

BETWEEN

Burnet County

AND

Nikki T. Tran, DMD, PLLC d/b/a Austin Dental Cares

FOR

ON-SITE DENTAL SERVICES

At the Burnet County Jail Facility

STATE OF TEXAS 5
COUNTY OF Burnet 5

PROFESSIONAL SERVICES AGREEMENT
FOR ON-SITE DENTAL SERVICES

This Agreement is entered into by the following Parties: Burnet County, a corporate and political subdivision of the State of Texas, ("County") and Nikki T. Tran, DMD, PLLC d/b/a Austin Dental Cares, ("Austin Dental Cares" of "Contractor").

WHEREAS, County desires to obtain the services of a qualified contractor to provide onsite dental services for the County at the Burnet County Jail facility and;

WHEREAS, Contractor has the professional ability and expertise, and any necessary professional degrees, licenses, and certifications to provide these services;

NOW, THEREFORE, County and Contractor agree as follows:

- **DEFINITIONS**

In this Agreement,

- "Commissioners Court" means Burnet County Commissioners Court.

- "Contractor" means, Austin Dental Cares.
- "County Auditor" means, Burnet County Auditor.
- "Director" means, Jail Captain at the Burnet County Jail, Captain Matt Kimbler or his successor working at all times under the authority of the Burnet County Sheriff.
- "Fiscal Year" means the County fiscal year, currently that period beginning on October 1 of one year and continuing through September 30 of the following year.
- "Key Contracting Person" means any person or business listed in Exhibit 1 to Attachment D of this Agreement and marked as the Ethics Sworn Declaration.
- "Parties" mean Burnet County, Texas and Contractor.
- "Purchasing Agent" means Burnet County Purchasing Agent, Karin Smith, or her successor.
- **EMPLOYMENT OF CONTRACTOR**
- The Purchasing Agent acts as County's overall agreement administrator. The Purchasing Agent may designate representative to transmit and receive information.
- Authority. The Director or designee will act on behalf of County with respect to the work to be performed under this Agreement. The Director shall have complete authority to interpret and define in writing County's policies and decisions with respect to Contractor's services. The Director may designate representatives to transmit instructions and receive information. The Director shall perform these actions under the guidance of the Burnet County Sheriff.
- **TERM**
- Initial Term. The Initial Term of this Agreement shall commence upon complete execution by all Parties and shall continue through September 30, 2025, unless sooner terminated as provided herein.
- Renewal Term(s). Subject to continued funding by the Commissioners Court, this Agreement shall automatically renew October 1, hereafter for four (4) consecutive twelve (12) month terms ending on September 30, 2029, unless sooner terminated by either Party as provided herein.
- Termination. Either party may terminate this Agreement with or without cause upon thirty (30) days written notice.

CONTRACTOR'S RESPONSIBILITIES

- Scope of Services. Contractor shall perform, in a timely manner, the services and activities described in the Scope of Services set forth as Attachment A to this Agreement, which is expressly incorporated herein and made a part hereof.
- Ethical Standards. Contractor shall perform all services and exercise all discretionary powers in a manner consistent with applicable canons of professional ethics and Contractor's best professional judgment. Contractor shall use at least that standard of care which a reasonably prudent professional in Travis County, Texas would use in similar circumstances.
- Professional Qualifications. At all times during the term of this Agreement, Contractor's personnel performing services under this Agreement shall maintain in good standing their professional licenses, certifications, and accreditations applicable to services. Contractor shall provide Director documentation that the provider's license is in good standing with the licensing entity. Contractor shall perform all acts reasonably necessary to maintain and improve its professional competence and training. Contractor shall notify County within two (2) working days if any adverse action related to its professional license or accreditations occurs.
- Subcontracting. Except as otherwise specifically provided herein, Contractor is prohibited from hiring or subcontracting with any other person to perform any of Contractor's obligations under this Agreement. 1099 Providers functioning on behalf of Austin Dental Cares shall be specifically excluded from this limitation.
- Civil Rights and Equal Opportunity in Employment. Contractor agrees, during the performance of the services under this Agreement, that Contractor shall provide all services and activities required in a manner that complies with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 [S.933], and all other federal and state laws, rules, regulations, and orders pertaining to equal opportunity in employment, as if Contractor were an entity bound to comply with these laws. Contractor shall not discriminate against any applicant for employment, employee, or other person on the basis of race, color, religion, sexual orientation, gender identity/expression, age, national origin or handicapped condition and shall provide reasonable accommodations for disabilities as required by the Americans with Disabilities Act as amended. in accordance with Title VI of the Civil Rights Act of 1964.
- Compliance with Regulations: Contractor shall comply with the requirements relative to nondiscrimination in Federally Assisted programs, including but not limited to Title VI of the 1964 Civil Rights Act (42 USC Section 2000d, et. seq.), and 49 CFR Part 21, both as explained in Federal Transit Administration (FTA) Circular 4702.1B, as they may be amended (the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.
- Nondiscrimination: Regarding the work performed by Contractor under this Agreement, it shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Seller shall not participate either directly or

indirectly in the discrimination prohibited by section 21.5 in 49 CFR Part 21, including employment practices.

- Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- Sanctions for Noncompliance: If Contractor does not comply with the nondiscrimination provisions of this Agreement, County shall impose sanctions including, but not limited to, withholding of payments to Contractor under the Agreement until Contractor complies, or until cancellation, termination or suspension of the Agreement, in whole or in part.
- Incorporation of Provisions: Contractor shall include the provisions of section 4.5 (regarding nondiscrimination) and 7.3 (regarding reports) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant to them.
- List of Pertinent Nondiscrimination Authorities: During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to: Pertinent Nondiscrimination Authorities:
 - Title VI of the Civil Rights Act of 1964 (42 U.S.C. 5 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 5 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Federal-Aid Highway Act of 1973, (23 U.S.C. S 324 et seq.), (prohibits discrimination on the basis of sex);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 5 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. 5 6101 et seq.), (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982, (49 U.S.C. 5 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. 5 1213112189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. 5 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI,
 - you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq)
- Verification of Non-Discrimination Against Specified Entities. In compliance with Texas Government Code, chapter 2271 and relevant sections of chapter 2274, Contractor's signature on this Agreement serves as written verification that Contractor complies with the following sections:
 - a. Contractor does not boycott Israel and will not boycott Israel during the Agreement Term;
 - b. Contractor does not boycott energy companies and will not boycott energy companies during the Agreement Term; and
 - c. Contractor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the Agreement Term.
- Legal Compliance. Contractor shall comply with all federal, state, county, and city laws, rules, regulations and ordinances applicable to the provision of the services described herein and the performance of all obligations undertaken pursuant to this Agreement.
- Insurance Requirements. Contractor shall comply with the insurance requirements set out in Attachment C, "Insurance Requirements", which is incorporated by reference and made a part of this Agreement.

- Federal Funds. Contractor warrants that no Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- Communications. Contractor may communicate all requests for direction and factual information relating to services performed pursuant to this Agreement to the Director and may rely on all factual information supplied by the Director in response to these requests. However, Director shall not serve as the agent of County or the Commissioners Court or any elected official of County for any other purpose than conveying factual information.
- Contractor expressly acknowledges that, in entering into this Agreement, County has relied on the representations of Contractor about the persons who will be performing the services and their qualifications, and that any other person must be approved by Commissioners Court before providing services under this Agreement. Contractor warrants that all work done will be done by the employees or members of Contractor that are presented as performing the services in Contractor's scope of services.
- Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion from Participation in Contracts Exceeding \$25,000.00.

Contractor certifies, by entering into this Agreement, that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor shall include this certification requirement in all subcontracts to this agreement that exceed \$25,000.00.

