

**Software Pilot Project Interlocal Agreement
between the
City of Austin, Texas, Travis County, and the Austin Independent School District
regarding Chronic Absenteeism in Public Schools**

This Agreement ("Agreement") is between the City of Austin, Texas ("City"), a Texas home-rule and municipal corporation, Travis County, a Texas political subdivision of the State of Texas ("County"), and the Austin Independent School District ("District), Travis County ("County"), and collectively referred to as the "Parties" or individually referred to a "Party."

Recitals

1. On June 14, 2010, the City and District approved a Joint Resolution regarding Chronic Absenteeism in AISD Public Schools. County Commissioners' Court approved the Resolution on June 29, 2010.
2. The Joint Resolution stated that "chronic absenteeism" is a term that relates to students who drop out of school and need to be recovered, who are truant, and whose lack of attendance in school is a barrier to academic achievement and high school completion.
3. As stated in the Joint Resolution, the Parties determined that chronic absenteeism continues to be a major challenge for too many students in the public school system, impeding student achievement and contributing to unacceptable dropout and high school completion rates.
4. Pursuant to the Joint Resolution, the Parties approved the March 12, 2009 recommendation of the Joint Subcommittees of the above-referenced governmental bodies that a pilot software project be initiated to track AISD student absenteeism at a cost not to exceed \$48,000 in the current fiscal year and \$36,000 annually in two succeeding fiscal years for software infrastructure costs, contingent upon successful outcomes and funds availability. This cost would be allocated equally among the City, County, and District pursuant to an interlocal agreement that would be negotiated among the Parties containing the specific terms and funding amounts as agreed to by the Parties;

Now Therefore, the Parties, in consideration of these promises and mutual obligations undertaken, agree as follows:

1. Definitions

1.1 Family Resource Centers ("FRC") refers to one type of school-based service located on six AISD campuses, managed either by a community-based organization through a contract with AISD or AISD itself (Reagan High School's FRC). The FRCs participating in the Software Pilot Project include those located within the St. John Community (Webb, Pearce, Dobie, Reagan) and the FRCs located on the Mendez and Martin Middle School campuses. The FRCs connect District students and families to support services that improve student attendance, academic achievement, and promote family stability, parent leadership, and community support

for each campus. The FRCs are designed to support families in crisis, as well as families who may benefit from having a friendly place on campus where their questions and desires to connect with the school community and other parents can be supported. The FRCs also connect families to community-based agencies, businesses, neighborhood centers, and faith-based organizations to ensure that children are ready to learn when at school, and their parents support their children's social, emotional, physical and academic development. FRCs do not provide direct services, but rather provide the determination of need and connection to those services.

1.2 City and County-Based Services. Both the City and County provide direct services and also contract with providers to deliver social services to eligible clients. Many of these services relate to the needs met by the FRCs, and efforts by City and County in providing these services may result in information and resources which may be instrumental in enhancing the activities which are the subject of this Agreement.

2. Purpose

2.1 General Purpose. This Agreement is to obtain each of the Parties' governing bodies' authorization to provide a certain amount of funding for the District's acquisition of software for a Software Pilot Project ("Project") to track students who fail to attend District classes without medical or parental consent and track social services coordinated through FRCs to District students and their families; and to require the District to report to City and County regarding the pilot program and the software's use and effectiveness.

2.2 Public Purpose. The Parties agree that each Party has an interest in the data which will be generated by the implementation of the Project which is the subject of this Agreement. The need of the students and parents involved constitute a significant public concern impacting the members of the population that each Party serves and the information gathered and studied under this Agreement will further the public purpose of addressing those needs and problems.

3. Agreement Term

The initial term of this Agreement ("Initial Term") shall begin on the date this contract is signed by the Parties; and end on September 30, 2011, unless terminated earlier in accordance with Section 15. The Parties may extend this Agreement for up to two (2) 12-month extension options ("Extension Term(s)") provided all Parties provide a written request to extend the Agreement to the other Parties, and the Parties agree in writing to the extension term. At any time that any Party does not agree to renew the Agreement or terminates the Agreement, the Agreement shall be terminated in whole for all Parties.

