) - A corporation, sole proprietorship, or joint venture formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons who have been historically underutilized (socially disadvantaged) because of their identification as members of certain groups: Black American, Hispanic American, Asian Pacific American, Native American, and Women. The HUB must be certified by Texas Building and Procurement Commission or another entity.
- For Profit Organization

SUMMARY OF CONTRACT DOCUMENTATION:
COVER PAGE 1 - Receiving and Performing Agency Data
COVER PAGE 2 - Details of Attachment(s)
COVER PAGE 3 - Authorized Signatures

GENERAL PROVISIONS - 6/2004
ATTACHMENT(S)
EXHIBITS, IF APPLICABLE

DETAILS OF ATTACHMENTS

Att/ Amd No.	DSHS Program ID/ DSHS Purchase Order Number	Term		Financial Assistance		Direct Assistance	Total Amount (DSHS Share)
		Begin	End	Source of Funds*	Amount		
01	TB/PC 0000313010	01/01/06	12/31/06	93.116	353,133.00	0.00	353,133.00
DSHS Document No.7460020708 2007				Totals	\$353,133.00	\$ 0.00	\$353,133.00

*Federal funds are indicated by a number from the Catalog of Federal Domestic Assistance (CFDA), if applicable. REFER TO BUDGET SECTION OF ANY ZERO AMOUNT ATTACHMENT FOR DETAILS.

EXECUTED IN DUPLICATE ORIGINALS ON THE DATES SHOWN.

Authorized Contracting Entity (type above if different from PERFORMING AGENCY) for and in behalf of:

PERFORMING AGENCY NAME:

SAN ANTONIO METROPOLITAN HEALTH DISTRICT

By: _____
(Signature of person authorized to sign contracts)

(Name and Title)

Date: _____

RECEIVING AGENCY NAME:

DEPARTMENT OF STATE HEALTH SERVICES

By: _____
(Signature of person authorized to sign contracts)

Bob Burnette, Director
Client Services Contracting Unit

(Name and Title)

Date: _____

RECOMMENDED:

By: _____
(PERFORMING AGENCY Director, if different from person authorized to sign contract)

DSHS Document No: 7460020708 2007

DOCUMENT NO. 7460020708-2007
ATTACHMENT NO. 01
PURCHASE ORDER NO. 0000313010

PERFORMING AGENCY: SAN ANTONIO METROPOLITAN HEALTH DISTRICT

RECEIVING AGENCY PROGRAM: INFECTIOUS DISEASE INTERVENTION AND
CONTROL BRANCH

TERM: January 01, 2006 THRU: December 31, 2006

SECTION I. SCOPE OF WORK:

PERFORMING AGENCY shall develop and provide: (1) basic services for tuberculosis (TB) prevention and control, and (2) expanded outreach services to individuals of identified populations who have TB or who are at high risk of developing TB throughout PERFORMING AGENCY'S defined service area.

PERFORMING AGENCY shall comply with all applicable federal and state laws, rules, regulations, standards, and guidelines in effect on the beginning date of this contract Attachment unless amended. All documents referenced herein are incorporated by reference and made a part of this contract Attachment. PERFORMING AGENCY shall perform the following activities:

Provide basic services and expanded outreach services in compliance with RECEIVING AGENCY'S Program's most current version of the Standards of Performance and the following series of American Thoracic Society (ATS) and Centers for Disease Control and Prevention (CDC) "Joint Statements" on diagnosis, treatment and control of TB.

1. Diagnostic Standards and Classification of Tuberculosis in Adults and Children, (American Review Respiratory Disease, Vol. 161, pp. 1376-1395, 2000);
2. Treatment of Tuberculosis, (ATS/CDC/IDSA), 2003. Publication can be located at web site www.cdc.gov/nchstp/bt/pubs/mmwrhtum1/maj_guide.htm
3. Targeted Tuberculin Testing and Treatment of Latent TB Infection, MMWR, Vol. 49, No. RR-6, 2000;
4. Updated: Adverse Event Data and Revised American Thoracic Society/CDC Recommendations Against the Use of Rifampin and Pyrazinamide for Treatment of Latent Tuberculosis Infection – United States, 2003, MMWR 52 (No. 31); and
5. Control for Tuberculosis (American Review Respiratory Disease, Vol. 146, pp. 1623-33, 1992).

PERFORMING AGENCY shall comply with the following:

1. Texas Tuberculosis Code, Health and Safety Code, Chapter 13, Subchapter B;
2. Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81;
3. Screening and Treatment for Tuberculosis in Jails and Other Correctional Facilities, Health and Safety Code, Chapter 89;
4. Control of Communicable Diseases, Texas Administrative Code, Title 25, Part 1, Chapter 97, Subchapter A;
5. Tuberculosis Screening for Jails and Other Correctional Facilities, Texas Administrative Code, Title 25, Part 1, Chapter 97, Subchapter H; and
6. RECEIVING AGENCY'S Standards for Public Health Clinic Services, Revised January 1, 2004.

PERFORMING AGENCY shall perform all activities in accordance with PERFORMING AGENCY'S objectives, work plans, and detailed budget as approved by RECEIVING AGENCY'S Program. All of the above named documents are incorporated herein by reference and made a part of this contract Attachment. RECEIVING AGENCY'S Program must approve, in writing, any revisions to these documents.

Within thirty (30) days of receipt of an amended standard(s) or guideline(s), PERFORMING AGENCY shall inform RECEIVING AGENCY'S Program, in writing, if it will not continue performance under this contract Attachment in compliance with the amended standard(s) or guideline(s). RECEIVING AGENCY may terminate the contract Attachment immediately or within a reasonable period-of-time as determined by RECEIVING AGENCY.

RECEIVING AGENCY reserves the right, where allowed by legal authority, to redirect funds in the event of financial shortfalls. RECEIVING AGENCY'S Program will monitor PERFORMING AGENCY'S expenditures on a quarterly basis. If expenditures are below that projected in PERFORMING AGENCY'S total contract amount, as shown in SECTION III. BUDGET, PERFORMING AGENCY'S budget may be subject to a decrease for the remainder of the Attachment term. Vacant positions existing after ninety (90) days may result in a decrease in funds.

PERFORMING AGENCY'S approved service delivery plan shall meet or exceed RECEIVING AGENCY'S Program's Standard of Performance.

PERFORMING AGENCY shall provide a narrative report on their performance goals, objectives, and screening activities semi-annually in a format provided by RECEIVING AGENCY'S Program. The narrative reports shall be sent electronically or mailed to the Department of State Health Services, Attention: Infectious Disease Control Unit, Mail Code 1939, 1100 West 49th Street, Austin, Texas 787576-3199. Report periods and due dates are as follows:

PERIOD COVERED	DUE DATE
January - June	July 31, 2006
July - December	March 1, 2007

RECEIVING AGENCY'S Program shall provide administrative and technical assistance for the implementation and operation of the service delivery plan.

PERFORMANCE MEASURES:

The following outcome performance measures will be used to assess, in part, PERFORMING AGENCY'S effectiveness in providing the services described in this contract Attachment, without waiving the enforceability of any of the other terms of the contract.

1. 90% of cases and suspects under treatment are on directly observed therapy (DOT);
2. 92% of eligible TB cases complete a course of curative TB treatment within twelve (12) months of initiation of treatment;
3. 92% of TB patients with initial positive cultures tested for and have drug susceptibility results documented in their medical record;
4. 91% of smear positive TB cases reported in 2006 have at least one (1) contact identified;
5. 72% of identified contacts to smear positive TB cases reported in 2006 shall be evaluated for TB infection or disease;
6. 63% of infected contacts (to smear positive cases reported in 2006) who are started on treatment for latent TB infection (LTBI) shall complete therapy;
7. 52% of immigrants and refugees designated as Class A, B1 or B2 are appropriately evaluated;
8. 63% of immigrants and refugees designated as Class A, B1 or B2 that are started on treatment for LTBI, complete treatment;
9. The rate for U.S. born African Americans will not exceed fourteen and five tenths (14.5) TB cases per 100,000 population in PERFORMING AGENCY'S defined service area; and
10. 82% of adults (age >14) with TB disease are tested for HIV.

PERFORMING AGENCY shall collect and maintain documentation of clinical and epidemiological information related to TB cases, suspects, contacts, and persons with latent TB infection that is used by RECEIVING AGENCY to calculate outcome performance measures. PERFORMING AGENCY shall submit RECEIVING AGENCY Program's reporting forms for TB cases, suspects, contacts, and persons with LTBI on the timelines stated in SECTION II. SPECIAL PROVISIONS below and in RECEIVING AGENCY Program's most current version of the Standards of Performance. PERFORMING AGENCY shall provide additional information about TB cases, suspects, contacts, and persons with LTBI upon request of RECEIVING AGENCY through limited scope audits or inspections and scheduled program reviews of PERFORMING AGENCY.

