

**CITY OF SAN ANTONIO  
SAN ANTONIO METROPOLITAN HEALTH DISTRICT  
CITY COUNCIL AGENDA MEMORANDUM**

**TO:** Mayor and City Council

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

**SUBJECT:** ORDINANCE AUTHORIZING THE EXECUTION OF A FUNDING CONTRACT WITH BARRIO COMPREHENSIVE FAMILY HEALTH CARE CENTER, INC.

**DATE:** May 12, 2005

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes the Interim City Manager to accept and execute a City Funding Contract providing \$400,000.00 of 2003 General Obligation Bond funds, plus interest earned by said bond funds, and \$600,000.00 of Community Development Block Grant funds to pay certain costs for the construction of the Dr. Frank Bryant Health Center to be located at 3066 East Commerce Street and authorizing payments in connection therewith.

Staff recommends approval.

**BACKGROUND INFORMATION**

Through an election held on November 4, 2003, San Antonio voters approved Proposition 5, authorizing the City to issue and sell general obligation (GO) bonds totaling \$35,500,000.00 for specific permanent improvements related to public health and safety. Included in this proposition was \$400,000.00 to Barrio Comprehensive Family Health Care Center, Inc. (BCFHCC) to partially offset the construction of a comprehensive healthcare facility in City Council District 2. In addition, the City has set aside \$600,000.00 in Community Development Block Grant (CDBG) Funds for this same purpose.

BCFHCC, began construction of the Dr. Frank Bryant Health Center at 3066 E. Commerce on October 13, 2004. When completed in December of this year, this \$8.9 million facility will provide medical, dental, mental health, and related services to primarily low-income residents of this community. Part of the cost of this center is to be offset by the bond and CDBG funds delineated above. In addition, the interest earned by the bond funds, while in the possession of the City, will be provided to this project.

This ordinance authorizes the acceptance and execution of the City Funding Contract necessary to formalize this transaction. It should be noted that the remaining funds needed to construct and equip the facility have been secured by BCFHCC.

## **POLICY ANALYSIS**

Barrio Comprehensive Family Health Care Center, Inc. was founded in 1972. Currently, it operates two primary care sites, one at 1102 Barclay in Southwest San Antonio and another on the Eastside at 1920 Burnet. Ancillary services available at these centers include pharmacy, lab, nutrition counseling, WIC, family planning, mental health counseling, dental, health education, case management services, and transportation assistance. When the Frank Bryant Health Center is completed in December, services at the Burnet facility will be moved to the new, two-story 40,000 square foot location. In addition, the Frank Bryant Health Center will feature an expanded 18 chair dental clinic operated in collaboration with the University of Texas Health Science Center at San Antonio Dental School.

This ordinance provides bond funding to the BCFHCC as approved by voters in the election held on November 4, 2003. In addition, this ordinance follows established guidelines for the distribution of CDBG funds.

## **FISCAL IMPACT**

This ordinance provides \$400,000.00 of 2003 General Obligation Bond funds, plus interest earned by said bond funds, and \$600,000.00 of Community Development Block Grant funds to pay certain costs to BCFHCC for the construction of the Dr. Frank Bryant Health Center to be located at 3066 East Commerce Street.

Acceptance and execution of this funding contract will place no additional demand on the City General Fund.

## **COORDINATION**

This request for ordinance has been coordinated with the Housing and Community Development Department, the City Attorney's Office, the Human Resources Department, the Office of Management and Budget, and the Finance Department. In addition, the Contract Services and Public Works Departments provided input to the development of the contract.

## **SUPPLEMENTARY COMMENTS**

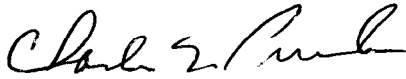
The required signed City of San Antonio Discretionary Contracts Disclosure form is attached.

**Attachments:**

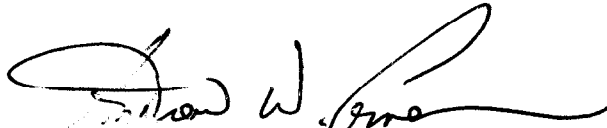
Attachment: City of San Antonio Discretionary Contracts Disclosure Form  
Attachment I: City of San Antonio Funding Contract, Project Name: Dr. Frank Bryant Health Center, Project Number 23-00494

**Funding Contract Attachments:**

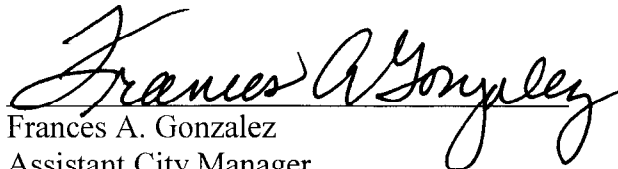
Exhibit "A"–Bond Election  
Exhibit "B"–Election Canvassing Ordinance  
Exhibit "C"–Board Resolution  
Exhibit "D"–Work Statement  
Exhibit "E"–Project Construction Timeline and Draw Schedule  
Exhibit "F"–Property Description  
Exhibit "G"–Payment and Performance Bonds  
Exhibit "H"–City's Federal Compliance Manual  
Exhibit "I"–Restrictive Covenant Agreement  
Exhibit "J"–Project Budget  
Exhibit "K"–[Intentionally Deleted]  
Exhibit "L"–Kronkowski Grant  
Exhibit "M"–Frost Loan  
Exhibit "N"–Contract Close-out Package  
Exhibit "O"–Project Pro Forma Operating Cash Flows Statement  
Exhibit "P"–Title Search  
Exhibit "Q"–Determination Letter  
Exhibit "R"–Performance Records  
Exhibit "S"–Patient Information Form



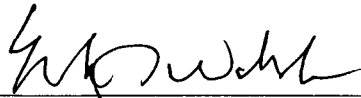
Fernando A. Guerra, MD, MPH  
Director of Health



Andrew W. Cameron  
Director  
Housing and Community Development



Frances A. Gonzalez  
Assistant City Manager



J. Rolando Bono  
Interim City Manager

**AN ORDINANCE  
AUTHORIZING THE ACCEPTANCE AND EXECUTION  
OF A CITY FUNDING CONTRACT PROVIDING  
\$400,000.00 OF 2003 GENERAL OBLIGATION BOND  
FUNDS, PLUS INTEREST EARNED BY SAID BOND  
FUNDS, AND \$600,000.00 OF COMMUNITY  
DEVELOPMENT BLOCK GRANT FUNDS TO PAY  
CERTAIN COSTS FOR THE CONSTRUCTION OF THE  
DR. FRANK BRYANT HEALTH CARE CENTER TO BE  
LOCATED AT 3066 EAST COMMERCE STREET AND  
AUTHORIZING PAYMENTS IN CONNECTION  
THEREWITH.**

\* \* \* \* \*

**WHEREAS**, a bond election was held on the 4<sup>th</sup> day of November, 2003, which authorized the issuance of general obligation bonds for public health and safety improvements; and

**WHEREAS**, Proposition Number 5 (hereinafter referred to as "Proposition No. 5") of the bond election authorized the City to issue and sell general obligation bonds of the City in the principal amount of \$35,500,000.00, which included \$400,000.00 to be used by Barrio Comprehensive Family Health Care Center, Inc. for the construction of a comprehensive health care facility in City Council District 2; and

**WHEREAS**, canvassing the results of the bond election, a majority of the resident qualified voters of the City voted for the authorization and issuance of general obligation bonds as provided in Proposition No. 5, and the City Council was thereby authorized to issue said bonds and to levy the ad valorem tax in payment thereof; and

**WHEREAS**, on October 13, 2004, Barrio Comprehensive Family Health Care Center, Inc. began construction of the Dr. Frank Bryant Health Care Center at 3066 East Commerce Street within District 2 of the City of San Antonio at the estimated total cost of \$8,903,142.00 for the purpose of providing comprehensive health services to the public to include medical, dental, mental health, and a pharmacy on site (hereinafter referred to as the "Project"); and

**WHEREAS**, City has the legal ability to use \$400,000.00 of General Obligation Bond Funds, plus interest earned by said bond funds, from Proposition No. 5 to pay certain costs of the Project; and

