

STATE OF TEXAS
COUNTY OF TRAVIS

AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES COMMISSION
AND
CORPUS CHRISTI – NUECES COUNTY PUBLIC HEALTH DISTRICT
FOR
THE TEXAS NURSE-FAMILY PARTNERSHIP PROGRAM

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COUNTY OF TRAVIS

**AGREEMENT BETWEEN THE
HEALTH AND HUMAN SERVICES COMMISSION
AND
CORPUS CHRISTI – NUECES COUNTY PUBLIC HEALTH DISTRICT
FOR
THE TEXAS NURSE-FAMILY PARTNERSHIP PROGRAM**

Article I. INTRODUCTION

This Agreement is between the Health and Human Services Commission (“HHSC”), an administrative agency within the executive department of the State of Texas, having its principal office at 4900 North Lamar Boulevard, Austin, Texas, 78751, and Corpus Christi – Nueces County Public Health District, (“CONTRACTOR”), having its principal office at 1702 Horne Road, Corpus Christi TX 78406. HHSC and CONTRACTOR may be referred to in this Agreement individually as “Party” and collectively as the “Parties.”

The Parties agree that the following terms and conditions shall apply to the services and deliverables to be provided by CONTRACTOR under this Agreement in consideration of certain payments to be made by HHSC.

Article II. BACKGROUND, INDUCEMENTS, AND OBJECTIVES

Section 2.01 Background

Nurse Family Partnership (NFP) was selected as one of the approved evidence-based home visiting models to be implemented in Texas through funds received through the Maternal, Infant, Early Childhood Home Visiting (MIECHV) statewide program grant, through the U.S. Department of Health and Human Services Health Resources and Services Administration (HRSA) awarded to HHSC in 2011.

Summary of Procurement Activities.

(a) HHSC issued a request for proposals for the development and operation of local Nurse-Family Partnership (NFP) programs in Texas to be funded by the Maternal, Infant, Early Childhood Home Visiting (MIECHV) statewide program grant on December 15, 2011. CONTRACTOR’s proposal for the establishment and implementation of a program was submitted and was evaluated and determined to be worthy of a grant award by HHSC.

(b) The procurement that is the subject of this Agreement is undertaken as a “best value” procurement under the terms of Section 2155.144, Texas Government Code.

Section 2.02 CONTRACTOR’s Experience and Qualifications.

CONTRACTOR has the skills, qualifications, expertise, financial resources and experience necessary to provide the services and deliverables described in this Agreement (the “Services and Deliverables”).

Section 2.03 Mission Objectives.

(a) CONTRACTOR's acknowledgement.

CONTRACTOR acknowledges its understanding that HHSC's overall objective in engaging CONTRACTOR pursuant to this Agreement is to obtain efficiently delivered services for the establishment and operation of local NFP programs.

(b) CONTRACTOR's understanding of HHSC's Mission objectives.

CONTRACTOR acknowledges its understanding of HHSC's desire to achieve the following primary Mission Objectives:

(1) To utilize registered nurses to regularly visit the homes of low-income, first-time mothers to provide services to:

- Improve pregnancy outcomes;
- Improve child health and development;
- Improve family economic self-sufficiency and stability; and
- Reduce the incidence of child abuse and neglect.
- Reduce the incidence of domestic violence among program participants
- Increase coordination and referrals for community resources and supports for families

(2) CONTRACTOR must contract with the Nurse-Family Partnership National Service Office in order to achieve these objectives.

(c) CONTRACTOR's understanding of the Meaning of the Term Program; Definitions

For purpose of this Agreement, the term "program" shall mean a local NFP program whose purpose is to provide education and guidance to low-income, first-time mothers through visits by highly trained registered nurses following NFP model elements and visit-to-visit guidelines as prescribed by the NFP National Service Office.

"Deliverables" means a written work product prepared, developed, or procured by CONTRACTOR as part of the Services under this Agreement for the use or benefit of HHSC or the State of Texas. The Deliverables to be provided by CONTRACTOR are incorporated as part of this Agreement in Exhibit B, CONTRACTOR'S Proposal, and Exhibit F, Reporting Requirements, which shall be deemed to include and incorporate any Deliverable upon which the Parties subsequently mutually agree or which by their nature are necessary or appropriate to the successful performance of CONTRACTOR's obligations under this Agreement.

"Grant" means the funding assistance authorized HHSC through MIECHV grant for the purpose of establishing an evidence-based home visitation model in selected high-risk communities and, working with other home visitation models to develop a community-based, comprehensive childhood system.

"HHSC" means the Texas Health and Human Services Commission.

"Services" means the tasks, functions, and responsibilities to be performed by CONTRACTOR under this Agreement, including any incidental or ancillary tasks, functions, or responsibilities not expressly described in this Agreement but that are necessary and appropriate for the successful performance of the CONTRACTOR's obligations under this Agreement.

(d) *CONTRACTOR's commitment and understanding.*

In entering into this Agreement, CONTRACTOR has had the opportunity to review and understand HHSC's mission and objectives, and based on such review and understanding, CONTRACTOR represents and warrants that it has the capacity to perform in accordance with the terms and conditions of this Agreement.