4.12 Disqualifying Criminal History.

4.12.1 Contractor agrees to provide documentation to Director or designee that a criminal background check has been completed on any employee, intern, volunteer, subcontractor, agent and/or consultant of Contractor, or Contractor, whose duties in connection with this Agreement may include contact with youth referred under this Agreement. To comply with this requirement, a criminal background check shall include a fingerprint-based criminal history search of criminal information databases maintained by the Federal Bureau of Investigation and by the State of Texas and shall have been conducted within two years prior to assignment of services under this Agreement. Should County have any questions, it reserves the right to conduct a criminal background check on any Contractor employee, associate, agent, volunteer, or subcontractor that enters into the Burnet County Jail.

In addition to the required criminal background check, the Director or designee will consult any child abuse registry maintained by the State or locality in which any employee, intern, volunteer,

subcontractor, agent and/or consultant of Contractor, or Contractor, will work those duties in connection with this Agreement may include contact with youth referred under this Agreement. Any employee, intern, volunteer, subcontractor, agent, and/or consultant of Contractor, or Contractor, whose name appears on any child abuse registry will be disqualified from providing services to youth referred under this Agreement.

4.12.2 Contractor shall not assign or allow any employee, intern, volunteer, subcontractor, agent and/or consultant of Contractor, or Contractor, to provide services to youth referred under this Agreement whose criminal background check reflects a disqualifying criminal history. To comply with this requirement, a disqualifying criminal history includes: any felony conviction or deferred adjudication within the past ten years; any jailable misdemeanor conviction or deferred adjudication within the past five years; any current felony or jailable misdemeanor deferred adjudication, probation, or parole; or the requirement to register as a sex offender.

4.12.3 Contractor shall not assign or allow any employee, intern, volunteer, subcontractor, agent and /or consultant of Contractor, or Contractor, to provide services to youth referred under this Agreement who have:

4.12.3.1 Engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997);

4.12.3.2 Been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or

4.12.3.3 Been civilly or administratively adjudicated to have engaged in the activity described in 4.12.3.2 of this section.

COMPENSATION, BILLING AND PAYMENT

- Fees. For and in consideration of the satisfactory performance by Contractor of the services described in Attachment A, Scope of Services, and Contractor's compliance with the terms and conditions of this Agreement, County shall pay Contractor in accordance with the Fee Schedule ~~which is attached~~ hereto as Attachment B and made a part hereof.
- Not to exceed amount: As Needed Basis
- Additional Fees: None
- Satisfactory Completion of Services. County shall not be responsible for the costs of any services under this Agreement that are not performed to County's

reasonable satisfaction and given County's approval, which shall not be unreasonably withheld. County's obligation to make any payment to Contractor is dependent upon completion of the services invoiced in a timely, good and professional manner and at a standard acceptable in Contractor's profession.

- Timely Payment. County shall pay Contractor within thirty (30) days after the receipt of a complete and correct invoice by County Department. Accrual and payment of interest on overdue payments shall be governed by Chapter 2251 of the Texas Government Code.
- Invoicing. Contractor shall invoice County monthly for services performed pursuant to this Agreement. Contractor is an independent contractor and County shall not pay any customary Travis County benefits, including, but not limited to taxes, worker's compensation, health and retirement benefits, sick leave and vacation and holiday. Invoices shall be submitted by the 10th of the month immediately following the month in which the services were rendered.
- County shall pay by ACH/EFT or check upon satisfactory delivery and acceptance of items and submission of a correct and complete invoice to the address below:

Karin Smith
Burnet County Auditor

Preferably via e-mail to:

ksmith@burnetcountvtexas.org or

Via mail to: 220 South Pierce St.
Burnet, Texas 78611

Contractor may contact the Auditor's Office at (512) 756-5495 for assistance with setting up electronic payment through ACH, which deposits payments directly into Contractor's account.

To be "correct and complete," an invoice must include at least the following information:

- Name, address, and telephone number of Contractor, and the name should match the name shown on the W-9 that Contractor submitted to the Auditor's Office;
- Name and address where the payment is to be sent, if payment is by check;
- County Contract Number and County Purchase Order Number; • Identification of items or services as outlined in the Agreement*;
- Quantity or quantities, applicable unit prices, total prices by item, and total invoice amount, and
- Any additional payment information that may be called for by the Agreement*.

*Note: Information reflecting Protected Health Information (PHI) or Personally Identifiable Information (PII) must be properly

redacted before submission of an invoice to the Auditor's Office to ensure compliance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and other privacy regulations.

Invoices with improperly redacted PHI or PII will not be processed for payment and they will be permanently deleted from our files. For payment to be made, an invoice must be resubmitted. The re-submitted invoice must have all PII/PHI information redacted and appropriately disclosed.

- Additional Copy of Invoice: In addition, Contractor shall email a copy of the invoice to:

Matt Kimbler <mkimbler@burnetsheriff.com>

If email is not possible, please send via postal mail to:

Burnet County Jail Captain

Burnet County Jail

P.O. Box 1249

Burnet, TX 78611

If payment is based on percentage of completion, Contractor shall also submit a statement showing the percentage of completion of the work as at the date of the invoice with each invoice, and any additional written information requested by County to document the progress of the work.

- Overpayment. Contractor shall refund to County any money which has been paid to Contractor by County, which County determines has resulted in overpayment to Contractor. Such refund shall be made by Contractor to County within thirty (30) days after the refund is requested by County. If County enters into any subsequent Agreement with Contractor and Contractor fails to refund any money owed to County within thirty days of request, County may offset the difference against the next advance or payment payable to Contractor.
- Taxpayer Identification. Contractor shall provide County with an Internal Revenue W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations, and a statement of entity status in a form satisfactory to the County Auditor before any Contract funds are payable.
- Delinquent Property Taxes. Notwithstanding anything to the contrary herein, if Contractor is delinquent in the payment of property taxes at the time of invoicing, Contractor hereby assigns any payments to be made for services rendered hereunder to the Travis County Tax Assessor-Collector for the payment of said delinquent taxes.
- Disbursements to Persons with Outstanding Debt.

- In accordance with Section 154.045 of the Local Government Code, If notice of indebtedness has been filed with the County Auditor or County Treasurer evidencing the indebtedness of Contractor to the State, the County or a salary fund, a warrant may not be drawn on a County fund in favor of Contractor, or an agent or assignee of Contractor until:
- the County Treasurer notifies Contractor in writing that the debt is outstanding; and
- the debt is paid.
- "Debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with the County.
- County may apply any funds County owes Contractor to the outstanding balance of debt for which notice is made under section 6.8.1.1 above, if the notice includes a statement that the amount owed by the County to Contractor may be applied to reduce the outstanding debt.
- Period of Services. County shall not be liable for costs incurred or performances rendered by Contractor before or after the term of this Agreement.
- Funding Out. Notwithstanding anything to the contrary herein, if, during budget planning and adoption, Commissioners Court fails to provide funding for this Agreement for the following fiscal year of County, County may terminate this Agreement after giving Contractor twenty (20) days written notice that this Agreement is terminated due to the failure to fund it.

RECORDS CONFIDENTIALITY AND ACCESS

- - Confidentiality. Contractor shall establish a method to secure the confidentiality of records and other information relating to residential treatment services in accordance with the applicable federal, state and local laws, rules and regulations, and applicable professional ethical standards. This provision shall not be construed as limiting the right of County access to client information. Upon authorization from County to render client files anonymous, Contractor agrees to mask information identifying clients in a way that will not obstruct County's monitoring and evaluation duties in any way.
 - Records Maintenance. Contractor shall create, maintain, and retain, and shall make reasonably available to County, all necessary and appropriate records, information, and documentation (including all accounting records) relating to

services provided under the terms of this Agreement for a period of seven (7) years after the provision of the services, or until any litigation concerning any of the services has been satisfactorily resolved, whichever occurs later. Contractor shall provide copies of such records to County upon written request to Contractor at a cost mutually agreed to by County and Contractor.