4. Designation of Contract Administrators

4.1 City Contract Administrator. The City's Contract Administrator is Bert Lumbreras, Assistant City Manager. Correspondence may be sent to: Attention: Contract Administrator: Software Pilot Project Interlocal Agreement, Bert Lumbreras, Assistant City Manager, Contract Administrator, Software Pilot Program Interlocal, 3rd Floor City Hall, 301 W.

2nd Street, Austin, Texas 78701. The City's Contract Administrator represents the interests of the City during the term of the Agreement and is the designated point of contact for the City.

4.2. County Contract Administrator. The County's Contract Administrator is Sherri Fleming, Executive Manager. Correspondence may be sent to: Attention: Contract Administrator: Software Pilot Project Interlocal Agreement, Sherri Fleming, Executive Manager, Travis County Health, Human Services and Veterans' Services, P. O. Box 1748, Austin, Texas 78767. The County's Contract Administrator represents the interests of the County during the term of the Agreement and is the designated point of contact for the County. It is acknowledged that no officer, agent, employee or representative of County has any authority to change the terms of this Agreement unless expressly granted that authority by the Commissioners' Court under a specific provision of this Agreement or by separate action of the Commissioners' Court.

4.3 District Contract Administrator. The District's Contract Administrator is Melvin Waxler, General Counsel. Correspondence may be sent to: Attention: Contract Administrator: Software Pilot Project Interlocal Agreement, Melvin Waxler, General Counsel, Software Pilot Program Interlocal, 1111 West 6th Street, Ste. A240, Austin, Texas 78703-5338. The District's Contract Manager represents the interests of the District during the term of the Agreement and is the designated point of contact for the District.

4.4 Change of Contract Administrator. Should the identity of a Party's Contract Administrator change, each Party will identify a replacement and notify the other Parties in writing of the change within thirty (30) days.

5. Agreement Amount

5.1 Acquisition Cost. The acquisition cost of the pilot software program ("Software Program") will not exceed \$48,000 in the Initial Term and \$36,000 annually in two succeeding Extension Terms for software maintenance costs including software modifications, if any, contingent upon successful outcomes, funds availability, and Parties agreement. This cost will be allocated equally among the City, County, and District as described below, with the amount allocated to each Party being one-third (1/3) of the actual amount spent.

5.2 . Fiscal Year 2011 Payment. For fiscal year 2011, each Party agrees to deposit one-third of the actual amount of the acquisition cost of the pilot software program (the total amount not to exceed \$48,000, or \$16,000 for each Party) within thirty (30) days of receipt of the complete and correct invoice from the District showing the actual amount of the acquisition cost, with the District, who will act as the fiscal agent.

5.3 Fiscal Year 2012 Payment. For fiscal year 2012, each Party will have the option to renew for year two of the project and deposit one-third of the actual amount of maintenance costs (the total amount of maintenance not to exceed \$36,000, or \$12,000 for each Party within thirty (30) days of receipt of the complete and correct invoice from the District showing the actual maintenance cost with the District, who will act as the fiscal agent.

5.4 Fiscal Year 2013 Payment. For fiscal year 2013, each Party will have the option to renew for year three of the project and deposit one-third of the actual amount of maintenance costs (the total amount of maintenance not to exceed \$36,000, or \$12,000 for each Party) within thirty (30) days of receipt of the complete and correct invoice from the District showing the actual maintenance cost, with the District, who will act as the fiscal agent.

6. City and County Duties

6.1 City and County-Based Services. The City and County will inform the District about existing and new City and/or County, respectively, social services providing City and County-Based Services relevant to this Agreement available to the Austin community.

6.2 City and County-Based Services Information. To the extent allowed by law, City and County will provide District with student/client information gathered from City and County-Based Services contracts where that data is available, subject to release and subject to obtaining any necessary written authorizations, provided the data is relevant to the activities performed under this Agreement. It is understood that City and County may not have data to fit all the fields included in the Software Program, but will provide information as available.