**WHEREAS**, City has received certain funds from the U.S. Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974, as amended (hereinafter referred to as "the Community Development Act") for utilization in connection with its Community Development Block Grant (CDBG) Program; and

**WHEREAS**, City has available up to \$600,000.00 of said CDBG funds to pay certain costs of the Project; and

**WHEREAS**, it is now necessary to formally authorize these proposed transactions through the approval by City Council of a City Funding Contract with Barrio Comprehensive Family Health Care Center, Inc. providing \$400,000.00 plus interest from 2003 General Obligation Bond Funds and \$600,000.00 from CDBG Funds to be used for the construction of the Dr. Frank Bryant Health Care Center and authorizing payments in connection therewith; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The Interim City Manager, or his designee, is hereby authorized to accept and execute a City Funding Contract with Barrio Comprehensive Family Health Care Center, Inc. providing \$400,000.00 of 2003 General Obligation Bond Funds, plus interest earned by said bond funds, and \$600,000.00 of Community Development Block Grant (CDBG) Program funds to pay certain costs of construction of the Dr. Frank Bryant Health Care Center to be located at 3066 East Commerce Street within District 2 of the City of San Antonio. A copy of the City of San Antonio Funding Contract, Project Name: Dr. Frank Bryant Health Care Center, Project Number 23-00494, is set out in Attachment I and incorporated herein for all purposes.

**SECTION 2.** SAP Fund \_\_\_\_\_ has been designated for use in the accounting of the 2003 General Obligation Bond Funds, plus interest earned by said bond funds, for the above project.

**SECTION 3.** The sum of \$400,000.00, plus interest earned by said bond funds, from Proposition No. 5 is appropriated in the above-designated SAP fund for the Dr. Frank Bryant Health Care Center Project.

**SECTION 4.** Payments are authorized up to \$400,000.00 in General Obligation Bond Funds, plus interest earned, to Barrio Comprehensive Family Health Care Center, Inc. from SAP Fund \_\_\_\_\_, Cost Center \_\_\_\_\_, Internal Order \_\_\_\_\_, SAP GL No. \_\_\_\_\_, in accordance with the City Funding Contract set out in Attachment I.

**SECTION 5.** SAP Fund 28030000 has been designated for use in the accounting of the CDBG funds for the above project.

**SECTION 6.** The sum up to \$600,000.00 is appropriated in the above-designated SAP fund for the Dr. Frank Bryant Health Care Center Project.

**SECTION 7.** Payments are authorized up to \$600,000.00 in CDBG funds to Barrio Comprehensive Family Health Care Center, Inc. from SAP Fund 28030000, Cost Center 3101020001, Internal Order 131000001014, SAP GL No. \_\_\_\_\_, in accordance with the City Funding Contract set out in Attachment I.

**SECTION 8.** The Director of Finance may, subject to concurrence by the Interim City Manager or the Interim City Manager's designee, correct allocation to specific fund numbers, account numbers, and internal order numbers as necessary to carry out the purpose of this ordinance.

**SECTION 9.** Should the project require an amount other than that budgeted for, or should the contract require terms and conditions different than those currently existing, acceptance of the contract and budget will be subject to subsequent City Council ordinance.

**SECTION 10.** This ordinance shall be effective on and after the tenth day after passage hereof.

PASSED AND APPROVED this \_\_\_\_\_ day of May, 2005.

**M A Y O R**

ATTEST:

City Clerk

APPROVED AS TO FORM: \_\_\_\_\_  
City Attorney

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

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity that is a **party** to the discretionary contract:

**Barrio Comprehensive Family Health Care Center, Inc.**

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☒ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☐ No subcontractor(s); or

List subcontractors:

**J. T. Vaughn Construction Company, Inc.**

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☐ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

**Fulbright & Jaworski L.L.P.,  
Jane H. Macon, Attorney-at-Law**

<sup>1</sup> 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. A sole proprietor should list the name of the individual and the d/b/a, if any.

**(5) Political Contributions**

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made 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 Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3).

☐ No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
Individual contributions made by officers, not by Barrio Comprehensive Family Health Care Center, Inc. (see attached)			


**(6) Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code) ("conflicts of interest") by participating in official action relating to the discretionary contract.

☒ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information 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, whichever occurs first.

<b>Signature:</b>  Debhora Thompson	<b>Title:</b> CEO  <b>Company or D/B/A:</b> Barrio Comprehensive Family Health Care Center, Inc.	<b>Date:</b> April 8, 2005
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<sup>2</sup> 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.



# Indirect Contributions made by officers

TO	DATE	AMOUNT
Tom Lopez Campaign	05/17/03	\$ 500.00
Art Hall Campaign	05/20/03	\$ 250.00
Art Hall Campaign	07/29/03	\$ 500.00
Joel Williams Campaign	04/07/04	\$ 500.00
Art Hall Campaign	04/27/04	\$ 250.00
Julian Castro Campaign	07/14/04	\$1,000.00
Kevin Wolff Campaign	08/10/04	\$ 250.00
Richard Perez Campaign	08/18/04	\$ 250.00

## **CITY FUNDING CONTRACT**

**PROJECT NAME: DR. FRANK BRYANT  
HEALTH CARE CENTER**

**PROJECT NO.:** \_\_\_\_\_

**STATE OF TEXAS           §  
                                  §  
COUNTY OF BEXAR       §**

This CITY FUNDING CONTRACT (this "CONTRACT") is hereby made and entered into by and between the CITY OF SAN ANTONIO, TEXAS (hereinafter referred to as "CITY"), a Texas political subdivision and home rule municipality, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_ adopted by the City Council of the City of San Antonio on \_\_\_\_\_, and the BARRIO COMPREHENSIVE FAMILY HEALTH CARE CENTER, INC. (hereinafter referred to as "CONTRACTOR"), a 501(c)(3) non-profit corporation, acting by and through its Executive Director, hereto duly authorized.

**WHEREAS**, a bond election was held on the 4<sup>th</sup> day of November, 2003, which authorized the issuance of bonds for public health and safety improvements pursuant to Ordinance No. 98020 calling the election, and which was passed and approved by the City Council of the City of San Antonio on August 14, 2003 as amended, and which is attached hereto as Exhibit "A"; and

**WHEREAS**, Proposition Number 5 (hereinafter referred to as "Proposition No. 5") of the bond election authorized the CITY to issue and sell general obligation bonds of the CITY in the principal amount of \$35,500,000.00 for the purpose of making permanent public improvements and for public purposes, to wit: acquiring, constructing, improving, renovating and equipping public health and safety facilities, and acquiring lands and rights-of-way necessary thereto, which included a City Council District 2 Comprehensive Health Facility; and

**WHEREAS**, as set forth in Ordinance No. 98467, which is attached hereto as Exhibit "B," canvassing the results of the bond election, which was passed and approved by the City Council of the City of San Antonio on November 13, 2003, a majority of the resident qualified voters of the CITY voted for the authorization and issuance of the \$35,500,000.00 of general obligation bonds and the levy and pledge of the ad valorem tax in payment thereof as provided in Proposition No. 5, and the City Council was thereby authorized to issue the general obligation bonds and to levy the ad valorem tax; and

**WHEREAS**, CITY has received certain funds from the U.S. Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974, as amended (hereinafter referred to as "the Community Development Act") for utilization in connection with its Community Development Block Grant (CDBG) Program; and

**WHEREAS**, CONTRACTOR, on land that it currently owns, has proposed the construction of the Dr. Frank Bryant Health Center to be located at 3066 East Commerce Street within District 2 of the City of San Antonio at the estimated total cost of \$8,903,142.00 for the purpose of providing comprehensive health services to the public to include medical, dental, mental health, and a pharmacy on site (hereinafter referred to as the "Project"); and

**WHEREAS**, the owner of all improvements of the Project is and shall be CONTRACTOR; and

**WHEREAS**, CONTRACTOR has secured a commercial loan (the "Commercial Loan") from The Frost National Bank in an amount not to exceed the sum of \$5,000,000.00 to assist in funding the construction of the Project; and

**WHEREAS**, CONTRACTOR has commenced construction of the Project as of October 13, 2004 ("Construction Commencement Date"); and

**WHEREAS**, CITY has the legal ability to use \$400,000.00 of bond funds, plus interest earned by said bond funds, from Proposition No. 5 to pay certain costs of the Project; and

**WHEREAS**, CITY has available up to \$600,000.00 of CDBG Funds to pay certain costs of the Project; and

**WHEREAS**, the City Council has adopted a budget for said bond proceeds and CDBG Funds and has included therein the expenditure of such proceeds and funds for the Project, offering the same for use by CONTRACTOR; and

**WHEREAS**, CONTRACTOR hereby accepts the funding offered by CITY as well as all responsibilities and duties necessary to fully implement and manage the Project.