- Access to Records. Contractor further agrees that upon reasonable notice the County or its duly authorized representatives shall have access to any and all books, documents, papers, reports and records of Contractor, which the County deems are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions, and to ascertain compliance with federal and state employment discrimination laws. Contractor shall provide all information and reports required by Title VI of the 1964 Civil Rights Act (42 USC Section 2000d, et. seq.) and any regulations or directives issued pursuant to them. Contractor shall permit access to its books, records, accounts, other sources of information and its facilities as County may determine to be pertinent to ascertain compliance with these regulations, orders, and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to the County, as appropriate, and shall state what efforts it has made to obtain the information.
- Right to Contractual Material. County is entitled to copies of all work products produced under this Agreement including programming, reports, charts, schedules, or other appended documentation to any responses, inquiries, correspondence, and related material submitted by Contractor, which will become the property of the County.

AMENDMENTS / MODIFICATIONS

- General. Unless specifically provided otherwise in this Agreement, any change to the terms of this Agreement or any attachments to it shall be in writing and signed by each Party. IT IS ACKNOWLEDGED BY CONTRACTOR THAT NO OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHMENTS TO IT UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY COMMISSIONERS COURT.
- Requests for Changes. Contractor shall submit all requests for changes to the terms of this Agreement or any attachment to it to the Director with a copy to the Purchasing Agent.
- Purchasing Agent Authority. Contractor understands and agrees that the Purchasing Agent has certain authority to approve an Amendment subject to applicable law (specifically the County Purchasing Act, TEX. LOC. GOV'T CODE, Chapter 262, and other applicable law) and County policy, as approved by the Commissioners Court. Within that authority, the Purchasing Agent may approve Amendment requests under this Agreement. The Purchasing Agent will advise Contractor as to such authority upon submission of a request for Amendment; at any time, the Purchasing Agent may submit any request to the Commissioners Court for approval, regardless of the authority of the Purchasing Agent to sign the Amendment.

OTHER PROVISIONS

- INDEMNIFICATION. CONTRACTOR AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, NEGLIGENCE, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, FOR ANY ACT OR OMISSION BY CONTRACTOR, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY CONTRACTOR UNDER THIS AGREEMENT.
- Copyrights, Patents & Licenses. Contractor represents and warrants that (i) all applicable copyrights, patents, licenses, and other proprietary or intellectual property rights which may exist on materials used in this Agreement have been adhered to and (ii) the County shall not be liable for any infringement of those rights and any rights granted to the County shall apply for the duration of this Agreement. CONTRACTOR SHALL INDEMNIFY THE COUNTY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND INCLUDING EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY FEES FOR DAMAGES TO ANY PERSON OR PROPERTY ARISING IN CONNECTION WITH ANY ALLEGED OR ACTUAL INFRINGEMENT OF EXISTING PATENTS, LICENSES, OR COPYRIGHTS APPLICABLE TO MATERIALS USED IN THIS AGREEMENT.
- Claims Notification. If any claim, or other action, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against Contractor or County in relation to the performance of this Agreement, Contractor shall give written notice to County of the claim or other action within three (3) working days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim, or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action or proceeding; the court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice shall be given in the manner provided herein. Except as otherwise directed, Contractor shall furnish to County copies of all pertinent papers received by Contractor with respect to these claims or actions.
- Suspension. County may suspend performance of this Agreement at any time for any reason without terminating this Agreement by giving Contractor written notice of suspension (a "Notice of Suspension"). The "Effective Date of Suspension" will be the date on which Contractor receives the notice of suspension, and the suspension Period will begin on this date. Performance may be reinstated, and this Agreement resumed in full force and effect within sixty (60) days of Contractor's receipt of written notice of reinstatement from County. Upon the Effective Date of Suspension, Contractor shall follow the procedures described below:
- Upon receipt of a notice of suspension, Contractor shall, unless the notice otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Agreement and shall prepare a

statement detailing the services performed under this Agreement prior to the Effective Date of Suspension.

- During the suspension period, Contractor may submit the above referenced statement to County for payment of the approved services actually performed under this Agreement, less previous payments.

- Non-Waiver of Default.

- No payment, act or omission by County may constitute or be construed as a waiver of any breach or default of Contractor which then exists or may subsequently exist.

- All rights of County under this Agreement are specifically reserved, and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

- FORFEITURE OF AGREEMENT. If Contractor has done business with a Key Contracting Person as listed in Exhibit "1" to Attachment D during the 365 day period immediately prior to the date of execution of this Agreement by Contractor or does business with any Key Contracting Person at any time after the date of execution of this Agreement by Contractor (including business done during any Renewal Term of this Agreement) and prior to full performance of this Agreement, Contractor will forfeit all County benefits of this Agreement and County will retain all performance by Contractor and recover all considerations, or the value of all consideration, paid to Contractor pursuant to this Agreement. Contractor will notify County of any change in the information submitted with this Agreement as to the Ethics Sworn Declaration within twenty (20) days of such change throughout the Initial Term and/or any Renewal Term.

- "Is doing business" and "has done business" means:

(a) Paying or receiving in any calendar year any money valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or

(b) Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;

but does not include:

(c) Any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public;

(d) Any financial services product sold to a Key Contracting Person for personal, family, or household purposes in accordance with pricing guidelines applicable to similarly situated individuals with similar risks as determined by Contractor in the ordinary course of its business; or

(e) If Contractor is a national or multinational corporation, any transaction for financial service or insurance coverage made on behalf of Contractor by its agent, employee or other representative who does not know and is not in a position that he or she should have known about this Agreement.

• Agreement.

• Entire Agreement. All written or oral agreements between the Parties to this Agreement related to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement or in the policies and procedures approved by Commissioners Court for County. Any prior agreements, promises, negotiations, or representations not expressly set forth in this document are of no force and effect.

• Attachments. The attachments enumerated and denominated below are hereby made a part of this Agreement and constitute promised performances by Contractor in accordance with all the provisions of this Agreement.

• Attachment A — Scope of Services

• Attachment B — Fee Schedule

• Attachment C — Insurance Requirements

• Attachment D — Ethics Sworn Declaration including:

• Exhibit 1 — List of Key Contracting Persons

• Exhibit 2 — Disclosure Form

8.7.2.5 Attachment E — Business Associates Agreement

• Notices:

• Written Notice. Any notice required or permitted to be given under this Agreement by one Party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the Party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the Party at the address herein specified.

• County Address. The address of County for all purposes under this Agreement shall be:

Karin Smith (or her successor)
Burnet County Purchasing Agent
220 South Pierce St.
Burnet, Texas 78611

With copies to (registered or certified mail with return receipt is not required):

Captain Matt Kimbler (or his successor) Burnet
County Jail Captain
Officer P.O. Box 1249 Burnet,
Texas 78611

- Contractor Address. The address of Contractor for all purposes under this Agreement and for all notices hereunder shall be:

Austin Dental Cares
1900 E Howard Lane
Building A Suite 4

Pflugerville, Texas 78660

- Change of Address. Each Party may change the address for notice to it by giving written notice of the change in compliance with Section 8.8. Any change in the address shall be reported within fifteen (15) days of the change.
- Dispute Resolution - Administration by Purchasing Agent. When Contractor and/or County have been unable to successfully resolve any question or issue related to this Agreement, Contractor or County shall then present the matter to the Purchasing Agent by providing the Purchasing Agent with written notice of the dispute. Such notice shall contain a specific written description of the issues involved as well as Contractor's requested resolution of the dispute and any other relevant information which Contractor desires to include. As of the receipt of such notice by the Purchasing Agent, the Purchasing Agent will act as the County representative in any further issuances and in the administration of this Agreement in relation to the described dispute. Unless otherwise stated in this Agreement, any document, notice or correspondence in relation to the disputes at this stage not issued by or to the Purchasing Agent may be considered void. If Contractor does not agree with any document, notice or correspondence relating to the dispute issued by the Purchasing Agent or other authorized County person, Contractor must submit a written notice to the Purchasing Agent with a copy to the Director within ten calendar days after receipt of the document, notice or correspondence, outlining the exact point of disagreement in detail. The Purchasing Agent will issue a written notice of the final resolution of the dispute to Contractor within thirty days of receipt of the initial written notice of dispute by the Purchasing Agent. If this final resolution does not resolve the dispute to the Contractor's satisfaction, Contractor may submit a written Notice of Appeal to the Commissioners Court through the Purchasing Agent. The Purchasing Agent will provide a copy of such response to the Director. This Notice of Appeal must be submitted within ten calendar days after receipt of the unsatisfactory final resolution. Contractor then

has the right to be heard by Commissioners Court and the Purchasing Agent will coordinate placing the matter on the Commissioners Court agenda.

