Item #46
Late Backup - ILA Ratification
APH

City of Austin Purchasing Office

Certificate of Exemption for Professional Services, Public Health and Safety or Other Exempt Purchase (Competitive)

DATE: 6/3/2020

DEPT: Austin Public Health

TO: Purchasing Officer or Designee

FROM: Stephanie Hayden, Director

PURCHASING POC: Linda Moore-Cohns

PHONE: (512) 972-5100

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of $50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Refer to Local Government Code 252.022 for a complete list of exemptions:
Link to Local Government Code

The City desires to seek responses from more than one vendor using an alternate procurement method selected by the City and declares this procurement to be exempt from the competitive solicitation procedures in Local Government Code Chapter 252.022.This Certificate of Exemption is hereby executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

   Please check the criteria listed below that applies to this request:

   - ☑ A procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of a municipality.
   - ☑ A procurement necessary to preserve or protect the public health or safety of the municipality's residents.
   - ☐ A procurement necessary because of unforeseen damage to public machinery, equipment, or other property.
   - ☐ A procurement of personal, professional, or planning services
   - ☐ Other exemption from Chapter 252.022:____________________

2. Describe this procurement (as applicable):
   - What it is for and why it is needed?
   - What public health and safety or other exempt attribute listed in Chapter 252.022 does this procurement contain?
   - Describe if a specific procurement method is desired to collect vendor responses such as a solicitation directed to a specific group of prequalified vendors or other, evaluation stages throughout the solicitation, etc.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

COVID-19 Class Determination for the following Social Services Agreement:

University of Texas at Austin, Dell Medical School – COVID19 Nursing Home Design Study (MA # 4700 20052800052)

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:
   - ☑ Scope of Work
   - ☑ List of tasks, schedule of deliverables or milestones, and other supporting documentation

4. Check the contract type (one-time or multi-term) and fill in the estimated dollar amount and term as applicable:
   ☑ This is a one-time request for $210,000

   ☐ This is a multi-term contract request for _______ (# months for base term) in the amount of $_________ with __________ (# of renewal options) for $__________ each for a total contract amount of $____________.

Recommended Certification — Leslie Bayd 6-3-2020
Originator — Date

Approved Certification — Stephanie Hayden 06/04/2020
Department Director or designee — Date
(For Austin Energy, Deputy General Manager or designee)

Purchasing Office Review — ______________________
Authorized Purchasing Office Staff — Date

Purchasing Office Management Review — ______________________
Purchasing Officer or designee — Date
(If required due to signature authority level)

From:	PURCHASING
To:	Purchasing Dept Contacts DL
Cc:	PURCHASING ALL STAFF DL; Cronk, Spencer; Rivera-Vandermyde, Nuria; Hart, Elaine; "Morgan"; Canally, Greg; Carr, Brandon
Subject:	PURCH ALERT -
Date:	Tuesday, March 17, 2020 4:12:00 PM
Attachments:	CLASS DF - Emergency Purchasing for Coronavirus or COVID19 (FINAL).pdf
Importance:	High

PURCH ALERT

The PURCH ALERT is a notice from the City of Austin Purchasing Office. PURCH ALERTS are directed to all City staff and typically concern City procurement regulations, policies, procedure or other procurement topics applicable to all City staff.

DATE: March 17, 2020

FROM: James Scarboro, Purchasing Officer

RE: Emergency Purchasing due to Coronavirus or COVID-19 – Class Determination

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NOTICE: Please see the attached Class Determination and associated Action below.

ACTION: When it is necessary to waive normally required competition in order to expedite a purchase necessary to support the City's response to the COVID-19 pandemic, as usual staff shall include a completed Certificate of Exemption (COE) form in the procurement file. The reason for the COE shall be *"COVID-19 Class Determination"*, with a copy of this document attached. No further signatures on the COE are required.

CITATION: This determination is established in accordance with Ch. 252.022(1)&(2). This determination only applies to emergency purchases made in support of the City's response to the OVID-19 pandemic. This determination does not apply to procurements that are not subject to Ch. 252, that do not allow for emergency exemptions.

MORE INFO: Contact your assigned Purchasing Office Liaison if you have questions in this regard. You are also welcome to contact the Executive Team, or me, James Scarboro, Purchasing Officer.

Do not respond directly to this PURCH ALERT. If you have questions, please contact the staff member identified in above. All previous PURCH ALERT notices are available on the Purchasing Office's intranet website located HERE.

MEMORANDUM

TO: Memo to File

FROM: James Scarboro, Purchasing Officer

DATE: March 16, 2020

SUBJECT: Emergency Purchasing due to Coronavirus or COVID-19 – Class Determination

Based on the following findings, in accordance with Local Government Code Ch. 252.022(a)(1) and (2) and related statutes and regulations as applicable, I hereby authorize the purchase of all supplies, equipment, products or services made in support of the City of Austin's response to the Coronavirus or Covid-19.

FINDINGS:

On March 6, 2020, Steve Adler, Mayor of the City of Austin, issued a Disaster Declaration, due to and to further mobilize the City's response to COVID-19. Starting that same day, City staff with delegated Procurement Authority began to make purchases in support of the City's response to COVID-19, using the Mayor's Disaster Declaration as temporary documentation for their actions.

On March 12, 2020, Austin City Council voted to extend the Mayor's Disaster Declaration indefinitely.

On March 13, 2020, State of Texas Governor, Greg Abbott, and President Trump, respectively declared State and National Emergencies due to COVID-19.