6.3 Coordination. The Parties will coordinate efforts in data gathering and sharing under this Agreement throughout the term of the Agreement with the intent to maximize the results of the services performed and information analyzed. It is understood and agreed that the extent and method of such efforts may not be evident at this time, and will be subject to the mutual agreement of the Parties throughout the Agreement Term(s). Where an amendment to the Agreement is necessary, the Parties will cooperate to enter into such amendment pursuant to the applicable terms of this Agreement.

6.4 Data Use. All reporting, exchange or other use of data or information under this Agreement by all Parties will be in compliance with all applicable laws, including but not limited to those specifically set forth in Section 7.6 of this Agreement; and will be supported by all necessary authorized party release documents where necessary.

7. District Duties

7.1 Procurement Process. The District will develop specifications for the tracking Software Program, conduct the procurement process, acquire, implement, and maintain the software for this Project. Written specifications will be provided to County and City for approval prior to issuance of the procurement documents. Written copies of the final contract will be provided to City and County for approval prior to execution. Approvals under this Section 7.1 will be provided by the Contract Administrator for each Party.

7.2 Initial Term Reports. During the Initial Term of this Agreement, the District agrees to provide calendar quarterly reports to the City and County no later than 30 calendar days after the last day of the preceding quarter on the District software selection process and acquisition.

7.3 Extension Term(s) Reports. After the Initial Term, if the Parties agree to extend this Agreement, the District agrees to provide calendar quarterly reports to the City and County no later than 30 calendar days after the last day of each quarter on data tracked with the software regarding District student absenteeism, social services provided through the Family Resource Centers to District students and their families, and software maintenance costs.

7.4 Fiscal Agent. The District will serve as the fiscal agent for this program and be responsible for the disbursement of the contract funds in accordance with this Agreement. The District will provide documentation of expenditures based on this Agreement to the City and County Contract Administrators, or their designee.

7.5. Purchase and Implementation Schedule.

7.5.1 Purchase. District shall complete the software acquisition process on or before August 31, 2011.

7.5.2 Implementation and Operation. District will initiate the implementation of the Software Program on or before December 31, 2011. The Parties agree that, due to ongoing changes in funding and availability of personnel, the operation of the Project, may be maintained by the District; however, as needed, the Parties will coordinate efforts to provide other in-kind resources as necessary to continue the operation of the Project. If at any time the Parties cannot provide such necessary support, the Parties will terminate the Agreement with no liability as to any Party for funds or services provided to that point.

7.6. Compliance. The Parties agree to abide by all local ordinances and state and federal laws in the provision of its services, activities or programs under this Agreement, including but not limited to, the Americans with Disabilities Act, 42 USC §12111, *et seq.*, 29 CFR §130.1, *et seq.*; Section 504 of the 1973 Rehabilitation Act, 34 CFR §104.1, *et seq.*; the Family Educational Rights and Privacy Act, 20 USC §1232g, *et. seq.*, 34 CFR §99.1, *et seq.*; Title IX of the Education Amendments of 1972, 20 USC §1681 *et seq.*, 34 CFR §106.1 *et seq.*; the Health Insurance Portability and Accountability Act of 1996 (HIPAA); the Privacy Standards adopted to implement HIPAA at 45 CFR Parts 160 and 164, at Section 164.512; and State confidentiality laws. The Parties will include the above language in all subcontractor agreements or any agreements or arrangements entered into in connection with this Agreement (including any arrangements or agreements for multi-agency use) to ensure that all users of the Program are bound by the requirements herein. Any information shared or released will be subject to the requirements of the above laws, and required release documentation signed by an authorized party will be obtained and maintained

7.7. Subcontractor(s).

7.7.1 Criminal History Record Information. Each Party agrees to comply with that Party's Criminal History Record Information policy if any Party retains the services of independent contractors or subcontractors to administer the software pilot program.

7.7.2 Each Party is wholly responsible for its performance under this Agreement, whether such performance is provided directly by that Party or indirectly by any subcontractor, and shall monitor both financial and programmatic performance and maintain pertinent records concerning subcontractor(s) that shall be available for inspection by all Parties. Each Party shall ensure that its subcontractors comply with all applicable terms of this agreement as if the performance rendered by the subcontractor was being rendered by that Party.