- Mediation. When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.
- Force Majeure. The parties acknowledge that this Agreement is being executed and will at least partially be performed during a Declared Disaster resulting from the COVID-19 pandemic and expressly acknowledge that they have taken the effects of this Declared Disaster into account in determining timelines and performance requirements stated in it and that this Declared Disaster may not be used to excuse performance under this Contract. Neither party is financially liable to the other for any delays or failures in contract performance caused by federal or state laws or the rules, regulations, or orders of any public body or official purporting to exercise authority or control respecting the operations covered by this Contract, or caused by strikes not against the parties, actions of the elements, or acts of God and delays due to the above causes shall not be considered breach of this Contract. These delays or failures to perform extend the period of performance for a period of time equal to the substance of the impossible conditions. If Force Majeure conditions exist, the party affected by them shall give the other party Notice within five working days after the conditions begin. If timely Notice is impractical due to the Force Majeure conditions, then the party must provide Notice in as timely a manner as practicable. If Notice is not provided timely, the party experiencing Force Majeure waives it as a defense.
- Cooperation and Coordination. Contractor shall cooperate and coordinate with County staff and other contractors as reasonable and necessary and as required by the Director.
- Independent Contractor. The Parties expressly acknowledge and agree that Contractor is an independent contractor, operating solely in that capacity. Contractor assumes all of the rights, obligations and liabilities applicable to an independent contractor. Neither Contractor nor any of Contractor's employees will be considered an employee, partner, joint-venturer, nor agent of County, nor does Contractor gain any rights against County pursuant to the County's personnel policies. County will not pay Contractor nor Contractor's employees any customary Travis County benefits, including but not limited to FICA, payroll taxes, worker's compensation, health or retirement benefits, sick leave or vacation or holiday pay. Contractor is responsible to report all federal, state and city tax liabilities, social security obligations, and any other taxable matters associated with services rendered under this Agreement and is solely obligated to pay any and all taxes related to income paid to Contractor.

- No Third-Party Rights. No provision in this Agreement, express or implied, is intended to confer upon any person or entity, other than the Parties to this Agreement, any benefits, rights, or remedies under or by reason of this Agreement.
- Governing Law. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of Texas.
- Severability. Any clause, sentence, provision, paragraph, or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be limited to the clause, sentence, provision, paragraph or article so held to be invalid, illegal, or ineffective.
- Law and Venue. All obligations under this Agreement shall be performable in Burnet County, Texas. Venue for any litigation concerning this Agreement shall be in the City of Burnet, Burnet County.
- Assignment. No Party may assign any of the rights or duties created by this Agreement without the prior written approval of the other Party. It is acknowledged by Contractor that no officer, agent, employee or representative of County has any authority to assign any part of this Agreement unless expressly granted that authority by Commissioners Court.
- Binding Agreement. Notwithstanding any other provision of this Agreement shall be binding upon and inure to the benefit of the County and Contractor and their respective successors, executors, administrators, and assigns. Neither the County nor Contractor may assign, sublet, or transfer his interest in or obligations under this Agreement without the written consent of the other
- Performance of Other Services. As a part of this Agreement, it is understood that Contractor is free to provide services outside this Agreement as it sees fit at those times which Contractor is not obligated to County. It is also understood that County is free to have more than one contractor providing the type of services included in this Agreement and County is under no obligation to refer any case to Contractor for services under this Agreement.
- Survival. Conditions and covenants of this Agreement which by their terms are performable after the termination, expiration, or end of this Agreement shall survive such termination, expiration, or end and remain fully performable.
- Certificate of Contractor. Contractor certifies that neither Contractor nor any members of Contractor's firm nor any Subcontractor has:
 - Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee

working solely for Contractor) to solicit or secure the work provided by the Agreement.

- Agreed, as an expressed or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person other than in connection with carrying out the work to be performed under this Agreement.
- Paid or agreed to pay to any firm, organization, or person (other than bona fide employees working solely for Contractor) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the work provided under this Agreement.
- Been suspended or debarred from federal or state procurement.

Contractor further agrees that this certification may be furnished to any local, state or federal government agencies in connection with this Agreement and for those portions of the program involving participation of agency grant funds and is subject to all applicable state and federal, criminal and civil laws.

- Interpretational Guidelines.
- Computation of Time. When any period of time is stated in this Agreement, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday or a day that County has declared a holiday for its employees, these days shall be omitted from the computation.
- Number and Gender. Words of any gender in this Agreement shall be construed to include any other gender and words in either singular or plural form shall be construed to include the other unless the context in the Agreement clearly requires otherwise.
- Headings. The headings at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that section or subsection and are not to be used in construing this Agreement.
- County Monitoring. The Contractor will be monitored by the Director (or their designee) for compliance with the requirements of this Agreement.
- Signatures. The person or persons manually or electronically signing this Agreement on behalf of the Contractor or representing themselves as signing this Agreement on behalf of the Contractor, do hereby warrant and guarantee that he, she or they have been duly authorized by the Contractor to sign this Agreement on behalf of Contractor and to bind Contractor validly and legally to all terms, performances, and provisions in this Agreement. Manual signatures or electronic signatures, whether digital or encrypted, have the same force and effect.

DUPLICATE ORIGINALS

This Agreement will be executed in duplicate originals and be effective when executed by both Parties.

Austin Dental Cares

County of Burnet, Texas

Burnet County

Name:

Judge Date:

Title:

Date:

Approved as to Purchasing
Policies and Procedures by:

Burnet County Purchasing
Agent Karin Smith

CPPB

Approved as to Legal Form by:

Burnet County Attorney

ATTACHMENT A
SCOPE OF SERVICES

- Purpose

For Nikki T. Tran, DMD, PLLC d/b/a Austin Dental Cares (Contractor) to provide incarcerated individuals in the Burnet County Jail on-site dental evaluations and recommend treatment services.

2. Service Type

At the request of and under the supervision of the Burnet County Jail Captain or his/her designee, Contractor shall provide dental evaluations and recommend treatment services for jail inmates housed at the Burnet County Jail facility on-site and share such information with the Burnet County Jail medical staff as permitted by State and Federal Statute.

3. Burnet County Jail Responsibilities

3.1 Where indicated by sound medical practices, make an individual inmate's medical records available for review to Contractor.

3.3 Provide appropriate security services during the performance of any dental services. This includes but is not limited to the presence of security guards at the worksite. In the event that the incarcerated individual is suspected of engaging in any violent criminal activity, the following actions will be taken:

- The individual shall be restrained by security personnel for the duration of their appointment to prevent harm, given the environment which includes the presence of sharp tools and other hazardous materials. The contractor reserves the right to cease work and leave the worksite if the safety of the contractor or others is at risk due to the individual's actions.

*Note — Burnet County Jail will provide Contractor with a dedicated room or location with adequate lighting to facilitate dental examinations/services.

Burnet County Jail will not provide Austin Dental Cares with any dental tooling or medications.

3.4

Notify Vendor in a timely manner if dental services need to be rescheduled.

4. Contractor's Responsibilities

4.1 Must cooperate and coordinate fully with Burnet County Jail staff at all times when inside the facility, any other County contract physicians, the professional, departmental administration, and counseling staff the Burnet County Jail facility in the integration of dental care for inmates housed therein.

- 4.2 Shall inform the Burnet County Jail medical staff and/or Jail
- 4.3 Captain of any issues as they arise.
Must immediately alert Burnet County Jail medical staff and/or Jail
- 4.4 Captain upon becoming aware of any medical issue pertaining to any jail inmate.
- 4.5 Will consult with the medical staff at the Burnet County Jail as necessary.
- 4.6 To the extent practicable, shall notify the Burnet County Jail Captain or his/her designee in advance of any periods of unavailability to perform
- 4.7 the services.