Section 2.04 *CONTRACTOR's Inducements*

(a) Based upon the CONTRACTOR'S representations, these representations may be regarded, as statements upon which HHSC may reasonably rely in connection with the award of this Agreement, are true, accurate, and complete to the best of CONTRACTOR's knowledge in all respects.

(b) HHSC is relying, and will continue to rely throughout the Term of this Agreement, upon the truthfulness, accuracy and completeness of such written assurances, as inducements made by the CONTRACTOR to HHSC to enter into this Agreement. Moreover, HHSC would not have entered into this Agreement with the CONTRACTOR but for such assurances.

(c) CONTRACTOR acknowledges that HHSC is relying upon such assurances and acknowledges their materiality and significance. In light of the foregoing, the CONTRACTOR hereby unequivocally represents to HHSC that the following statements of fact are true, accurate and complete to the best of CONTRACTOR's knowledge in all respects:

Section 2.05 *Agreement Elements*

(a) *Agreement Documentation*

The contract between the Parties will consist of this final, executed Agreement, including the following Exhibits to the Agreement:

- (1) The document entitled "HHSC RFP 529-12-0066" (incorporated by reference as Exhibit A to this Agreement);
- (2) The document entitled "CONTRACTOR'S Proposal" (incorporated by reference as Exhibit B to this Agreement);
- (3) The document entitled "HHSC's Uniform Contract Terms and Conditions, Version 1.4.1, with Special Condition 16.01(incorporated by reference as Exhibit C to this Agreement)"; and
- (4) The document entitled "Uniform Grant Management Standards Governor's Office of Budget and Planning (As Adopted June 2004)", (incorporated by reference as Exhibit D to this Agreement).
- (5) The document entitled "Additional Contract Requirements", (attached hereto and incorporated as Exhibit E to this Agreement).
- (6) The document entitled "Reporting Requirements", (attached hereto and incorporated as Exhibit F to this Agreement).
- (7) The document entitled "Performance Measures", (attached hereto and incorporated as Exhibit G to this Agreement).
- (8) The document entitled "Contract Budget", (attached hereto and incorporated as Exhibit H to this Agreement).

(b) *Order of Documents*

In the event of any conflict or contradiction between or among the Agreement elements, the documents shall control in the following order of precedence:

- (1) This final, executed Agreement (excluding Exhibits, which are specifically incorporated by reference as indicated below):

- (2) The document entitled “HHSC RFP 529-12-0066” (incorporated by reference as Exhibit A to this Agreement);
- (3) The document entitled “HHSC’s Uniform Contract Terms and Conditions, Version 1.4.1, including Special Condition 16.01(incorporated by reference as Exhibit C to this Agreement)”;
- (4) The document entitled “Uniform Grant Management Standards Governor’s Office of Budget and Planning (As Adopted June 2004)” (incorporated by reference as Exhibit D to this Agreement);
- (5) The document entitled “Additional Contract Requirements”, (attached hereto and incorporated as Exhibit E to this Agreement);
- (6) The document entitled “CONTRACTOR’S Proposal” (incorporated by reference as Exhibit B to this Agreement); and
- (7) The document entitled “Reporting Requirements”, (attached hereto and incorporated as Exhibit F to this Agreement).
- (8) The document entitled “Performance Measures”, (attached hereto and incorporated as Exhibit G to this Agreement).
- (9) The document entitled “Contract Budget”, (attached hereto and incorporated as Exhibit H to this Agreement).

Section 2.06 *Term of the Agreement*

(a) The term of this Agreement will begin upon execution, as defined by HHSC’s Uniform Terms and Conditions, Version 1.4, and will expire on August 31, 2013 (the “Expiration Date”) unless terminated sooner or extended pursuant to the terms and conditions of this Agreement.

(b) The Parties may extend the Term of the Agreement by mutual written agreement for a maximum period of four (4) years, or as necessary to complete the mission of this Agreement, contingent upon the continued availability of funding. All reserved contract extensions beyond the Expiration Date set forth herein will be subject to good faith negotiations between the Parties and mutual agreement to the terms and conditions set forth in the extensions.

Section 2.07 *Project Managers and other Key Staff*

The following Project Managers will serve as the primary contacts for all administrative issues:

Tamara Lewis, MPH, RD, LD
Program Manager, Texas Nurse Family Partnership
Health and Human Services (HHSC)
1106 Clayton Lane, Ste. 225E
Austin, Texas 78723
Tel # (512) 706-7283
E-mail: Tamara.Lewis@hhsc.state.tx.us

Annette Rodriguez, MPH,
Director of Public Health
1702 Horne Road,
Corpus Christi, TX 78416
Tel# (361) 826-7205
Fax# (361) 826-4526
E-mail: Annetter@cctexas.com

The following Contract Manager will serve as primary contact for all invoices, purchase vouchers and reporting deliverables:

Vicki Echols
Contract Manager
Health and Human Services Commission (HHSC)
11209 Metric Boulevard, Building H, MC 340,
Austin, Texas 78758
Tel. # (512) 491-5556
Fax # (512) 491-1974
E-mail: vicki.echols@hhsc.state.tx.us

The following State Nurse Consultant will serve as primary contact for all clinical requirements:

Rebecca Pack, RN, MN, PHD State Nurse Consultant
Health and Human Services (HHSC)
1106 Clayton Lane, Suite 225E
Austin, Texas 78723
Tel. # (512) 706-7284
Fax # (512) 706-7340
E-mail: rebecca.pack@hhsc.state.tx.us

Section 2.08 Notices

(a) *Delivery of Notice*

Any notice or other legal communication required or permitted to be made or given by either Party pursuant to this Agreement will be in writing and deemed to have been duly given:

- (1) Three (3) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested;
- (2) When transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine; or
- (3) When delivered if delivered personally or sent by express courier service.