**NOW THEREFORE**, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

## **I. TERM**

1.1 This CONTRACT shall commence immediately upon its execution ("Effective Date") and, subject to CONTRACTOR's performance hereunder, shall continue in full force and effect until the Construction Completion Date, as hereinafter defined.

## **II. DESIGNATED REPRESENTATIVES**

2.1 Unless written notification by CONTRACTOR to the contrary is received and approved by CITY, CONTRACTOR's Executive Director shall be CONTRACTOR's designated representative responsible for the management of this CONTRACT.

2.2 CITY's Department of Housing and Community Development (hereinafter referred to as the "CITY Department") Director or his designee is responsible for the administration of this CONTRACT on behalf of CITY.

2.3 Communications between CITY and CONTRACTOR shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.1 and 2.2 hereinabove.

### **III. LEGAL AUTHORITY AND REPRESENTATIONS**

3.1 CONTRACTOR represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this CONTRACT and to perform the responsibilities herein required.

3.2 The signer of this CONTRACT for CONTRACTOR represents, warrants, assures and guarantees that he or she has full legal authority to execute this CONTRACT on behalf of CONTRACTOR and to bind CONTRACTOR to all terms, performances and provisions herein contained.

3.3 A resolution from CONTRACTOR authorizing the Executive Director, or her designee, to execute this CONTRACT to the extent set forth in paragraph 3.2 hereof is attached hereto as Exhibit "C."

3.4 In the event that a dispute arises as to the legal authority to enter into this CONTRACT of either the CONTRACTOR or the person signing on behalf of CONTRACTOR, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this CONTRACT. Should CITY suspend or permanently terminate this CONTRACT pursuant to this paragraph, however, CONTRACTOR shall be liable to CITY for any money it has received from CITY for performance of any of the provisions hereof.

3.5 CONTRACTOR represents, warrants, assures and guarantees that it has obtained all zoning authorizations, engineering, platting and land use approvals necessary for the development and construction of the Project. CONTRACTOR additionally represents, warrants, assures and guarantees that it has received all other necessary public approvals from federal, state, and local authorities, as well as approvals as to removal of any hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), the Superfund Amendments and Reauthorization Act ("SUPRA"), as each may be amended from time to time, and any other applicable environmental laws.

### **IV. PERFORMANCE BY CONTRACTOR**

4.1 CONTRACTOR, in accordance and compliance with the terms, provisions and requirements of this CONTRACT, shall oversee, manage, perform and provide all of the activities and services necessary to satisfactorily complete the Project, including those activities and services set forth in the Work Statement attached hereto and incorporated herein for all purposes as Exhibit "D," to CITY Department's satisfaction.

4.2 Modifications or alterations to Exhibit "D" may be made only pursuant to the prior written approval of the CITY Department Director or his designee.

4.3 Intentionally Deleted.

4.4 Intentionally Deleted.

4.5 Intentionally Deleted.

4.6 CONTRACTOR agrees that construction of the Project shall be in adherence to the Project Construction Timeline and Draw Schedule, as set forth in Exhibit "E," attached hereto, and that construction shall be completed on or before December 31, 2005 (hereinafter referred to as "Construction Completion Date"). If CONTRACTOR fails to so comply, then CONTRACTOR shall be considered to have breached this CONTRACT and this CONTRACT will be subject to termination pursuant to Article XXXI herein at the sole option of CITY, and CONTRACTOR shall reimburse CITY for all expenses actually incurred by CITY for such delay.

4.7 CONTRACTOR and CITY agree that the Construction Completion Date may be extended only upon written request by CONTRACTOR to the CITY Department and subject to written approval by the City Manager, or his/her designee, only for the following reasons:

- (A) "Force majeure," as used herein, shall mean labor disputes, casualties (which are not the result of negligence or misconduct of CONTRACTOR or its contractors, subcontractors, agents, employees or others for whose acts CONTRACTOR is responsible), acts of God [including more than ten (10) consecutive days of rainy weather] or public enemy, governmental embargo restrictions, strikes, material shortages, action or non-action of public utilities, or other causes beyond CONTRACTOR's reasonable control; or
- (B) Any other reason deemed acceptable by the City Manager in his/her sole discretion.

## **V. RESPONSIBILITIES**

5.1 Provided CONTRACTOR receives the funding described in Article VIII, Section 8.3 hereof, CONTRACTOR hereby accepts full responsibility for the performance, in a satisfactory and efficient manner as determined by CITY Department, of all services and activities described in this CONTRACT to fully implement the Project. The CITY's funds provided for under this CONTRACT shall only be used for work directly related to the Project, namely for constructing the Project (which may hereinafter sometimes be referred to as the "Improvements"), located as described in Section 5.2 hereof.

5.2 CONTRACTOR hereby agrees to design, develop and construct the Project, located at 3066 East Commerce, in San Antonio, Bexar County, Texas on that certain 3.6 acre tract of real property on Lot 5, except S. 199.27 of E. 120 feet, New City Block 10235, legally described and shown in Exhibit "F" attached hereto, which shall be hereinafter referred to as the "Property."

5.3 CONTRACTOR shall pay, on or before the respective due dates, to the appropriate collecting authority, all federal, state and local taxes, license fees, permit fees, debts, and obligations, which are now or may hereafter be levied upon the Project, Improvements, other associated improvements, and the Property during the term of this CONTRACT, or incurred by CONTRACTOR related to its improvements, operations, and activities hereunder, or upon any of CONTRACTOR's property used in connection therewith, and shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business and the performance of the work hereunder conducted by CONTRACTOR.

5.4 CONTRACTOR agrees to the following conditions associated with use of the Property and construction of the Project and related Improvements:

- (A) To provide, as of the Effective Date of this CONTRACT, to CITY Department, through CONTRACTOR's contractor, Payment and Performance Bonds, in a form satisfactory to CITY Department, in an amount equal to the total cost of the Improvements, including the cost of all labor and materials related thereto, showing the "CITY OF SAN ANTONIO" as obligee for the purpose of assuring the completion of the work described herein and payment of all laborers and suppliers of materials; copies of said bonds will be attached hereto as Exhibit "G"; and
- (B) To allow CITY entry to the Property and Project site at all times to provide electrical and other inspections required as part of CITY's governmental functions, as well as to generally inspect the Improvements.

5.5 CITY shall assume no liability and no expense by reason of this CONTRACT or any activities by CONTRACTOR, and CITY shall not be liable for any damages caused to the Property, the Improvements or to the property of CONTRACTOR by reason of construction, installation or maintenance paid for, authorized or permitted by CITY in the areas covered by this CONTRACT. Any such damages to the Property or the Improvements caused by CONTRACTOR will be promptly repaired by CONTRACTOR.

## **VI. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

6.1 CONTRACTOR warrants and represents that it will at all times comply with all Federal, State and Local laws, orders and regulations, including the Americans with Disabilities Act and will ensure such compliance by any and all contractors and subcontractors that may work on the Project. The federal, state and local laws, ordinances and regulations which affect those engaged or employed in the work or equipment used in the work, or which in any way affects the conduct

of the work, shall be observed, and no pleas of misunderstanding will be considered on account of ignorance thereof.

6.2 CONTRACTOR agrees to and shall utilize a Competitive Low Bid or a Request for Proposal ("RFP") process, as applicable, to award all applicable contracts for which the funds granted hereunder by CITY are used, in accordance with and as described and set out in Chapter 252 of the Texas Local Government Code and in Chapter 2254 of the Texas Government Code pertaining to Professional and Consulting Services.