CLASS DETERMINATION:

Local Government Code Ch. 252.022(a)(1) exempts any procurement made because a public calamity that requires the immediate appropriation of money to relieve the municipality's residents or to preserve public property, and subsection (a)(2) exempts any procurement necessary to preserve or protect the public health or safety of the municipality's residents from compliance with the chapter.

This Class Determination is effective as of the date of the Mayor's first Disaster Declaration, March 6, 2020, and shall remain in effect until expressly rescinded by me. As the pandemic is still escalating within the United States at this time, there are no grounds currently upon which to determine when the emergency underlying this Class Determination will conclude.

All purchases made under this Class Determination are limited to goods and services that are reasonably related to the City's response to the Coronavirus or COVID-19. Purchasing Office staff, and all City staff operating under Procurement Authority delegated by the Purchasing Officer, will affirmatively document each purchase made under this authority is in support of the City's emergency response effort.

cc: Spencer Cronk, City Manager
Nuria Rivera-Vandermyde, Deputy City Manager
Elaine Hart, Chief Financial Officer
Anne Morgan, City Attorney
Greg Canally, Deputy Chief Financial Officer
Brandon Carr, Assistant City Attorney

DEBARMENT INFO.

SAM SYSTEM FOR AWARD MANAGEMENT

A NEW WAY TO SIGN IN - If you already have a SAM account, use your SAM email for login.gov.

Log In

Login.gov FAQs

ALERT: SAM.gov will be down for scheduled maintenance Saturday, 06/13/2020 from 8:00 AM to 1:00 PM

Entity Dashboard

- Entity Overview
- Entity Registration
  - Core Data
  - Assertions
  - Reps & Certs
  - POCs
- Exclusions
  - Active Exclusions
  - Inactive Exclusions
  - Excluded Family Members

RETURN TO SEARCH

University Of Texas At Austin
DUNS: 170230239 CAGE Code: 9B981
Status: Active
Expiration Date: 03/10/2021
Purpose of Registration: All Awards

110 Inner Campus Dr Mn 13
Austin, TX, 78712-1139,
UNITED STATES

Entity Overview

Entity Registration Summary

Name: University Of Texas At Austin
Business Type: Business or Organization
Last Updated By: Gina Bhakta
Registration Status: Active
Activation Date: 03/10/2020
Expiration Date: 03/10/2021

Exclusion Summary

Active Exclusion Records? No

GSA

IEM-P-20200 [illegible]
WWW1

Search Records | Data Access | Check Status | About | Help
Disclaimers | Accessibility | Privacy Policy
FAPIIS.gov | GSA.gov/IAE | GSA.gov | USA.gov

INTERLOCAL COOPERATION AGREEMENT
BETWEEN
THE CITY OF AUSTIN
AND
UNIVERSITY OF TEXAS DELL MEDICAL SCHOOL
FOR
SOCIAL SERVICES
(COVID-19 Nursing Home Study)

AGREEMENT NO. MA 4700 20052800052

AGREEMENT AMOUNT: $210,000

This Interlocal Cooperation Agreement ("Agreement") is made by and between The University of Texas at Austin Dell Medical School ("UT" or the "Coordinating Entity") and Austin Public Health, a department of the City of Austin (the "City" or "Austin Public Health" or "APH"). This Agreement is authorized and governed, in part, by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function, which it is authorized to perform individually under the applicable statutes of the State of Texas and/or its charter. Each is individually a "Party" and collectively, the "Parties." The effective date of this Agreement is June 1, 2020.

Austin Public Health (APH) is working with partner organizations to assist its efforts at accomplishing its mission to understand, respond to, and mitigate the spread of COVID-19. Through this study, UT will analyze, evaluate, and identify approaches for system improvements to protect residents and reduce the risks of the spread of COVID-19 in nursing homes, assisted living centers, and other long-term care facilities, to help Austin Public Health accomplish this mission.

The City will provide $210,000 in funds from APH General Funds in five (5) installments within 30 days following receipt of the respective deliverables outlined in Exhibit A.1-Program Work Statement for Deliverables to UT Dell Medical. In exchange for these funds, the City will receive the deliverables outlined in Exhibit A.1. The City can stop payment if the Agreement is terminated as described in section J. Termination and Exhibit B.3.

A. Term

The initial Term of this Agreement is June 1, 2020 through December 30, 2020 unless amended or terminated in accordance with other provisions of this Agreement.

B. Services and Deliverables to be Provided by UT

UT agrees to provide the following services and activities:

1. UT will share data with the City as described in Section G. Data Sharing and in accordance with the Data Management policies and procedures developed in accordance with Exhibit A.1. Program Work Statement for Deliverables.
2. UT will perform the work described in Exhibit A.1. Program Work Statement for Deliverables.
3. UT will comply with the terms of Exhibit B.3. Compensation Terms, including in making timely payment requests.

C. Services and Deliverables to be Provided by the City

1. The City will share data with UT as described in Section G. Data Sharing and in accordance with the Data Management policies and procedures developed in accordance with Exhibit A.1. Program Work Statement for Deliverables.
2. The City will make payments as described in Exhibit A.1. Program Work Statement for Deliverables and Exhibit B.3. Compensation Terms.
3. The City will monitor UT's performance, including by reviewing deliverables and timely notifying UT of any issues with compliance with this agreement.

