

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF CORPUS CHRISTI
AND
DR. WILLIAM W. BURGIN, JR., M.D.**

THE STATE OF TEXAS §

§ KNOW ALL BY THESE PRESENTS:

COUNTY OF NUECES §

Section 1. Parties. This professional services agreement ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City"), acting through its City Manager or the City Manager's designee ("City Manager"), and Dr. W. W. Burgin, Jr., M.D., a licensed medical doctor of the State of Texas, in his individual capacity ("Dr. Burgin").

Section 2. Engagement. The City engages Dr. Burgin to provide professional services for the Corpus Christi-Nueces County Public Health District ("CCNCPHD") in the capacity of the Medical Provider for the CCNCPHD's Tuberculosis Clinic ("TB Clinic").

Section 3. Term. The term of this Agreement commences on May 1, 2017, and terminates on April 30, 2019. This Agreement may be renewed for additional two year terms, subject to sufficient appropriations, for the same period of calendar days and under the same terms and conditions, upon mutual agreement of the parties, in writing and signed by authorized representatives of each.

Section 4. Services. In consideration of payment to be made for services rendered, Dr. Burgin agrees to provide professional services, including, but not limited to the following:

- a) serve as the Medical Provider for the TB Clinic;
- b) responsible for the overall operation and administration of the TB Clinic, located at 1702 Horne Road, Corpus Christi, Nueces County Texas, including:
 - i) ensure all personnel are competent to perform test procedures;
 - ii) record and report test results promptly, accurately and proficiently; and
 - iii) assure compliance with statutes and standing orders;
- c) be accessible to the TB Clinic for consultation or professional service within 24-72 hours of notification with patients and/or other physicians;
- d) be available to address the media;
- e) ensure the identification and treatment of positive Tuberculosis ("TB") patients are according to the standards of care per the Texas Department of State Health Services ("TDSHS") Standing Delegation Orders for Tuberculosis;
- f) reading of Chest X-Rays in the TB clinic or via electronic transmission (if applicable);

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- g) provide verbal and/or written orders for medications, treatments according to protocol to include Direct Observed Therapy (DOT)
- h) consult with TDSHS laboratory when additional testing or information is needed
- i) assist in the coordination of care should the patient need to be transferred to Texas Center for Infectious Disease (voluntary or involuntary); and
- j) assist with procedure to apply for court management of non-compliant TB Suspect/Case Quarantine.

Section 5. Relationship of the Parties.

- (A) Dr. Burgin will perform all Services as an independent contractor and will furnish the Services in his own manner and method. Under no circumstances or conditions will Dr. Burgin be considered an employee of the City for any purpose or reason. Dr. Burgin may only act as an agent of the City's TB Clinic in the capacity of a Medical Provider.
- (B) Dr. Burgin acknowledges that he is competent, capable, qualified and duly licensed by the State of Texas to perform the Services specified under this Agreement. Dr. Burgin will provide the City with a copy of his current medical license upon execution and return of this Agreement.

Section 6. Fee/Compensation for Services.

- (A) In consideration of Dr. Burgin's faithful performance of this Agreement and as full compensation for Services performed pursuant to this Agreement, the City shall pay Dr. Burgin a monthly amount of \$1,500.00, to be remitted on a monthly basis following the delivery of Services.
- (B) Dr. Burgin acknowledges and agrees that he is personally responsible for the payment of all federal, State, and local taxes and fees, of any nature whatsoever, accruing or that may derive from the receipt of compensation under this Agreement.

Section 7. Insurance Required.

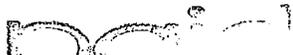
- (A) Before the performance required under this Agreement can begin, Dr. Burgin shall deliver copies of all Certificates of Insurance ("Certificates") required by Exhibit A, which is attached to this Agreement and Incorporated in this Agreement by reference, as proof that the required insurance coverage provisions of this Agreement have been satisfied. Copies of the Certificates must be submitted to the City's Risk Manager ("Risk Manager") and to the City Manager. Dr. Burgin must maintain in good standing and keep in force all insurance coverages required under this Agreement for the term of this Agreement.
- (B) The Certificates must state, in writing on the face of each document, that the Risk Manager shall be given at least 30 days written notice of cancellation, any material change, or intent not to renew any of the policies required under this Agreement, by



certified mail. Additionally, the City of Corpus Christi, Corpus Christi-Nueces County Public Health District, and County of Nueces must be named as separate **additional insureds** for liability arising from Dr. Burgin's provision of Services under this Agreement.

- (C) If the insurance company or companies utilized by Dr. Burgin elects to use the standard ACORD form, the cancellation clause located on the bottom right of each ACORD form must be amended by adding the wording "materially changed or" between "be" and "canceled," deleting the words "endeavor to," and deleting the wording after "left." In lieu of modification of an ACORD form, separate endorsements addressing the same substantive requirements, as stated in this section and Exhibit A, are mandatory on the ACORD form.
- (D) Dr. Burgin must provide workers' compensation coverage through a licensed insurance company or through self-insurance obtained in accordance with Texas law or in lieu of the forgoing, sign the Release of Liability and Covenant Not to Sue attached and labeled Exhibit C.

Section 8. Indemnification. To the extent allowed by Texas law, Dr. Burgin ("indemnitor") will indemnify and hold harmless the City, Corpus Christi-Nueces County Public Health District, County of Nueces and their respective officers, employees, representatives, and agents (indemnitees") from and against any and all liability, damages, loss, claims, demands, suits, and causes of action of every nature whatsoever asserted against or recovered from the indemnitees, or any of them individually, on account of personal injuries (including, without limitation on the foregoing, workers' compensation, premises defects, and death claims), property loss or damage, or any other kind of damage, including dishonest, fraudulent, negligent, or criminal acts of the Indemnitor or any of his employees, representatives, or agents, acting alone or in collusion with others, and including all expenses of litigation, court costs, and attorneys' fees which arise, or are claimed to arise, out of or in connection with the services provided by the Indemnitor pursuant to this Agreement, regardless of whether such injuries, death, or damages are caused or claimed to be caused by the concurrent or contributory negligence of the Indemnitees, or any of them individually. The Indemnitor covenants and agrees that, if the indemnitees, or any of them individually, are made a party to any litigation against the Indemnitor or, in any litigation commenced by any party other than the Indemnitor, relating to this Agreement, the Indemnitor, shall, upon receipt of reasonable notice regarding the commencement of any litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the indemnitees collectively or each separately, in



all actions based thereon with counsel satisfactory to the indemnitees, and pay all charges of attorneys and all other costs and expenses of any kind arising from any said liability, damage, loss, demand, claim, or action.

Section 9. Nondiscrimination. Dr. Burgin shall not discriminate nor permit discrimination against any person or group of persons, as to employment or in the performance of Services under this Agreement, on the grounds of race, religion, national origin, sex, disability, or age, or in any manner prohibited by the laws of the United States or the state of Texas. The City retains the right to take such action as the United States may direct to enforce this non-discrimination covenant.

Section 10. Compliance with Laws. Dr. Burgin must comply with all applicable federal, State, and local government laws, rules, regulations, and ordinances, which may be applicable to the Services to be rendered under this Agreement and to his performance under this Agreement.

Section 11. Notices.

(A) All notices, demands, requests, or replies provided for or permitted, under this Agreement by either party must be in writing and must be delivered by one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified mail, return receipt requested, postage prepaid; (3) by prepaid telegram; (4) by deposit with an overnight express delivery service, for which service has been prepaid; or, (5) by fax transmission.

(B) Notice deposited with the United States Postal Service in the manner described above will be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by telegram or overnight express delivery service in the manner described above will be deemed effective one (1) business day after transmission to the telegraph company or overnight express carrier. Notice by fax will be deemed effective upon transmission with proof of delivery to the receiving party. All such communications must only be made to the following:

IF TO THE HEALTH DISTRICT:

City of Corpus Christi
Attn: City Manager
P. O. Box 9277
Corpus Christi, TX 78469-9277
(361) 826-3220 Office
(361) 826-3839 Fax

IF TO DR. BURGIN:

Dr. William W. Burgin, Jr., M.D.
4091 Bandera Hwy.
Kerrville, TX 78028
(361) 633-1324 Cell

Copy to:
Corpus Christi-Nueces County Health District
Attn: Director of Public Health
1702 Horne Rd.

Corpus Christi, TX 78416-1902
(361) 826-7205 Office
(361) 826-1343 Fax

- (C) Either party may change the address to which notice is sent by using a method set out above in this section. Dr. Burgin must notify the City of an address or phone number change within 10 days after the address or number is changed.

Section 12. Amendments. No alterations, changes, or modifications to the terms of this Agreement nor the waiver of any provision will be valid unless made in writing and signed by all parties to this Agreement, by a person authorized to sign agreements on behalf of each party.

Section 13. Waiver.

- (A) The failure of any party to complain of any act or omission on the part of the other party, no matter how long the same may continue, will not be deemed a waiver by said party of any of its rights under this Agreement.
- (B) No waiver of any covenant or condition or of the breach of any covenant or condition of this Agreement by any party at any time, express or implied, will be taken to constitute a waiver of any subsequent breach of the covenant or condition nor will justify or authorize the nonobservance on any other occasion of the same or any other covenant or condition of this Agreement.
- (C) If any action by Dr. Burgin requires the consent or approval of the City on one occasion, any consent or approval given on said occasion will not be deemed a consent or approval of the same or any other action at any other occasion.
- (D) Any waiver or indulgence of Dr. Burgin's default of any provision of this Agreement will not be considered an estoppel against the City. It is expressly understood that, if at any time Dr. Burgin is in default of any of the conditions or covenants of this Agreement, the failure on the part of the City to promptly avail itself of any rights and remedies which the City may have will not be considered a waiver on the part of the City, but the City may at any time avail itself of said rights or remedies or elect to terminate this Agreement on account of said default.
- (E) The rights and remedies in this section are cumulative and are in addition to any other rights and remedies provided by law.

Section 14. Budgetary Appropriations. Dr. Burgin understands and acknowledges that the continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30, of each year, is subject to sufficient appropriations and budget approval providing for or covering this Agreement as an expenditure in the City's budgets. The City does not represent to Dr. Burgin that said budget item will be actually adopted, the determination as to

appropriations and expenses being within the sole discretion of the City's governing body at the time of adoption of its budget. If revenue funds are not appropriated by the City for any individual fiscal year following the execution of this Agreement, the City reserves the right to terminate this Agreement without penalty.

Section 15. Force Majeure. No party to this Agreement will be liable for failures or delays in performance due to any cause beyond their control including, but not limited to, any failures or delays in performance caused by strikes, lock outs, fires, acts of God or the public enemy, common carrier, severe inclement weather, riots or interference by civil or military authorities. The rights and obligations of the parties will be temporarily suspended during this period to the extent performance is reasonably affected.

Section 16. Assignment and Transfer of Agreement. This Agreement may not be, in whole or in part, assigned or transferred, directly or indirectly, by Dr. Burgin without the prior written consent of the City. Subject to the foregoing, this Agreement shall be binding upon the City and Dr. Burgin and each of their respective successors and assigns.

Section 17. Termination of Agreement.

(A) This Agreement may be terminated prior to the term specified in Section 3 of this Agreement under the following circumstances:

- (1) Upon 30 days written notice by either party;
- (2) Lack of budgetary appropriations by the City as specified in Section 14; or
- (3) By mutual consent of the parties to this Agreement.

(B) In the event of a termination of this Agreement, any unpaid compensation due by the City to Dr. Burgin for Services performed up to the effective date of termination will be paid to Dr. Burgin within 10 days of the effective termination date.

(C) The parties acknowledge and agree that this Agreement may be terminated with or without cause.

Section 18. Venue and Jurisdiction.

(A) All actions brought to enforce compliance will be brought in Nueces County, where this Agreement was executed and will be performed.

(B) This Agreement will be governed by and construed in accordance with the laws of the State of Texas.

Section 19. Severability.

(A) If, for any reason, any section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement or the application hereof to any person or circumstance is, to any extent, held

illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of said term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected thereby, for it is the definite intent of the parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word hereof be given full force and effect for its purpose.

(B) To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected thereby, and in lieu of each such illegal, invalid, or unenforceable clause or provision, a clause or provision, as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable, will be added to this Agreement automatically.

Section 20. Disclosure of Interest. In compliance with Section 2-349 of the City's Code of Ordinances, Dr. Burgin agrees to complete the City's *Disclosure of Interests* form, which is attached to this Agreement as Exhibit B, the contents of which are incorporated in this document by reference as if fully set out in this Agreement.

Section 21. Entirety Clause. This Agreement and the attached and incorporated exhibits constitute the entire agreement between the parties for the purposes stated. All other agreements, promises, representations, and understandings, oral or otherwise, with reference to the subject matter hereof, unless contained in this Agreement, are expressly revoked, as the parties intend to provide for a complete understanding within the provisions of this Agreement and its exhibits of the terms, conditions, promises, and covenants relating to Dr. Burgin's performance hereunder.

(EXECUTION PAGES FOLLOW)



EXECUTED IN DUPLICATE, each of which will be considered an original, on this the
3rd day of August, 2017.

CITY OF CORPUS CHRISTI

Designee on behalf
of Margie Rose.

DocuSigned by:
Annette Rodriguez, MPT
Margie C. Rose
City Manager

APPROVED AS TO FORM ONLY: 6/6/2017

Yvette Aguilar
Yvette Aguilar
Assistant City Attorney
For the City Attorney

Dr. William W. Burgin, Jr., M.D., in his individual capacity

William W. Burgin Jr. M.D.
Signature

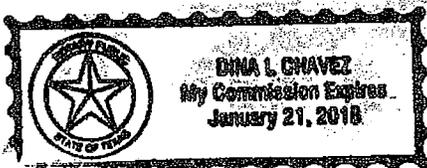
7-20-17
Date

William W. Burgin Jr. M.D.
Printed Name

E1998
7-20-17
Texas Medical License Number

STATE OF TEXAS §
§
COUNTY OF NUECES §

This instrument was acknowledged before me on the 20th day of July,
2017, by Dr. William W. Burgin, Jr., M.D.



Dina L. Chavez
Notary Public, State of Texas