(b) *Notice to CONTRACTOR*

Any notice under this Agreement will be sufficient if delivered to the following persons or their successors.

- (1) Communications that are routine and administrative in nature should be sent to the Project Managers identified in Section 2.08.
- (2) Legal notices should be sent to the following:
Thomas M. Suehs, Executive Commissioner
Carey Smith, General Counsel
Health and Human Services Commission
4900 North Lamar Blvd.
Austin, Texas 78751
Fax: (512) 424-6586

Annette Rodriguez, MPH,
Director of Public Health
1702 Horne Road,
Corpus Christi, TX 78416
Fax# (361) 826-4526

(c) ***Change of Designee***

Either Party may change the above-referenced designees or address with five (5) days written notice to the other Party.

Section 2.09 ***Laws and Regulations Governing the Administration of the Agreement***

The Parties shall administer the Agreement in accordance with the following rules and regulations:

- (1) Texas Government Code, Chapter 531, as amended or modified, and any administrative rules adopted thereunder;
- (2) Uniform Grant Management Standards (UGMS) as provided in Exhibit D; and
- (3) Any other applicable provisions of state or federal law.

Section 2.10 ***Laws and Regulations Governing the Procurement of the Services***

It is the express intention of the Parties that this Agreement be a procurement of services meeting all applicable requirements of the following:

- (1) Texas Government Code, Section 2155.144;
- (2) 1 T.A.C. Chapter 391; and
- (8) Any other applicable provisions of state or federal law.

Section 2.11 ***Conflicts of Interest***

(a) ***Representation.***

CONTRACTOR agrees to comply with applicable state and federal laws, rules, and regulations regarding conflicts of interest in the performance of its duties under this Agreement. CONTRACTOR warrants that it has no interest, and will not acquire any direct or indirect interest, that would conflict in any manner or degree with its performance under this Agreement.

(b) ***General Duty Regarding Conflicts of Interest.***

CONTRACTOR will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. CONTRACTOR will operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to the activities conducted under this Agreement with the State of Texas.

(c) CONTRACTOR shall abide by the terms and conditions of the Article 12 of the HHSC Uniform Terms and Conditions, regarding Conflicts of Interest, as made part of this Agreement in Exhibit C.

Section 2.12 *Laws and Regulations Governing Civil Rights*

(a) CONTRACTOR agrees to comply with state and federal anti-discrimination laws, including without limitation:

- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
- (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
- (3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
- (4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
- (5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
- (6) Food Stamp Act of 1977 (7 U.S.C. §200 *et seq.*); and
- (7) The HHS agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

CONTRACTOR agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.

(b) CONTRACTOR agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. CONTRACTOR agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin.

CONTRACTOR also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

(c) CONTRACTOR agrees to comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(d) Upon request, CONTRACTOR will provide HHSC Civil Rights Office with copies of all of the CONTRACTOR'S civil rights policies and procedures.

(e) CONTRACTOR must notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
TTY Toll Free: (877) 432-7232

Fax: (512) 438-5885.

Section 2.13 *Federal Funding Accountability and Transparency Act (FFATA) Reporting.*

(1) Definitions:

(a) Prime Recipient for this Contract: Texas Health and Human Services Commission

(b) Sub-recipient: means a Contractor who receives federal funds via the prime recipient (HHSC) and are accountable to the recipient for the use of those Federal funds.

(2) Contractor must report to HHSC the data elements required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282) and listed in the Sub-recipient Reporting section below if Contractor is a Sub-recipient. No direct payment will be made to Contractor for providing any reports required under these provisions, as the cost of producing such reports will be deemed included in the Contract price. The reporting requirements below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes will be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract. HHSC may provide written notice to Contractor of any such change in accordance with this Contract, but such notice will not be a condition precedent to Contractor's duty to comply with revised OMB reporting requirements.

(3) Failure to submit a required report or additional requested information by the due date required by HHSC constitutes a breach of contract, may result in delayed payment and/or the imposition of sanctions and remedies, and, if appropriate, emergency action; and may adversely affect evaluation of Contractor's future contracting opportunities with the HHSC.

(4) Sub-recipient Reporting - If Contractor is a Sub-recipient, Contractor will report to HHSC as set forth below unless otherwise exempted. All required information must be made publicly available according to federal law.