D. Compliance with Laws

UT agrees to comply with all applicable federal, state, and local laws and regulations in providing services under this Agreement.

E. Right to Audit

UT agrees that the representative of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, or reproduce, any and all UT records related to its performance under this Agreement during normal business hours (Monday – Friday, 8 a.m. – 5 p.m., excluding state holidays), UT shall retain all such records in an accessible location for a period of three years after the termination of this Agreement or until all audit and litigation matters that the City has brought to the attention of UT are resolved, whichever is longer. UT agrees to refund to the City any overpayments disclosed by any such audit. UT shall include this section in all subcontractor agreements entered into in connection with this Contract.

F. Designation of Contract Managers

City's Contract Manager for this Agreement is Samantha Verde, Grant Coordinator. They will be responsible for assigning appropriate staff for oversight and monitoring of UT's performance under this Agreement.

City's Contract Manager:

- May meet with UT to discuss any operational issues or the status of the services or work to be performed;
- Will promptly review all written reports submitted by UT, will determine whether the reports comply with the terms of this Agreement, and will give UT timely feedback on the adequacy of its progress and reports; and
- Will review and approve payments in accordance with the approved payment plan and with City financial policies.

UT's Contract Manager for this Agreement is Jeff Steinberg, Director of Operations, who will represent UT with regard to performance of this Agreement and will be the designated point of contact for the City Contract Manager.

If either party replaces its Contract Manager, the party will promptly send written notice of the change to the other party. The notice will identify a qualified and competent replacement and provide contact information.

G. Data Sharing

Definitions. For the purposes of this section the following definitions apply:

1. "<u>Data</u>" includes information regarding facilities and patients reasonably necessary to complete the deliverables required by this agreement. It includes information regarding:
   a. Workflow and process improvement;
   b. General information on patients in facilities, including:
      i. Numbers of patients;
      ii. turnover rates;
      iii. lengths of stay;
      iv. key vendors serving the facilities;
      v. space requirements; and
      vi. previous study findings.

2. "<u>APH Data</u>" is any Data collected or generated by APH and provided to UT that was not otherwise collected or generated by UT.

3. "Commercial Purposes": The sale, lease, license, or other transfer of the Data to a for-profit organization or an insurance company. Commercial purposes shall also include uses of the Data by any organization, to perform contract research, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the Data to a for-profit organization.

Confidentiality. UT may require access to certain of City's confidential information (including employee information, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the deliverables to the City. UT acknowledges and agrees that the Confidential Information is the valuable property of the City and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure City and its licensors. UT (including its employees, subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of City, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of a court or other governmental authority with proper jurisdiction. In all cases, UT agrees to promptly notify the City before disclosing Confidential Information to permit the City reasonable time to seek an appropriate protective order. UT agrees to use protective measures no less stringent than UT uses in its business to protect its own most valuable information. In all circumstances, UT's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

Business Associate Agreement. The Parties will execute a Business Associate Agreement, attached as **Exhibit E**, before exchanging any Protected Health Information as defined by the Health Insurance Portability and Accountability Act ("HIPAA").

Privacy Law Compliance. The parties will comply with the privacy rules of HIPAA and of the Texas Health & Safety Code, including Chapter 181, and with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, subpart C, and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated thereunder, and any applicable state confidentiality laws.

Information Requests. The parties acknowledge that each is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this agreement, and documents related to this agreement, which are in the party's possession, or to which it has access, are presumed to be public and the party may release these records to the public unless an exception described in the Act applies to a document.

If either Party receives a request for the Data it received from the other party, including a subpoena or an authorized request under the Texas Public Information Act, it must inform the other Party within three days and at least five days before responding to the request. Pursuant to Tex. Health & Safety Code § 181.006, PHI is not public information subject to disclosure under the Texas Public Information Act ("TPIA") found in Chapter 552 of the Texas Government Code. The City and Coordinating Entity agree that the sharing of Data is an intergovernmental transfer of information, and not the release of public information.

Data Sharing. This Agreement section sets forth the terms and conditions pursuant by which APH and the Coordinating Entity will share Data:

1. UT will share with APH Data within UT's possession on an ongoing basis as needed to comply with this Agreement, including the deliverables required by Exhibit A.1. Program Work Statement for Deliverables.
2. APH will share Data with UT on an ongoing basis as so UT can complete the deliverables required by Agreement and so UT can assist APH in its public health mission of preventing or controlling disease, specifically COVID-19.
3. APH will continue to share Data with the UT until this agreement is terminated.
4. APH and UT will only use the Data shared pursuant to this agreement for the purposes of controlling and preventing disease. Any and all other studies or uses of the Data are prohibited and may not be pursued by UT, without the express permission of the City.
5. The APH Data and any resulting research shall not be used for any Commercial Purposes.
6. Any publication of the APH Data must include APH authorship and can only be published with express written approval of APH.
7. UT agrees to use appropriate data security measures and other safeguards to prevent the inappropriate Use or Disclosure of the APH Data in accordance with relevant laws and this Agreement.
8. UT shall not share the Data with other entities without the express permission of the City.
9. APH will retain ownership of the APH Data sent to UT.

10. Any research, modeling, and other work created with the APH Data shall require review and approval by APH, as well as co-authorship where appropriate.

H. Default

A party 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 receipt of notice of such failure as provided in Section K, fails timely to cure the failure within the time periods provided in Section J; or (b) fails to provide adequate assurance of performance as required under Section I.