7.8 Insurance. Each Party will have and maintain, and will require all subcontractors providing services under this Agreement to have and maintain, insurance coverage at a level sufficient to cover the needs of that Party pursuant to applicable generally accepted business standards.

7.9 W-9 Taxpayer Identification Form. District shall provide City and County (sent to the County and City Purchasing Agents) with an Internal Revenue Service Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations, and a statement of entity status in a form satisfactory to the County and City Auditors, and with immediate notice of any changes to said form. District understands that this form must be provided to the County and City Purchasing Agents before any agreement funds are payable.

8. Records/Right to Audit

8.1. Records. Each Party shall create and maintain all records and reports required and/or created relevant to performance under this Agreement, including all fiscal records, documentation about operations and statistical reports.

8.2 Audit. Each Party agrees that the representatives of the Office of the City Auditor or County Auditor or District Auditor, or other authorized representatives of the City or County or District, shall have access to, and the right to audit, examine, or reproduce, any and all records of the Parties related to the performance under this Agreement. The Parties shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that any Party has brought to the attention of the other Parties are resolved, whichever is longer. District agrees to refund to the City and County any overpayments disclosed by any such audit. Each Party agrees to take whatever action is appropriate to facilitate the performance of any audits conducted pursuant to this Section 8 that the other Parties may reasonably require.

8.3 Subcontractor(s). The Parties shall include the provisions of this Section 8.0 in all subcontractor agreements, if any, entered into in connection with this Agreement.

9. Project Performance Standards

9.1 Initial Term. AISD will manage the software purchasing process with input from the City, County (pursuant to Section 7.1 and through communication throughout the process) and FRCs.

9.2 Purchase. AISD will purchase the Software Program no later than August 31, 2011. After the software is purchased, the City, County and AISD will mutually determine the specific data to be reported on a periodic basis.

9.3 Design. The Software Program will be designed to be used in conjunction with the AISD Advanced Case Management System, including consistent data fields where appropriate. The software must track data including demographic information (student age, grade, family size, race/ethnicity), multiple addresses per student for GIS mapping, social services provided to the student and/or his family, student school attendance, grades, and other data fields to be determined as part of the request for proposal purchasing process and as may be modified throughout the Agreement term(s) as mutually agreed to by the Parties.

9.4 Use - Extension Term 1. Subject to Sections 3.0 and 7.5.2, the Parties will design and produce a data capture template, provide training to multi-agency software program users, implement the software with data capture underway, demonstrate report generation capacity, and design reports. While it is understood that AISD may take the lead in these efforts, it is also understood that the Parties will mutually negotiate and coordinate the distribution of work on this portion of the implementation of the Software Program as required by the limitation of resources of each Party.

9.5 Use - Extension Term 2. Subject to Sections 3.0 and 7.5.2, the Parties will continue the Software Program implementation with multi-agency participation, generate reports, monitor outcomes, and develop evaluation factors with input and direction by all Parties.

9.6 Multi-Agency Use. It is understood that other related agencies may, subject to the terms of this Agreement, utilize certain information and reports created pursuant to this Agreement; however, those agencies will not have access to or use of the Program directly.

10. Invoices

10.1. Invoice Content. The District will submit to the City and County an invoice for each payment required under this Agreement with supporting documentation. Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The District's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City and County may rely on the remittance address specified on the District's invoice. Invoices received without all

required information cannot be processed and will be returned to the District. Lack of funds shall abate the City's and/or County's payment obligation until such funds become available.

10.2 Invoice Submission. Invoices shall be mailed to the following:

City:

Vince Cobalis, Assistant Director
Health and Human Services Department
7201 Levander Loop, Bldg E
Austin, Texas 78702
Facsimile: 512/972-5016

County:

Sherri Fleming, Executive Manager
Travis County Health, Human Services and Veterans Services
P.O. Box 1748
Austin, Texas 78767

10.3 Actual Cost. The District shall record the purchase cost of the software program and software maintenance at actual cost.

10.4 Taxes. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City and County will furnish a tax exemption certificate upon request. Under no circumstances shall the City or County be liable to pay exempt taxes under this Agreement.