(5) Sub-award Information - A Sub-recipient will provide the following information to HHSC according to the timeframes communicated by the Department but no later than the end of the month following the month of award of a contract with a value of \$25,000 or more, (and any modifications to these contracts that change previously reported data):

- (a) Unique identifier (DUNS Number) for the Contractor receiving the award and for the Contractor's parent company, if the Contractor has a parent company;
- (b) Name of the Contractor;
- (c) Contractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district; and
- (d) Contractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(6) Sub-recipient Officers' Total Compensation (Top 5) - According to the timeframes communicated by the Department but no later than the end of the month following the month of a contract award, and annually thereafter, the Contractor will report the names and total compensation of each of the five most highly compensated executives for the Contractor's preceding completed fiscal year if: in the Contractor's preceding fiscal year, the Contractor received:

- (a) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
- (b) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
- (c) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(7) Funds received under the following conditions and/or by the indicated entities are exempt from the reporting requirement, though they may be reported voluntarily:

- (a) Sub-awards with a value less than \$25,000;
- (b) Funds received by entities with gross incomes of less than \$300,000 in the previous tax year;
- (c) Federal awards to individuals which are unrelated to any business or non-profit organization;
- (d) Funds used to provide monies to classified activities;
- (e) Awards made under the American Reinvestment and Recovery Act (ARRA) 1512; and,
- (f) Cooperative Research and Development Agreements (CDRAs).

Section 2.14 *Federal Laws and regulations pertaining to this agreement*

CONTRACTOR agrees to comply and to cause each of its contractors or subcontractors to comply with all relevant state and federal requirements as applicable including:

HRSA/MIECHV grant and federal requirements

(1) HHS Grants Policy Statement

HRSA grant and cooperative agreement awards, through which this contract is funded, are subject to the requirements of the HHS Grants Policy Statement (HHS GPS) that are applicable based on recipient type and purpose of award. This includes, as applicable, any requirements in Parts I and II of the HHS GPS that apply to the award. The HHS GPS is available at <http://www.hrsa.gov/grants/>. The general terms and conditions in the HHS GPS will apply as indicated unless there are statutory, regulatory, or award-specific requirements to the contrary (as specified in the HHSC Notice of Award).

(2) Federal Uniform Administrative Requirements

CONTRACTOR must comply with the administrative requirements outlined in 45 CFR Part 92 [Uniform Administrative Requirements For Grants And Cooperative Agreements to State, Local, and Tribal Governments](#), as appropriate.

(3) ***Cultural and Linguistic Competence***

HRSA is committed to ensuring access to quality health care for all. Quality care means access to services, information, materials delivered by competent providers in a manner that factors in the language needs, cultural richness, and diversity of populations served. Quality also means that, where appropriate, data collection instruments used should adhere to culturally competent and linguistically appropriate norms. For additional information and guidance, refer to the National Standards for Culturally and Linguistically Appropriate Services in Health Care (CLAS) published by HHS and available online at <http://www.omhrc.gov/CLAS>. Additional cultural competency and health literacy tools, resources and definitions are available online at <http://www.hrsa.gov/culturalcompetence> and <http://www.hrsa.gov/healthliteracy>.

EO 13166, August 11, 2000, requires recipients receiving Federal financial assistance to take steps to ensure that people with limited English proficiency can meaningfully access health and social services. A program of language assistance should provide for effective communication between the service provider and the person with limited English proficiency to facilitate participation in, and meaningful access to, services. The obligations of recipients are explained on the OCR website at <http://www.hhs.gov/ocr/lep/revisedlep.html>.

(4) ***Trafficking in Persons***

CONTRACTOR and CONTRACTOR's sub-recipients understand that this contracts issued under this federal grant award is subject to the requirements of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). For the full text of the award term, go to <http://www.hrsa.gov/grants/trafficking.html>.

(5) ***Healthy People 2020***

Healthy People 2020 is a national initiative led by HHS that sets priorities for all HRSA programs. The initiative has four overarching goals: (1) Attain high-quality, longer lives free of preventable disease, disability, injury, and premature death; (2) Achieve health equity, eliminate disparities, and improve the health of all groups; (3) Create social and physical environments that promote good health for all; and (4) Promote quality of life, healthy development, and healthy behaviors across all life stages. The program consists of over 40 topic areas, containing measurable objectives. HRSA has actively participated in the work groups of all the topic areas and is committed to the achievement of the Healthy People 2020 goals. More information about Healthy People 2020 may be found online at <http://www.healthypeople.gov/>.

(6) ***National HIV/AIDS Strategy (NHAS)***

The National HIV/AIDS Strategy (NHAS) has three primary goals: 1) reducing the number of people who become infected with HIV, 2) increasing access to care and optimizing health outcomes for people living with HIV, and 3) reducing HIV-related health disparities. The NHAS states that more must be done to ensure that new prevention methods are identified and that prevention resources are more strategically deployed. Further, the NHAS recognizes the importance of early entrance into care for people living with HIV to protect their health and reduce their potential of transmitting the virus to others. HIV disproportionately affects people who have less access to prevention, care and

treatment services and, as a result, often have poorer health outcomes. Therefore, the NHAS advocates adopting community-level approaches to identify people who are HIV-positive but do not know their serostatus and reduce stigma and discrimination against people living with HIV.