I. Right to Assurance

When one Party to this Agreement in good faith has reason to question the other party's intent to perform, that Party may make demand on the other Party for written assurance of the intent to perform. The Party who is asked for assurance has ten (10) business days to provide notice of its written assurance of intent to perform. If the Party fails to provide the assurance, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

J. Termination

Termination with Cause. In the event of default by a party, the other party shall have the right to terminate the Agreement for cause, by written notice delivered by certified mail to the party in default. Unless the party giving notice specifies a different time in the notice, the contract is terminated 30 calendar days after the date of the notice. During this time period, the party alleged to be in default may cure the default or provide evidence sufficient to prove to the other party's reasonable satisfaction that the 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 and direct costs incurred as a result of the other party's default, 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.

Termination for Convenience. The City may terminate this Agreement for convenience at any time with 30 calendar days' written notice to UT. On receipt of the Notice, UT shall immediately stop performance of services (unless the Notice directs otherwise) and deliver all documents, programs, reports, and materials accumulated in performing this Agreement (whether finished or in process) to City within ten (10) business days, or as otherwise stated in the Notice. City shall pay UT for all reimbursable costs incurred up to the date of termination, in accordance with the deliverables and payment schedule of this Agreement.

The fixed-fee payment to UT shall be proportional to Services performed through the date of termination. However, in no event shall UT be entitled to recover any profit for unperformed Services. In the event of a termination for convenience, City shall have the right (but not the obligation) to take over the Services and complete them by contract or otherwise, including the option to require UT to assign any or all of its subcontracts to City.

Termination for Public Safety. The City will have the right to terminate this Agreement without prior notice, due to UT's or its vendors' action or inaction that results in an immediate threat to public health, safety, and welfare, and for which there is no cure.

K. Notices.

Any notice to be given under this Agreement will be considered delivered: (i) upon personal delivery to the person named below; (ii) within three days after deposit in the United States mail, if mailed by certified mail, return receipt requested, and addressed to the person designated below for receipt of notice; or (iii) one business day after being sent by overnight delivery by a commercial courier service that tracks shipping and notice delivery. In cases where there is an emergency or other need for immediate notice to be given, written notice may be faxed to the person designated below, provided that a written copy of the notice is also delivered promptly to the person by one of the three means identified above.

The parties designate the following persons for receipt of notices:

If to UT: The University of Texas at Austin, Senior Vice President and Chief Financial Officer, 110 Inner Campus Drive, Austin, Texas 78712 Attn: Darrell Bazzell

Copy to: The University of Texas at Austin, Dell Medical School, 1501 Red River Street, Stop Z0100, Austin, Texas 78712 ATTN: Assoc. VP of Legal Affais

If to City of Austin: Adrienne Sturrup, Assistant Director, HECE Division, Austin Public Health, Adrienne.Sturrup@austintexas.gov

The parties may change the person designated for receipt of notice by giving notice in writing to the other party, identifying the new person designated for receipt of notice and providing the person's mailing address and contact information.

L. Miscellaneous

Complete Agreement. This is the complete agreement between the parties regarding the COVID19 Nursing Home Design Study It supersedes any other agreement or understanding between the parties, written or oral, and any other commitments, promises, undertakings, understandings, proposals or representations of either party to the other, written or oral, concerning the subject matter of this Agreement.

Amendment. This Agreement may be modified or renewed only in a writing executed by each party following approval by each party's representative. Neither any representation nor promise made after the execution of this Agreement, nor any modification or amendment of this Agreement, will be binding on either party unless approved in writing by each party's representative.

Independent Contractors. This Agreement will not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the parties. City and UT are independent contractors. UT agrees and understands that the Agreement does not grant to UT or its employees any rights or privileges established for employees of the City.

Indemnification. To the extent authorized under the laws and constitution of Texas, the City and UT agree that each entity is responsible for its own proportionate share of any liability for any claims or damages arising out of or connected to its negligent acts or omissions in connection with this Agreement as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act.

Jurisdiction and Venue. This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of law principles, which would apply the law of any other jurisdiction. Venue for any dispute arising out of or concerning this Agreement shall be proper in Travis County.

Non-waiver. Failure of a party to exercise any right or remedy in the event of default by the other party shall not constitute a waiver of such right or remedy for any subsequent breach or default.

Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Assignment. Neither party shall transfer any right or obligation under this Agreement without the prior written consent of the other party.

No Third Party Beneficiaries. The parties agree that nothing in this Agreement shall be construed to be for the benefit of any third party.

Conflict of Interest. UT covenants that neither it, nor any member of its governing body, presently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner with the performance of services required to be performed under this Agreement. UT further covenants that no member of its governing body or its staff, subcontractors or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others, particularly those with which they have family, business, or other ties.

UT acknowledges that no officer, employee, independent consultant or elected official of City who is involved in the development, evaluation or decision-making process, or the performance of any solicitation regarding this Agreement shall have a financial interest, direct or indirect, in the Agreement. UT acknowledges that if it takes action, directly or indirectly, that results in a violation of this provision, City in its sole discretion may void this Agreement.

Dispute Resolution. If a dispute arises out of or relates to the 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, nor does it waive the state's sovereign immunity under the Eleventh Amendment to the United States Constitution. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 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 both parties, in which event the parties may proceed directly to mediation as described below.

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and UT 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 the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session, and UT agrees it will compel participation of its vendors in mediation if applicable to the dispute. The City and UT will share the mediator's fees equally and the parties 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 parties acknowledge that the mediation is non-binding.