6.3 CONTRACTOR understands that \$600,000.00 of the funds provided to it pursuant to this CONTRACT are funds which have been made available to CITY by the federal government under the Community Development Act and in accordance with CITY's HUD-approved Grant Application and with other specific assurances made and executed by CITY (such funds hereinafter referred to as "CDBG Funds"). CONTRACTOR, therefore, assures and certifies that it will comply with the requirements of the Community Development Act and with all regulations promulgated thereunder as codified at Title 24 of the Code of Federal Regulations, pursuant to the use of CDBG Funds. CONTRACTOR understands, however, that the Community Development Act in no way is meant to constitute a complete compilation of all duties imposed upon CONTRACTOR by law or administrative ruling, or to narrow the standards which CONTRACTOR must follow. Accordingly, CONTRACTOR understands that if the regulations and issuances promulgated pursuant to the Community Development Act are amended or revised, it shall comply with them or otherwise immediately notify CITY Department pursuant to the provisions of Article XLII of this CONTRACT.

6.4 CONTRACTOR understands that summaries of certain compliance requirements mandated by applicable laws or regulations are contained in CITY's Federal Compliance Manual, and any amendments thereof, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit "H," and that CONTRACTOR must at all times remain in compliance therewith regarding the use of CDBG Funds; CONTRACTOR further understands that said summaries are intended only as such and in no way are meant to constitute a complete compilation of all duties imposed upon CONTRACTOR by law or administrative ruling, or to narrow the standards which CONTRACTOR must follow.

6.5 CONTRACTOR assures that all contractors and subcontractors receiving CDBG Funds in connection with this Project are familiar with, and shall comply with, any and all applicable rules and regulations as contained in CITY's Federal Compliance Manual and that a copy of said Federal Compliance Manual will be included as part of every contract awarded in connection with this Project.

## **VII. CONTRACTOR MAINTENANCE OF EFFORT**

7.1 CONTRACTOR agrees that the funds and resources provided to it under the terms of this CONTRACT shall in no way be substituted for funds and resources provided from other sources, nor shall such funds and resources in any way serve to reduce the funds, resources, services, or

other benefits which would have been available to, or provided through, CONTRACTOR had this CONTRACT not been executed.

### **VIII. FUNDING AND ASSISTANCE BY CITY**

8.1 In consideration of CONTRACTOR's performance, in a satisfactory and efficient manner as determined by CITY, of all services and activities set forth in this CONTRACT, which CONTRACTOR agrees and ensures will serve the public purpose of providing comprehensive health services to the public to include medical, dental, mental health, and a pharmacy to be located on the Property, CITY agrees to reimburse CONTRACTOR for certain eligible expenses incurred hereunder.

8.2 CONTRACTOR agrees to maintain the Project, the Improvements and the Property as a public health facility (such public health facility may hereinafter sometimes be referred to as the "Facility"). CONTRACTOR further agrees and covenants that throughout the Affordability Period, as such term is defined herein, twenty-five percent (25%) of the clients served at the Project shall be low to moderate-income persons and families, in accordance with the HUD Section 8 Income Guidelines. Additionally, CONTRACTOR shall execute a Declaration of Restrictive Covenant ("Declaration"), providing that the Property shall be used only for a comprehensive public health facility for a continuous period of twenty-five (25) years from the date of recording of the Declaration in the Real Property Records of Bexar County, Texas, hereinafter referred to as the "Affordability Period." This Declaration shall also provide that twenty-five percent (25%) of the participants served shall have an annual gross income that does not exceed eighty percent (80%) of the San Antonio Median Income adjusted for household size in accordance with HUD Section 8 Income Guidelines. This Declaration shall be a restrictive covenant running with the land. CONTRACTOR shall be responsible for the associated recording fees and shall provide to CITY Department within five (5) days of execution of this CONTRACT, a check made payable to the Bexar County Clerk's Office in an amount sufficient to cover said fees. A copy of the Declaration is attached hereto as Exhibit "I." CONTRACTOR understands and agrees that notwithstanding the term of this CONTRACT, this paragraph 8.2 shall survive the expiration of this CONTRACT until the ending date of the Affordability Period.

8.3 Notwithstanding any other provisions of this CONTRACT, the total of all payments and other obligations made or incurred by CITY hereunder shall not exceed the sum of \$400,000.00 in General Obligation bond funds plus interest earned by said bond funds (such sum or any portion thereof referred to herein as the "Bond Funds") and \$600,000.00 in CDBG Funds, for a total of \$1,000,000.00, plus interest earned by the \$400,000.00 in General Obligation bond funds (said funds cumulatively referred to as "CITY Funds").

8.4 CITY shall not be liable for any CONTRACTOR cost, or portion thereof, which:

- (A) Has been paid, reimbursed or is subject to payment or reimbursement from another source;



- (B) Was incurred prior to the Construction Commencement Date or subsequent to the Construction Completion Date as specified in Article I hereinabove;
- (C) Is not in strict accordance with the terms of this CONTRACT, including all exhibits attached hereto;
- (D) Has not been billed to CITY Department within thirty (30) calendar days following billing to CONTRACTOR, or termination of this CONTRACT, whichever is earlier; or
- (E) Is not an allowable cost as defined by Article X of this CONTRACT.

8.5 CITY shall not be liable for any CONTRACTOR cost, or portion thereof, which is or was incurred in connection with an activity of CONTRACTOR where:

- (A) Prior written authorization from CITY Department is required for the activity and such authorization was not first procured; or
- (B) CITY Department has requested that CONTRACTOR furnish data concerning an activity prior to proceeding further therewith and CONTRACTOR nonetheless proceeds without first submitting the data and receiving CITY Department approval thereof.

8.6 It is expressly understood and agreed by CITY and CONTRACTOR that CITY's obligations regarding Bond Funds, under this Article, are contingent upon the actual sale of applicable general obligation bonds by the CITY allocated pursuant to Proposition No. 5. Should CITY not receive funds from the sale of said bonds to make payments pursuant to this CONTRACT or should proceeds from this sale be less than anticipated, CITY Department shall notify CONTRACTOR in writing within a reasonable time after such fact has been determined and may, at its option, either terminate this CONTRACT or reduce the amount of its obligation accordingly. It is expressly understood by CITY and CONTRACTOR that this CONTRACT in no way obligates CITY's general fund monies or any other monies or credits of CITY.

8.7 It is expressly understood and agreed by CITY and CONTRACTOR that CITY's obligations regarding CDBG Funds, under this Article, are contingent upon the actual receipt of adequate CDBG Funds to meet CITY's liabilities hereunder. Should CITY not receive funds to make payments pursuant to this CONTRACT or should fund awards be reduced, CITY Department shall notify CONTRACTOR in writing within a reasonable time after such fact has been determined and may, at its option, either terminate this CONTRACT or reduce the amount of its obligation accordingly.

8.8 CITY shall not be obligated nor liable under this CONTRACT to any party, other than CONTRACTOR, for payment of any monies or provision of any goods or services.

8.9 CONTRACTOR agrees and assures that CONTRACTOR has obtained funding sufficient to finance Project costs within the Project in the amount of \$5,497,000.00. CONTRACTOR further understands and agrees that CONTRACTOR shall pay Project costs from its funding sources in the following sequential order of priority: (1) CONTRACTOR's funds for the Project in the amount of \$750,000.00 (hereinafter referred to as "CONTRACTOR's Funds"); (2) that certain Kronkowski Charitable Foundation Grant to CONTRACTOR for the Project in the amount of \$750,000.00 (hereinafter referred to as the "Kronkowski Grant" and attached hereto and incorporated herein as Exhibit "L"); (3) at least \$3,000,000.00 in funds drawn from that certain Frost National Bank loan (hereinafter referred to as the "Frost Loan" attached hereto and incorporated herein as Exhibit "M"), which agreement allows for up to \$5,000,000.00 for Project costs"; (4) other funding sources for the Project; and (5) the CITY Funds. CONTRACTOR agrees to pay Project costs from each of the foregoing funding sources in sequential order until the designated amount from each respective funding source as hereinabove indicated is expended.

8.10 In the event that the Project costs are less than the available funds, CITY agrees to still provide up to the hereinabove-described amount of CITY Funds, for Project costs, if (a) CONTRACTOR shows evidence to CITY's satisfaction of need for such CITY Funds for a purpose directly related to the Project, and (b) costs for which CONTRACTOR is requesting CITY Funds under the provisions of this paragraph are allowable expenditures in accordance with Article X of this CONTRACT. The priority sources of funding shall remain as set forth in Section 8.9 herein, however, sources of funding other than CITY Funds may be adjusted in order to account for the total amount of CITY Funds. In any event, CITY Funds shall be paid last in order of priority.