To the extent possible, program activities should strive to support the three primary goals of the NHAS. As encouraged by the NHAS, programs should seek opportunities to increase collaboration, efficiency, and innovation in the development of program activities to ensure success of the NHAS. Programs providing direct services should comply with Federally-approved guidelines for HIV Prevention and Treatment (see <http://www.aidsinfo.nih.gov/Guidelines/Default.aspx> as a reliable source for current guidelines). More information can also be found at <http://www.whitehouse.gov/administration/eop/onap/nhas>

(7) ***Smoke-Free Workplace***

The Public Health Service strongly encourages all award recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. Further, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

(8) ***Medicare and Medicaid anti-kickback statute***

Recipients and sub-recipients of Federal funds are subject to the strictures of the Medicare and Medicaid anti-kickback statute (42 U.S.C. 1320a - 7b(b)) and should be cognizant of the risk of criminal and administrative liability under this statute, specifically under 42 U.S.C. 1320 7b(b) Illegal remunerations which states, in part, that whoever knowingly and willfully: (A) Solicits or receives (or offers or pays) any remuneration (including kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring (or to induce such person to refer) an individual to a person for the furnishing or arranging for the furnishing of any item or service, OR (B) In return for purchasing, leasing, ordering, or recommending purchasing, leasing, or ordering, or to purchase, lease, or order, any goods, facility, services, or itemFor which payment may be made in whole or in part under subchapter XIII of this chapter or a State health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years, or both.

(9) ***Allowable Costs***

Contract funds may be used only for:

- (a) The allowable costs of the CONTRACTOR, including allowable costs in the form of payments to fixed-price contractors (see [OMB Circular A-87](#)) for a list of allowable costs; and
- (b) Not any fee or profit (or other increment above allowable costs) to the CONTRACTOR.

(10) ***Acknowledgement of federal funds***

CONTRACTOR and CONTRACTOR's sub-recipients will acknowledge federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds. CONTRACTOR and CONTRACTOR's sub-recipients specifically agree to state (1) the percentage and dollar amounts of the total program or project costs financed with Federal

funds and (2) the percentage and dollar amount of the total costs financed by nongovernmental sources.

(11) Procedural requirements

- (a) CONTRACTOR and CONTRACTOR's sub-recipients will not make any change in the administration of the MIECHV grant program, including but not limited to extensions, change in scope, and budget modifications, unless HHSC agrees to and has obtained and transmitted HRSA's written prior approval of the proposed change to CONTRACTOR. Any request for change must be in writing and be submitted through HHSC in a manner to ensure time to obtain the necessary prior approval from HRSA..
- (b) CONTRACTOR and CONTRACTOR's sub-recipients will retain all financial records, supporting documents, statistical records, and other records pertinent to this funding for a period of three years from the date of the submission of their final financial report to HHSC, that date being September 30, 2017 unless HRSA or either party requests to extend the date.
- (c) CONTRACTOR and CONTRACTOR's sub-recipients will permit independent auditors of HRSA or HHSC or either or their designees to access records and financial statements.
- (b) CONTRACTOR and CONTRACTOR's sub-recipients will adopt and enforce on-the-job seat belt policies and programs that require its officers and employees to use seat belts when operating vehicles, whether owned or rented by the sub-recipient or the officer or employee.

(12) Standards of conduct

- (a) CONTRACTOR and CONTRACTOR's sub-recipients are subject to the Medicare and Medicaid anti-kickback statute (42 U.S.C. § 1320a-7b(b)), which imposes criminal and administrative liability on a person who knowingly and willfully solicits or receives remuneration in return for (A) referring an individual to a person to furnish or arrange to furnish any item or service; or (B) purchasing, leasing, ordering, or recommending purchasing, leasing, or ordering goods, facilities, services, or items.
- (b) CONTRACTOR and CONTRACTOR's sub-recipients will establish written standards of conduct to prevent employees, consultants, members of governing bodies, and others who may be involved in grant-support activities from using their positions for purposes that are, or that appear to be, motivated by a desire for private financial gain for themselves or others, such as those with whom they have family, business, or other ties.

(13) Foreign activities

CONTRACTOR and CONTRACTOR's sub-recipients agree that any MIECHV activities carried on outside the United States will be coordinated as necessary with appropriate government authorities and using appropriate licenses, permits, or approvals. (See 2.17 below)

In addition, CONTRACTOR and CONTRACTOR's sub-recipients will comply with all of the following laws:

- (1) The federal Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.* (implemented at 45 C.F.R. pt. 91), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance;
- (2) 20 U.S.C. § 7183, which prohibits smoking in any portion of an indoor facility used to provide federally funded health, day care, education, or library services to children under the age of 18. All sub-recipients must certify in writing that they comply with these provisions;
- (3) the federal Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.*, and regulations found at 45 C.F.R. pt. 82, which requires the provision of a drug-free workplace;

- (4) the Hatch Act, 5 U.S.C. §§ 1501—1528, which restricts the political activities of officers and employees of a state or local governmental body, including a council of government;
- (5) the Public Health Security and Bioterrorism Preparedness and Response Act, Public Law 107-188, as amended, and regulations codified at 42 C.F.R. part 73, which restrict the possession of and protects against the misuse of certain agents and toxins;
- (6) the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, and regulations codified at 40 C.F.R. part 247, which require that, with respect to certain procurements, a procuring entity prefer products containing recycled materials identified in EPA guidelines; and
- (7) the USA PATRIOT Act, 18 U.S.C. §§ 175—175c, which restricts access to biological agents, toxins, or delivery systems in certain circumstances.