Force Majeure. Each party to this agreement agrees to excuse the failure of another party to perform its obligations under this Agreement to the extent, and for a period of time during which, the failure is caused by an event of Force Majeure. An event of Force Majeure is any event or circumstance which prevents or delays performance of any obligation arising under this Agreement, but only if and to the extent the event or circumstance is not within the control of the party seeking to have its performance obligation excused thereby and which the party was unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include acts of God, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Events of Force Majeure do 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 timely and adequate notice to the other party, by e-mail or telephone confirmed promptly in writing, and shall use due diligence to remedy the effects of an event of Force Majeure, as soon as reasonably possible. In the event a party's performance of an obligation under this Agreement is delayed due to a Force Majeure event, then the time for completion of the party's obligation will be extended day-for-day, provided that an event of Force Majeure shall not extend the time for performance beyond December 31, 2020. If an event of Force Majeure affecting Contractor's performance continues for more than 30 days, the City shall have the right to terminate this Agreement upon written notice to Contractor delivered prior to the date that Contractor resumes performance.

Offset for Indebtedness. UT acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person who is in arrears to City of Austin for taxes, and of § 2-8-3 of the Austin City Code concerning the right of City of Austin to offset indebtedness owed City of Austin.

Holdover. If the initial term of this Agreement and any authorized period of renewal expire, UT agrees to hold over under the terms and conditions of this Agreement for a period of time as may be reasonably necessary, not to exceed 60 days, in order to renew or re-solicit this Agreement.

Appropriation. UT acknowledges that the City has provided notice that this Agreement is subject to the approval of the City of Austin City Council and the City's payment obligations to UT are payable only from current revenue funds appropriated or available for the purpose of this Agreement. If the City does not obtain the approval of the City Council or does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. City shall provide UT notice of the failure of City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit City to pay its obligations under the Agreement.

Ratification. The Parties agree to ratify continuation of the Parties' rights and obligations under the Agreement from June 1, 2020 until execution of this Agreement by both Parties.

AGREED AND APPROVED:

THE UNIVERSITY OF TEXAS AT AUSTIN, DELL MEDICAL SCHOOL

DocuSigned by:
Linda Shaunessy

By: ______________________ **Date:** 2020-06-03 | 13:10:36 PDT

D9E4718047F242B...

[Name]

Businesss Contracts Administrator

[Title]

CITY OF AUSTIN

By: ______________________ **Date:** ______________

[Name]

____

[Title]

EXHIBITS

Exhibit A – Program Forms
- **A.1** Program Work Statement for Deliverables

Exhibit B – Program Budget Forms
- **B.3** Compensation Terms

Exhibit C – Equal Employment/Fair Housing Office/Non-Discrimination Certification, Israel Verification, and Conflicts of Interest

Exhibit E – Business Associate Agreement

City of Austin – Austin Public Health

Work Statement for Deliverables

COVID-19 Nursing Home Study

1.0 Introduction/Overview and Purpose

On May 7, 2020, Austin City Council approved Resolution 20200507-059 directing the City Manager to plan and collaborate with outside entities, develop, fund, and implement programs, and report status updates to Council regarding efforts to prevent and mitigate the spread of COVID-19 among the residents and staff of nursing homes and other long-term care facilities, and other vulnerable persons.

Through this agreement, The University of Texas at Austin Dell Medical School will complete a study to analyze, evaluate, and identify approaches for system improvements to protect residents and reduce the risks of the spread of COVID-19 in nursing homes, assisted living centers, and other long-term care facilities. The primary emphasis in the first two phases will be on nursing homes with consideration for similar circumstances that affect assisted living centers, and other long-term care facilities.

2.0 Statement of Work

A. Study Services and Delivery

This study will be carried out in Austin/Travis County long-term care facilities in phases within the contract term. Austin Public Health is funding phase 1 and phase 2 of this study. This agreement does not include funding for Phases 3, 4 and 5 of the study. Phase 3, 4 and 5 will most likely be funded through funders other than the Austin Public Health:

Phase 1 – Focused Investigation - June 2020 – funded by Austin Public Health

The first phase of work will begin where the most immediate impact is likely to be had, focusing on expected issues involving:

• Proximity and physical space layout -resident and caregiver density, shared utilization of space, flow of materials and people through the facilities
• Operational frameworks and processes –care protocols, group activities, caregiver handoffs, scheduling and timing of care
• Staffing –personnel roles and responsibilities, staff concerns and priorities

All of these will need to be considered in the context of resident and family needs. The investigation will utilize design research methods that focus on in-situ observation and in-person interviews of administrators, staff, and residents. The interviews and observations will help reveal systemic gaps, conflicting priorities and collisions, and unrecognized or unexpressed behaviors that affect the care and safety of the residents and staff. Prior to any field research, the team will understand at depth the ongoing effort of the current emergency response spearheaded by the Health Authority, Austin Public Health, and the Nursing Home Task Force.