#### **IX. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY CONTRACTOR**

9.1 On or before the fifteenth (15<sup>th</sup>) day of the month following each and every month in which expenditures were made toward the Project, CONTRACTOR shall submit to CITY Department an invoice indicating the amount of the expenditures made during the previous month, that the payee is the CONTRACTOR, the date paid and the purpose of the payment. CONTRACTOR shall clearly indicate on each invoice submitted to CITY Department whether the invoice is to be paid with CDBG Funds or with Bond Funds.

9.2 CITY shall allow for the payment to CONTRACTOR for the expenditures set forth in each invoice submitted by CONTRACTOR in the following manner and under the following conditions:

- (A) CONTRACTOR has submitted an invoice in accordance with the terms hereof to CITY Department and CONTRACTOR has provided sufficient evidence, as determined solely by CITY's Director of Finance that one of the following events has occurred:

- (1) All sources of funding specified in paragraph 8.9 herein, except for CITY Funds, will be deposited by CONTRACTOR upon draw down or receipt into a construction account located in CONTRACTOR's financial institution; or
- (2) CONTRACTOR has obtained a guaranty that is acceptable to CITY Department and which shall legally obligate the guarantor to reimburse CITY for the total amount that CITY has paid to CONTRACTOR under this CONTRACT in the event that the Project is not (i) completed and acceptable to CITY Department and (ii) constructed in accordance with the dates set forth in the Project Construction Timeline and Draw Schedule.

9.3 CITY shall retain ten percent (10%) of Bond Funds and ten percent (10%) of CDBG Funds for payment to CONTRACTOR after final completion of the Project.

9.4 CONTRACTOR further understands that any and all CDBG funding received or to be received by CONTRACTOR from CITY for the completion of the Project shall be paid to CONTRACTOR pursuant to and in accordance with all applicable federal guidelines.

9.5 CONTRACTOR understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this CONTRACT and further agrees that all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of CITY funds provided under this CONTRACT.

9.6 Intentionally Deleted.

9.7 CONTRACTOR agrees to retain all financial books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter collectively referred to as "records") pertaining to activities pertinent to this CONTRACT for a minimum of four (4) years from the completion of the Project. CITY shall have access to the records at all times upon reasonable notice.

9.8 CITY agrees to provide CONTRACTOR written notice regarding any expenditure by CONTRACTOR that the CITY reasonably determines to be outside the permissible parameters of this CONTRACT. Said notice will provide CONTRACTOR thirty (30) days from receipt of said notice to cure the deficiency or refund to CITY any sum of money paid by CITY to CONTRACTOR determined to:

- (A) Have not been spent by CONTRACTOR strictly in accordance with the terms of this CONTRACT; or
- (B) Not be supported by adequate documentation to fully justify the expenditure.

9.9 Upon termination of this CONTRACT, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 9.8 above as a result of any auditing or monitoring by CITY, including the City Auditor, or by HUD or any federal agency, CONTRACTOR shall refund such amount to CITY within thirty (30) business days of CITY Department's written request therefor, wherein the amount disallowed or disapproved shall be specified. For purposes of this CONTRACT, the term, "business day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for City of San Antonio employees. Refunds of disallowed or disapproved costs, however, shall not be made from funds received pursuant to this CONTRACT or from funds received from or through the federal government or CITY.

9.10 Upon execution of this CONTRACT or at any time during the term of this CONTRACT, the CITY's Director of Finance, the City Auditor, or a person designated by the Director of the CITY Department may review and approve all CONTRACTOR's systems of internal accounting and administrative controls prior to the release of funds hereunder.

9.11 If CONTRACTOR expends \$250,000.00 or more of CITY Funds, then during the term of this CONTRACT, the CONTRACTOR shall have completed an independent audit of its financial statements performed within a period not to exceed one hundred eighty (180) days immediately succeeding the end of CONTRACTOR's fiscal year or termination of this CONTRACT, whichever is earlier. CONTRACTOR understands and agrees to furnish the CITY Department a copy of the audit report within a period not to exceed fifteen (15) days upon receipt of the report. CONTRACTOR further agrees to provide a line item in its budget for a financial statement audit prepared by an independent certified public accountant. If the CITY determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit from non-CITY resources. If CONTRACTOR expends less than \$250,000.00 of CITY Funds, then during the term of this CONTRACT, the CONTRACTOR shall complete and submit an unaudited financial statement(s) within a period not to exceed ninety (90) calendar days immediately succeeding the end of CONTRACTOR's fiscal year or termination of this CONTRACT, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by CONTRACTOR attesting to the correctness of said financial statement.

9.12 In the event that the actual amount expended by CONTRACTOR to meet the level of performance specified in the Work Statement at Exhibit "D," or any amendment thereto, is less than that amount provided to CONTRACTOR pursuant to this CONTRACT, then CITY reserves the right to reappropriate or recapture any such underexpended funds.

9.13 Utilizing the format provided by CITY Department, a "Contract Close-Out Package," the form of which is attached hereto as Exhibit "N," together with a final expenditure report, for the period commencing on the date of CONTRACTOR's last invoice requesting reimbursement of funds pursuant to this CONTRACT, shall be submitted by CONTRACTOR to CITY Department within fifteen (15) business days following the expiration of the term of this CONTRACT.

## **X. ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY**

10.1 Allowable expenditures of CITY Funds provided hereunder shall be restricted only to Construction Costs for the Project. The term "Construction Cost" shall be defined herein as the actual cost incurred by the approved contractor (or subcontractors) for building the Facility. Construction Costs shall not include land acquisition or the purchase of furniture, equipment and/or fixtures.

10.2 CONTRACTOR shall prepare and submit to CITY Department and CITY's Department of Finance a Project Budget, attached hereto and incorporated herein as Exhibit "J," which shall be based upon the amount of funds received or to be received by CONTRACTOR for the Project, which amount of funds CONTRACTOR assures is sufficient to complete the Project. Said funds shall include funds for the Project deposited by CONTRACTOR into the construction account required in paragraph 9.2(A)(1) hereof, and funds for which CONTRACTOR has obtained an executed funding agreement or a letter of commitment guaranteeing funding to the CONTRACTOR. CONTRACTOR understands and agrees that prior to any CITY approval of any costs to be paid from CITY Funds, such Project Budget must be deemed acceptable by CITY. Additionally, no later than the execution date hereof, CONTRACTOR shall submit to CITY's Department of Finance a copy of CONTRACTOR's Project Pro Forma Operating Cash Flows Statement, attached hereto and incorporated herein as Exhibit "O." Costs shall be considered allowable only if so approved in CONTRACTOR's Project Budget, or otherwise approved in advance by CITY Department in writing, and incurred directly and specifically in the performance of and in compliance with this CONTRACT and with all city, state and federal laws, regulations and ordinances affecting CONTRACTOR's operations hereunder. Expenditures of CITY Funds provided under this CONTRACT shall only be allowed if incurred directly and specifically in the performance of and in compliance with this CONTRACT and all applicable city, state and federal laws, regulations and ordinances.

10.3 The following shall not be considered allowable costs under this CONTRACT:

- (A) Personnel costs, salaries or wages paid directly by CONTRACTOR;
- (B) Out of town travel;
- (C) Costs or fees associated with the alteration or relocation of the facilities on and in which the activities specified in the Work Statement at Exhibit "D" are conducted;
- (D) Costs or fees associated with alterations, deletions or additions to any Personnel Schedule;
- (E) Costs or fees for temporary employees or services;

- (F) Costs or fees for consultant and/or professional services, except for those directly related to the Project;
- (G) Costs or fees associated with attendance at meetings, seminars or conferences;
- (H) Costs or fees incurred prior to the execution of this CONTRACT; and
- (I) Costs, fees or expenses for equipment, machinery, fixtures or any other personal property, whether expendable or non-expendable.