Must provide services on an as needed basis on mutually agreed dates and times.
- 4.8 Shall work closely with the Burnet County Jail staff to accommodate any fluctuations in the population or dental needs of jail inmates.

5. Compliance with Laws, Regulations and Standards

- All dental tooling must be counted with the Burnet County Jail staff
- 5.1 upon arrival and upon leaving the jail facility. Contractor may not start services until the initial count has been completed.
- Contractor shall maintain current professional license as a dentist from the Texas State Board of Dental Examiners and a
- 5.2 working knowledge of the available courses of dental treatment.
- Contractor shall complete safety related training as required by the Burnet County Jail.

6. Hours/Days of Service

TCJPD will contact the Contractor to schedule an appointment within five (5) days of requested Date of Service (DOS). Service days will be on weekdays between the hours of 11AM – 3PM, unless the Contractor receives notification of changes from Burnet County Jail staff. One (1) last minute appointment is allowed to be added onto the schedule with 24 (twenty-four) hours' notice to the Contractor.

7. Frequency of Services

Services will be ongoing throughout the year, at the request of the Burnet County Jail. Parties will arrange the provision of services on mutually agreed dates and times.

8. Performance Measures

The Burnet County Jail staff will make the appropriate referrals within (5) business days.

- Contractor is expected to arrive on time for all scheduled appointments.

- Contractor shall be reviewed annually by the Burnet County Jail Captain. ●
Contractor shall immediately alert Burnet County Jail staff and medical staff upon becoming aware of any medical issue pertaining to a jail inmate.

ATTACHMENT B FEE SCHEDULE

The following are the basic services which may be billed:

- Diagnostic and general services consist of the following:
- Diagnostic Examination with report documenting any/all recommendations for follow-up
- Preventive (prophylaxis)

To protect sensitive business information, the detailed fee schedule will not be attached to this document. If you have questions about the fees or a specific procedure, please note that a treatment plan with a comprehensive code breakdown will be provided upon request. This will be done following a proper oral examination to ensure accuracy and relevance of the information provided.

ATTACHMENT C INSURANCE REQUIREMENTS

Contractor shall have, and shall require all subcontractors providing services under this Contract to have, Standard Insurance meeting the General Requirements as set forth below and sufficient to cover the needs of Contractor and/or Subcontractor pursuant to applicable generally accepted business standards. Depending on services provided by Contractor and/or Subcontractor(s), Supplemental Insurance Requirements or alternate insurance options shall be imposed as follows:

- General Requirements Applicable to All Contractors' Insurance

The following requirements apply to the Contractor and to Subcontractor(s) performing services or activities pursuant to the terms of this Contract. Contractor acknowledges and agrees to the following concerning insurance requirements applicable to Contractor and subcontractor(s):

- The minimum types and limits of insurance indicated below shall be maintained throughout the duration of the Contract.

- Insurance shall be written by companies licensed in the State of Texas with an A.M. Best rating of B+ VIII or higher.
- Prior to commencing work under this Contract, the required insurance shall be in force as evidenced by a Certificate of Insurance issued by the writing agent or carrier. A copy of the Certificate of Insurance shall be forwarded to County immediately upon execution of this Contract.
- Certificates of Insurance shall include the endorsements outlined below and shall be submitted to the Burnet County Purchasing Agent within ten (10) working days of execution of the contract by both parties or the effective date of the Contract, whichever comes first. The Certificate(s) shall show the Burnet County contract number and all endorsements by number.
- Insurance required under this Contract which names Burnet County as Additional Insured shall be considered primary for all claims.
- Insurance limits shown below may be written as Combined Single Limits or structured using primary and excess or umbrella coverage that follows the form of the primary policy.
- County shall be entitled, upon its request and without expense, to receive certified copies of policies and endorsements.
- County reserves the right to review insurance requirements during any term of the Contract and to require that Contractor make reasonable adjustments when the scope of services has been expanded.
- Contractor shall not allow any insurance to be cancelled or lapse during any term of this Contract. Contractor shall not permit the minimum limits of coverage to erode or otherwise be reduced. Contractor shall be responsible for all premiums, deductibles and self-insured retention. All deductibles and self-insured retention shall be shown on the Certificates of Insurance.
- Insurance coverage specified in this Contract is not intended and will not be interpreted to limit the responsibility or liability of the Contractor or subcontractor(s).
- Specific Requirements

The following requirements apply to the Contractor and Subcontractor(s) performing services or activities pursuant to the terms of this Contract. Contractor acknowledges and agrees to the following concerning insurance requirements applicable to Contractor and subcontractor(s):

- Workers' Compensation and Employers' Liability Insurance
- Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act.
- Employers' Liability limits are:
 - \$500,000 bodily injury each accident

\$500,000 bodily injury by disease

\$500,000 policy limit

' Policies under this Section shall •apply to State of Texas and include the following endorsements in favor of Burnet County:

- Waiver of Subrogation
- Thirty (30) day Notice of Cancellation
- Commercial General Liability Insurance
- Minimum limit: \$500,000 per occurrence for coverage A and B with a \$1,000,000 policy aggregate
- The Policy shall contain or be endorsed as follows:
 - Blanket contractual liability for this Contract
- Independent Contractor Coverage
- The Policy shall also include the following endorsements in favor of Burnet County:
- Waiver of Subrogation
- Thirty (30) day Notice of Cancellation
- Burnet County named as additional insured upon written request of client

Supplement Insurance Requirement: If child care, or housing arrangements for clients is provided, the required limits shall be:

\$1,000,000 per occurrence with a \$2,000,000 policy aggregate

- Business Automobile Liability Insurance
- If any form of transportation for clients is provided, coverage for all owned, non-owned, and hired vehicles shall be maintained with a combined single limit of \$300,000* per occurrence
- Policy shall also include the following endorsements in favor of Burnet County:
- Waiver of Subrogation
- Thirty (30) day Notice of Cancellation
- Travis County named as additional insured
- Professional Liability and/or E & O Insurance
- Minimum Limit: \$1,000,000 per Occurrence
- If coverage is written on a claims made policy, the retroactive date shall be prior to the date services begin under this Contract or the effective date of this Contract, whichever comes first. Coverage shall include a three (3) year extended reporting period from the date this Contract expires or is terminated. Certificate of Insurance shall clarify coverage is claims made and shall contain both the retroactive date of coverage and the extended reporting period date.
- Additional insured status for Burnet County is not required

ATTACHMENT D
ETHICS SWORN DECLARATION

6/28/24

Name of Declarant: JAMES OAKLEY
Title of Declarant: COUNTY JUDGE
Business Name of Contractor: ØVR.S.)CT COONTH
County of Contractor: BURNET



Date:

Declarant on oath swears that the following statements are true and complete:

1. Declarant is authorized by Contractor to make this Sworn Declaration for Contractor.
2. Declarant is fully aware of the facts stated in this Sworn Declaration.
3. Declarant can read the English language.
4. Contractor has received the list of key contracting persons associated with this Agreement which is attached to this Sworn Declaration as Exhibit "1".
5. Declarant has personally read Exhibit "1" to this Sworn Declaration.
6. Declarant has no knowledge of any key contracting person on Exhibit "1" with whom Contractor is doing business or has done business during the 365-day period immediately before the date of this Sworn Declaration whose name is not disclosed in Exhibit "2" to this Sworn Declaration.

Signature of Declarant

Typed or printed name of Declarant

Address

City,

State

Zip Code

EXHIBIT 1, ATTACHMENT D
LIST OF KEY CONTRACTING PERSONS

[illegible]

[illegible]

EXHIBIT 2, ATTACHMENT D

DISCLOSURE

Exhibit 2 acknowledges that Contractor is doing business or has done business during the 365day period immediately prior to the date of execution of the agreement with the following Key Contracting Persons and warrants that these are the only such Key Contracting Persons.