Activities and Deliverables:

i. Background research and immersion into existing emergency response
ii. Coordination with care facilities and oversight agencies
iii. Research observations in nursing home facilities with variations in size and layout
iv. Interviews with stakeholders (administrators, staff, patients)
v. Preliminary interim share out of initial insights from observed facilities
vi. Synthesis of research to detail initial findings, immediate possible responses, and areas for further study
vii. Report out to City Council and other stakeholders

b. Phase 2 – Broadened Investigation – July 2020 – funded by Austin Public Health

The focus of this second phase of work is to explore more deeply and broadly, as informed by insights from the first phase of work, and from input from the Health Authority, Austin Public Health, the Nursing Home Task Force, and other stakeholders. While the focus of this phase of work will depend substantially on the output from previous phase, some of the expected effort can be described:

• In-depth interviews with varying staff roles, residents, and family
• Role and utilization of technology
• Expansion of focus to assisted-living facilities, and other facilities of relevance (including representation from individual non-profit, corporate non-profit, and corporate for-profit operators, as willing and available)

Activities and Deliverables:

i. Additional site observations and synthesis of findings
ii. Development of new strategies and options for care models and frameworks, and initial notional design concepts for space, protocols, workflow, staffing, use of technology and other relevant ideas
iii. Report out to City Council and other stakeholders

d. Future Phases 3, 4, and 5

- Phase 3 (Design & Development) will have the goal to design and develop real responses / concepts to the strategic opportunities from the previous phases.
- Phase 4 (Prototype & Pilot) will have the goal to take the refined concepts and put them into practice with cooperating facilities.
- Phase 5 (Implementation & Recommendations) will have the goal to develop pathways to large-scale implementation, and associated recommendations that may be helpful to agencies with statutory oversight as they consider facilitating necessary change.

Changes may be made to this Work Statement based on need and when mutually agreed upon between The University of Texas at Austin Dell Medical School and Austin Public Health in writing.

3.0 Deliverables and Payment Schedule

Payment requests will be due every two weeks.

Deliverable #	Deliverable Description	Supporting Documentation Required	Deliverable Due Date	Payment Amount
#1	Study Form(s)	Form used to capture all study measurements	June 1, 2020	$50,000
	Data Management	Policy and procedures to accurately track, maintain and secure client level data.		
#2	Insurance	Insurance Certificate with all required coverages	June 15, 2020	$10,000
#3	Preliminary Interim Share out	Report of initial insights from observed facilities	June 30, 2020	$15,000
#4	Synthesis of Phase 1 Research	Document detailing the initial (phase 1) findings	July 17, 2020	$30,000

	Report Out to Austin City Council and other stakeholders	Written report and/or presentation detailing Phase 1 findings		
#5	Synthesis of Phase 2 Research	Document detailing phase 2 findings Document detailing the development of new strategies and options for care models and frameworks, and initial notional design concepts for space, protocols, workflow, staffing, use of technology and other relevant ideas	August 14, 2020	$95,000
	Report Out to Austin City Council and other stakeholders	Written report and/or presentation detailing Phase 1 and 2 findings		
#6	Comprehensive Final Report and Recommendations	Written report and presentation detailing all completed project phases findings and recommendations	December 31, 2020	$10,000
	Close out report	Submit a Closeout Report summarizing: • Successes • Challenges • Study Impact • Unmet Needs • Trends		
	FINAL reconciliation of all funds provided	General Ledger Detail report from Grantee's financial management system that reconciles all funds.		

City of Austin

Social Services Compensation Terms

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

2. **Request for Payment**

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

3. **Documentation**

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

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

   3.2.1. Appropriate supporting documentation includes:

   - General Ledger Detail report from the Grantee's financial management system
   - Transaction Detail by Account Report from the Grantee's financial management system
   - Other reports that meet all of the following specifications:
     - produced from the Grantee's accounting system with no manual changes or adjustments
     - submitted in PDF format
     - includes date the report was created
     - demonstrates specific expenses for which reimbursement is being requested
     - demonstrates that City of Austin funds are maintained in a separate numbered bank account or standalone general operating account that includes only City expenses and reimbursements.

4. **Right of Final Approval.**

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

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

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

5. <u>Payment</u>.

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

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

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

5.3.1 delivery of unsatisfactory services by the Grantee;

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

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

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

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

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

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

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

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

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

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

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

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

8. **Final Payment and Close-Out**

   8.2 The making and acceptance of final payment will constitute:

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

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

9. **Financial Terms**

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

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

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

   9.5 The City shall not be liable to Grantee for any costs which have been paid under other agreements or from other funds. In addition, the City shall not be liable for any costs incurred by Grantee which were: a) incurred prior to the effective date of this Agreement or outside the Agreement period as referenced in Section 2.1, or b) not billed to the City within 5 business days before the due date for the Grantee's annual Contract Progress Report or Contract Closeout Summary Report, whichever is applicable.

   9.6 Grantee agrees to refund to the City any funds paid under this Agreement which the City determines have resulted in overpayment to Grantee or which the City determines have not been spent by Grantee in accordance with the terms of this Agreement. Refunds shall be made by Grantee within 30 calendar days after a written refund request is submitted by the City. The City may, at its discretion, offset refunds due from any payment due Grantee, and the City may also deduct any loss, cost, or expense caused by Grantee from funds otherwise due.