RECEIVING AGENCY'S Program shall calculate performance measures based on the information maintained in databases kept at RECEIVING AGENCY'S Program, through limited scope audits, or inspections and scheduled program reviews of PERFORMING AGENCY.

PERFORMING AGENCY shall provide services to clients who live or receive services in the following county(ies)/area: Bexar.

SECTION II. SPECIAL PROVISIONS:

General Provisions, **Reports** Article, is revised to include the following:

PERFORMING AGENCY shall develop and submit a service delivery plan and detailed budget justification for continuation of this contract Attachment during the next fiscal year. The plan and budget shall be prepared in the format approved by RECEIVING AGENCY'S Program; an original and one (1) copy shall be submitted to RECEIVING AGENCY'S Program, upon request. The plan shall describe PERFORMING AGENCY'S service delivery and activities toward meeting the objectives outlined in SECTION I. SCOPE OF WORK above, including updated outcome performance measure targets and detailed line item budget justifications.

PERFORMING AGENCY shall mail all initial reports of confirmed TB cases, and suspected TB cases to RECEIVING AGENCY'S Program within fifteen (15) working days of identification or notification. Any updates to initial RECEIVING AGENCY'S Report of Cases and Patient Services Form (TB400) (e.g., diagnosis, medication changes, x-rays, and bacteriology) and case closures shall be mailed to RECEIVING AGENCY'S Program.

PERFORMING AGENCY shall mail reports of contacts on all Class 3 TB cases and smear positive Class 5 TB suspects within thirty (30) days of identification using RECEIVING AGENCY'S Report of Contacts Form (TB340). All subsequent reports of contacts shall be mailed as contacts are identified. Refer to the latest edition of Standards of Performance for information on reporting intervals.

One (1) copy of each quarterly Financial Status Report, State of Texas Supplemental Form 269A, shall also be submitted to RECEIVING AGENCY'S Program. Copies shall be mailed to the Department of State Health Services, Attention: Infectious Disease Intervention and Control Branch, Mail Code 1939, 1100 West 49th Street, Austin, Texas 78756. Report periods and due dates are as follows:

PERIOD COVERED	DUE DATE
January, February, March	April 30, 2006
April, May, June	July 31, 2006
July, August, September	October 31, 2006
October, November, December	January 31, 2007

General Provisions, **Terms and Conditions of Payment** Article, is revised to include the following:

Funding from this Attachment shall not be used to supplant (i.e., used in place of funds dedicated, appropriated or expended for activities funded through this contract Attachment) state or local funds, but PERFORMING AGENCY shall use such funds to increase state or local funds currently available for a particular activity. PERFORMING AGENCY shall maintain local funding at a sufficient level to support the local program. If the total cost of the project is greater than RECEIVING AGENCY Program's share set out in SECTION III. BUDGET, PERFORMING AGENCY shall obtain funds for the remaining costs in order to accomplish the objectives set forth in this contract Attachment.

SECTION III. BUDGET:

PERSONNEL	\$196,491.00
FRINGE BENEFITS	83,816.00
TRAVEL	6,752.00
EQUIPMENT	0.00
SUPPLIES	5,205.00
CONTRACTUAL	19,800.00
OTHER	23,680.00
TOTAL DIRECT CHARGES	\$335,744.00
INDIRECT CHARGES	\$17,389.00
TOTAL	\$353,133.00

Total reimbursements will not exceed \$353,133.00.

Financial status reports are due the 30th of April, 30th of July, 30th of October, and the 30th of March.

The indirect cost rate shown above is based upon an indirect cost rate on file at the RECEIVING AGENCY and subject to review by RECEIVING AGENCY fiscal monitors. Indirect charges to this contract may not exceed the amount shown above.

CERTIFICATION REGARDING LOBBYING
CERTIFICATION FOR CONTRACTS, GRANTS,
LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or an employee of any agency, a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-111, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Date

Print Name of Authorized Individual

7460020708 2007-01

Application or Contract Number

SAN ANTONIO METROPOLITAN HEALTH DISTRICT

Organization Name and Address

332 W COMMERCE ST STE 307

SAN ANTONIO, TX 78205-2489

**GENERAL PROVISIONS FOR
DEPARTMENT OF STATE HEALTH SERVICES SUBRECIPIENT GRANT CONTRACTS**

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Paper Publications Number: 29-11834, Revised June 2004

**GENERAL PROVISIONS FOR
DEPARTMENT OF STATE HEALTH SERVICES SUBRECIPIENT GRANT CONTRACTS**

ARTICLE 1. Preamble

PERFORMING AGENCY and RECEIVING AGENCY (the parties) agree to make and enter into this grant contract (contract), to faithfully perform the duties prescribed by this contract, and to uphold and abide by its terms and provisions. This contract consists of:

- RECEIVING and PERFORMING AGENCY identifying data,
- Details of Attachment(s),
- authorized signatures,
- General Provisions, and
- Attachment(s).

Attachments may include the following elements as applicable:

- detailed Scope(s) of Work,
- Special Provisions,
- budget(s), and
- exhibit(s).

This contract represents the complete and entire understanding and agreement of the parties. No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in this contract. The terms "shall" and "will" are used interchangeably in this contract.

The person or persons signing and executing this contract on behalf of PERFORMING AGENCY, or representing themselves as signing and executing this contract on behalf of PERFORMING AGENCY, warrant and guarantee that he, she, or they have been duly authorized by PERFORMING AGENCY to execute this contract for PERFORMING AGENCY and to validly and legally bind PERFORMING AGENCY to all of its terms, performances, and provisions.

PERFORMING AGENCY assures compliance with this contract, including these General Provisions unless otherwise specified in any Special Provisions of the Attachment(s) to this document. If these General Provisions are revised or replaced during the term of this contract and PERFORMING AGENCY does not consent to comply with the modified General Provisions, PERFORMING AGENCY may exercise its termination options in accordance with the General Provisions, Termination Article.

ARTICLE 2. Term

The term (time period) of this contract shall be governed by the term(s) of the Attachment(s). No commitment of contract funds is permitted prior to the first day or subsequent to the last day of the term. The term may be renewed, extended or shortened by amendment(s).

ARTICLE 3. Funding

This contract is contingent upon the continued availability of funding. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the appropriations act, health and human services agency consolidations, or any other disruption of current appropriations, provisions of the Termination Article shall apply.

ARTICLE 4. Amendments

Amendments to this contract must be in writing and signed by individuals with authority to bind the parties.

Uniform Grants Management Standards and RECEIVING AGENCY procedures authorize limited changes to a contract attachment with prior written approval from RECEIVING AGENCY. PERFORMING AGENCY must submit request in format prescribed by RECEIVING AGENCY Program. RECEIVING AGENCY will consider the request and document approval or disapproval in writing. PERFORMING AGENCY is responsible for ensuring that any modification to a contract Attachment becomes a part of the contract file.

RECEIVING AGENCY may not waive any term, covenant, or condition of this contract unless by amendment executed in compliance with this Article. PERFORMING AGENCY shall not perform and RECEIVING AGENCY will not pay for the performance of different or additional services, work, or products except pursuant to an amendment that is executed in compliance with this Article.

PERFORMING AGENCY shall plan expenditures so that any necessary budget revisions or amendments are executed no later than ninety (90) days prior to the expiration of the Attachment term. PERFORMING AGENCY shall provide a written justification for any budget revisions and/or amendments. If a budget revision or amendment is requested during the last quarter of the Attachment term, the written justification shall include a reason for the delay. Revision or amendment requests may be granted at the discretion of RECEIVING AGENCY.

ARTICLE 5. Applicable Laws and Standards

This contract shall be interpreted under and in accordance with the laws of the State of Texas and enabling state rules. Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, shall apply to this contract. PERFORMING AGENCY agrees to comply with the Uniform Grant Management Act (UGMA), Texas Government Code, Chapter 783, as amended, and the Uniform Grant Management Standards (UGMS) as amended by revised federal circulars and incorporated in UGMS by the Governor's Budget and Planning Office. UGMA is located on the Internet at <http://www.capitol.state.tx.us/statutes/statutes.html>; the UGMS are located on the Internet at <http://www.governor.state.tx.us/stategrants/>.