10.4 Written requests for costs and expenditures requiring prior CITY approval under the terms of this CONTRACT shall be CONTRACTOR's responsibility and shall be made within sufficient time to permit a thorough review by CITY. Written approval by CITY through the CITY Department Director or his designee, must be obtained prior to the commencement of procedures to solicit or purchase services, equipment, or real or personal property paid or proposed to be paid, in whole or in part, with CITY Funds. Procurements and/or purchases which must be approved pursuant to the terms of this CONTRACT shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

10.5 CONTRACTOR understands that invoices submitted by CONTRACTOR and received by CITY for payment from CITY Funds for the completion of the Project will be reviewed by the CITY Department for approval of payment.

## **XI. PROGRAM INCOME**

11.1 For purposes of this CONTRACT, "Program Income" shall mean earnings shall be limited to thirteen percent (13%) of the proceeds from any lease of the Property or any portion thereof; and/or thirteen percent (13%) of the proceeds or the amount of the CONTRACT hereunder, whichever is greater, from the disposition by sale of the Property or any portion thereof. All Program Income generated from this Project, for the duration of the Affordability Period shall be deemed CDBG income. Said Program Income shall be used by CONTRACTOR only for Project operating expenses and expenses for maintenance of the Property.

11.2 Beginning ninety (90) days after the Construction Completion Date, and every ninety (90) days thereafter until the end of the Affordability Period, CONTRACTOR shall submit to CITY Department a report of all Program Income received or accrued during the preceding ninety (90) days.

11.3 Records of the receipt and disposition of Program Income shall be maintained by CONTRACTOR in the same manner as required for other CONTRACT funds and shall be submitted to CITY Department in the format prescribed by CITY Department.

11.4 CONTRACTOR understands and agrees that notwithstanding the term of this CONTRACT, this Article XI shall survive the expiration of this CONTRACT until the ending date of the Affordability Period.

## **XII. OWNERSHIP OF PROPERTY**

12.1 No later than the execution date hereof, CONTRACTOR shall provide to CITY Department a title search conducted by a title company authorized to do business in Texas, indicating CONTRACTOR as the record title holder in fee simple of the Property. Such title search shall be affixed hereto and incorporated herein as Exhibit "P."

## **XIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

13.1 CONTRACTOR further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to CITY Department is, shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY Department;
- (B) It is financially stable and capable of fulfilling its obligations under this CONTRACT and that CONTRACTOR shall provide CITY Department immediate written notice of any adverse material change in the financial condition of CONTRACTOR that may materially and adversely effect its obligations hereunder;
- (C) No litigation or proceedings are presently pending or, to CONTRACTOR's knowledge, threatened against CONTRACTOR;
- (D) It shall continue to maintain its 501(c)(3) non-profit status, as set forth in the determination letter, which is attached hereto as Exhibit "Q";
- (E) None of the provisions contained herein contravene or in any way conflict with the authority under which CONTRACTOR is doing business or with the provisions of any existing indenture or agreement of CONTRACTOR;
- (F) CONTRACTOR has the legal authority to enter into this CONTRACT and accept payments hereunder, and has taken all necessary measures to authorize such execution of this CONTRACT and acceptance of payments pursuant to the terms and conditions hereof; and
- (G) None of the assets of CONTRACTOR are both currently and for the duration of this CONTRACT subject to any lien or encumbrance of any character, except for the Commercial Loan, and current taxes not delinquent, and except as shown in the financial statements provided by CONTRACTOR to CITY Department.

13.2 During the period of time that payment may be made hereunder and so long as any payments remain unliquidated, CONTRACTOR covenants that it shall not, without the prior written consent of CITY Department's Director or his designate:

- (A) Mortgage, pledge, or otherwise encumber or cause to be encumbered all or any portion of the Project, the Property or the Improvements;
- (B) Permit any pre-existing mortgages, liens, or other encumbrances to remain on or attached to all or any portion of the Project, the Property or the Improvements or any of the funding sources of CONTRACTOR which are allocated to the performance of this CONTRACT and with respect to which CITY has ownership hereunder, except for the Commercial Loan;
- (C) Sell, assign, pledge, transfer or otherwise dispose of accounts receivable, notes or claims for money due or to become due on the Project;
- (D) Sell, convey, or lease all or any portion of the Project, the Property or the Improvements; or
- (E) Make any advance or loan to, or incur any liability as guarantor, surety or accommodation endorser for any other firm, person, entity or corporation.

13.3 Each of the foregoing representations, warranties and covenants shall be continuing and deemed repeated each time CONTRACTOR submits a new request for payment in accordance with the terms, provisions and requirements of this CONTRACT.

#### **XIV. MAINTENANCE OF RECORDS**

14.1 CONTRACTOR agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this CONTRACT. CONTRACTOR further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions and requirements of this CONTRACT and with all applicable federal and state regulations establishing standards for financial management and all generally accepted accounting principles (GAAP); and
- (B) That CONTRACTOR's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure.

14.2 CONTRACTOR agrees to retain, for the period of time and under the conditions specified by CITY, all books, records, documents, reports, and written accounting policies and procedures pertaining to the operation of programs and expenditures of funds under this CONTRACT, in accordance with Section 9.7 and Section 39.6 herein.



14.3 CONTRACTOR agrees to include the substance of this Article in all of its sub-contracts.

14.4 Nothing in this Article shall be construed to relieve CONTRACTOR of:

- (A) Responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this CONTRACT; and
- (B) Fiscal accountability and liability pursuant to this CONTRACT and any applicable rules, regulations and laws.

14.5 CONTRACTOR understands and agrees that notwithstanding the term of this CONTRACT, this Article XIV shall survive the expiration of this CONTRACT until the ending date of the Affordability Period.

#### **XV. ACCESSIBILITY OF RECORDS**

15.1 In addition to CONTRACTOR's obligations under Article XVII, Section 17.2 hereof, at any reasonable time and as often as CITY may deem necessary, upon three (3) days written notice, CONTRACTOR shall make all of its records pertaining to this CONTRACT available to CITY, HUD or any of its authorized representatives, and shall permit CITY, HUD or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same; provided however, that CONTRACTOR shall first redact all "Individually Identifiable Health Information" as such term is defined by the Health Insurance Portability and Accountability Act ("HIPPA"). In the event that HUD requires CITY to provide Individually Identifiable Health Information or CITY otherwise requires such information, then prior to examining any of CONTRACTOR's records containing Individually Identifiable Health Information CITY shall enter into a Business Associate agreement with CONTRACTOR which shall be limited in duration and scope, and shall be approved by the City Attorney's Office prior to execution by CITY.

15.2 CONTRACTOR agrees and represents that it will cooperate with CITY, at no charge to the CITY, to satisfy, to the extent required by law, any and all requests for information received by CITY under the Texas Public Information Act or related laws pertaining to this CONTRACT.

15.3 CONTRACTOR understands and agrees that notwithstanding the term of this CONTRACT, this Article XV shall survive the expiration of this CONTRACT until the ending date of the Affordability Period.

#### **XVI. PERFORMANCE RECORDS AND REPORTS**

16.1 As often and in such form as CITY may require, CONTRACTOR shall furnish CITY Department such performance records and reports as deemed by CITY as pertinent to matters covered by this CONTRACT.

16.2 During the period of construction, monthly performance records and reports shall be submitted to CITY Department by CONTRACTOR no later than the tenth (10<sup>th</sup>) day of the month following and shall be in accordance with the formats set forth in the construction reporting portions of Exhibit "R" attached hereto and incorporated herein for all purposes. Such reports shall also include CONTRACTOR's compliance with (a) the construction timeline and (b) the timeline for the expenditures, as set forth in the Project Construction Timeline and Draw Schedule.

16.3 For the duration of the Affordability Period, CONTRACTOR shall submit a monthly performance report to CITY in a format acceptable to CITY, including documentation verifying that at least twenty-five percent (25%) of participants served in connection with the Project located at the Property have an annual gross income that does not exceed eighty percent (80%) of the San Antonio Median Income adjusted for household size, in accordance with the HUD Section 8 Income Guidelines, and that each such participant under the Project is so eligible. In addition, CONTRACTOR shall provide status reports as requested by the CITY Department throughout the term of this CONTRACT and throughout the Affordability Period. CONTRACTOR understands and agrees that notwithstanding the term of this CONTRACT, this paragraph 16.3 shall survive the expiration of this CONTRACT until the ending date of the Affordability Period.