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

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

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

10. Allowable and Unallowable Costs

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

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

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

- Be reasonable for the performance of the activity under the Agreement
- Conform to any limitations or exclusions set forth in this Agreement
- Be consistent with policies and procedures that apply uniformly to both government- financed and other activities of the organization
- Be determined and accounted in accordance with generally accepted accounting principles (GAAP)
- Be adequately documented

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

1. Alteration, construction, or relocation of facilities;
2. Cash payments, including cash equivalent gift cards such as Visa, MasterCard, and American Express;
3. Equipment and other capital expenditures;

4. Interest, other than mortgage interest as part of a pre-approved budget under this Agreement;
5. Organization costs (costs in connection with the establishment or reorganization of an organization);
6. Purchases of tangible, nonexpendable property, including fax machines, stereo systems, cameras, video recorder/players, microcomputers, software, printers, microscopes, oscilloscopes, centrifuges, balances and incubator, or any other item having a useful life of more than one year and an acquisition cost, including freight, of over $5,000;
7. Selling and marketing; or
8. Travel/training outside Travis County.

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

1. Alcoholic beverages;
2. Bad debts;
3. Compensation of trustees, directors, officers, or advisory board members, other than those acting in an executive capacity;
4. Contingency provisions (funds) *(Self-insurance reserves and pension funds are allowable);*
5. Defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringement;
6. Deferred costs;
7. Depreciation;
8. Donations and contributions, including donated goods or space;
9. Entertainment costs, other than expenses related to client incentives;
10. Fines and penalties (including late fees);
11. Fundraising and development costs;
12. Goods or services for officers' or employees' personal use;
13. Housing and personal living expenses for organization's officers or employees;
14. Idle facilities and idle capacity;
15. Litigation-related expenses (including personnel costs) in action(s) naming the City as a Defendant;
16. Lobbying or other expenses related to political activity;
17. Losses on other agreements or casualty losses;
18. Public relations costs, except reasonable, pre-approved advertising costs related directly to services provided under this Agreement;
19. Taxes, other than payroll and other personnel-related levies; or
20. Travel outside of the United States of America.

11. Ownership of Property.

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

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

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

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

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

City of Austin, Texas
Human Rights Commission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, *demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.*

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

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

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

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

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

Dated this 2020-06-03 | 13:10:36 PDT day of ____________, ________

University of Texas at Austin

CONTRACTOR

Authorized Signature: DocuSigned by: Linda Shaunessy D9E4716847F042B...

Title Businesss Contracts Administratc

PROHIBITION OF BOYCOTT OF ISRAEL VERIFICATION

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

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

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

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

A COURT OF COMPETENT JURISDICTION HAS RECENTLY ENJOINED THE ABOVE STATE LAW. HOWEVER, IF THIS INJUNCTION IS LIFTED OR STAYED BY A COURT OR OTHER ENTITY OF COMPETENT JURISDICTION, THIS SECTION WILL BE AN ENFORCEABLE AND REQUIRED TERM OF YOUR CONTRACT WITH THE CITY. IF YOU DISAGREE WITH THE ABOVE SECTION OF THE CONTRACT, PLEASE STRIKE THROUGH IT OR INDICATE YOUR OBJECTION IN THE EXCEPTIONS SECTION. YOUR CONTRACT WILL NOT BE AFFECTED BY STRIKING THROUGH THIS PROVISION, AT THIS TIME.

INTERESTED PARTIES DISCLOSURE (FORM 1295)

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

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

CHAPTER 176 CONFLICT OF INTEREST DISCLOSURE

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

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

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

Business Associate Agreement Provisions

This Business Associate Agreement (the "Agreement"), is made as of the 1st day of June, 2020 (the "Effective Date"), by and between The University of Texas at Austin Dell Medical school (Business Associate) and the City of Austin, a Texas home rule municipal corporation (Covered Entity) (collectively the "Parties") to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 ("the Privacy Rule") and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, subpart C ("the Security Rule"), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated thereunder, and any applicable state confidentiality laws.

RECITALS

WHEREAS, Business Associate provides program evaluation services to study approaches for system improvements to protect residents and reduce the spread of COVID19 in nursing homes, assisted living centers, and other long-term care facilities (Services) to or on behalf of Covered Entity;

WHEREAS, in connection with these Services, Covered Entity discloses to Business Associate certain protected health information that is subject to protection under the HIPAA Rules; and

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

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

A. <u>Definitions.</u> Terms used herein, but not otherwise defined, shall have the meaning ascribed by the Privacy Rule and the Security Rule.

1. <u>Breach</u>. "Breach" shall have the same meaning as the term "Breach" in 45 C.F.R. §164.402.

2. <u>Business Associate</u>. "Business Associate" shall have the same meaning as the term "business associate" in 45 C.F.R. §160.103 and in reference to the party to this agreement shall mean [enter name of BA].

3. <u>Covered Entity</u>. "Covered Entity" shall have the same meaning as the term "covered entity" in 45 C.F.R. §160.103 and in reference to the party to this agreement shall mean the City of Austin, a Texas home rule municipal corporation.

4. Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for a Covered Entity that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

5. HIPAA Rules. The Privacy Rule and the Security Rule, and amendments codified and promulgated by the HITECH Act are referred to collectively herein as "HIPAA Rules."

6. Incident. "Incident" means a Security Incident as defined by 45 CFR 164.304 and includes a potential or attempted unauthorized access, use, disclosure, modification, loss, disruption, or destruction of PHI or interference with system operations in an information system, which has the potential for jeopardizing the confidentiality, integrity, or availability of the PHI.

7. Individual. "Individual" shall mean the person who is the subject of the protected health information.

8. Protected Health Information ("PHI"). "Protected Health Information" or PHI shall have the same meaning as the term "protected health information" in 45 C.F.R. §160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of covered entity pursuant to this Agreement.

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

10. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services, or his or her Designee.

