

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

TO: Mayor and City Council

FROM: Fernando A. Guerra, MD, MPH, Director of Health

THROUGH: Terry M. Brechtel, City Manager

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

SUBJECT: ORDINANCE AUTHORIZING A LEASE FOR 4020 NACO-PERRIN BOULEVARD

DATE: September 2, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the City Manager to execute a Lease Agreement with WNLV, Ltd., a Texas limited partnership, for approximately 3,000 square feet of clinic and office space located at 4020 Naco-Perrin Boulevard for the period September 1, 2004 through January 31, 2005 at a rate of \$2,850.00 per month. In addition, this ordinance will authorize payments for contractual services.

Staff recommends approval.

BACKGROUND INFORMATION

The San Antonio Metropolitan Health District (SAMHD) delivers comprehensive public health services to protect the health of residents within its jurisdiction. Currently, SAMHD does not have a multi-purpose facility for patients living in Northeast San Antonio. WNLV, Ltd., a Texas limited partnership, owns a building located at 4020 Naco-Perrin. This building is an excellent site for an SAMHD facility because it was originally a clinic for another medical provider. Of the approximately 8,400 square feet available in this building, the six month lease will utilize approximately 3,000 square feet. This will be an interim solution to the need for clinic space. There is currently a proposal to purchase the building for SAMHD and Department of Community Initiatives services through HUD 108 funding.

Due to an agreement executed with Parent-Child, Incorporated (PCI) on August 12, 2004, SAMHD needs additional capacity to provide well-child screenings and related clinical services in this area as soon as possible. PCI must assure that all of its enrollees have a well child assessment within ninety (90) days from the beginning of their school year (August 23, 2004). In the past SAMHD provided approximately 2,500 of these screenings. This year PCI has requested

that SAMHD furnish all 5,800 of the screenings needed. Although this contract will yield substantial revenues to the City, the volume of work requires that an additional clinic site be identified and services begin immediately. For this reason, SAMHD is requesting that this ordinance become effective upon approval.

POLICY ANALYSIS

This ordinance follows the past City policy of utilizing leased space to augment the provision of public health services for the residents of our community.

FISCAL IMPACT

This Lease will be paid through revenues from the PCI contract. It will cost \$2,850.00 per month for five months, a total of \$14,250.00.

This project will place no demand on the City General Fund.

COORDINATION

The City Attorney's Office and the Department of Asset Management have reviewed the lease. The City Attorney's Office has reviewed the insurance provisions of the lease with the Human Resources Department, Risk Management Division.

SUPPLEMENTARY COMMENTS

The required City of San Antonio Discretionary Contracts Disclosure form is attached.

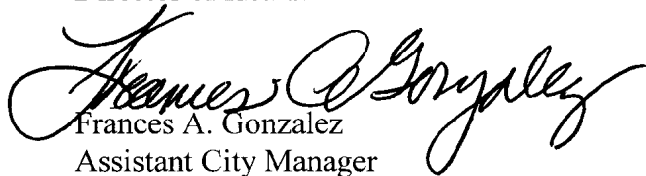
Attachments:

Attachment I: Lease Agreement

Attachment II City of San Antonio Discretionary Contracts Disclosure

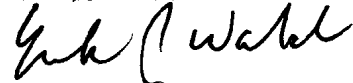


Fernando A. Guerra, MD, MPH
Director of Health



Frances A. Gonzalez
Assistant City Manager

APPROVED:



Terry M. Brechtel
City Manager

LEASE AGREEMENT

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 WNLV, Ltd., a Texas limited partnership (hereinafter referred to as "Landlord") for the lease of a building located at 4020 Naco-Perrin Boulevard, San Antonio, Bexar County, Texas 78217(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 3,000 square feet of rentable space in a one-story building located at 4020 Naco-Perrin Boulevard, San Antonio, Bexar County, Texas 78217, 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 as Lot 2, Block 7, New City Block 16154 of Perrin Plaza Subdivision, Unit 1, San Antonio, Bexar County, Texas. This Lease shall further extend to, and the Leased Premises shall be deemed to include, the parking area located adjacent to the subject one-story building.

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

2.1 The term of this Lease Agreement shall be for a period of five (5) months, unless terminated earlier as provided herein, commencing on September 1, 2004 and terminating January 31, 2005.

III. SERVICES BY LANDLORD

3.1 Landlord, at Landlord's sole cost and expense, agrees to provide all maintenance, repair and replacement, of any kind and character required on the Leased Premises as necessary for proper upkeep of the building structure, specifically including the foundation and roof of the building, the structural soundness of the exterior walls and windows, and utility metering. Landlord, at Landlord's sole cost and expense, agrees to replace any heating, ventilation and air conditioning systems when necessary (as determined by a licensed HVAC contractor), and all major repairs to, or replacement of the electrical and plumbing systems which require opening or tunneling under the buildings foundation (slab), parking lot or walls.

3.2 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.

3.3 Landlord agrees to pay one-half (50%) of tenant's monthly utility usages (gas, water, sewer and electricity).

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 one-half (50%) of tenant's monthly utility usages (gas, water, sewer and electricity) and any other utilities used by tenant, such as telephone and/or 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.

V. RENT /TAXES/OPTION TO PURCHASE

5.1 **Rent.** Tenant agrees to pay Landlord rent per month in the amount of \$2,850.00 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 **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.

5.3 **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.

5.4 **Option to Purchase.** The Tenant and Landlord understand that the Tenant intends to purchase the Leased Premises, contingent upon the receipt by Tenant of Community Development Block Grant funding. For and in consideration of the tender by Tenant to Landlord of the sum of \$100.00, as separate and distinct consideration from the Rent set forth herein, Landlord grants to Tenant a right and option to purchase the Premises on the following terms and conditions:

Purchase Price: To Be Negotiated Between Landlord and Tenant

Closing Date: On or before January 31, 2005

Conditions: Subject to the negotiation of such other terms and conditions as mutually agreed to by Landlord, as Seller, and Tenant, as Purchaser, to be negotiated and set forth in a Purchase Contract, to be submitted for approval by the Seller, and by the City Council of the City of San Antonio, Texas.

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, including yard and parking lot, in good, clean and habitable condition and free from dirt and rubbish. Tenant agrees to be responsible for all repairs, replacement, and maintenance to the Leased Premises other than those specifically required to be performed by Landlord in Section 3.1 during the term of the Lease. Those items the Tenant shall be responsible for include, but are not limited to the interior and exterior portions of all doors, windows, plate glass, all mechanical, plumbing and electrical equipment and systems (including HVAC) partitions and all other fixtures, appliances and facilities furnished by the Tenant or the Landlord. 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 Lessor 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 thirty (30) 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 selected by Landlord who is licensed by the Texas Department of Health to conduct an Asbestos Survey, ("Licensed Surveyor,") and shall be at Landlord'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 untenable 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 \$500,000.00.

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 \$2,000,000.00 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, such holding over shall constitute and be construed as a tenancy

from month to month only, at a rental equal to the rent paid for the last month of the term of this Lease plus 10% for the entire holdover period unless otherwise agreed to in writing by Landlord and Tenant. 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, as well subject to the receipt of adequate grant funding. 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.

XXII. CONFLICT OF INTEREST

22.1 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

23.1 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

24.1 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

25.1 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

26.1 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:

WNLV, Ltd.
C/o Brian Brady Company, Inc., General Partner
1920 Nacogdoches, Suite 201
San Antonio, Texas 78209

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

27.1 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

28.1 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.

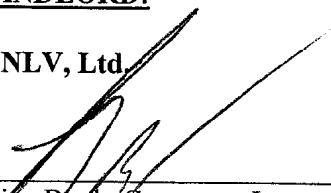
XXIX. TEXAS LAW TO APPLY

29.1 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:

WNLV, Ltd.



Brian Brady Company, Inc.
General Partner for WNLV, Ltd.
By Brian P. Brady
President

TENANT:

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

Frances A. Gonzalez
Assistant City Manager

ATTEST:

Leticia M. Vacek
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:

BRIAN P. BRADY

(2) the identity of any business entity¹ that would be a party to the discretionary contract:

WNLV, Ltd. a Texas Limited Partnership

and the name of:

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

NA

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;

Lauren Morris

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.

NA

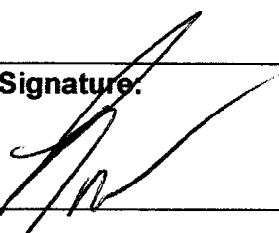
Political Contributions

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: General Partner for WNLV Company: Brian Brady Company LLC	Date: 8/20/04

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.