16.4 As of the Effective Date of this CONTRACT, CONTRACTOR agrees to gather information and data relative to all programmatic and financial reporting.

16.5 CONTRACTOR understands and agrees that notwithstanding the term of this CONTRACT, this Article XVI shall survive the expiration of this CONTRACT until the ending date of the Affordability Period.

## **XVII. MONITORING AND EVALUATION**

17.1 CONTRACTOR agrees that CITY may carry out reasonable monitoring and evaluation activities, including on-site monitoring, so as to ensure compliance by CONTRACTOR with this CONTRACT and with all other laws, regulations and ordinances related to the performance hereof.

17.2 In addition to CONTRACTOR's obligations under Article XV, Section 15.1 hereof, CONTRACTOR agrees to cooperate fully with CITY in the development, implementation and maintenance of record-keeping systems and to provide CITY with any data determined by CITY to be necessary for its effective fulfillment of its monitoring and evaluation responsibilities. CONTRACTOR and CITY agree and understand that CONTRACTOR may be required to redact certain portions of said data in order for CONTRACTOR to be in compliance with privacy laws pertaining to medical records, including but not limited to HIPPA.

17.3 CONTRACTOR agrees that it will cooperate with CITY in such a way so as not to obstruct or delay CITY in its monitoring of CONTRACTOR's performance and that it will designate one of its staff to coordinate the monitoring process as requested by CITY staff.

17.4 After each official monitoring visit, CITY shall provide CONTRACTOR with a written report of monitoring findings.

17.5 Intentionally Deleted.

17.6 Copies of any fiscal, management, or audit reports regarding financial information only, by any of CONTRACTOR's funding or regulatory bodies shall be submitted to CITY's Finance Department within five (5) business days of receipt thereof by CONTRACTOR.

17.6 CONTRACTOR understands and agrees that notwithstanding the term of this CONTRACT, this Article XVII shall survive the expiration of this CONTRACT until the ending date of the Affordability Period.

### **XVIII. INDEMNITY**

**18.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal bodily injury, death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this CONTRACT, all without, however, waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND/OR REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to the CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.**

**18.2 It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this Article XVIII, is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

**18.3 It is expressly understood and agreed that CONTRACTOR is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that CITY shall in no way be responsible therefor.**

### **XIX. INSURANCE REQUIREMENTS**

19.1 Any and all employees, representatives, agents or volunteers of CONTRACTOR while engaged in the performance of any work required by the CITY shall be considered employees, representatives, agents or volunteers of CONTRACTOR only and not of the CITY. Any and all claims that may result from any obligation for which CONTRACTOR may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of CONTRACTOR.

19.2 Prior to the execution of this CONTRACT, CONTRACTOR shall furnish an original completed Certificate(s) of Insurance to the CITY Department Director and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information reference or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this CONTRACT until such certificate shall have been delivered to the CITY Department Director and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.

19.3 The CITY reserves the right to review the insurance requirements of this section during the effective period of the CONTRACT and to modify insurance coverages and their limits when deemed necessary and prudent by the CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the CONTRACT, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.

19.4 A CONTRACTOR's financial integrity is of interest to CITY, therefore, subject to right to maintain reasonable deductibles in such amounts as are approved by CITY, CONTRACTOR shall obtain and maintain, or cause to be obtained or maintained, in full force and effect for the duration of the CONTRACT, and any extension hereof, at CONTRACTOR's sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts:

	<u>TYPE</u>	<u>AMOUNT</u>
1.	Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e.* Broad form property damage, to include fire legal liability f. Personal Injury g.* Explosion, collapse, underground	For Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
3.	Comprehensive Automobile Liability* a. Owned/Described Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
4.	Builder's Risk	\$500,000 or amount of construction contract, whichever is less

\*If Applicable

19.5 The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the CITY, the CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

19.6 CONTRACTOR agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- (A) Name the CITY and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- (B) Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
- (C) Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.

19.7 CONTRACTOR shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the following address:

City of San Antonio  
Department of Housing and  
Community Development  
1400 S. Flores  
San Antonio, Texas 78204

City of San Antonio  
City Clerk's Office  
City Hall-Second Floor  
P.O. Box 839966  
San Antonio, Texas 78283-3966

19.8 If CONTRACTOR fails to maintain or fails to cause to be maintained the aforementioned insurance, or fails to secure and maintain or fails to cause to be secured and maintained, the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the CONTRACT. Procuring of said insurance by the CITY, however, is not the exclusive remedy for failure of CONTRACTOR to maintain or cause to be maintained said insurance or secure said endorsements. In addition to any other remedies the CITY may have upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

19.9 Nothing herein contained shall be construed as limiting in any way the extent to which CONTRACTOR may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's or its subcontractors' performance of the work covered under this CONTRACT.

19.10 All personal property placed in the Project shall be at the sole risk of CONTRACTOR. CITY shall not be liable and CONTRACTOR waives all claims for any damage either to the person or property of CONTRACTOR or to other persons due to the Project or any part of

appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Project, or any other persons; due to the happening of any accident in or about said Project. CONTRACTOR shall save and hold harmless CITY from any claims arising out of damage to CONTRACTOR's property or damage to CONTRACTOR's business, including subrogation claims by CONTRACTOR's insurers.

## **XX. NONDISCRIMINATION**

20.1 CONTRACTOR covenants that it, or agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the Property, which said discrimination CONTRACTOR acknowledges is prohibited.

## **XXI. CONFLICT OF INTEREST**

21.1 CONTRACTOR covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this CONTRACT. CONTRACTOR further covenants that in the performance of this CONTRACT, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

21.2 CONTRACTOR further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

21.3 No member of CITY's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this CONTRACT shall:

- (A) Participate in any decision relating to this CONTRACT, which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
- (B) Have any direct or indirect interest in this CONTRACT or the proceeds thereof.

21.4 CONTRACTOR acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the CITY or any CITY Agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individuals(s) or entities is party to the contract or sale; a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or

employee or his 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.

21.5 CONTRACTOR warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. CONTRACTOR further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

## **XXII. POLITICAL ACTIVITY**

22.1 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

## **XXIII. SECTARIAN ACTIVITY**

23.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

## **XIV. PUBLICITY**

24.1 When appropriate, as determined by and upon written approval of CITY Department, CONTRACTOR shall publicize the activities conducted by CONTRACTOR pursuant to the terms of this CONTRACT. In any news release, sign, brochure, or other advertising medium disseminating information prepared or distributed by or for CONTRACTOR, however, mention shall made of HUD and bond-funded CITY participation having made this Project possible.

## **XXV. PUBLICATIONS**

25.1 All published materials and written reports submitted pursuant to this CONTRACT shall be originally developed unless otherwise specifically provided for herein. If material not originally developed is included in a report, however, said material shall have its source identified, either in the body of the report or by footnote, regardless of whether the material is in a verbatim or extensive paraphrase format.

25.2 All published materials submitted pursuant to this Project shall include the following reference on the front cover or title page:



"This document was prepared in accordance with the City of San Antonio's Community Development Block Grant Program, with funding received from the United States Department of Housing and Urban Development."

25.3 CONTRACTOR understands and agrees that notwithstanding the term of this CONTRACT, this Article XXV shall survive the expiration of this CONTRACT until the ending date of the Affordability Period.

#### **XXVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

26.1 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by CONTRACTOR, shall, upon receipt, become the property of CITY.

#### **XXVII. FUNDING APPLICATIONS**

27.1 CONTRACTOR agrees to notify CITY each time CONTRACTOR is preparing or submitting any application for funding outside of this CONTRACT for the Project herein. When so preparing or submitting such an application, the following procedures shall be adhered by CONTRACTOR:

- (A) When the funding application is in the planning stages, a description of the funds being applied for and of the proposed use for the funds shall be submitted by CONTRACTOR to CITY Department;
- (B) Upon award or notice of award, whichever is sooner, CONTRACTOR shall notify CITY Department of the award or notice thereof, and of the effect, if any, of such funding on the funds and programs agreed to hereunder. Such notice shall be submitted by CONTRACTOR to CITY Department, in writing, within ten (10) business days of receipt of the award or notice thereof, together with copies of the applicable budget, personnel complement, program description, and contract; and
- (C) Except pursuant to prior written consent of CITY Department, CONTRACTOR shall not use, either directly or indirectly, resources provided hereunder to prepare applications for other federal or private funds, nor shall said resources be used, directly or indirectly, as contributions.