11. Sensitive Personal Information. "Sensitive Personal Information" shall mean an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: a) social security number; driver's license number or government-issued identification number; or account number, or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or b) information that identifies an individual and relates to: the physical or mental health or condition of the individual; the provision of health care to the individual; or payment for the provision of health care to the individual.

12. Subcontractor. "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 C.F.R. §160.103.

13. Unsecured PHI. "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under Section 13402(h)(2) of Public Law 111-5.

B. Purposes for which PHI May Be Disclosed to Business Associate. In connection with the Services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may disclose PHI to Business Associate for the purposes of [describe specific purpose of BAA].

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

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

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

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

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

5. notify Business Associate of any amendment to PHI to which Covered Entity has agreed affects a Designated Record Set maintained by Business Associate;

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

7. direct, review and control notification made by the Business Associate to individuals of a Breach of their Unsecured PHI in accordance with the requirements set forth in 45 C.F.R. § 164.404.

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

1. Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI except as necessary to provide Services described above to or on behalf of Covered Entity, and shall

not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by Covered Entity. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate shall in such cases:

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

(b) obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (a) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been Breached; and

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

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

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

4. Safeguards.

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

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

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

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

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

(a) Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that Set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524. If the PHI is in electronic format, the Individual shall have a right to obtain a copy of such information in electronic format, and if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the individual in accordance with HITECH Section 13405(c) of the HITECH Act. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible, but not later than **30 days** following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline by responding to the Individual's request within **15 days** following receipt of the request. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If Covered Entity maintains the requested records, Covered Entity, rather than Business Associate, shall permit access according to its policies and procedures implementing the Privacy Rule.

(b) Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. §164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. §164.526.

(c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI, whether PHI is in paper or electronic format, in accordance with 45 C.F.R. §164.528 and Section 13405(c) of the HITECH Act, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. Business Associate agrees to use its best efforts to assist Covered Entity in meeting this deadline but not later than **30 days** following receipt of the request. Such accounting must be provided without cost to the individual or Covered Entity if it is the first accounting requested by an individual within any 12 month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the individual in advance of the fee and is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the six years prior to the request (not including disclosures prior to the compliance date of the Privacy Rule) and shall be provided for as long as Business Associate maintains the PHI.

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

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

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

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

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

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

or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.

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

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

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

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

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

3. Right Title and Interest. Business Associate acknowledges and agrees that Covered Entity owns all right, title, and interest in and to all PHI, and that such right, title, and interest will be vested in Covered Entity. Neither Business Associate nor any of its employees, agents, consultants or assigns will have any rights in any of the PHI, except as expressly set forth above. Business Associate represents, warrants, and covenants that it will not compile and/or distribute analyses to third parties using any PHI without Covered Entity's express written consent.

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

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

2. Annual Guidance. For the first year beginning after the date of the enactment of the HITECH Act and annually thereafter, the Secretary shall annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the Sections referred to in Section F.1 "Security Measures" and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations. Business Associate

shall, at their own cost and effort, monitor the issuance of such guidance and comply accordingly.

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

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

G. Term and Termination.

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

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

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

   i. Provide an opportunity for Business Associate to cure the breach within 30 days of written notice of such breach, or end the violation and terminate this Agreement, whether it is in the form of a stand-alone agreement or an addendum to a Master Services Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or

   ii. Immediately terminate this Agreement whether it is in the form of a stand-alone agreement or an addendum to a Master Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

4. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, or maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in

writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI, and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI. This Section shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI.

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

I. Miscellaneous.

1. Indemnification. To the extent authorized by the laws and constitution of Texas, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate or its agents in connection with the performance of their duties under this Agreement. This indemnity shall apply even if Covered Entity is alleged to be solely or jointly negligent or otherwise solely or jointly at fault; provided, however, that a trier of fact finds Covered Entity not to be solely or jointly negligent or otherwise solely or jointly at fault. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

   Covered Entity shall provide Business Associate with timely notice of the existence of such proceedings and such information, documents, and other cooperation as reasonably necessary to assist Business Associate in establishing a defense to such action.

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

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

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

4. Survival. The respective rights and obligations of Business Associate under Section E.3 "Right Title and Interest" of this Agreement shall survive the termination of this Agreement.

5. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

   If to Covered Entity:
   City of Austin
   Austin Public Health
   Health Equity and Community Engagement Division 7201
   Levander Loop, Bldg. E
   Austin, TX 78702

   Attn: Adrienne Sturrup, Assistant Director

   Phone Number: 512-972-5167

   If to Business Associate:
   The University of Texas at Austin
   Senior Vice President and Chief Financial Officer
   110 Inner Campus Drive
   Austin, Texas 78712
   Attention: Darrell Bazzell

   Copy to:
   The University of Texas at Austin - Dell Medical School
   1501 Red River Street, Stop Z0100
   Austin, Texas 78712
   Attention: Assoc. Vice President of Legal Affairs

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

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

8. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or

delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.

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

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

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

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

13. No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not a party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.

14. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement.

15. Entire Agreement. This Agreement, together with all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof.

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

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

Agreed to:

BUSINESS ASSOCIATE	**COVERED ENTITY**
By: DocuSigned by: Linda Shaunessy (Authorized Signature)	By:________ (Authorized Signature)
Name: Linda Shaunessy (Type or Print)	Name:________ (Type or Print)
Title: Businesss Contracts Administrator	Title:________
Date: 2020-06-03 | 13:10:36 PDT	Date:________