11. Payment

11.1 Payment. Subject to Section 11.2, all **complete and correct** invoices received by the City and County will be paid within thirty calendar (30) days of that Party's receipt of the invoice.

11.2. **Prompt Payment.** If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City or County may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved to all Parties' satisfaction. The time period for payment will not begin to run until the invoice has been determined by the receiving Party to be complete and correct.

11.3 Offset. The City and/or County may withhold or set off the entire payment or part of any payment otherwise due the District to such extent as may be necessary on account of:

11.3.1 Failure to deliver reports or delivery of non-conforming reports by the District;

11.3.2. Failure of District to pay for labor, software costs, or equipment;

11.3.3 Failure of the District to submit proper invoices with supporting documentation;

11.3.4. Failure of the District to comply with any material provision of the Agreement; or

11.3.5 Overpayment of any earlier invoice.

12 . Independent Contractor

This Agreement shall not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the Parties. County, City and District are independent contractors. Each Party agrees and understands that this Agreement does not grant to any rights or privileges established for one Party to the employees of another Party.

Section 13 . Default

A Party to this Agreement shall be in default (“Default”) under the Agreement if the Party (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, and following notice of default as provided in Section 13 (Termination), fails timely to cure the alleged default as provided in Section 15.1; or (b) fails to provide adequate assurance of performance under Section 14 (Right to Assurance).

Section 14 . Right to Assurance

Whenever one Party to this Agreement in good faith has reason to question the other Party’s intent to perform, demand may be made to the other Party for written assurance of the intent to perform. In the event that no assurance is given within ten (10) calendar days after demand is received, the demanding Party may treat this failure as an anticipatory repudiation of the Agreement.

Section 15 . Termination

15.1 Default. In the event of Default by a Party, the other Party/Parties shall have the right to terminate the Agreement for cause, by written notice delivered to the Party alleged to be in default via certified mail. The notice shall be effective within sixty (60) days, unless otherwise specified, after the date of receipt of such notice. During this time period, the Party alleged to be in default may cure the event of Default or provide evidence sufficient to prove to the other Party’s reasonable satisfaction that such default does not exist or will be cured in a time satisfactory to the Party alleging the default. In addition to any other remedy available under law or in equity, the Party not in default shall be entitled to recover all actual damages, direct costs, incurred as a result of the other Party’s default, including court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Each Party’s rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

15.2 Termination Due To Lack of Funding. Any Party may terminate this Agreement if, during the budget planning and adoption process related to any term, the governing body of that Party fails to provide funding for this Agreement for that term or in the event of non-appropriation as set forth in Section 29.0.

Section 16 . Dispute Resolution

16.1 If a dispute arises out of or relates to this Agreement, or the breach thereof, the Parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. A Party may make a written request for a meeting between representatives of each Party to occur within fourteen (14) calendar days after receipt of the request or such later time as agreed by the Parties to seek a negotiated resolution. At a minimum, each Party shall require one (1) senior level individual with decision-making authority regarding the dispute and with authority to agree to resolve it, subject as may be required by law and/or policy of that Party to approval by the governing body(ies) of the Parties, to attend any and each such meeting for such negotiation. The Parties understand and agree that no individual has the authority to make decisions regarding such dispute negotiation for County other than the Travis County Commissioners Court. The purpose of this and any subsequent negotiation meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by all of the Parties, in which event the Parties may proceed directly to mediation as described below.

16.2 If the efforts to resolve the dispute through negotiation fail, or the Parties waive the negotiation process, the Parties may select, at their option, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute or an agreement interpretation expert. If the Parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The Parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The Parties will share the costs of mediation and the mediator equally, and will bear their own costs of participation, such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation. The results of any such mediation will be non-binding.

Section 17 . Survival of Obligations

All provisions of this Agreement that impose continuing obligations on the Parties, including but not limited to confidentiality, and agreement purpose shall survive the expiration or termination of this Agreement.

Section 18 . Current Revenues

This Agreement is authorized by the Interlocal Cooperation Act, which is Chapter 791 of the Texas Government Code. Each Party's monetary obligations, if any, under this Agreement are payable only and solely from the current revenues appropriated and available for the performance of such obligations.