PERFORMING AGENCY shall not use funds granted under this contract to pay any person for influencing or attempting to influence an officer or employee of any agency, federal or state, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any contract or grant or the extension, continuation, renewal, amendment, or modification of any contract or grant (31 USC §1352, as amended, and UGMS). If at any time this contract exceeds \$100,000 of federal funds, PERFORMING AGENCY shall file with RECEIVING AGENCY a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of PERFORMING AGENCY in connection with that contract or grant, a certification that none of the funds provided by RECEIVING AGENCY have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom PERFORMING AGENCY has an agreement. PERFORMING AGENCY shall require any person who requests or receives a subgrant or subcontract to file the same declaration, certification and disclosure with RECEIVING AGENCY. PERFORMING AGENCY shall file the declaration, certification, and disclosure at the time of application for the contract or grant; upon execution of a contract or grant unless PERFORMING AGENCY

previously filed a declaration, certification or disclosure form in connection with the award; and at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any declaration, certification or disclosure previously filed. RECEIVING AGENCY will supply the certification form to PERFORMING AGENCY upon request.

ARTICLE 6. Debarment and Suspension

PERFORMING AGENCY certifies by execution of this contract to the following:

- It is not ineligible for participation in federal or state assistance programs under Executive Order 12549, Debarment and Suspension, Feb. 18, 1986, 51 Fed. Reg. 6370;
- Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- It has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency; and,
- It is not subject to an outstanding judgment in a suit against PERFORMING AGENCY for collection of the balance of a debt.

Where PERFORMING AGENCY is unable to certify to any of the statements in this Article, PERFORMING AGENCY shall attach an explanation. If PERFORMING AGENCY'S status with respect to the items certified above changes during the contract term, PERFORMING AGENCY shall notify RECEIVING AGENCY immediately.

PERFORMING AGENCY shall not contract with a subrecipient nor procure goods or services from a subcontractor, at any tier, which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549.

ARTICLE 7. Assurances

PERFORMING AGENCY shall establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

To the extent such provisions are applicable to PERFORMING AGENCY, PERFORMING AGENCY agrees to fully comply with the following:

- Title VI of the Civil Rights Act of 1964, 42 USC §§2000d *et seq.*, as amended (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin, and includes the provision for effective communication and equal access to programs, services and activities to persons with Limited English Proficiency (LEP);
- Title IX of the Education Amendments of 1972, 20 USC §§1681-1683, and 1685-1686, as amended, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, 29 USC §794(a), which prohibits discrimination on the basis of disabilities and the Americans with Disabilities Act of 1990, 42 USC §§12101 *et seq.*, including the provision for effective communication and equal access to programs, services and activities to persons with sensory and speech impairments;
- The Age Discrimination Act of 1975, 42 USC §§6101-6107, as amended, which prohibits discrimination on the basis of age;
- The Drug Abuse Office and Treatment Act of 1972, 21 USC §§1101 *et seq.*, as amended, relating to nondiscrimination on the basis of drug abuse;
- The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 USC §290dd (b)(1), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

- Public Health Service Act of 1912, §§523 and 527, 42 USC §290dd-2, as amended, relating to confidentiality of alcohol and drug abuse patient records;
- Title VIII of the Civil Rights Act of 1968, 42 USC §§3601 *et seq.*, as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- The requirements of any other nondiscrimination statute(s); and

Collectively, such requirements obligate RECEIVING AGENCY to provide services without discrimination on the basis of race, color, national origin, religion, age, sex or disability. PERFORMING AGENCY shall carry out the terms of this contract in a manner which will assist RECEIVING AGENCY in complying with such obligations to the fullest extent of PERFORMING AGENCY'S ability.

PERFORMING AGENCY agrees to comply with all or part of the following, as applicable:

- A. Texas Labor Code, Chapter 21, which requires that certain employers not discriminate on the basis of race, color, disability, religion, sex, national origin, or age.
- B. Immigration Reform and Control Act of 1986, 8 USC §1324a, as amended, regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this contract.
- C. Pro-Children Act of 1994, 20 USC §§6081-6084, regarding the provision of a smoke-free workplace and promoting the non-use of all tobacco products.
- D. The National Research Service Award Act of 1971, 42 USC §§289a-1 *et seq.*, as amended, and 6601 (P.L. 93-348 and P.L. 103-43), as amended, regarding the protection of human subjects involved in research, development, and related activities supported by any applicable award of federal assistance, as implemented by 45 CFR Part 46, Protection of Human Subjects.
- E. The Clinical Laboratory Improvement Amendments of 1988, 42 USC §263a, as amended, which establish federal requirements for the regulation and certification of clinical laboratories.
- F. The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR §1910.1030, which set safety standards for those workers and facilities in the private sector who may handle blood borne pathogens, or Title 25 Texas Administrative Code (TAC), Chapter 96, which affects facilities in the public sector.
- G. Laboratory Animal Welfare Act of 1966, 7 USC §§2131 *et seq.* (P.L. 89-544), as amended, pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by this award of assistance.
- H. Texas Government Code, Chapter 469, as amended, pertaining to standards which eliminate architectural barriers for persons with disabilities.
- I. Health and Safety Code, Chapter 165, relating to the rights of mothers to breast-feed and the promotion of breast-feeding. RECEIVING AGENCY will support PERFORMING AGENCY in complying by providing promotional material and information that encourages breast-feeding to program participants who are pregnant women or mothers with infants. Promotional material may be requested from RECEIVING AGENCY by calling (512) 458-7796.

J. Environmental standards pursuant to the following:

- (1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality."
- (2) Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans."
- (3) Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961.
- (4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951.
- (5) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§1451 *et seq.*, as amended.
- (6) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, as amended, 42 USC §§7401 *et seq.*
- (7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§300f-300j, as amended.
- (8) Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§1531 *et seq.*, as amended.

K. The Hatch Political Activity Act, 5 USC §§7321-26, which limits the political activity of employees whose principal employment activities are funded in whole or in part with federal funds.

L. The Fair Labor Standards Act, 29 USC §§201 *et seq.*, and the Intergovernmental Personnel Act of 1970, 42 USC §§4701 *et seq.*, as applicable, concerning minimum wage and maximum hours.

M. General Appropriations Act, Regular Session, 78th Legislature, 2003, Article §9-6.13, page IX-35, "Limitation on Grants to Units of Local Government." For the purpose of §9-6.13, "unit of local government" shall mean a council of governments, a regional planning commission, or a similar regional planning agency created under Chapter 391, Local Government Code; a local workforce development board; or an MHMR community center.

N. Texas Government Code, Chapter 573, relating to nepotism.

O. Texas Government Code, Chapter 552, relating to open records and public information.

P. Texas Government Code, Chapter 551, relating to open meetings.

Q. Texas Occupations Code, Chapter 1701, as amended, and all rules adopted by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 1701, as amended, relating to regulated law enforcement agencies.

PERFORMING AGENCY shall ensure that the facilities under its ownership, lease or supervision which will be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and shall notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA (Executive Order 11738).

PERFORMING AGENCY shall comply with the flood insurance purchase requirements of 102(a) of the Flood Disaster Protection Act of 1973, 42 USC §§4001-4003, as amended. Section 102(a) requires the purchase of flood insurance in communities where the insurance is available as a condition for the receipt of any federal financial

assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the U. S. Department of Housing and Urban Development as an area having special flood hazards.

If PERFORMING AGENCY provides medical, dental, psychological or surgical treatment to a minor under this contract, either directly or through contracts with subrecipients, the treatment of a minor shall be provided only if consent to treatment is obtained pursuant to Chapter 32 of the Texas Family Code relating to consent to treatment of a child by a non-parent or child. If requirements of federal law relating to consent directly conflict with Chapter 32 of the Family Code, federal law shall supersede state law.

If PERFORMING AGENCY provides immunizations, PERFORMING AGENCY shall comply with all immunization reporting guidelines and requirements set forth in the Health and Safety Code, Chapter 161, Subchapter A. This requirement shall also apply to subrecipients or subcontractors of PERFORMING AGENCY, if any.

PERFORMING AGENCY shall comply with the requirements of the Texas Workers' Compensation Act, Labor Code, Chapters 401-406, and rules promulgated thereunder found at 28 Texas Administrative Code (TAC), Part 2, which cover compensation for employees' injuries.

When incorporated into an Attachment, standard assurances contained in the application package, if any, become terms or conditions for receipt of RECEIVING AGENCY funds. PERFORMING AGENCY and its subrecipients shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met.

PERFORMING AGENCY shall comply with all federal tax laws and is solely responsible for filing all required state and federal tax forms.