Section 2.15 *Prior Approval of Written Materials*

CONTRACTOR shall submit for approval by HHSC all written program materials (including any promotional materials, client notifications, business presentations, or client materials) to be created or acquired with HHSC funds under the contract. Client-related materials developed for mass distribution must be submitted for approval 15 business days in advance of distribution for review and approval. CONTRACTOR shall submit such written materials prior to their use or distribution regarding this contract.

Section 2.16 *Special Terms and Conditions-HIPPA-Protected Health Information*

To the extent that Contractor creates, reviews, receives, uses or discloses Protected Health Information (PHI), Contractor is a Business Associate of HHSC and the Business Associate Agreement (BAA) (Exhibit I, attached and incorporated by reference) applies.

To the extent that the BAA conflicts with UCTC v.1.4.1, the BAA controls.

Section 2.17 *Prohibition Against Performance Outside the United States*

(a) Findings

(1) HHSC finds the following:

- (a) HHSC is responsible for administering several public programs that require the collection and maintenance of information relating to persons who apply for and receive services from HHSC programs. This information consists of, among other things, personal financial and medical information and information designated “Confidential Information” under state and federal law and this Agreement. Some of this information may, within the limits of the law and this Agreement, be shared from time to time with CONTRACTOR or a subcontractor for purposes of performing the Services or providing the Deliverables under this Agreement.
- (b) HHSC is also responsible for collecting and maintaining personal information, including personal financial and medical information, concerning persons employed by HHSC and other health and human services agencies. Some of this information may be shared from time to time with CONTRACTOR or a subcontractor or collected and maintained by

CONTRACTOR or a subcontractor for purposes of performing the Services or providing the Deliverables under this Agreement.

- (c) HHSC is legally responsible maintaining the confidentiality and integrity of information relating to applicants and recipients of HHSC services and employees of HHS agencies and ensuring that any person or entity that receives such information, including CONTRACTOR and any subcontractor, is similarly bound by these obligations.
- (d) HHSC also is responsible for the development and implementation computer software and hardware to support HHSC programs. These items are paid for, in whole or in part, with state and federal funds. The federal agencies that fund these items maintain a limited interest in the software and hardware so developed or acquired.
- (e) Some of the software used or developed by HHSC may also be subject to statutory restrictions on the export of technology to foreign nations, including but not limited to the Export Administration Regulations, 15 C.F.R. Parts 730-774.

(2) In view of these obligations, and to ensure accountability, integrity, and the security of the information maintained by or for HHSC and the work performed on behalf of HHSC, HHSC DETERMINES that it is necessary and appropriate to require that:

- (a) All work performed under this Agreement must be performed exclusively within the United States; AND
- (b) All information obtained by CONTRACTOR or a subcontractor under this Agreement must be maintained within the United States.

(3) Further, HHSC finds it necessary and appropriate to forbid the performance of any work or the maintenance of any information relating or obtained pursuant to this Agreement to occur outside of the United States except as specifically authorized or approved by HHSC.

(b) *Meaning of “within the United States” and “outside the United States”*

(1) As used in this Section 2.17, the term “within the United States” means any location inside the territorial boundaries comprising the republic of the United States of America, including of any of the 48 coterminous states in North America, the states of Alaska and Hawaii, and the District of Columbia.

(2) Conversely, the phrase “outside the United States” means any location that is not within the territorial boundaries comprising the republic of the United States of America, including of any of the 48 coterminous states in North America, the states of Alaska and Hawaii, and the District of Columbia.

(c) *Maintenance of Confidential Information*

(1) CONTRACTOR and all subcontractors, vendors, agents, and service providers of or for CONTRACTOR must not allow any Confidential Information that CONTRACTOR receives from or on behalf of HHSC to leave the United States by any means (physical or electronic) at any time, for any period of time, for any reason.

(2) CONTRACTOR and all subcontractors, vendors, agents, and service providers of or for CONTRACTOR must not permit any person to have remote access to HHSC information, systems, or Deliverables from a location outside the United States.

(d) *Performance of Work under Agreement*

(1) Unless otherwise approved in advance by HHSC in writing, and subject to the exceptions specified in paragraph (e) of this Section 2.17, CONTRACTOR and all subcontractors, vendors, agents, and service providers of or for CONTRACTOR must perform all services under the Agreement, including all tasks, functions, and responsibilities assigned and delegated to CONTRACTOR under this Agreement, within the United States.

(a) This obligation includes, but is not limited to, all Services, including but not limited to information technology services, processing, transmission, storage, archiving, data center services, disaster recovery sites and services, customer support), medical, dental, laboratory and clinical services.

(b) All custom software prepared for performance of this Agreement, and all modifications of custom, third party, or vendor proprietary software, must be performed within the United States.

(2) Unless otherwise approved in advance by HHSC in writing, and subject to the exceptions specified in paragraph (e) of this Section 2.17, CONTRACTOR and all subcontractors, vendors, agents, and service providers of or for CONTRACTOR must not permit any person to perform work under this Agreement from a location outside the United States.

(e) *Exceptions*

(1) COTS Software - The foregoing requirements will not preclude the acquisition or use of commercial off-the-shelf software that is developed outside the United States or hardware that is generically configured outside the United States.

(2) Foreign-made Products and Supplies - The foregoing requirements will not preclude CONTRACTOR from acquiring, using, or reimbursing products or supplies that are manufactured outside the United States, provided such products or supplies are commercially available within the United States for acquisition or reimbursement by HHSC.