Section 19. Assignment

A Party to this Agreement may not assign or transfer its interests under this Agreement without prior written approval of the other Parties.

Section 20. Entirety of the Agreement

20.1 This Agreement constitutes the entire Agreement and understanding between the Parties and supersedes all previous agreements, understandings, discussions, or representations concerning its subject matter. This Agreement may not be amended in whole or in part except in a written amendment executed by both Parties to this Agreement.

20.2 It is acknowledged that no officer, agent, employee or representative of County has any authority to change the terms of this Agreement unless expressly granted that authority by the Commissioners' Court under a specific provision of this Agreement or by separate action of the Commissioners' Court. All requests for changes shall be submitted to the Contract Administrator of each Party, with a copy to the County Purchasing Agent at: Cyd Grimes, Travis County Purchasing Agent, P. O. Box 1748, Austin, Texas 78767.

Section 21 . Performance

The obligations arising under this Agreement shall be performed in Travis County, Texas.

Section 22 . Jurisdiction and Venue

The Parties agree that this Agreement is governed by the laws of the State of Texas and that venue for a dispute arising from this Agreement shall be in Austin, Travis County, Texas.

Section 23 . Severability

If a term or provision of this Agreement is determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement remains effective to the extent permitted by law.

Section 24 . Notices

Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be considered delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, addressed to the person

designated for receipt of notice, postage prepaid and Return Receipt Requested. Notices delivered by facsimile shall be considered three (3) business days after transmittal or when received by the addressee, whichever is earlier. Hand-delivered notices are considered delivered upon receipt by the addressee which may be noted in a courier confirmation report. The Parties may make routine communications by first class mail, fax, or other commercially accepted means. Notices to the City, County, and District shall be addressed as follows:

24.1 City

Bert Lumbreras, Assistant City Manager
City Hall, 3rd Floor,
301 W. 2nd Street
Austin, Texas 78701
Phone: 512-974-7717

Facsimile: 512-974-2833

24.2 County:

Sherri Fleming, Executive Manager
Travis County Health, Human Services and Veterans Services
P. O. Box 1748
Austin, Texas 78767
Phone:

Facsimile:

With copies to:

Cyd Grimes, Travis County Purchasing Agent
P. O. Box 1748
Austin, Texas 78767

24.3 AISD/District

Mel Waxler, General Counsel
Attention: Contract Administrator: Software Pilot Project Interlocal Agreement,
1111 West 6th Street, Ste. A240
Austin, Texas 78703-5338
Phone:

Facsimile:

With copies to:

Nicole Conley-Abram, AISD Chief Financial Officer
Austin Independent School District
1111 West 6th Street
Austin, Texas 78703-5338

25 . Governmental Immunity.

Nothing in this Agreement shall be deemed to waive, modify, or amend any immunity or legal defense available at law or equity to any of the Parties against claims arising in the exercise of its governmental powers and functions, or to create any legal rights or claims on behalf of any third party. Neither the City, County, nor District waives, modifies, or alters to any extent whatsoever the

availability of the defense of governmental (sovereign) immunity under the laws of the State of Texas. It is understood and agreed that a decision by one Party to waive immunity or to compensate a claim for which immunity would have been a defense and would have operated to prevent payment does not operate as a waiver or decisions to compensate by the other Party; nor will such action by one Party operate to incur any expense or charge to the other Parties.

26 . Execution of this Agreement

This Agreement may be executed (by original or facsimile) by the Parties in one or more counterparts, each of which shall be considered one and the same agreement upon approval by each Party's governing body and authorization of the signature by the individual executing the Agreement on that Party's behalf.

27 . Force Majeure

A Party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, unusual weather conditions, fire, riots, sabotage, acts of domestic or foreign terrorism, or any other cause beyond the reasonable control of such Party ("Force Majeure"). Force Majeure does not include economic or market conditions, which affect a Party's cost, but not its ability to perform. The Party invoking Force Majeure shall give prompt, timely and adequate notice to the other Parties, by facsimile transmission or telephone confirmed promptly thereafter in writing, and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible. In the event of default or delay in Agreement performance due to any of the foregoing causes, then the time for completion of the services will be extended by a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

28. Texas Public Information Act

Each Party agrees that it is required to comply with Chapter 552 of the Texas Government Code (Public Information Act or Act) and this Agreement is subject to the Act.