- Obligations

In the course of providing these services to or on behalf of Covered Entity, Contractor acknowledges and agrees that it will either create, receive, maintain, access, or transmit information that is protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Insurance Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"), and current and future regulations promulgated under HIPAA and/or the HITECH Act, as well as Texas laws related to the privacy and security of health information, including, but not limited to, Texas Health and Safety Code Chapters 181 and 182.

To the extent that Business Associate uses, discloses, maintains, or transmits protected health information ("PHI") that concerns alcohol and substance abuse treatment, Business Associate acknowledges and agrees that:

- such information is protected by 42 C.F.R. Part 2 ("Part 2"), and Business Associate is bound by these regulations;
- Part 2 prohibits Business Associate from further disclosing such information unless disclosure is authorized by Part 2, Subparts D or E, or Business Associate obtains the written consent of the individual whose PHI is to be further disclosed; and
- if necessary, Business Associate will resist any effort to obtain access to such information by initiating judicial proceedings against the person or entity attempting to gain access in contravention of Part 2.

Obligations of Business Associate and Business Associate Subcontractors. Business Associate agrees (and its Subcontractors will agree through the execution of a written contract) to comply with all of the provisions of this Section 1.3. For purposes of clarification, the obligations set forth in this Section shall apply to all of Business Associate's subcontractors (as that term is defined in 45 C.F.R. 160.103) and subcontractor's downstream subcontractors who create, receive, use, disclose, or have access to Covered Entity's PHI. Any reference to Business Associate in this Agreement includes all of Business Associate's subcontractors, directors, officers, employees, affiliates, agents, and representatives, as well as subcontractors' downstream subcontractors. Business Associate expressly acknowledges and agrees that it will be liable for the actions and omissions of its subcontractor(s) and its subcontractors' downstream subcontractors (collectively referred to as "Subcontractor" or "Subcontractors").

- Use Reasonable Safeguards to Secure Protected Health Information. The HITECH Act and final Omnibus Rule as published at 78 Federal Register 5566 (January 25, 2013) require Business Associate to comply with 45 C.F.R. Sections 164.308, 164.310, 164.312 and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees that it will comply with those provisions of the Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule"). Business Associate acknowledges and agrees that the provisions of the Security Rule with which it must comply require Business Associate to:

- employ appropriate administrative and physical safeguards, consistent with the size and complexity of Business Associate's operations, to protect the

confidentiality of PHI and to prevent the use or disclosure of PHI in any manner inconsistent with the terms of this Business Associate Agreement. These safeguards will include, without limitation:

- implementing written policies and procedures in compliance with HIPAA, HITECH, and the Privacy and Security Rule;
- performing a security risk assessment; and

- regularly and adequately training its employees, and any Subcontractors who will have access to PHI on the policies and procedures required by HIPAA, HITECH, their implementing regulations, and state law.

- use, to the extent possible, commercially reasonable efforts to secure electronic protected health information ("EPHI") through technical safeguards that render such EPHI unusable, unreadable, and indecipherable to individuals unauthorized to acquire or otherwise have access to such EPHI. At a minimum, Business Associate will use technical safeguards that are compliant with 45 C.F.R. Section 164.312, or such later regulations or guidance promulgated by the U.S. Department of Health and Human Services ("HHS") or issued by the National Institute for Standards and Technology ("NIST") that concern the protection of identifiable data such as PHI.

- provide Covered Entity with a copy of its written information security program before execution of this Business Associate Agreement.

- Use and Disclose Protected Health Information for Permissible Purposes.

- Business Associate agrees that it will:
- use or disclose PHI only in connection with fulfilling its duties and obligations under this Business Associate Agreement and the Service Agreement;

- not use or disclose PHI other than as permitted by Section 2 of this Business Associate Agreement or as required by Section 1.3.3 of this Agreement; and

- not use or disclose PHI in any manner that violates applicable federal and state laws or would violate such laws if used or disclosed in such manner by Covered Entity.

- Business Associate may disclose PHI that is not protected by Part 2 to Subcontractors as necessary to perform its obligations under the Service Agreement and as permitted or required by applicable federal or state law.

- Under no circumstances will Business Associate:
- sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153;

- use or further disclose genetic information for underwriting purposes;

- attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action would be permitted if performed by the Covered Entity; or

- use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152. Before Business Associate can sell, use, or

disclose PHI for marketing purposes, Business Associate must first obtain Covered Entity's written consent.

- Support Covered Entity in Fulfilling its Obligations. If the

Business

Associate maintains a Designated Record Set (as defined in 45 C.F.R. 164.501), Business Associate will support Covered Entity in a manner that enables Covered Entity to meet its obligations under 45 C.F.R. Sections 164.524, 164.526, and 164.528. To the extent that Business Associate is asked to carry out Covered Entity's obligations under these sections, Business Associate will comply with the requirements that apply to Covered Entity in the performance of such obligations.

- Requests for Access (45 C.F.R. 164.524)

- Business Associate will provide Covered Entity with any PHI subject to an individual's request for access within three (3) business days of Covered Entity's written request for the same. Unless Covered Entity specifically requests otherwise, the PHI subject to the request will be forwarded in electronic form.

- In the event any individual requests access to PHI directly from Business Associate, Business Associate will forward such request to Covered Entity within two (2) business days. Before forwarding any PHI to Covered Entity, Business Associate will indicate in the Designated Record Set, any material it deems unavailable to the individual pursuant to 45 C.F.R. Section 164.524(a)(1). Covered Entity will make the final determination as to the availability of the requested material.

- Requests for Amendment (45 C.F.R. 164.526)

- Business Associate will provide Covered Entity with the PHI subject to an individual's request for amendment within five (5) business days of Covered Entity's written request for the same. Unless Covered Entity requests otherwise, the PHI subject to the request will be forwarded in electronic form.

- In the event any individual requests an amendment of PHI directly from Business Associate, Business Associate will forward such request to Covered Entity within two (2) business days. Before forwarding any PHI to Covered Entity, Business Associate will indicate in the Designated Record Set, any material it deems unavailable for inspection by the individual pursuant to 45 C.F.R. Section 164.524(a)(1). Covered Entity will make the final determination on the request.

(c) Business Associate will incorporate any amendment to PHI that Covered Entity directs or agrees to make no later than fifteen (15) days after Covered Entity requests the amendment be effected.

- Accounting of Disclosures (45 C.F.R. 164.528)

- In order to allow Covered Entity to respond to an individual's request for an accounting, Business Associate will provide Covered Entity with the information required by 45 C.F.R. Section 164.528 within five (5) business days of Covered Entity's written request for the same. Unless Covered Entity specifically requests otherwise, the information will be forwarded in electronic form.

- In the event any Individual requests an accounting of disclosure of PHI directly from Business Associate, Business Associate will forward such request to Covered Entity within two (2) business days.

- At a minimum, Business Associate will provide Covered Entity with the following information:

- the date of the disclosure;
- the name of the entity or person who received the PHI, and if known, the address of such entity or person;

- a brief description of the PHI disclosed; and
 - a brief statement of the purpose of such disclosure.

- Business Associate will implement an appropriate recordkeeping process to enable it to comply with the requirements of this Subsection 1.3.4.

- Keep Accurate and Detailed Records. Business Associate will keep such accurate and detailed records pertaining to:

- all disclosures of PHI to third parties, including those made to Business Associate's directors, officers, employees, affiliates, agents, Subcontractors, and representatives, other than those disclosures that meet the exception criteria of 45 C.F.R. Section 164.528, for a period of at least six (6) years from the date of termination of this Agreement; and

- the written agreements it enters into with Subcontractors. Business Associate will provide Covered Entity with a copy of such agreements, upon request, and will also keep a written list of all Subcontractors to whom Business Associate discloses PHI.

- Cooperate with Covered Entity and the Secretary. Business Associate agrees that:

- Business Associate will submit such compliance reports, in such time and manner and containing such information, as the Secretary of HHS ("SecretaM") may determine to be necessary to verify compliance with applicable HEPAA provisions.