PERFORMING AGENCY assures it shall not transfer, assign or sell its interest in this contract, or in any equipment purchased with funds from this contract, without the written consent of RECEIVING AGENCY.

ARTICLE 8. Child Abuse Reporting Requirements

[PERFORMING AGENCY is required to comply with this article only as related to services provided under the following Attachments: Human Immunodeficiency Virus and Sexually Transmitted Diseases (all direct client care services for HIV and other sexually transmitted diseases funded under the Ryan White CARE Act Title II or general revenue), Title V Family Planning (ACFH/FEE-FP, Title X Family Planning (BWH/TITLE X), Title XX Family Planning (BWH/TTLXX), Primary Health Care (ACFH/PHC), Title V Maternal and Child Health (ACFH/FEE), Special Supplemental Nutrition Program for Women, Infants, and Children (BNS/WIC-CARD, and the Services Delivery Integration project (SDI/FFS).] PERFORMING AGENCY and each of its subrecipients shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Chapter 261 of the Texas Family Code relating to investigations of reports of child abuse and neglect. PERFORMING AGENCY and each of its subrecipients shall develop, implement and enforce a written policy that includes at a minimum the TDH Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements. PERFORMING AGENCY and its subrecipients shall use the Checklist for TDH Monitoring as required by RECEIVING AGENCY. (The policy and checklist are available at each of the above-referenced programs' websites.)

ARTICLE 9. Intellectual Property

Texas Health and Safety Code §12.020, as amended, authorizes RECEIVING AGENCY to protect intellectual property developed as a result of this contract.

"Intellectual property" means created property that may be protected under copyright, patent, or trademark/service mark law.

"Work made for hire" is a copyrightable work prepared for RECEIVING AGENCY use, or a work specially ordered or commissioned through a contract for RECEIVING AGENCY use. RECEIVING AGENCY owns works made for hire unless it agrees otherwise by contract.

If federal or state funds are used to finance activities supported by this Contract that result in the production of original material, the federal or state awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal or state government purposes (1) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright to which a PERFORMING AGENCY or its subrecipient purchases ownership with grant support. PERFORMING AGENCY shall place an acknowledgment of federal or state awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment shall be to the effect that "This publication was made possible by grant number _____ from (federal or state awarding agency)" or "The project described was supported by grant number _____ from (federal or state awarding agency)" and "Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal or state awarding agency)."

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

If the results of the contract performance are subject to copyright law, the PERFORMING AGENCY cannot publish those results without prior review and approval of RECEIVING AGENCY.

ARTICLE 10. Historically Underutilized Businesses

If PERFORMING AGENCY subcontracts a portion of this contract, PERFORMING AGENCY agrees to make a good faith effort to subcontract with HUBs during the performance of its contract Attachment(s) with RECEIVING AGENCY and will report HUB subcontract activity on a quarterly basis to RECEIVING AGENCY.

ARTICLE 11. Conflict of Interest

PERFORMING AGENCY does not have nor will it acquire any interest that would conflict in any manner with the performance of its obligations under this contract. Potential conflicts of interest include an existing business or personal relationship between PERFORMING AGENCY, its principal, or any affiliate or subrecipient with RECEIVING AGENCY, its board members, officers or employees, or any other entity or person involved in any way in any project that is the subject of this contract.

ARTICLE 12. Certification of Software, Hardware, Firmware and Micro Code Products

PERFORMING AGENCY certifies that any supplied or supported software, hardware, firmware, and micro code products used individually or together as a system to comply with RECEIVING AGENCY contract requirements shall

operate "accurately" in the manner in which they were intended when given a "valid date" containing century, year, month, and day.

For purposes of this Article, "supplied or supported software, hardware, firmware, and micro code products" does not include software supported by RECEIVING AGENCY or an agency of the federal government.

PERFORMING AGENCY is responsible for installing and implementing any versions of any software provided by RECEIVING AGENCY or an agency of the federal government which is used in performance of this contract.

For purposes of this Article,

- A) "accurately" is defined to include the following:
 - 1) calculations shall be correctly performed using four-digit year processing;
 - 2) functionality-on-line, batch including entry, inquiry, maintenance and updates shall support four-digit year processing;
 - 3) interfaces and reports shall support four-digit year processing;
 - 4) processing with a four-digit year shall occur without human intervention;
 - 5) correct results in forward and backward date calculation spanning century boundaries shall be provided;
 - 6) correct leap year calculations shall be performed; and,
 - 7) processing correct results in forward and backward date calculation spanning century boundaries shall occur;
- B) "date integrity" shall mean all manipulations of time-related data (dates, durations, days of week, etc.) shall produce desired results for all valid date values within the application domain;
- C) "explicit century" shall mean date elements in interfaces and data storage permit specifying century to eliminate date ambiguity;
- D) "extraordinary actions" shall be defined to mean any action outside the normal documented processing steps identified in the product's reference documentation;
- E) "general integrity" shall mean no value for current date will cause interruptions in desired operation;
- F) "implicit century" shall mean for any data element without century, the correct century is unambiguous for all manipulations involving that document;
- G) "product" or "products" shall be defined to include, but is not limited to, any supplied or supported hardware, software, firmware and/or micro code;
- H) "valid date" shall contain a two-digit month, a two-digit day and a four-digit year.

PERFORMING AGENCY and its subrecipient(s) shall obtain a warranty from any vendor/licensor from which it obtains product(s), that product(s) delivered and installed under the contract/license shall accurately process valid date data when used in accordance with the product documentation provided by the contractor/licensor and require no extraordinary actions on the part of PERFORMING AGENCY, its personnel, or its subrecipient(s). Products under the contract/license shall possess general integrity, date integrity, explicit and implicit century capabilities. If the contract/license requires that specific products shall perform as a system in accordance with the foregoing warranty, then the warranty shall apply to those listed products as a system. The duration of this warranty and the remedies available to PERFORMING AGENCY or its subrecipient(s) for breach of the warranty shall be defined in, and subject to, the terms and conditions of the contractor's standard commercial warranty or warranties contained in the

contract/license; provided, that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to PERFORMING AGENCY or its subrecipient(s) shall include repair or replacement of any supplied product if its noncompliance is discovered and made known to the contractor/licensor in writing within ninety (90) days after final acceptance. Nothing in the warranty shall be considered to limit any rights or remedies PERFORMING AGENCY or its subrecipient(s) may otherwise have under the contract/license.

RECEIVING AGENCY will not hold PERFORMING AGENCY responsible if the information coming to PERFORMING AGENCY'S product/software from RECEIVING AGENCY is inaccurate or corrupt.

ARTICLE 13. Standards for Financial and Programmatic Management

PERFORMING AGENCY shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of UGMS and adhere to procedures detailed in RECEIVING AGENCY'S Financial Administrative Procedures Manual (documents available at http://www.tdh.state.tx.us/grants/form_doc.htm). Those requirements shall include at a minimum:

- A. Financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
- B. Financial management systems including accurate, correct, and complete accounting records, that identify the source and application of funds provided under each Attachment, and that support the information contained in required financial reports; cost source documentation; effective internal and budgetary controls; determination of reasonableness, allowableness, and allocability of costs; and timely and appropriate audits and resolution of any findings; and,
- C. Billing and collection policies, including a fee schedule, a system for discounting or adjusting charges based on a person's income and family size, and a mechanism capable of billing and making reasonable efforts to collect from patients and third parties.

PERFORMING AGENCY shall bill all third party payers for services provided under the Attachment(s) before submitting any request for reimbursement to RECEIVING AGENCY. A third party payer is any person or entity who has the legal responsibility for paying all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local and private funding sources. Third party billing functions shall be provided by PERFORMING AGENCY at no cost to the client. PERFORMING AGENCY or its subrecipient shall become a Medicaid provider if performing approved Texas Medicaid services authorized by the Attachment(s).

PERFORMING AGENCY and its governing body shall bear full responsibility for the integrity of the fiscal and programmatic management. Such responsibility shall include: accountability for all funds and materials received from RECEIVING AGENCY; compliance with RECEIVING AGENCY rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and RECEIVING AGENCY'S monitoring processes. Ignorance of any contract provisions or other requirements contained or referenced in this contract shall not constitute a defense or basis for waiving or appealing such provisions or requirements.