29. Non-Appropriation

The awarding or continuation of this contract is dependent upon the availability of funding. Each Party's payment obligations are payable only and solely from current revenue funds appropriated and available for this contract. The absence of appropriated or other lawfully available funds shall render the Agreement null and void to the extent funds are not appropriated or available. A Party, who lacks appropriated funds, shall provide the other Parties with written notice of its inability to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement, or the reduction of any appropriation to an amount insufficient to permit that Party to pay its obligations under the Agreement.

30. Liabilities and Claims

30.1 No Party will be liable for any claims, damages or attorney fees arising from the negligence or unlawful acts of any of the other parties or their employees in relation to this Agreement. Each party will give written notice to the other Parties of any claim or other action,

including proceedings before an administrative agency ("Claim"), which is made or brought by any person, firm, corporation or other entity against that Party in relation to this Agreement within three (3) working days after being notified of it or the threat of it. Such notice shall include information identifying the claimant, the basis of the Claim, the tribunal involved and the person against whom the Claim is filed.

30.2 Approval of City and/or County of any service, report or other performance by District under this Agreement shall not constitute nor be deemed a release of the responsibility and liability of District, its employees, agents or associates for the accuracy and competency of their reports, information, documents, or services, nor shall approval be deemed to be the assumption of such responsibility by City and/or County for any defect, error, omission, act or negligence or bad faith by District, its employees, agents or associates.

31.0 Materials and Publications.

All reports, charts, schedules or other materials created and/or submitted by any Party under the terms of this Agreement, and all work performed under this agreement shall be the property of the creating Party. Any Party may publish the results of this Agreement at their own expense with notice to the other Parties. Any publication or other use shall include acknowledgement of any support received from the other Parties and the appropriate reference to any copyright. Subject to the rights of third Parties and compliance with confidentiality or privacy laws, each Party hereby grants the other Parties an irrevocable, non-exclusive, non-transferable and royalty-free license to use, reproduce, publish, revise and make disposition of, prepare derivative works from, distribute to the public, to perform and display publicly, for or on behalf of that Party according to law, any material (excluding software) that may be developed as part of the work under this Agreement, provided that it is an original work of authorship under the U. S. Copyright Act.

32.0 Prohibitions

The Parties shall comply with all applicable laws, rules, regulations and codes relating to conflict of interest, procurement, gratuities, sectarian activity and nepotism.

33.0 Reservation of Rights/Non-Waiver of Default

33.1 If any Party to this Agreement breaches this Agreement, the other Party(ies) shall be entitled to any and all rights and remedies provided for by Texas law and any applicable Federal laws or regulations. All rights of City, County and District under this Agreement are specifically reserved, and any payment, act or omission shall not impair or prejudice any remedy or right to County, City and/or District under it. The exercise or failure to exercise any right or remedy in this Agreement of City, County or District or the failure to act in accordance with law based upon the other Party's breach of the terms, covenants and conditions of this Agreement, or the failure to demand the prompt performance of any obligation under this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken or not taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

33.2 One or more acts of forbearance by any Party to enforce any provision of this Agreement or any payment, act or omission by any Party shall not constitute or be construed as a modification of this Agreement or a waiver of any breach or default which then exists or may subsequently exist.

34 . Counterparts

This agreement may be executed (by original or facsimile) by the Parties in one or more counterparts, each of which shall be considered one and the same agreement.

35 . Effective Date

This Agreement is effective on the latest date signed as set forth below.

The Parties enter into this Agreement on the Effective Date.

CITY OF AUSTIN

BY: _____
Printed Name: _____
Title: _____
Date: _____

TRAVIS COUNTY

BY: _____
Printed Name: _____
Title: _____
Date: _____

AUSTIN INDEPENDENT SCHOOL DISTRICT

BY: _____
Printed Name: _____
Title: _____
Date: _____