(3) HHSC Prior Approval - The foregoing requirements will not preclude CONTRACTOR from performing work outside the United States that HHSC has approved in writing and that HHSC has confirmed will not involve the sharing of Confidential Information outside the United States.

(f) *Disclosure*

CONTRACTOR must disclose all Services and Deliverables under or related to this Agreement that CONTRACTOR intends to perform or has performed outside the United States, whether directly or via subcontractors, vendors, agents, or service providers.

(g) *Remedy*

(1) CONTRACTOR's violation of this Section 2.17 will constitute a material breach in accordance with Section 11.02 of version 1.4.1 of the HHSC Uniform Contract Terms and Conditions. CONTRACTOR will be liable to HHSC for all actual and consequential damages in accordance with the HHSC Uniform Contract Terms and Conditions.

(2) For breach of the requirements under this Section 2.17, HHSC may terminate the Agreement with Notice to CONTRACTOR at least 1 calendar day before the effective date of such termination.

Article III. SCOPE OF WORK – SERVICES AND DELIVERABLES

Section 3.01 *Scope of the Services and Deliverables.*

CONTRACTOR will provide the Services and Deliverables in accordance with:

- (1) CONTRACTOR'S Proposal (Exhibit B); and,
- (2) Reporting Requirements (Exhibit F)
- (3) Performance Measures (Exhibit G)

Section 3.02 *Performance Measurement and Monitoring.*

(a) HHSC will monitor CONTRACTOR's performance of the Services and production of the Deliverables identified in the above Section 3.01 of this Agreement on the Effective Date and as they may be modified from time-to-time by mutual agreement of the Parties.

Section 3.03 *Additional State of Texas or Texas Government Customers.*

(a) CONTRACTOR may propose or offer services similar in scope, kind, and quality to the Services under this Agreement to other State of Texas administrative agencies and other governmental customers in the State of Texas.

(b) Such proposals or offers to other potential Texas government customers may propose to utilize facilities and products CONTRACTOR developed, acquired or will develop or acquire for the purpose of performing the Services under this Agreement, provided that such proposals or offers do not include without HHSC's prior consent, the following:

- (1) Confidential Information;
- (2) Deliverables;
- (3) Custom Software and related documentation; or
- (4) Any other property owned or provided by HHSC under this Agreement.

(c) CONTRACTOR must bear all costs of such additional business development and may not charge or offset any expense related to such business development to HHSC.

(d) Operating Fees for the Services will be adjusted in accordance with Section 3.03 of this Agreement to account for any additional Texas government customers for which CONTRACTOR supplies services similar in scope, kind, and quality to the Services under this Agreement.

Article IV. TERMS AND CONDITIONS OF PAYMENT

Section 4.01 *General Payment Terms.*

(a) HHSC shall pay the Contractor an amount not to exceed the total agreed upon amount in the Contractor's approved budget as represented in Exhibit H, as approved each fiscal year prior to the fiscal year for the term beginning upon execution and ending August 31, 2013.

The term of payments by HHSC to the Contractor will be effective for two (2) State of Texas fiscal years, beginning upon execution and ending August 31, 2013.

An initial start up payment of \$50,000 will be made to the Contractor for funds to hire staff and initiate the program, after this initial payment ongoing reimbursements will be made in the following manner: HHSC will make payments to the Contractor on a monthly cost reimbursement basis, in response to HHSC's receipt and approval of Contractor's invoice, purchase voucher, and the required monthly deliverables.

(b) Contractor will submit to the HHSC Contract Manager an Invoice and Purchase Voucher for the amount of expenses incurred by the Contractor on a monthly basis no later than the 15th day of the month following that in which expenditure occurred, if the 15th falls on a weekend or holiday the documents will be due the next business day.

(c) HHSC's duty to pay the amount described in paragraph (b) of this section is subject to offset of any amounts HHSC determines are owed to HHSC or to which there is a bona fide dispute regarding HHSC's duty to pay.

(d) Contractor is self-insured. Contractor further has sovereign immunity and is subject to the Texas Tort Claims Act.

Section 4.02 *Required Invoices for Grant Payment*

(a) CONTRACTOR shall submit invoices and State of Texas Purchase Voucher to HHSC for payments according to section 4.02(b) and the schedule in Section 3.01(2), as supplied to CONTRACTOR by HHSC.

(b) Invoice and State of Texas Purchase Voucher shall include CONTRACTOR's contact information and business address, tax identification number information, HHSC contract number, and amount of payment requested. Invoice State of Texas Purchase Voucher shall be submitted to HHSC Contract Manager listed in this Agreement.

Section 4.03 *Time and Manner of payment.*

(a) Payments for Services and Deliverables under the Agreement will be made in the following manner. HHSC project manager will approve payments upon receipt and approval of invoices and any required deliverables. Payment will be made in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code, within 30 days of the approval of invoices and any required deliverables.

(b) If HHSC disputes payment of an invoice for purposes of enforcing a remedy or obtaining set-off against payments due, HHSC may limit payments in accordance with Article 9 of HHSC's Uniform Contract Terms and Conditions.