ARTICLE 14. Bonding

PERFORMING AGENCY is required to carry a fidelity bond, insurance coverage or self-insurance equal to the amount of funding provided under the contract Attachment(s) up to \$100,000 that covers each employee of PERFORMING AGENCY handling funds under this contract, including person(s) authorizing payment of such funds. ~~The fidelity bond, insurance, or self-insurance shall provide for indemnification of losses occasioned by: 1)~~

~~any fraudulent or dishonest act or acts committed by any of PERFORMING AGENCY'S employees, either individually or in concert with others, and/or 2) failure of PERFORMING AGENCY or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment.~~

ARTICLE 15. Funding Participation Requirement

STATE USA
DATE DATE

PERFORMING AGENCY agrees funds provided through this contract shall not be used for matching purposes in securing other funding unless directed or approved by RECEIVING AGENCY.

ARTICLE 16. Allowable Costs and Audit Requirements

Only those costs allowable under UGMS and any revisions thereto plus any applicable federal cost principles are eligible for reimbursement under this contract. Applicable cost principles, audit requirements, and administrative requirements are as follows:

Applicable Cost Principles*	Audit Requirements*	Administrative Requirements*
OMB Circular A-87, State, Local and Tribal Governments	OMB Circular A-133 and UGMS	UGMS

The OMB circulars cited above shall be applied with the modifications prescribed by UGMS.

PERFORMING AGENCY or the AUTHORIZED CONTRACTING ENTITY shall arrange for a financial and compliance audit (Single Audit) if required by OMB Circular A-133 and/or UGMS, Part IV, "State of Texas Single Audit Circular." The audit shall be of PERFORMING AGENCY'S or the AUTHORIZED CONTRACTING ENTITY's fiscal year. The audit shall be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS. PERFORMING AGENCY shall procure audit services in compliance with state procurement procedures, as well as with the provisions of UGMS.

If PERFORMING AGENCY is not required to have a Single Audit, a limited scope audit may be required. RECEIVING AGENCY will provide PERFORMING AGENCY with written audit requirements if a limited scope audit is required.

Within thirty (30) days of receipt of the audit reports required by this section, PERFORMING AGENCY/AUTHORIZED CONTRACTING ENTITY shall submit a copy to Health and Human Services Commission (HHSC), OIG Single Audit at the following address:

Health and Human Services Commission
Attention: Single Audit OIG
Mailcode H-954
1100 West 47th Street
Austin, Texas 78756-3199

ARTICLE 17. Terms and Conditions of Payment

For services satisfactorily performed pursuant to this contract, RECEIVING AGENCY will reimburse PERFORMING AGENCY for allowable costs. Reimbursements are contingent on a signed contract and will not exceed the total of each Attachment(s). PERFORMING AGENCY is entitled to payment only if the service, work, and/or product has been authorized and satisfactorily performed. If those conditions are met, RECEIVING AGENCY will make payment in accordance with the Texas prompt payment law (Texas Government Code, Chapter 2251).

PERFORMING AGENCY is entitled to exercise remedies for nonpayment in accordance with Texas Government Code, Chapter 2251, Subchapter D.

PERFORMING AGENCY shall have incurred a cost within the applicable Attachment term to be eligible for reimbursement under this contract and prior to claiming reimbursement. PERFORMING AGENCY shall submit requests for reimbursement on a State of Texas Purchase Voucher (TDH Form B-13) or any other form designated by RECEIVING AGENCY monthly within thirty (30) days following the end of the month covered by the bill. PERFORMING AGENCY shall submit a reimbursement request as a final close-out bill not later than ninety (90) days following the end of the applicable Attachment term(s) for goods received and services rendered during the Attachment term. Reimbursement requests received in RECEIVING AGENCY'S offices more than ninety (90) days following the end of the applicable Attachment term will not be paid. If necessary to meet this deadline, PERFORMING AGENCY may submit reimbursement request by facsimile transmission. Consideration of requests for an exception will be made on a case-by-case basis and only for an extenuating circumstance such as a catastrophic event, natural disaster, or criminal activity that substantially interferes with normal business operations, or causes damage or destruction of the place of business and/or records. A written statement describing the extenuating circumstance and the last request for reimbursement must be submitted for review and approval to the RECEIVING AGENCY Program sponsoring the Attachment.

PERFORMING AGENCY shall disburse program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting cash payments including advance payments from RECEIVING AGENCY.

Funding from this contract may not be used to supplant [i.e., use in place of funds dedicated, appropriated or expended for activities funded through the Attachment(s)] state or local funds, but PERFORMING AGENCY shall use the funds from this contract to increase state or local funds currently available for a particular activity. PERFORMING AGENCY shall make a good faith effort to maintain its current level of support. PERFORMING AGENCY may be required to submit documentation substantiating that a reduction in local funding, if any, resulted for reasons other than receipt or expected receipt of funding under the Attachment(s).

RECEIVING AGENCY shall determine whether costs submitted by PERFORMING AGENCY are allowable and reimbursable. If RECEIVING AGENCY has paid funds to PERFORMING AGENCY for unallowable or ineligible costs, PERFORMING AGENCY shall return the funds to RECEIVING AGENCY within thirty (30) days of written notice.

RECEIVING AGENCY may withhold all or part of any payments to PERFORMING AGENCY to offset reimbursement for any ineligible expenditures that PERFORMING AGENCY has not refunded to RECEIVING AGENCY, or if financial status report(s) required under the Reports Article are not submitted by the date(s) due. RECEIVING AGENCY may take repayment from funds available under any Attachment, active or expired, in amounts necessary to fulfill PERFORMING AGENCY repayment obligations.

ARTICLE 18. Advance Payments

PERFORMING AGENCY may request a one-time advance for each Attachment only to meet immediate need for cash disbursement. PERFORMING AGENCY shall make the request on a State of Texas Purchase Voucher, accompanied by written justification and supporting documentation as specified in RECEIVING AGENCY'S Financial Administrative Procedures Manual. The advance shall be requested at the beginning of the applicable Attachment period or at a later time in the applicable Attachment period if circumstances so warrant. Approval of the request for advance will be at the discretion of RECEIVING AGENCY. If the request is approved, the voucher will be processed; if disapproved, RECEIVING AGENCY will provide written notification to PERFORMING AGENCY.

RECEIVING AGENCY will determine the amount of the advance, if any, by the amount and term of the applicable Attachment(s). For each Attachment, the amount of the advance shall not exceed the amount of the Attachment divided by the number of months covered by the Attachment multiplied by two (2). Advance funds shall be expended during the applicable Attachment term; any unexpended funds must be refunded to RECEIVING AGENCY.

If the Attachment is amended to increase or decrease the total amount of funding, RECEIVING AGENCY may adjust the amount of allowable advance in accordance with the above formula. If PERFORMING AGENCY is requesting an upward adjustment, PERFORMING AGENCY shall submit a written justification and State of Texas Purchase Voucher in the amount necessary to correct the ratio. If the adjustment is downward, RECEIVING AGENCY will determine the amount of adjustment to the advance and the method of repayment.

ARTICLE 19. Program Income

PERFORMING AGENCY may, but if a local health department shall, develop a fee-for-service system and a schedule of fees for personal health services in accordance with the provisions of Health and Safety Code §12.031; the Texas Board of Health rules covering Fees for Clinical Health Services, 25 TAC §1.91; and other applicable laws. No patient may be denied a service due to inability to pay.

All revenues directly generated by an Attachment(s) supported activity or earned only as a result of the Attachment(s) during the term of the Attachment(s) are considered program income. Program income will be used by PERFORMING AGENCY to further the program objectives of the state/federal statute under which the Attachment(s) was/were made, and it shall be spent on the same project in which it was generated. PERFORMING AGENCY shall identify and report this income utilizing the forms and time frames specified in the Reports Article of these provisions or the Special Provisions of the Attachment.

PERFORMING AGENCY shall utilize one of the following methods for applying program income:

- A. Additive method - add the program income to the funds already committed to the project by both parties.
- B. Deductive method - deduct the program income from the total allowable costs to determine the net allowable costs.

PERFORMING AGENCY shall expend program income during the Attachment term in which it is earned, and may not carry forward to the succeeding term. Program income not expended in the term in which it is earned shall be refunded to RECEIVING AGENCY.

RECEIVING AGENCY may base future funding levels, in part, upon PERFORMING AGENCY'S proficiency in identifying, billing, collecting, and reporting program income, and in utilizing it for the purposes and conditions of the applicable Attachment(s).

ARTICLE 20. Overtime Compensation

PERFORMING AGENCY shall not use any of the funds provided by the Attachment(s) to pay the premium portion of overtime. PERFORMING AGENCY shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any compensation paid to an individual in addition to the normal rate of pay for hours worked in excess of normal working hours.

ARTICLE 21. Equipment and Supplies

In accordance with Health and Safety Code, §12.053, title to all equipment and supplies purchased from funds from this contract shall be in the name of PERFORMING AGENCY throughout the Attachment(s) term(s) or until the Attachment is terminated.

Equipment is defined as tangible nonexpendable personal property with an acquisition cost of more than \$5,000 and a useful life of more than one year, with the following exceptions: fax machines, stereo systems, cameras, video recorder/players, microcomputers, software, printers, microscopes, oscilloscopes, centrifuges, balances, and incubators. If the unit cost of these exception items is more than \$500, they will be considered equipment, shall be approved for purchase by RECEIVING AGENCY, and are considered capital assets for inventory purposes. The acquisition cost is the net invoice unit price of an item of equipment, including the cost of any necessary modifications, attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Supplies are defined as consumable items necessary to carry out the Attachment including medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software, and any items of tangible personal property other than those defined as equipment above.

All items of equipment purchased with Attachment funds shall be itemized in the budget. Any changes to the equipment list contained in the budget shall be approved in writing by RECEIVING AGENCY. PERFORMING AGENCY shall submit a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, RECEIVING AGENCY will notify PERFORMING AGENCY by means of a written amendment or Attachment Change Notice.

PERFORMING AGENCY shall maintain a nonexpendable personal property (equipment) inventory and submit an annual cumulative report (TDH Form GC-11) to RECEIVING AGENCY no later than October 15th of each year. PERFORMING AGENCY shall administer a program of maintenance, repair, and protection of assets under this contract so as to assure their full availability and usefulness. In the event PERFORMING AGENCY is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided under this contract, it shall use the proceeds to repair or replace said assets. If any item of equipment is no longer needed to perform services under the Attachment(s) or becomes inoperable, PERFORMING AGENCY shall request disposition instructions in writing from RECEIVING AGENCY.

Upon termination or expiration of applicable Attachment(s) that are not renewed, title to any remaining equipment and supplies purchased from funds under this contract reverts to RECEIVING AGENCY. Title may be transferred to any other party designated by RECEIVING AGENCY. RECEIVING AGENCY may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to PERFORMING AGENCY.

ARTICLE 22. Contracts with Subrecipients

PERFORMING AGENCY may enter into contracts with subrecipients unless restricted or otherwise prohibited in specific Attachment(s). Prior to entering into an agreement equaling \$25,000 or twenty-five percent (25%) of an Attachment, whichever is greater, PERFORMING AGENCY shall obtain written approval from RECEIVING AGENCY.

Contracts with subrecipients shall be in writing and include the following:

- Name and address of all parties;
- A detailed description of the services to be provided;
- Measurable method and rate of payment and total amount of the contract;
- Clearly defined and executable termination clause;

- Beginning and ending dates which coincide with the dates of the applicable contract Attachment(s) or cover a term within the beginning and ending dates of the applicable contract Attachment(s);
- Records retention requirements consistent with UGMS;
- Access to inspect the work and the premises on which any of the work is performed, in accordance with the Inspections Article contained in this contract;
- All clauses required by state/federal statutes, executive orders, and their implementing regulations; and
- Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, Uniform Grant Management Standards issued by the Governor's Office, applicable Office of Management and Budget Circulars, and applicable Code of Federal Regulations.

PERFORMING AGENCY agrees that all contracts with other subrecipients containing a categorical budget shall include audit requirements referenced in the Allowable Costs and Audit Requirements Article of this contract, as appropriate.

PERFORMING AGENCY is responsible to RECEIVING AGENCY for the performance of any subrecipient. PERFORMING AGENCY shall monitor both financial and programmatic performance and maintain pertinent records that shall be available for inspection by RECEIVING AGENCY.

PERFORMING AGENCY shall ensure that:

- Subrecipients are fully aware of the requirements imposed upon them by state/federal statutes and regulations including prompt payment of any subcontractors pursuant to Texas Government Code, Chapter 2251, Subchapter D;
- Subrecipients comply with all financial management requirements as defined by RECEIVING AGENCY, UGMS and the applicable OMB circulars;
- Subrecipients complete required audits;
- An adequate tracking system is maintained to ensure timely receipt of any subrecipient's required audit reports and the resolution of any findings and questioned costs cited by these reports; and, that
- RECEIVING AGENCY is immediately notified in writing of alleged or actual misuse or misappropriation of contract funds by subrecipients.

ARTICLE 23. Contracts for Procurement

PERFORMING AGENCY may enter into contracts for procurement of goods and services unless restricted or otherwise prohibited in specific Attachment(s). PERFORMING AGENCY agrees that it shall be responsible to RECEIVING AGENCY for the performance of any subcontracted activity.

Contracts for procurement of goods and services shall be in writing and contain the following provisions:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (contracts other than small purchases).
- Remedies for prompt payment of any subcontractor pursuant to Texas Government Code, Chapter 2251, Subchapter D.
- Termination for cause and for convenience by PERFORMING AGENCY including the manner by which it will be effected and the basis for settlement (all contracts in excess of \$10,000).
- Compliance with the Copeland "Anti-Kickback" Act (18 USC §874) as supplemented in Department of Labor regulations (29 CFR Part 3) (all contracts and subgrants for construction or repair).
- Compliance with §§103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC §§ 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) (construction

contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

- Notice of RECEIVING AGENCY requirements and regulations pertaining to reporting.
- Notice of RECEIVING AGENCY requirements and regulations pertaining to trademarks, service marks, copyrights, and patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- RECEIVING AGENCY requirements and regulations pertaining to copyrights and rights in data.
- Access by RECEIVING AGENCY, the federal grantor agency, the Comptroller General of the United States, the State of Texas or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- Retention of all required records for the required retention period after RECEIVING AGENCY makes final payments and all other pending matters are closed.
- Compliance with all applicable standards, orders, or requirements issued under §306 of the Clean Air Act (42 USC § 7401), § 508 of the Clean Water Act (33 USC § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
- Mandatory standards and policies relating to efficiency which are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act (P. L. 94-163), 42 USC §§6201, *et seq.*, as amended.

ARTICLE 24. Reports

Financial reports are required as provided in UGMS, and PERFORMING AGENCY shall file them regardless of whether expenses have been incurred.

For each Attachment, PERFORMING AGENCY shall submit a Financial Status Report, State of Texas Supplemental Form 269A (TDH Form GC-4a) within thirty (30) days following the end of each of the first three (3) quarters. PERFORMING AGENCY shall submit a final financial report on State of Texas Supplemental Form 269A (TDH Form GC-4a), not later than ninety (90) days following the end of the Attachment term(s). PERFORMING AGENCY shall submit a State of Texas Purchase Voucher (TDH Form B-13), or any other form designated by RECEIVING AGENCY, with the final financial report if all costs have not been recovered, or PERFORMING AGENCY shall refund excess monies if costs incurred were less than funds received.

PERFORMING AGENCY shall submit program and progress reports required by RECEIVING AGENCY in the format agreed to by the parties. PERFORMING AGENCY shall provide RECEIVING AGENCY and/or HHSC other reports including financial reports determined necessary to accomplish the objectives of this contract and to monitor compliance. If PERFORMING AGENCY is legally prohibited from providing such reports, it shall immediately notify RECEIVING AGENCY and/or HHSC.

ARTICLE 25. Inspections

RECEIVING AGENCY, Health and Human Services Commission (HHSC), and, when federal funds are involved, any authorized representative(s) of the federal government have the right, at all reasonable times, to inspect or otherwise evaluate the work (including reviews of client or patient records and discussions with staff) performed by PERFORMING AGENCY and its subrecipient(s), if any, and the premises on which the work is being performed. PERFORMING AGENCY and its subrecipient(s) shall participate in inspections and provide reasonable access, facilities, and assistance to the representatives. All inspections and evaluations will be conducted in such a manner as will not unduly interfere with the work.

PERFORMING AGENCY and its subrecipient(s), if any, shall give RECEIVING AGENCY, HHSC, the federal government, and the Texas State Auditor, or any of their duly authorized representatives, access to any pertinent books, documents, papers, and client or patient records, if any, for the purpose of making audit, examination, excerpts, and transcripts of transactions related to this contract. RECEIVING AGENCY will have the right to audit billings both before and after payment. Payments will not foreclose the right of RECEIVING AGENCY to recover excessive or illegal payments.

Any deficiencies identified by RECEIVING AGENCY and/or HHSC upon examination of PERFORMING AGENCY'S records will be conveyed in writing to PERFORMING AGENCY. PERFORMING AGENCY'S resolution of findings will be conveyed in writing within thirty (30) days of receipt of the report of the deficiencies. PERFORMING AGENCY'S resolution of findings will be sent to the agency(ies) referenced in the cover letter of the report. A RECEIVING AGENCY and/or HHSC determination of either an inadequate or inappropriate resolution of the findings may result in sanctions which will remain in effect until RECEIVING AGENCY and HHSC determines the deficiencies are properly remedied.

ARTICLE 26. Records Retention

PERFORMING AGENCY and its subrecipients and subcontractors shall retain medical records in accordance with 22 Texas Administrative Code (TAC), Part 9, §165.1(b)(c) or other applicable statutes and regulations governing medical information. PERFORMING AGENCY shall retain and preserve all other records, including financial records, which are generated or collected by PERFORMING AGENCY or its subrecipients or subcontractors under the provisions of this contract, for a period of four (4) years after the termination of the Attachment(s). If an Attachment is funded through Medicaid, the federal retention period, if more than four (4) years shall apply. PERFORMING AGENCY and its subrecipients shall retain all records for an Attachment that is the subject of litigation or an audit until the litigation is ended or all questions pertaining to the audit are resolved.

Legal requirements for PERFORMING AGENCY may extend beyond the retention schedules established herein.

ARTICLE 27. Confidentiality of Protected Health Information

PERFORMING AGENCY is required to comply with state and federal laws relating to the privacy and confidentiality of patient and client records that contain protected health information, or other information made confidential by law.

PERFORMING AGENCY is required to disclose protected health information of patients or clients provided services funded through this contract to RECEIVING AGENCY upon request, or as otherwise required in other contract provisions.

RECEIVING AGENCY is authorized to request, collect and receive protected health information under this contract, without the consent of the individual to whom the protected health information relates, for funding, payment and administration of the grant program.

RECEIVING AGENCY is also authorized to request, collect and receive protected health information under this contract, without the consent of the individual to whom the protected health information relates, under exceptions to state confidentiality laws and federal privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Standards adopted to implement HIPAA at 45 CFR Parts 160 and 164, at §164.512, and Occupations Code, Chapter 159, at §§159.003 and 159.004.

PERFORMING AGENCY must maintain patient and client records in compliance with state laws relating to the security and retention of medical or patient records. RECEIVING AGENCY may require PERFORMING AGENCY to transfer original or copies of patient and client records to another entity, without the consent or

authorization of the patient or client, upon termination of this contract, or if the care and treatment of the individual patient or client is transferred to another entity.

If providing direct client care, services, or programs, PERFORMING AGENCY shall implement RECEIVING AGENCY'S policies based on the model HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) workplace guidelines, and PERFORMING AGENCY shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Health and Safety Code § 85.112-114.

ARTICLE 28. Sanctions

RECEIVING AGENCY may impose sanctions for any breach of this contract and will monitor PERFORMING AGENCY for both programmatic and financial compliance. HHSC may impose or recommend imposition of sanctions to RECEIVING AGENCY for any breach of this contract and will monitor PERFORMING AGENCY for financial compliance. RECEIVING AGENCY may, at its own discretion, impose one or more sanctions for each item of noncompliance and will determine sanctions on a case-by-case basis. A state or federal statute, rule, regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both.

RECEIVING AGENCY may:

- A. Terminate all or a part of this contract. See the Termination Article in these provisions.
- B. Suspend all or part of this contract. Suspension is, depending on the context, either (1) the temporary withdrawal of PERFORMING AGENCY'S authority to obligate funds pending corrective action by PERFORMING AGENCY or its subrecipient(s) or pending a decision to terminate or amend the contract, or (2) an action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in contract transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY during a suspension are not allowable unless expressly authorized by the notice of suspension;
- C. Disallow (deny both use of funds and matching credit for) all or part of the activities or action not in compliance;
- D. Temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of advances or reimbursements to PERFORMING AGENCY or its subrecipient(s) for proper charges or obligations incurred, pending resolution of issues of noncompliance with contract conditions or indebtedness to the United States or to the State of Texas;
- E. Permanently withhold cash payments. Permanent withholding of cash payment means that RECEIVING AGENCY retains funds billed by PERFORMING AGENCY or its subrecipient(s) for a) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; b) failure to comply with contract provisions; or c) indebtedness to the United States or to the State of Texas;
- F. Deny contract renewal or future contract awards to a PERFORMING AGENCY;
- G. Delay contract execution with PERFORMING AGENCY while other imposed or proposed sanctions are pending resolution;

- H. Place PERFORMING AGENCY on probation. Probation means that PERFORMING AGENCY will be placed on accelerated monitoring for a period not to exceed six (6) months at which time items of noncompliance shall be resolved or substantial improvement shown by PERFORMING AGENCY;
- I. Conduct accelerated monitoring of PERFORMING AGENCY. Accelerated monitoring means more frequent or more extensive monitoring will be performed by RECEIVING AGENCY than would routinely be accomplished;
- J. Require PERFORMING AGENCY to obtain technical or managerial assistance;
- K. Disallow requests for reimbursement by disapproving costs or fees submitted for payment or reimbursement by PERFORMING AGENCY;
- L. Establish additional prior approvals for expenditure of funds by PERFORMING AGENCY;
- M. Require additional, more detailed, financial and/or programmatic reports to be submitted by PERFORMING AGENCY;
- N. Demand repayment from PERFORMING AGENCY;
- O. Reduce the funding amount for failure to achieve or maintain the proposed level of service, to expend funds appropriately and at a rate which will make full use of the award, or to provide services as set out in the Attachment(s); and,
- P. Impose other remedies provided by law.

RECEIVING AGENCY will formally notify PERFORMING AGENCY in writing when a sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the sanction(s), the reasons for imposing them, the corrective actions which shall be taken before they will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the sanctions imposed. PERFORMING AGENCY is required to file, within fifteen (15) days of receipt of notice, a written response to RECEIVING AGENCY'S program/division that sent the notice, acknowledging receipt of such notice and stating how PERFORMING AGENCY will correct the noncompliance or demonstrating in writing that the findings on which the sanctions are based are either invalid or do not warrant the sanction(s). If RECEIVING AGENCY determines that a sanction is warranted, and unless the sanction is subject to review (see Sanction Review Article), RECEIVING AGENCY'S decision is final and PERFORMING AGENCY shall take corrective action.

In an emergency, RECEIVING AGENCY may immediately terminate or suspend all or part of this contract, temporarily or permanently withhold cash payments, deny contract renewal or future contract awards, or delay contract execution by delivering written notice to PERFORMING AGENCY, by any verifiable method, stating the reason for the emergency action.

An "emergency" is defined as the following:

- PERFORMING AGENCY is noncompliant and the noncompliance has a direct adverse impact on the public or client health or safety. The direct adverse impact may be programmatic or financial, impacting health or safety by failing to provide services, providing inadequate services, providing unnecessary services, or utilizing resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures;
- PERFORMING AGENCY fails to achieve a performance measure;

- PERFORMING AGENCY is reimbursed or requesting reimbursement for expenditures which are not in accordance with applicable federal or state laws and regulations or the provisions of this contract; or
- PERFORMING AGENCY is expending funds inappropriately.

Whether PERFORMING AGENCY'S conduct or inaction is an emergency will be determined by RECEIVING AGENCY on a case-by-case basis and will be based upon the egregious nature of the noncompliance or conduct.

ARTICLE 29. Sanction Review

PERFORMING AGENCY may request a review of the imposition of the following sanctions: termination of all or part of the contract, suspension of all or part of the contract, permanent withholding of cash payments, reduction of contract funding or other contract amendment resulting from noncompliance, and denial of contract renewal or future contract awards.

PERFORMING AGENCY shall make the request for review in writing to RECEIVING AGENCY within fifteen (15) days from the date of notification by providing written notice of the dispute to the person who signed the notification.

PERFORMING AGENCY'S notice shall contain the following: (1) a copy of the letter from RECEIVING AGENCY notifying PERFORMING AGENCY of the sanction; (2) a specific description of each act that is the basis for the dispute; (3) the grounds upon which PERFORMING AGENCY bases the complaint; (4) an identification of the issue or issues to be resolved; (5) a precise statement of the relevant facts; (6) any documentation in support of PERFORMING AGENCY'S position; and (7) a statement and authorities in support of PERFORMING AGENCY'S position.

Evidence that PERFORMING AGENCY properly notified RECEIVING AGENCY consists of any of the following documents: (1) signature on delivery card; (2) confirmation of a facsimile to the correct telephone number; or (3) signed acknowledgment of delivery.

RECEIVING AGENCY'S representative will schedule a meeting or a conference call to attempt to resolve the issues in dispute. If the dispute is resolved, any resolution will be in writing and will be signed by all parties. If the dispute is not resolved, RECEIVING AGENCY'S representative will notify PERFORMING AGENCY in writing. RECEIVING AGENCY will appoint a reviewer(s), who will review the information, who may permit or require additional information and who may grant, deny, or modify all relief requested in the written notice of dispute. The reviewer(s)'s decision will be in writing and will contain a discussion of the reason for the decision and the remedial action, if any. The reviewer(s) will send copies of the decision to all parties by any verifiable means. The decision of the reviewer(s) is final and is the final action of RECEIVING AGENCY for purposes of further proceedings.

A state statute or rule or a federal statute, regulation or guideline will prevail over the provisions of this Article unless the statute, rule, regulation or guideline can be read together with the provision or provisions of this Article to give effect to both.

ARTICLE 30. Breach of Contract Claim

Any remedies set out in this contract are in addition to rights and remedies for breach of contract provided by law.

ARTICLE 31. Termination

Each Attachment shall terminate upon its expiration date unless extended by written amendment in accordance with the Amendments Article. Prior to completion of the Attachment term, all or a part of this contract may be terminated with or without cause as set out below.

- A. Termination is the permanent withdrawal of PERFORMING AGENCY'S authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by PERFORMING AGENCY of the authority to obligate previously awarded funds. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY after termination of an award are not allowable unless expressly authorized by the notice of termination. Termination does not include: (1) withdrawal of funds awarded on the basis of the PERFORMING AGENCY'S underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of an Attachment; (3) refusal to extend an Attachment or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.
- B. Termination without cause.
- (1) Either party may terminate this contract with at least ninety (90) days prior written notice to the other party.
 - (2) The parties may terminate this contract by mutual agreement.
 - (3) Either party may terminate this contract with at least thirty (30) days prior written notice to the other party in the event state and/or federal funding for this contract is terminated, limited, suspended, withdrawn, or discontinued.
 - (4) RECEIVING AGENCY may terminate this contract when, in the sole determination of RECEIVING AGENCY, termination is in the best interest of the State of Texas.
- C. Termination for cause.
- (1) Either party may terminate for material breach of this contract with at least thirty (30) days written notice to the other party.
 - (2) RECEIVING AGENCY may terminate this contract, in whole or in part, for breach of contract or for any other conduct that jeopardizes the contract objectives, by giving at least thirty (30) days written notice to PERFORMING AGENCY. Such conduct may include one or more of the following:
 - (a) A court of competent jurisdiction finds that PERFORMING AGENCY has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
 - (b) PERFORMING AGENCY fails to communicate with RECEIVING AGENCY or fails to allow its employees or those of its subrecipients to communicate with RECEIVING AGENCY as necessary to the performance of this contract;
 - (c) PERFORMING AGENCY breaches a standard of confidentiality with respect to the services provided under this contract;
 - (d) RECEIVING AGENCY determines that PERFORMING AGENCY is without the personnel or resources to perform under this contract;
 - (e) RECEIVING AGENCY determines that PERFORMING AGENCY, its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an official or employee of RECEIVING AGENCY for the purpose of obtaining a contract or favorable treatment;
 - (f) PERFORMING AGENCY'S management system does not meet the UGMS management standards; or
 - (g) PERFORMING AGENCY appears to be financially unstable. Indicators of financial instability may include one or more of the following:
 - (i) PERFORMING AGENCY fails to make payments;
 - (ii) PERFORMING AGENCY makes an assignment for the benefit of its creditors;

- (iii) PERFORMING AGENCY admits in writing its inability to pay its debts generally as they become due; or
- (iv) If judgment for the payment of money in excess of \$50,000 (which is not covered by insurance) is rendered by any court or governmental body against PERFORMING AGENCY, and PERFORMING AGENCY does not (a) discharge the judgment or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) days from the date of entry thereof, and within the thirty (30)-day period or a longer period during which execution of the judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefore as may be required under generally accepted accounting principles.

D. Emergency termination. In emergency circumstances, RECEIVING AGENCY may terminate this contract immediately upon notice to PERFORMING AGENCY by any verifiable means. "Emergency" is defined in the Sanctions Article.

Either party may deliver written notice of intent to terminate by any verifiable method. If either party gives notice of its intent to terminate all or a part of this contract, RECEIVING AGENCY and PERFORMING AGENCY will attempt to resolve any issues related to the anticipated termination in good faith during the notice period. Upon termination of all or part of this contract, RECEIVING AGENCY and PERFORMING AGENCY will be discharged from any further obligation created under the applicable terms of this contract except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination. Termination does not, however, constitute a waiver of any remedies for breach of this contract. In addition, the obligations of PERFORMING AGENCY to retain records and maintain confidentiality of information shall survive this contract.

ARTICLE 32. Void Contract

RECEIVING AGENCY may hold this contract void upon its determination that the contract award was obtained fraudulently or was otherwise illegal or invalid from its inception.

ARTICLE 33. Severability

If any provision of this contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue.

ARTICLE 34. Local Health Department Personnel

All local health department personnel funded by Attachment(s) to this contract are employees of PERFORMING AGENCY which shall be responsible for their direction and control and liable for any of their acts or omissions.

PERFORMING AGENCY shall have in place legally sufficient due process hearing procedures for all of its employees filling state-budgeted positions.

PERFORMING AGENCY shall have full authority to employ, promote, suspend, demote, discharge, and transfer within its organization any and all state-budgeted personnel funded by Attachment(s) to this contract provided, however, that any demotion, suspension, or discharge of such state-budgeted employees shall be in accordance with the due process hearing procedures as set out above. The only distinction between state-budgeted and local paid employees is that employees on state budgeted positions receive state benefits and are subject to certain duties, obligations, and restrictions as state employees as contained in state law. One such restriction, as contained in the State Appropriations Act, is that no employee paid on a state-budgeted position may receive a salary supplement from any source unless specifically authorized in the Appropriations Act or other state law. This prohibition includes the

payment to such employee of a so-called "flat rate" car allowance or travel allowance. Any travel or per diem allowance to these employees shall be on a reimbursement basis, supported by appropriate records, and shall not exceed the reimbursement for mileage and/or per diem allowed under the Appropriations Act and current state travel regulations. This restriction shall apply whether travel funds are provided in Attachment(s) under this contract or from any other source.

PERFORMING AGENCY shall utilize RECEIVING AGENCY'S policies and procedures for hiring and promoting individuals into state-budgeted positions funded by this contract. Qualifications of any individuals filling these positions will be subject to approval of RECEIVING AGENCY'S Bureau of Human Resources. The purpose of the approval is to ensure that individuals occupying these positions meet minimum educational and experience requirements.

PERFORMING AGENCY shall maintain required records and submit documents necessary to process personnel, payroll, leave and time records, and travel costs on state-budgeted positions. RECEIVING AGENCY will furnish documentation regarding salary compensation or travel reimbursement for employees on state-budgeted positions.

An independent audit is not required as a condition of this contract if the contract Attachment provides assistance through assignment of state-budgeted positions and no funds are budgeted for local costs.

PERFORMING AGENCY may be reimbursed for local personnel costs or other categories of expense used to fulfill the scope of work of applicable Attachment(s) in lieu of being furnished state payroll warrants after a state-budgeted position becomes vacant. Reimbursement will not exceed the balance of funds on the state-budgeted position after all benefits, obligations, and/or other entitlements are met. PERFORMING AGENCY'S Director, or other person(s) authorized elsewhere in this contract, may submit a request for conversion. RECEIVING AGENCY will transmit formal approval and a revised budget to PERFORMING AGENCY to complete the conversion if the request is granted.

ARTICLE 35. Survival of Terms

Termination or expiration of this contract for any reason shall not release either party from any liabilities or obligations set forth in this contract that (a) the parties have expressly agreed shall survive any such termination or expiration, or (b) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

ARTICLE 36. Construction of Ambiguities

The parties expressly agree that they have each independently read and understood this contract. Any ambiguities in this contract shall not be construed against the drafters.

ARTICLE 37. No Waiver of Sovereign Immunity

THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT THE PARTIES OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

ARTICLE 38. Certification

The governing body of each party has authorized this contract. RECEIVING AGENCY is paying for the performance of governmental functions and services from current revenues available to RECEIVING AGENCY. The payment is in an amount that fairly compensates PERFORMING AGENCY for the services or functions performed under this contract.