Business Associate will cooperate with the Secretary, if the Secretary undertakes investigations or compliance review of the policies, procedures, or practices of Covered Entity or Business Associate. Business Associate will also cooperate with Covered Entity if Covered Entity undertakes an audit to determine Business Associate's compliance with this Business Associate Agreement.

- Business Associate must permit access to the Secretary and Covered Entity, as applicable, during normal business hours to its facilities, books, records, accounts, and other sources of information, including PHI, in order for the Secretary or Covered Entity to ascertain Business Associate's compliance with HIPAA provisions or this Business Associate Agreement, respectively.

- Notwithstanding the foregoing, if the Secretary determines that exigent circumstances exist, such as when documents may be hidden or destroyed, Business Associate must permit access by the Secretary at any time and without notice.

- If any information required of the Business Associate is under the exclusive possession of any other agency, institution, or person and the other agency, institution, or person fails to furnish the information, the Business Associate must so certify and set forth what efforts it has made to obtain the information.

- Business Associate will provide Covered Entity with copies of all documents provided to the Secretary or other regulatory and accreditation authorities.

- In addition to Business Associate's obligations under Section 1.3.5(iii)(c), Business Associate will provide copies of any documents reasonably requested by Covered Entity. Documents will be made available to Covered Entity within fourteen (14) days of Covered Entity's request at no charge.

- Enter into Business Associate Agreements with Subcontractors.

- In accordance with 45 C.F.R. 164.314(a)(2)(B), Business Associate will enter into a signed written agreement with its Subcontractor(s), if any, that:

- Binds the Subcontractor to the same provisions, restrictions, and conditions as contained in this Business Associate Agreement;

- Contains reasonable assurances from Subcontractor that the PHI will be held confidential as provided in this Business Associate Agreement, and only disclosed as required by law or for the purposes for which it was disclosed to Subcontractor;

- Establishes the permitted and required uses and disclosures of PHI by the Subcontractor. The written agreement will not authorize the Subcontractor to use or further disclose PHI in a manner that would violate 45 C.F.R. Parts 160 and 164, Subparts A and E (the "Privacy Rule") or Part 2, if done by Covered Entity;

- Obligates Subcontractor to forward a request from an individual to Business Associate on the same day that Subcontractor receives such requests;

- Obligates Subcontractor to immediately notify Business Associate of any breaches (including breaches of unsecured PHI as required by 45 C.F.R. 164.410) of the confidentiality of the PHI and Security Incidents (as defined in 45 C.F.R. 164.304) of which it becomes aware; and

- Requires the Subcontractor to comply with the applicable requirements of HIPAA (including but not limited to the Security and Privacy Rule) as well as Texas Privacy provisions.

Business Associate will provide Covered Entity with a copy of each such written agreement, upon request.

- Survival. The provisions of this Section 1.3 will survive the termination of this Business Associate Agreement

Obligations of Covered Entity.

- Resolve and Report All Appeals and Complaints. Any denial of access or amendment to PHI, which is determined by Covered Entity and conveyed to Business Associate by Covered Entity, will be the sole responsibility of Covered Entity. Covered Entity will resolve, and report all appeals and/or complaints arising from such denials.

- Restrictions on the use and Disclosure of PHI

Except as otherwise specified herein, Business Associate may use or disclose any PHI necessary to perform its obligations under the Service Agreement.

Improper Uses and Disclosures.

- Neither Business Associate nor its directors, officers, employees, Subcontractors, or agents will disclose PHI to any person other than a member of their respective workforces, unless disclosure is required by law or authorized by the person whose PHI is to be disclosed.
- Business Associate and its Subcontractors will not disclose PHI to any member of its respective workforce unless Business Associate or Subcontractor has advised such member of Business Associate's obligations under this Business Associate Agreement, and of the consequences for such person and for Business Associate or such Subcontractor of violating them. Business Associate will take and will require that each of its Subcontractors and agents take appropriate disciplinary action against any member of its respective workforce who uses or discloses PHI in contravention of this Business Associate Agreement.
- If PHI is used or disclosed by Business Associate in violation of this Business Associate Agreement, Business Associate will:
 - notify Covered Entity within the timeframe described in Section
 - upon Covered Entity's direction, take steps to mitigate any harmful effect that is known to Business Associate and is the result of such improper use or disclosure, and
 - indemnify Covered Entity pursuant to Section 7 of this Business Associate Agreement.

Minimum Necessary.

- Business Associate will comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure of Limited Data Sets.
- Business Associate acknowledges and agrees that Section 13405(b) of the HITECH Act requires Business Associate to limit its uses and disclosures of PHI to either:
 - the information making up a Limited Data Set (as defined in 45 C.F.R. 164.514); or
 - the minimum PHI necessary to accomplish the intended purpose of the use or disclosure.
- Reporting of Breaches, Security Incidents, and Improper Disclosures

Definition of Breach. The term "Breach," as used in this Agreement, refers to two (2) distinct types of breaches: a HIPAA Breach and a Breach of System Security.

- A "HIPAA Breach" is the unauthorized acquisition, access, use, or disclosure of PHI in a manner not permitted by HIPAA and which compromises the security or privacy of such information.

- A "Breach of System Security" means an unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information (as defined in Section 521.002 of the Texas Business and Commerce Code) maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data.

Breach Reporting.

- In the event of a Breach of any Unsecured PHI (as defined in 45 C.F.R. 402) or sensitive personal information that Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Covered Entity, Business Associate will provide notice of the Breach to Covered Entity immediately, but in no event more than three (3) days after discovering the Breach.

- For purposes of this Business Associate Agreement, a Breach of Unsecured PHI or sensitive personal information will be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate (including any person, other than the individual committing the Breach, who is an employee, officer, Subcontractor, or other agent of Business Associate, as determined in accordance with the federal common law of agency) or should have been known to Business Associate following the exercise of reasonable diligence.

- Business Associate will be liable to, and indemnify Covered Entity for, unreasonable delays in reporting Breaches to Covered Entity.

- Notice of a Breach will include, at a minimum:
 - the identification of each individual whose PHI or sensitive personal information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach;

- the date of the Breach, if known, and the date the Breach was discovered;

- a description of the types of PHI or sensitive personal information involved (e.g., names, Social Security numbers, dates of birth, home addresses, or medical record numbers);

- a description of the Business Associate's response to the Breach, if any (i.e., what the Business Associate has done to investigate the Breach and to protect against future Breaches); and
- any other reasonable information requested by Covered Entity.

Duties Following a Breach. In addition to Business Associate's obligations under Section 3.2, Business Associate has a duty to:

- inform Covered Entity of any new information learned by Business

Associate regarding the Breach; • assist Covered

Entity in:

- conducting a risk assessment of the Breach;
- providing notice of the Breach as required by the Privacy and Security Rule;
- mitigating any harmful effect of such Breach, whether the harm is known by Business Associate to exist or merely directed by Covered Entity;
- pay all costs associated with mitigation and public or individual notice efforts (including the costs associated with a Subcontractor's breach); and
- appoint a liaison and provide contact information for same so that Covered Entity may ask Business Associate questions or learn additional information about the Breach.

Reporting of Security Incidents and Improper Disclosures. Business Associate will report to Covered Entity any Security Incident, unauthorized or improper use or disclosure of any PHI under the terms and conditions of this Business Associate Agreement or applicable federal and state laws as soon as practicable, but in no event later than two (2) days of the date on which Business Associate becomes aware of such use or disclosure.

- Equitable Remedies

Business Associate acknowledges and agrees that Covered Entity will suffer irreparable damage upon Business Associate's breach of this Business Associate Agreement, and that such damages will be difficult to quantify.

Business Associate acknowledges and agrees that, where Covered Entity has knowledge of any material breach by Business Associate, Covered Entity may file an action for injunction against Business Associate to enforce the terms of this Business Associate Agreement. Such proceeding may be brought before any Court having jurisdiction to obtain an injunction.

Business Associate acknowledges and agrees that Covered Entity may also pursue any other legal remedies available to Covered Entity to cure or stop such material breach.