Section 4.04 *Failure, Termination or Suspension of HHSC Funding.*

Except as otherwise provided in this Agreement, CONTRACTOR understands and expressly assumes all risks associated with the commitment of delivery of the contracted Services and Deliverables, including the

failure, termination or suspension of funding to HHSC, delays or denials of required third party approvals, and cost overruns not reasonably attributable to HHSC.

Section 4.05 State Auditor's Office

Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Education Code. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

Article V. PERFORMANCE & TAILORED REMEDIES MATRIX

Section 5.01 Performance Remedies – Damages.

(a) CONTRACTOR is expected to meet or exceed the objectives and standards set forth in this Agreement. All areas of responsibility and all requirements listed in the Agreement will be subject to performance evaluation by HHSC.

(b) Performance reviews may be conducted at HHSC's discretion at any time and may relate to any responsibility and/or requirement set forth in this Agreement.

(c) Any and all responsibilities and requirements not fulfilled may be subject to the remedies set forth in Article 11 of HHSC's Uniform Contract Terms and Conditions. Damages may be assessed in accordance with Section 11.02 of HHSC's Uniform Contract Terms and Conditions.

Article VI. BUSINESS PLAN FOR NEGOTIATING CONTRACT CHANGE ORDERS AND AMENDMENTS

Section 6.01 Introduction.

This Article 6 represents the Parties' Business Plan for negotiating amendments, contract change orders and modifications to the Agreement, as required by Article 7 of HHSC's Uniform Contract Terms and Conditions.

Section 6.02 Required compliance with modification procedures.

(a) No different or additional services, work, or products will be authorized or performed except pursuant to a written amendment or modification of this Agreement that is executed in compliance with this Article and Article 7 of the HHSC Uniform Terms and Conditions.

(b) No waiver of any term, covenant or condition of this Agreement will be valid unless executed in compliance with this Article 6.

(c) CONTRACTOR will not be entitled to payment for any Services, Deliverables, work or products that are not authorized by a properly executed amendment or modification to this Agreement, or through the express authorization of HHSC.

Section 6.03 Change Order Procedures

(a) Change Order approval procedures.

(1) HHSC or CONTRACTOR may propose changes in the Services, Deliverables, or other aspects of this Agreement.

(2) If HHSC proposes a change, it shall deliver a Change Order Request to the CONTRACTOR describing the proposed change.

(3) CONTRACTOR must prepare and deliver a Change Order Response to the HHSC Project Manager, at no additional cost to HHSC, within five (5) business days.

(4) The Change Order Response must specify:

(a) The effect, if any, of the proposed change on the amounts payable by HHSC under this Agreement and the manner used to calculate such effect;

(b) The effect, if any, of the proposed changes on CONTRACTOR's performance of its obligations under this Agreement, including the effect on the Services or Deliverables;

(c) The anticipated time schedule for implementing the proposed changes; and

(d) Any other information requested by HHSC or reasonably necessary for HHSC to make an informed decision regarding the proposal.

(5) If HHSC accepts the Change Order Response, CONTRACTOR must indemnify and hold harmless HHSC from and against any losses, costs or expenses resulting from any inaccurate or incomplete information contained in the response to the extent allowed by law without establishing a sinking fund.

(6) The Change Order Response constitutes an irrevocable proposal by CONTRACTOR to implement the proposed changes on the terms set forth in the response.

(7) If CONTRACTOR desires to propose a change, it must deliver a Change Order Request to HHSC that includes the information described in Section 6.03(a) (4), above.

(8) If HHSC accepts CONTRACTOR's proposal or Change Order Request, the Parties will draft and execute an amendment to this Agreement. HHSC's Executive Commissioner or his designee and a duly authorized representative of CONTRACTOR must sign the amendment.

(b) *Written Approval Required.*

(1) No change to the contracted Services or Deliverables or any other aspect of this Agreement will become effective without the prior written approval of a duly authorized representative of each Party.

(2) If HHSC accepts CONTRACTOR's proposal or Change Order Request, the Parties will draft and execute an amendment to this Agreement. HHSC's Executive Commissioner or his designee and a duly authorized representative of CONTRACTOR must sign the amendment.

(3) The Parties will execute a formal contract amendment for any Change Order that increases or decreases the total contract price or changes the scope of work.

(c) *Change Order Log.*

(1) CONTRACTOR will maintain a Change Order Log documenting all approved Change Orders. The Change Order Log must include:

(A) The assigned Change Order number;

(B) The date of execution or approval;

(C) The method of approval (by contract amendment or HHSC Project Manager);

(D) The Change Order's fiscal impact; and

(E) A brief summary of the Changes.

(2) CONTRACTOR will maintain copies of all approved Change Orders with the Change Order Log.

Article VII. AUTHORITY TO EXECUTE

The Parties have executed this contract in their capacities as stated below with authority to bind their organizations on the dates set forth by their signatures.

IN WITNESS HEREOF, HHSC and CONTRACTOR have each caused this Agreement to be signed and delivered by its duly authorized representative.

**HEALTH & HUMAN SERVICES
COMMISSION**

**CORPUS CHRISTI – NUECES COUNTY
PUBLIC HEALTH DISTRICT**

**THOMAS M. SUEHS
EXECUTIVE COMMISSIONER**

**ANNETTE RODRIGUEZ
DIRECTOR OF PUBLIC HEALTH**

DATE:

DATE: