

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
SAN ANTONIO METROPOLITAN HEALTH DISTRICT**

TO: Mayor and City Council

FROM: Fernando A. Guerra, M.D., M.P.H., Director of Health

THROUGH: Terry M. Brechtel, City Manager

COPIES: Frances A. Gonzalez, Assistant City Manager; City Attorney's Office; Office of Management and Budget; Finance Department; Project; File

SUBJECT: ORDINANCE AUTHORIZING LEASE FOR THE WOMEN, INFANTS & CHILDREN (WIC PROGRAM) CLINIC LOCATED AT 1013 RITTIMAN ROAD

DATE: January 8, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of a Lease Agreement with Ronald R. Deroo, c/o The Brian Brady Company, for use by the San Antonio Metropolitan Health District (SAMHD) in connection with the Women, Infants & Children (WIC Program) of approximately 4,258 square feet of office and clinic space in the Sam Houston Shopping Center located at 1013 Rittiman Road at a rate of \$3,619.30 per month for the period December 8, 2003 through December 7, 2005 and at a rate of \$3,832.20 per month for the period December 8, 2005 through December 7, 2008. This ordinance will also approve payments to the Landlord.

Staff recommends approval.

BACKGROUND INFORMATION

In 1993 the SAMHD Special Supplemental Nutrition Program for Women, Infant & Children (WIC Program) began leasing the clinic and office space in the Sam Houston Shopping Center located at 1013 Rittiman Road. This WIC clinic provides nutrition education and food vouchers for WIC approved foods for qualified income eligible women residents that are pregnant, breast-feeding or postpartum, and infants and children under the age of five in northeast San Antonio.

The lease expired on December 7, 2003 with a holding over monthly rental rate of \$3,619.30 (\$0.85/ft²). The rental rate for the first two (2) years of the proposed lease will be \$3,619.30 (\$0.85/ft²) per month, the same as the old rate, for the period December 8, 2003 through December 7, 2005 and for the next three (3) years a monthly cost of \$3,832.20 (\$0.90/ft²) for the period December 8, 2005 through December 7, 2008. The Asset Management Department agrees that the proposed rate is appropriate.

POLICY ANALYSIS

This ordinance follows past City policy in utilizing leased space to augment City-owned facilities. The Texas Department of Health (TDH), the granting agency for the WIC Program, has approved the lease of this space.

FISCAL IMPACT

The lease will cost \$3,619.30 (\$0.85/ft²) per month, the same as the last three years of the 1998 negotiated lease rate. This lease will be financed out of the WIC Program contract with TDH. It can be canceled if the WIC Program is not re-funded during the five (5) year period. This lease will place no demands on the City General Fund.


COORDINATION

The City Attorney's Office and Asset Management Department have approved the proposed lease. The Office of Management and Budget, Risk Management Division, has reviewed the insurance provisions.

SUPPLEMENTARY COMMENTS


The Discretionary Contracts Disclosure form required by the City Ethics Ordinance is attached (See Attachment II).

Attachments: Attachment I: Lease Agreement
Attachment II: Discretionary Contracts Disclosure Form


Fernando A. Guerra, MD, MPH
Director of Health


Frances A. Gonzalez
Assistant City Manager

APPROVED:


Terry M. Brechtel
City Manager

LEASE AGREEMENT

ATTACHMENT I

**STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF BEXAR §**

This Lease Agreement (hereinafter referred to as "Lease") is hereby made and entered into by and between the CITY OF SAN ANTONIO, (hereinafter referred to as "Tenant"), a Texas Municipal Corporation acting by and through its City Manager pursuant to Ordinance No. _____ dated _____ and RONALD R. DEROO, d/b/a/ SAM HOUSTON SHOPPING CENTER, A SOLE PROPRIETORSHIP (hereinafter referred to collectively as "Landlord") for the lease of a building located at 1013 Rittiman Road, San Antonio, Bexar County, Texas (hereinafter referred to as "Leased Premises").

I. LEASED PREMISES/USE

1.1 In consideration of the covenants and agreements contained herein, Landlord hereby leases unto Tenant, and Tenant hereby leases from Landlord, approximately 4,258 square feet of rentable space in the Sam Houston Shopping Center located at 1013 Rittiman Road, San Antonio, Bexar County, Texas 78218, to have and to hold for the Lease Term and any holdover or renewal periods, unless sooner terminated as hereinafter provided. The Leased Premises are more particularly described being 8,369 acres of land more or less, out of Block Four (4) NCB Wilshire Terrace Subdivision, San Antonio, Bexar County, Texas.

1.2 The Leased Premises may be used as a public health clinic or for related uses. The permitted uses may be expanded by Tenant upon Landlord's written consent.

1.3 Tenant will not occupy or use, nor permit any portion of the Leased Premises to be occupied or used for any business or purpose which is not the same as the purpose stated in Paragraph 1.2 above or is unlawful in part or in whole or deemed to be disreputable in any manner, or extra hazardous, excluding from the definition of "extra hazardous" those items which might otherwise be classified as "extra hazardous", or "hazardous substances" or "hazardous materials," but which have been brought, kept, stored or maintained on the Leased Premises for medical use, for immunization purposes, or otherwise utilized in connection with public health work; and also permitted on the Leased Premises shall be items used in public health work which may otherwise increase the insurance premium cost or may invalidate any insurance policy carried on the Leased Premises. Tenant must procure at its sole expense any permits and licenses required for the transaction of its business in the Leased Premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

1.4 Tenant will maintain the Leased Premises in a clean and healthful condition and comply with all laws, ordinances, orders, rules and regulations (state, federal municipal, and other agencies or bodies having any jurisdiction thereof) with reference to use, conditions, or occupancy of the Leased Premises. Tenant will conduct its business, and control its agents, employees, and invitees in such a manner as not to create any nuisance, interfere with, annoy or disturb other tenants or Landlord.

II. TERM/RENEWAL

2.1 The term of this Lease Agreement shall be for a period of five (5) years, unless terminated earlier as provided herein, commencing on December 8, 2003.

III. SERVICES, REPAIR AND MAINTENANCE BY LANDLORD

3.1 Tenant shall give to Landlord prompt written notice of any damage to, or defective condition in any part or appurtenance of the Building's plumbing, electrical, heating, air-conditioning or other system serving, located in, or passing through the Premises. Subject to the provisions of ARTICLE XV, Tenant shall, at Tenant's own expense, keep the Premises in good order, condition and repair during the term hereof, including repair and replacement of window glass, doors, and shall have HVAC air filters replaced once per month, except that Landlord, at Landlord's expense, shall keep in good working order and operating condition the electrical lines, plumbing fixtures located in the Building (except those installed by Tenant, with Landlord's approval), heating and air-conditioning equipment, outside walls, and the roof. Tenant, at Tenant's expense, shall comply with all laws and ordinances, and all rules and regulations of all governmental authorities and of all insurance bodies at any time in force, applicable to the Premises or to Tenant's use thereof, except the Tenant shall not hereby be under any obligations to comply with any ordinance, rule or regulation requiring any structural alteration of, or in connection with, the Premises, unless such alteration is required by reason of a condition which has been created by, or at the instance of, Tenant, or is required by reason of a breach of any of the Tenant's agreements hereunder. Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any panels, decoration, office fixtures, railing, ceiling (except for ceiling tiles as set forth in Section 3.6 of this lease), floor covering, partitions, or any other property installed in the premises by the Tenant, unless such injury or damage or need for repair, replacement, or installation is caused by the sole active negligence of Landlord.

3.2 All repairs of the roof, walls (excluding window glass) common areas, stairway and structural elements, specifically including the foundation, shall be the obligation of the Landlord.

3.3 Landlord shall maintain all common areas of the building exterior and the courtyard and all other operating expenses.

3.4 Landlord shall maintain the parking areas and landscaping and shall provide, at no expense, all other repairs and maintenance of the parcel on which the Premises are located.

3.5 Landlord warrants and represents that the Leased Premises are currently serviced by and will continue to be serviced by all necessary utilities, including but not limited to, electric, gas, water and sewer services.

3.6 Notwithstanding any other section of this Lease, Landlord, at Landlord's sole cost and expense, shall replace all damaged ceiling tiles on the Leased Premises and shall make all necessary changes, as required by Tenant to the existing ramp on the Leased Premises.

IV. SERVICES BY TENANT

4.1 Tenant agrees to provide and furnish the following services in reference to the Leased Premises during its occupancy:

- (a) Tenant shall pay for its monthly utilities (gas, water, sewer and electricity) and any other utilities used by tenant, such as telephone and television.
- (b) Tenant shall provide its own janitorial cleaning service and trash removal.

- (c) Tenant shall be responsible for the routine maintenance of the heating, ventilation and air conditioning, electrical and plumbing systems.
- (d) Tenant shall be responsible for their own disposal of medical supplies and equipment. Such measures of disposal shall meet legal requirements imposed by state and municipal authorities.

V. RENT /TAXES

5.1 **Rent.** Tenant agrees to pay Landlord rent per month on or before the first day of each succeeding calendar month during the lease term except that the first monthly rental installment shall be paid by Tenant on the Commencement Date hereof and shall be sent to Landlord at the address and in the manner provided in Article XXVI of this Lease. Rent for any fractional month at the beginning or end of the Lease Term shall be prorated based on the actual number of days in said month.

5.2. Rent shall be payable in the following amounts:

- (a) **First Year.** Tenant hereby agrees to pay monthly rent during the first year of this lease in the amount of \$3,619.30 per month (\$.85 per square foot).
- (b) **Second Year.** Tenant hereby agrees to pay Landlord monthly rent during the second year of this lease in the amount of \$3,619.30 per month (\$.85 per square foot).
- (c) **Third Year.** Tenant hereby agrees to pay Landlord monthly rent during the third year in the amount of \$3,832.20 (\$.90 per square foot).
- (d) **Fourth Year.** Tenant hereby agrees to pay Landlord monthly rent during the fourth year in the amount of \$3,832.20 (\$.90 per square foot).
- (e) **Fifth Year.** Tenant hereby agrees to pay Landlord monthly rent during the fifth year in the amount of \$3,832.20 (\$.90 per square foot).

5.3 **Real Property Taxes.** Landlord agrees to pay all taxes, assessments and governmental charges of any kind and nature (collectively referred to herein as "Taxes") that accrue against the Leased Premises.

5.4 **Personal Property Taxes.** Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in or on the Premises.

VI. MAINTENANCE AND REPAIRS BY TENANT

6.1 Tenant shall, at Tenant's own expense, repair or replace any damage done to the Leased Premises or any part thereof as a result of the sole active negligence of Tenant or Tenant's agents, employees, invitees or guests as determined by a court of competent jurisdiction and upon final adjudication or settlement and then not in excess of the limits of liability under the Texas Tort Claims Act. Tenant shall keep the Leased Premises in good, clean and habitable condition and free from dirt and rubbish. Tenant shall keep the Leased Premises secure (Tenant acknowledges that it is not relying on any representation or warranty of Landlord in this regard). If Tenant fails to perform such maintenance, repairs or replacements promptly or within thirty (30) days after such is brought to Tenant's attention, by written notice, or in the case of a situation which by its nature requires an immediate response or a response within less than thirty (30) days, Landlord may at its option perform such maintenance, repair or replacement, and Tenant shall repay the cost thereof to Landlord on demand as additional rent hereunder; subject to an appropriation of funds for such repayment.

6.2 Tenant agrees not to commit waste or damage on the Leased Premises and will, at the termination of

this Lease, deliver up the Leased Premises to Landlord in the same condition as of the Commencement Date, ordinary wear and tear excepted.

VII. ACCESS TO PREMISES

7.1 As long as a representative of Tenant is present and always accompanies Landlord or Landlord's authorized representatives, Landlord shall have the right to enter upon the Leased Premises during business hours for the purposes of abating nuisances or protecting the Leased Premises, inspecting the same or of making repairs, additions or alterations thereto or to the real property or to the Building located thereon. Further, Landlord shall have the right, without Tenant's consent, to enter upon the Leased Premises for emergency purposes, such as, but not limited to, curing plumbing or electrical problems.

VIII. MORTGAGE OF LANDLORD'S INTEREST

8.1 Landlord shall have the right to (1) mortgage and/or (2) sell or otherwise transfer, ("sell or otherwise transfer" is collectively hereinafter referred to as "transfer", whether used as a verb or noun) its fee simple interest in the real property and Building, including the Leased Premises, located thereon (hereinafter referred to collectively as "Property") with the following conditions:

- a. With respect to any future mortgages against, or transfers of, the Property, and in connection with any requested subordination, Tenant agrees (1) to subordinate its leasehold interest to any mortgage or other transfer instrument executed by Landlord, as Owner, or Transferor or otherwise, as applicable, which said mortgage or other transfer instrument creates a lien or other encumbrance against the Leased Premises, or to the Transferee, if a transfer occurs, and (2) to attorn to the Mortgage Holder of said mortgage, if foreclosure thereof occurs, or to the Transferee, if a transfer occurs, in exchange for said Mortgage Holder's or Transferee's recognition of Tenant's right to remain in peaceable possession of the Leased Premises under the existing Lease with Landlord, as long as Tenant is not in default in payment of rent or otherwise. Landlord shall, within thirty (30) days following the Commencement Date of this Lease, secure a Non-Disturbance and Attornment Agreement from any existing mortgage holder. Furthermore, Landlord agrees to secure a Non-Disturbance and Attornment Agreement from any future mortgage holder, lienholders, and any subsequent purchaser of the Property.
- b. Landlord shall notify Tenant not less than thirty (30) days prior to mortgage or transfer of the Leased Premises.
- c. It is the intent of the parties hereto, and Landlord agrees to incorporate into any legal documents evidencing a mortgage or transfer of the Property, including but not limited to, a subordination and attornment agreement and an estoppel certificate, language to the effect that any subsequent Mortgage Holder or Transferee or Landlord of the Building and/or the ground (1) will be bound by all of the provisions of this Lease and (2) will recognize Tenant's rights to remain in peaceful possession of the Leased Premises. Tenant agrees to execute any legal documents, evidencing such intent.

8.2 Tenant agrees to furnish, from time to time, within ten (10) days after receipt of a request from Landlord or Landlord's mortgagee, a statement certifying, if applicable and to the extent true, the following: Tenant is in possession of the Premises; the Premises are acceptable; the Lease is in full force and effect; the Lease is unmodified; Tenant claims no present charge,

lien, or claim of offset against rent; the rent is paid for the current month, but is not prepaid for more than one month and will not be prepaid for more than one month in advance; there is no existing default by reason of some act or omission by Landlord; and such other matters as may be reasonably required by Landlord or Landlord's mortgagee. Such statements may be executed by the City Manager or her designee, and will not require City Council approval.

IX. ASSIGNMENT OR SUBLEASE

9.1 Tenant may assign or sublease any part of the Leased Premises or any right or privilege connected therewith upon Landlord's written consent, said consent not to be unreasonably withheld.

9.2 Landlord agrees that substitution or an addition of another of Tenant's Departments is not a sublease or assignment for the purpose of this Lease.

X. TENANT'S PROPERTY

10.1 Any property of Tenant located on the Leased Premises shall remain the property of Tenant and Landlord agrees that Tenant shall have the right, provided Tenant is not in default under the terms of this Lease, at any time, and from time to time, to remove any and all of its property which it may have stored or installed in the Leased Premises, including, but not limited to, furniture, fixtures, equipment, furnishings (including any partitions), alarm systems, counters, shelving, mirrors, and other property. Tenant, at its sole cost and expense, shall immediately repair any damage occasioned to the Leased Premises by reason of the removal of any such property and upon expiration or earlier termination of this Lease shall leave the Leased Premises in a neat and clean condition, normal wear and tear excepted. The parties hereto agree that any property or other items, if not removed by Tenant from the Leased Premises on or before thirty (30) days after the termination of this Lease, shall be deemed to become the property of Landlord.

XI. ACCEPTANCE OF PREMISES / ASBESTOS SURVEY; MOLD

11.1 Tenant has inspected the Leased Premises and accepts the Leased Premises in an "as-is" condition. Landlord warrants that the Leased Premises and Building are, and will continue to be during the initial and any extended term of this Lease, in compliance with all Federal, State and Local laws and regulations, including but not limited to, the Americans with Disabilities Act that are applicable to the Leased Premises and the Building.

11.2 Pursuant to City of San Antonio Ordinance No. 89710 passed and approved May 6, 1999, Landlord agrees to conduct an Asbestos Survey of the Leased Premises or the building in which the Leased Premises is located. Such Survey shall be prepared by an individual who is licensed by the Texas Department of Health to conduct an Asbestos Survey, ("Licensed Surveyor,") and shall be at Tenant's sole cost and expense. Tenant's taking possession of the premises, the commencement of the term of this Lease and the payment of rent by Tenant shall be contingent upon one of the following occurrences:

- a. the Asbestos Survey reflecting the absence of any friable or damaged Asbestos Containing Material (ACM); or
- b. Landlord providing a Management Plan (Plan) satisfactory to Tenant to properly and safely contain the ACM; or
- c. abatement by removal of said friable or damaged ACM, if the Management Plan is not satisfactory to Tenant.

If one of these three occurrences are not timely met, then Tenant, on ten days prior written notice to Landlord, may terminate this Lease, without any liability whatsoever on Tenant's part.

11.3 Landlord represents and warrants to Tenant that, to the best of Landlord's knowledge and belief, as of the Commencement Date of this Lease, there is no toxic mold, including, but not limited to, black mold, mildew, organisms responsible for legionnaire's disease or the like (collectively "mold") present in any portion of the Leased Premises. If available, Landlord will provide to Tenant for its review prior to the Commencement Date copies of any inspection reports, studies, and letters from qualified personnel related to the presence of mold and conditions conducive to mold growth in any portion of said Leased Premises.

11.4 If at anytime during the initial term of this Lease or any renewal term, Tenant or Landlord determines or suspects the presence of mold on the Leased Premises, or conditions conducive to mold growth, the party shall immediately notify the other party in writing. Landlord shall, within ten (10) days after the date notice is sent by Tenant, notify Tenant in writing that Landlord elects to either:

(1) take any and all actions to relieve such conditions and/or remediate the mold, at Landlord's sole cost and expense, including all expenses associated with: a) the abatement of Tenant's Base Rent and Additional Rent and any other payments due from Tenant to Landlord; b) providing Tenant with approved alternate space if necessary; and c) moving/relocating to and from the alternate space, or

(2) advise Tenant in writing that the Landlord is not willing to take such action as necessary to relieve such conditions and/or remediate the mold ("Landlord notice of non-action"), whereupon Tenant shall have the option to terminate the Lease with ten (10) days written notice to Landlord and the rent shall terminate effective the date of Tenant's Lease Termination letter to Landlord and neither Landlord nor Tenant will have any further liability under this Lease from such date, including the abatement of rent from such date as detailed above.

XII. DISCLAIMER OF INDEMNITY

12.1 Except as may otherwise be provided in this Lease, neither Landlord nor Tenant shall be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, acts of terrorism, court order, requisition or order of governmental body or authority or any other loss or claim except as results from the sole active negligence of Landlord or Tenant, as determined by a court of competent jurisdiction and upon final adjudication or settlement. Under no circumstances shall Tenant be liable or responsible in excess of the limits of liability under the Texas Tort Claims Act.

XIII. QUIET ENJOYMENT

13.1 Landlord hereby covenants that Tenant, upon paying rent as herein reserved, and performing all covenants and agreements herein contained on part of Tenant, shall and may peacefully and quietly have, hold and enjoy the Leased Premises. Landlord agrees to use its best efforts to protect Tenant from interference or disturbance by third persons. Landlord also agrees to abide by the provisions of Section 8.1 of this Lease as to any mortgage holders, lienholders, and subsequent purchasers during the Lease Term and any renewal or holdover periods.

XIV. DESTRUCTION OF LEASED PREMISES

14.1 If the Leased Premises are partially destroyed or otherwise made untenantable in whole or in part by fire, other casualty, or for any other reason during the term of this Lease, or any holdover or renewal periods, Landlord shall (i) commence the repair of the Leased Premises to the condition it was in prior to such damage or destruction within sixty (60) days after the partial destruction, and (ii) diligently pursue the repair work in the order of priority designated by Tenant, and (iii) complete such repairs within one hundred eighty (180) days after the date of destruction. Rent for the Leased Premises will be reduced proportionately to the extent to which the repair operations interfere with the normal conduct of Tenant's business on the Leased Premises. If the repairs cannot be so made within one hundred eighty (180) days after the destruction, Tenant has the option to immediately terminate this Lease upon written notice to Landlord.

14.2 If the building in which the Leased Premises are located is more than fifty percent (50%) destroyed, either party may at its option, terminate the Lease whether the Leased Premises are damaged or not.

14.3 If neither party terminates under the provisions of Section 14.1, then Landlord shall be obligated to provide written notice (the "Restoration Notice") to Tenant within sixty (60) days of such event of casualty stating a good faith estimate, certified by an independent architect, of the period of time (the "Stated Restoration Period") which shall be required for the repair and restoration of the Leased Premises and/or the Building. Tenant shall thereafter have the right, at its election, to terminate the Lease if either (i) the Stated Restoration Period shall be in excess of one hundred eighty (180) days following the event of casualty and Tenant terminates this Lease with written notice thereof to Landlord within ten (10) days following delivery of the Restoration Notice, or (ii) Landlord shall fail to substantially complete the repair and restoration of the Leased Premises or the Building within the Stated Restoration Period (subject to delays due to Acts of God, strikes, labor disputes, or shortages of material or other causes which are agreed to by Tenant) and Tenant delivers written notice of such termination to Landlord within ten (10) days following the expiration of the restoration period deadline.

14.4 In the Event of fire or other casualty which prevents Tenant from using all or part of the Leased Premises, rent shall abate in proportion to the amount of unusable area for the period which Tenant is unable to utilize the space.

XV. INSURANCE AND INDEMNITY

15.1 Tenant shall provide for and maintain commercial general liability coverage, either through self-insurance or any combination of self-insurance and commercial insurance on the Leased Premises for the full term of this Lease and any renewal or holdover terms, with combined single limits, for bodily injury and property damage, in the amount of \$500,000.

15.2 Tenant shall provide such self-insurance as it deems advisable to insure against loss of any of its property in the Leased Premises.

15.3 Landlord agrees to maintain adequate Commercial General Liability insurance of not less than \$2,000,000 and property and casualty insurance for physical damage to the Leased Premises in the amount of 80% of the actual cash value of said Premises.

15.4 Landlord and Tenant acknowledge that the Tenant is a political subdivision of the State of Texas and that the Tenant is subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practice and Remedies Code, Section 101.001 *et seq.* and the remedies

authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. This Lease will be interpreted according to the Constitution and laws of the State of Texas.

XVI. EFFECT OF EMINENT DOMAIN PROCEEDINGS

16.1 Eminent domain proceedings which result in the condemnation of the Leased Premises herein will allow Tenant to terminate this Lease in its entirety. If Tenant does not terminate, Tenant's rental for the remainder of the Lease Term shall in such case be reduced by the amount that the Leased Premises taken bears to the total rental square footage of the entire building. Provided, however, if 40% or more of the Leased Premises is condemned, either Landlord or Tenant may terminate this Lease in its entirety. If the Lease is terminated, Tenant and Landlord shall each be entitled to compensation for any loss arising from such condemnation. Landlord and Tenant may pursue their rights to such compensation separately.

XVII. DEFAULT AND REMEDIES – TENANT'S DEFAULT

17.1 An Event of Default in the Lease shall occur should Tenant neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on Tenant's part to be performed or in any way observed and if such neglect or failure should continue for a period of thirty (30) days after receipt by Tenant of written notice of such neglect or failure except for the failure or neglect to pay any installment of rent or additional rent wherein such neglect or failure must be cured within ten (10) days after receipt by Tenant of written notice of such neglect or failure. However, if more than thirty (30) days shall be required because of the nature of the Event of Default, Tenant shall be allowed to cure if within said thirty (30) day period Tenant commences and thereafter diligently proceeds to cure such Event of Default but under no circumstances shall the period of notice and cure exceed sixty (60) days from the date of such Event of Default by Tenant. Landlord shall notify Tenant of any monetary default by certified, return receipt requested through the Director of Finance, CITY OF SAN ANTONIO, P.O. BOX 839966, SAN ANTONIO, TEXAS 78283-3966 and Landlord shall also provide notices of a monetary default to all parties described in Section 26.1 of this Lease and in the manner prescribed by Section 26.1 of this Lease. All notices of non-monetary default to Tenant shall be sent to the City Clerk at the address shown in Section 26.1.

17.2 Upon default and failure of Tenant to cure as stated above, Landlord may terminate this Lease by written notice to Tenant or without terminating, Landlord may, without being obligated to do so, reenter and relet the Leased Premises or any part thereof upon the best rent and best terms possible as soon as reasonably possible and with reasonable effort on the part of Landlord. Landlord shall pursue efforts to mitigate in accordance with the Texas Property Code and Texas case law.

XVIII. DEFAULT AND REMEDIES - LANDLORDS DEFAULT

18.1 An Event of Default shall occur should Landlord fail to perform any of its covenants or obligations hereunder after the date of commencement of this Lease or in the instance of any of the following events:

- a. Appointment of a receiver to take possession of Landlord's assets,
- b. Landlord's general Assignment of assets for the benefit of creditors,
- c. Landlord's insolvency.
- d. Landlord's taking or suffering action under the Bankruptcy Act, which action constitutes a breach of this Lease, and said Tenant shall have the right to (1) file an action for damages or (2) terminate this Lease; however, Tenant shall not exercise Tenant's right to sue for damages or to terminate unless and until (1) Tenant gives written notice of such default (which notice

shall specify the exact nature of said default with particularity and how the same may be cured) to the Landlord, and (2) said Landlord fails to cure or cause to be cured said default within thirty (30) days from the receipt of such notice from Tenant. However, if more than thirty (30) days shall be required because of the nature of the Event of Default, Landlord shall be allowed to cure if within said thirty (30) day period Landlord commences and diligently proceeds to cure said Event of Default, but in no event shall such date extend later than sixty (60) days after the date of the Event of Default by Landlord.

18.2 Any provision in the Lease to the contrary notwithstanding, if Landlord fails to perform its obligations under the Lease and such failure (a) is the result of a condition within the Landlord's control, (b) interferes with the normal use of the Leased Premises or appurtenant parking and/or other common areas by Tenant as allowed herein, and (c) continues for more than five (5) consecutive business days, then the rental shall be proportionately abated until such interference is eliminated or the Leased Premises are otherwise rendered tenantable again. Additionally, if such interference continues for a period of 15 or more consecutive days, then Tenant shall have the right and option to cancel the Lease by giving written notice to Landlord within 5 days after the end of such 15 day period.

XIX. EFFECT OF WAIVER

19.1 Either party's waiver of a breach of one covenant or condition of this Lease is not a waiver of a breach of any other covenants or conditions, or of a subsequent breach of the one waived. Landlord's acceptance of rent installments after a breach is not a waiver of the breach, except of a breach of the covenant to pay the rent installment or installments accepted.

XX. HOLDING OVER

20.1 Should TENANT hold over the Leased Premises, or any part thereof, after the expiration or termination of the term of this Lease Agreement, unless otherwise agreed to in writing pursuant to Article XX, Right of Renewal above, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental rate equal to the rent paid for the last month of the term of this Lease Agreement. The inclusion of the preceding sentence shall not be construed as LANDLORD's consent for the TENANT to hold over.

XXI. APPROPRIATIONS

21.1 Landlord agrees and understands that Tenant has projected costs for this Lease and that Tenant expects to pay all obligations of this Lease from projected revenue sources, but that all obligations of Tenant are subject to annual appropriation by City Council in future years, after September 30, 2004. Accordingly, if Tenant shall fail to appropriate sums to pay any of Tenant's obligations under the terms of this Lease, and due to the unavailability and/or the failure to appropriate funds Tenant shall not have the funds to pay such obligations, following Tenant's failure to pay such obligations due to lack of funding shall terminate this Lease and neither Landlord nor Tenant shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this Lease.

21.2 Landlord and Tenant further agree that payments of rent and additional rent for the WIC Program under which Tenant shall operate its office in the Building, is funded through the Texas Department of Health. In the event that the program is abolished in the City of San Antonio, or is not provided for in the annual City of San Antonio budget as approved by the passage of a City of San Antonio Ordinance each year, beginning on or before October 1, 2004, then the Tenant shall have the right to terminate this Lease,

provided Tenant gives to Landlord thirty (30) days' written notice of its intent to terminate and further provided that Tenant is not in default and is current on all rent and additional rent owed to the Landlord. If the Tenant is delinquent in rent and/or additional rent, Tenant shall remain liable for payment of such delinquent rent and/or delinquent additional rent only, and NOT for any future rent or additional rent due after the date of termination. In the event that Tenant elects to terminate as provided above, Tenant shall vacate the space by the termination date and shall leave the space in good condition, excepting reasonable wear and tear and damage by fire or from any other cause not attributable to the willful or negligent act of Tenant, or its employees, agents, invitees, or visitors.

XXII. CONFLICT OF INTEREST

23.1 Landlord acknowledges that it is informed that the Charter of the City of San Antonio ("City" and Tenant herein) and City's Ethics Code prohibit City or a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, as may be amended from time to time, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his or her parent, child or spouse; a business entity in which the officer or employee, or his or her parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. Landlord warrants and certifies, and this Lease is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Landlord further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

XXIII. SEVERABILITY CLAUSE AND INTERPRETATION

24.1 If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision that is illegal or unenforceable there be added as a part of this Lease, 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. The caption of each article and section hereof is added as a matter of convenience only and shall be considered to be of no effect in the construction of any provision or provisions of this Lease. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXIV. ENTIRE AGREEMENT

25.1 This Lease constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

XXV. PARTIES BOUND

26.1 This Lease shall be binding on and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns except as otherwise expressly provided herein.

XXVI. NOTICE

27.1 Except for those notices given pursuant to Article XVII of this Lease, any notice required or permitted to be given hereunder by one party to the other shall be deemed to be given when deposited in the United States Mail, with sufficient postage prepaid, certified mail, return receipt requested, addressed to the respective party to whom notice is intended to be given at the following address:

Landlord:

Sam Houston Shopping Center
c/o The Brian Brady Company
1920 Nacogdoches Road, Suite 201
San Antonio, TX 78209

Property Manager for:

Ronald R. Deroo
d/b/a Sam Houston Shopping Center
A Sole Proprietorship

Tenant:

City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966
and
Director of Health
San Antonio Metropolitan Health District
332 West Commerce, Suite 307
San Antonio, Texas 78205

XXVII. COUNTERPARTS, ONE AGREEMENT

28.1 This Lease and all other copies of this Lease, insofar as they relate to the rights, duties, and remedies of the parties, shall be deemed to be one agreement. This Lease may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

XXVIII. LEGAL AUTHORITY

29.1 The signer of this Lease for Landlord represents, warrants, assures and guarantees that he has full legal authority to execute this Lease on behalf of Landlord and to bind Landlord to all of the terms, conditions, provisions and obligations herein contained.

XXIX. TEXAS LAW TO APPLY

30.1 This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

The EFFECTIVE DATE shall be the Commencement Date set forth in Section 2.1.

LANDLORD:

**RONALD R. DEROO
c/o THE BRIAN BRADY COMPANY**

TENANT:

**CITY OF SAN ANTONIO,
A TEXAS MUNICIPAL CORPORATION**

BY: _____
Ronald R. Deroo
d/b/a Sam Houston Shopping Center,
A Sole Proprietorship

BY: _____
Frances A. Gonzalez
Assistant City Manager

ATTEST:

Yolanda L. Ledesma
Acting City Clerk

APPROVED AS TO FORM:

Andrew Martin
City Attorney

City of San Antonio
Discretionary Contracts Disclosure* **ATTACHMENT II**

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

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Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature:	Title: Company:	Date:

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.