- Term and Termination

General Term and Termination. This Business Associate Agreement will become effective on the Effective Date of the Service Agreement and will terminate when all PHI provided by either party to the other or created or received by Business Associate on behalf of Covered Entity is, in accordance with Section 6, destroyed or returned to Covered Entity or, if it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the terms of Section 6 of this Business Associate Agreement.

Termination for Material Breach.

- Where Covered Entity has knowledge of a material breach by Contractor, Covered Entity may terminate both the Service and Business Associate agreements it has executed with Contractor. Such termination may occur before the expiration of the Service Agreement and without provision of notice or an opportunity for Contractor to cure.

Business Associate:

- Business Associate commits a material breach of this Agreement if

- knows of a pattern of activity or practice of a Subcontractor that constitutes a material breach or violation of the Subcontractor's obligation under the contract or other arrangement, unless the Business Associate takes reasonable steps to cure the breaches or end the violation, as applicable; • impermissibly uses or discloses PHI;

- fails to provide Covered Entity with timely and accurate Breach notification;

- fails to provide timely access, either to Covered Entity, a requesting individual, or the requesting individual's designee, to a copy of PHI; • fails to provide a timely and accurate accounting;

- fails to timely disclose PHI where required by the Secretary;

- fails to fully comply with Texas law, the Security Rule, or the Privacy Rule; or

- otherwise fails to fully comply with this Business Associate Agreement.

- Alternatively, Covered Entity will have the right to cure any breach of Business Associate's obligations under this Business Associate Agreement.

- When Covered Entity chooses to exercise this right, Covered Entity will give Business Associate notice of its election to cure any such breach, and Business Associate will cooperate fully.

- Business Associate will compensate Covered Entity for the efforts Covered Entity undertakes to cure Business Associate's breach. Payment for such efforts will be made to Covered Entity within thirty (30) days.

- Return/Destruction of Protected Health Information upon Termination Business Associate acknowledges that, as between Business Associate and Covered Entity, all PHI will be and remain the sole property of Covered Entity, including any and all forms thereof developed by Business Associate or its Subcontractors in the course of fulfillment of its obligations pursuant to this Business Associate Agreement and the Service Agreement. Upon termination of the Business Associate Agreement or Service Agreement for any reason, Business Associate

If feasible, return or destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity that Business Associate or any of its directors, officers, employees, affiliates, Subcontractors, agents, and representatives still maintain in any form; or

- Business Associate agrees that all paper, film, or other hard copy media will be shredded or destroyed such that it may not be reconstructed, and EPHI will be purged or destroyed as set forth in the NIST Guidelines for media sanitization at <http://www.csrc.nist.gov/>.

If Covered Entity and Business Associate mutually determine that such return or destruction is not feasible, Business Associate's will:

- continue to use appropriate safeguards and comply with the Security Rule (45 C.F.R Part 164, Subpart C), with respect to EPHI;

- extend the conditions of Section 2 of this Business Associate Agreement to all PHI retained by Business Associate;

- further limit the uses and disclosures of PHI to those purposes that make the return or destruction of the PHI infeasible (i.e., for the purposes for which such PHI was maintained); and

- return or destroy the PHI retained as soon as it is no longer needed by Business Associate for the purposes that made the return or destruction of the PHI infeasible.

- Indemnification Business Associate will indemnify, defend and hold harmless Covered Entity and its directors, officers, employees, affiliates, agents, and representatives from and against any and all actions, claims, costs (including court costs and attorneys' fees), demands, suits, penalties, proceedings, losses and liabilities of any kind, arising from or relating to the acts or omissions of Business Associate or any of its directors, officers, employees, affiliates, agents, Subcontractors, and representatives in connection with Business Associate's performance under this Business Associate Agreement, without regard to any limitation or exclusion of damages provision otherwise set forth in the Business Associate or Service Agreement. The indemnification provisions of this Section 6 will survive the termination of this Business Associate Agreement and will apply when actions, claims, demands, or proceedings are brought by a third party or when Business Associate commits a material breach of this Agreement, as described in Section 5.2.1.

- Amendment. If any of the rules or regulations promulgated under HIPAA or state law are amended or interpreted in a manner that renders this Business Associate Agreement inconsistent therewith, Covered Entity may, on thirty (30) days written notice to Business Associate, amend this Business Associate Agreement to comply with such amendments or interpretations. Business Associate agrees that it will amend applicable Subcontractor agreements as necessary to comply with changes in laws or regulations.

- Assignment. This Agreement may be assigned to any affiliate or successor of the Covered Entity. Notwithstanding the foregoing, no assignment of this Business Associate Agreement or the rights and obligations hereunder will be valid without the prior written consent of the non-assigning party.

- Conflicting Terms and Requirements. In the event any terms of this Business Associate Agreement conflict with any terms of the Service Agreement, the terms of this Business Associate Agreement will govern and control. In the event of any conflict between this Business Associate Agreement and federal or Texas law, the more stringent requirements will govern.

11. Additional Documents. Each of the parties hereto agrees to execute any document or documents that may be requested from time to time by the other party to implement or complete such party's obligations pursuant to this Business Associate Agreement or law.

12. Entire Agreement. This Business Associate Agreement, including any exhibits or addenda identified and incorporated by reference herein, contains the entire understanding of the parties and supersedes any prior written or oral agreements or understandings among them concerning the subject matter set forth above. There are no representations, warranties, covenants, promises, agreements, arrangements, or understandings, oral or written, express or implied among the parties hereto relating to the subject matter set forth above which have not been fully expressed herein.

13. Governing Law and Venue. This Business Associate Agreement will be construed and governed according to the laws of the State of Texas, without giving effect to its conflict of laws provisions. Venue for any dispute relating to this Agreement will be in Travis County, Texas.

14. Independent Contractor Status. In performing Business Associate's responsibilities pursuant to this Business Associate Agreement, it is understood and agreed that Business Associate is all times acting as an independent contractor and that Business Associate is not a partner, joint-venturer, agent, or employee of the Covered Entity. It is expressly agreed that Contractor will not for any purpose be deemed to be an agent, ostensible or apparent agent, or servant of the Covered Entity, and the parties agree to take any and all such action as may be reasonably requested by the Covered Entity to inform the public and others utilizing the professional services of Business Associate of such fact.

15. Interpretation. Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with applicable law.

16. Non-Waiver. No waiver by either of the parties hereto of any failure by the other party to keep or perform any provision, covenant or condition of this Business Associate Agreement will be deemed to be a waiver of any preceding or succeeding breach of the same, or any other provision, covenant, or condition.

17. No Third Party Beneficiaries. This Business Associate Agreement is not intended to benefit any third person or entity, nor will anyone not a party to this Business Associate Agreement be able to enforce or recover any right or remedy hereunder.

18. Notices. Any notice to a party hereto pursuant to this Business Associate Agreement will be given in writing in the manner and at the address set forth in the Service Agreement for notice. Notice will be effective upon delivery.

19. Parties Bound. This Business Associate Agreement and the rights and obligations hereunder will be binding upon and inure to the benefit of the parties and their permitted assigns. This Business Associate Agreement will also bind and inure to the benefit of any successor of Covered Entity by sale, merger, or consolidation.

20. Severability. The sections, paragraphs and individual provisions contained in this Business Associate Agreement will be considered severable from the remainder of this Agreement and in the event that any section, paragraph, or other provision should be determined to be unenforceable as written for any reason, such determination will not adversely affect the remainder of the sections, paragraphs, or other provisions of this Agreement. It is agreed further, that in the event any section, paragraph or other provision is determined to be unenforceable, the parties will use their best efforts to reach agreement on an amendment to the Agreement to supersede such severed section, paragraph, or provision.

IN WITNESS WHEREOF, the parties have signed this Business Associate Agreement to be effective as of the date set forth above.

Nikki T. Tran, DMD, PLLC d/b/a Austin Dental Cares

By:

Name: _____

Title: _____

Address: _____

COUNTY OF Burnet

By: _____

Name: _____

Title: B OF-NET CD JVD QC

Address: 220 South Pierce
Burnet, Texas

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