#### **XXVIII. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

28.1 The following shall only apply with respect to CDBG Funds:

- (A) CONTRACTOR certifies, and the CITY relies thereon in execution of this CONTRACT, that neither CONTRACTOR nor its Principals are presently

debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department;

- (B) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions);
- (C) CONTRACTOR shall provide immediate written notice to CITY, in accordance with Article XLII, if, at any time during the term of this CONTRACT, including any renewals hereof, CONTRACTOR learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances; and
- (D) CONTRACTOR's certification is a material representation of fact upon which the CITY has relied in entering into this CONTRACT. Should CITY determine, at any time during this CONTRACT, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the CITY may terminate this CONTRACT in accordance with Article XXXI.

#### **XXIX. SUB-CONTRACTING**

29.1 Any work or services contracted or sub-contracted hereunder, shall be contracted or sub-contracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this CONTRACT. Compliance by contractors and sub-contractors with this CONTRACT shall be the responsibility of CONTRACTOR. CONTRACTOR is responsible to ensure that all permits required for the activities under this CONTRACT are obtained.

29.2 CONTRACTOR agrees that no contract or sub-contract approved pursuant to this CONTRACT shall provide for payment on a "cost plus a percentage of cost" basis.

29.3 CITY shall in no event be obligated to any third party, including any contractor or any sub-contractor of CONTRACTOR, for performance of or payment for work or services.

29.4 **CITY's SBEDA, Non-Discrimination and Affirmative Action Policies.** CONTRACTOR agrees and acknowledges that it is CITY's policy that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts (SBEDA Policy). CONTRACTOR agrees that CONTRACTOR will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. CONTRACTOR further agrees that CONTRACTOR will abide by all applicable terms and provisions of CITY's Non-Discrimination Policy, CITY's SBEDA Policy and CITY's Equal Opportunity Affirmative

Action Policy, these policies being available in CITY's Department of Economic Development and the City Clerk's Office.

29.5 **GFEP Required.** If the CONTRACTOR's Fee paid to CONTRACTOR pursuant to this CONTRACT will equal or exceed a total of \$200,000.00, then CONTRACTOR shall have submitted to CITY a Good Faith Effort Plan (GFEP) indicating CONTRACTOR's utilization of Small, Minority and Woman-owned Business Enterprises at the time of its proposal to seek this CONTRACT. If CITY approved the GFEP, and CONTRACTOR subsequently changes or does not utilize one or more of the subcontractors listed on its GFEP, CONTRACTOR shall submit a request for approval of this change to the original affirmed list of subcontractors. If CITY approved the GFEP, and CITY subsequently finds material deficiencies in any aspect of the GFEP, CONTRACTOR shall submit a written report to CITY's Department of Economic Development. The CONTRACTOR shall also submit a Supplemental GFEP indicating efforts to resolve any deficiencies. A denied Supplemental GFEP, by CITY's Department of Economic Development, will constitute failure to satisfactorily resolve any deficiencies by CONTRACTOR. Failure to obtain an approved Supplemental Good Faith Effort Plan, within sixty (60) days of initial denial shall constitute a default and may result in withholding of CONTRACTOR's Fee or suspension of this CONTRACT until all deficiencies are resolved. Failure to cure all deficiencies within another sixty (60) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by CONTRACTOR which can, at the option of the Director, result in forfeiture of the entirety of this CONTRACT.

### **XXX. SUSPENSION OF FUNDING**

30.1 Upon determination by CITY of CONTRACTOR's failure to timely and properly perform pursuant to the provisions of this CONTRACT, CITY, without limiting or waiving any rights it may otherwise have, may, at its discretion and upon five (5) business days' written notice to CONTRACTOR, withhold further payments to CONTRACTOR. CITY's notice shall specifically set forth CONTRACTOR's alleged default or failure as well as the action required for cure thereof.

30.2 The period of funding suspension shall be of such duration as is appropriate to accomplish corrective action, but in no event shall it exceed thirty (30) calendar days. Upon expiration of the suspension period:

- (A) Should CITY determine that the default or deficiency has been cured, CONTRACTOR may be restored to full compliance status and paid all eligible funds withheld during the suspension period; or
- (B) Should CITY determine continued non-compliance, the provisions of Article XXXI hereunder may be effectuated.

### **XXXI. TERMINATION**

31.1 "Termination" of this CONTRACT shall mean termination by expiration of the term of this CONTRACT or earlier termination pursuant to any of the provisions hereof.

31.2 CITY may terminate this CONTRACT for any of the following reasons:

- (A) Neglect or failure by CONTRACTOR to perform or observe any of the terms, conditions, covenants or guarantees of this CONTRACT or of any written contract or amendment between CITY and CONTRACTOR;
- (B) Failure by CONTRACTOR to cure, within the period prescribed pursuant to the above Article XXX of this CONTRACT, any default or deficiency basis for suspension of funding hereunder;
- (C) Finding by CITY that CONTRACTOR:
  - (1) Is in such unsatisfactory financial condition as to endanger performance under this CONTRACT, including, but not limited to:
    - (i) The apparent inability of CONTRACTOR to meet its financial obligations; or
    - (ii) Items that reflect detrimentally on the creditworthiness of CONTRACTOR, including, but not limited to, liens and other encumbrances on the assets of CONTRACTOR;
  - (2) Is delinquent, in the ordinary course of business, in the payment of taxes or in the payment of costs of performance of this CONTRACT;
- (D) Appointment of a trustee, receiver or liquidator for all or a substantial part of CONTRACTOR's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against CONTRACTOR;
- (E) The entry by a court of competent jurisdiction of a final order providing for the modification or alteration of the rights of CONTRACTOR's creditors;
- (F) Inability by CONTRACTOR to conform to changes in local, state and federal rules, regulations and laws as provided for in Article VI of this CONTRACT; and
- (G) Violation by CONTRACTOR of any rule, regulation or law to which CONTRACTOR is bound or shall be bound under the terms of this CONTRACT.

31.3 CITY may terminate this CONTRACT for convenience at any time, upon giving thirty (30) days written notice to CONTRACTOR, after which CONTRACTOR shall be paid an amount not to exceed the total accrued expenditures as of the effective date of termination.

31.4 CONTRACTOR may terminate this CONTRACT for any of the following reasons:

- (A) Cessation of outside funding upon which CONTRACTOR depends for performance hereunder; CONTRACTOR may opt, however, within the limitations of this CONTRACT and with the written approval of CITY Department, to seek an alternative funding source, provided that the termination of funding by the initial outside source was not occasioned by a breach of agreement as defined herein or as defined in a contract between CONTRACTOR and the funding source in question; or
- (B) Upon the dissolution of the CONTRACTOR organization, provided such dissolution was not occasioned by a breach of this CONTRACT.

31.5 Upon a decision to terminate by either CITY or CONTRACTOR, written notice of such, and the effective date thereof, shall be immediately provided to the other party.

31.6 Upon receipt of notice to terminate, CITY shall not be liable to CONTRACTOR or CONTRACTOR's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of termination.

31.7 Upon receipt of notice to terminate, all finished or unfinished documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, prepared by or on behalf of CONTRACTOR under this CONTRACT, and paid for by CITY Funds, shall, at the option of CITY, become the property of CITY and shall, if requested or agreed to by CITY, be delivered by CONTRACTOR to CITY in a timely and expeditious manner.

31.8 Within thirty (30) days after receipt of notice to terminate, CONTRACTOR shall submit a statement to CITY Department, indicating in detail the services performed under this CONTRACT prior to the effective date of termination.

31.9 Any termination of this CONTRACT as herein provided shall not relieve CONTRACTOR from the payment of any sum(s) that shall then be due and payable or become due and payable to CITY hereunder or as provided for at law or in equity, or any claim for damages then or theretofore accruing against CONTRACTOR hereunder or by law or in equity, and any such termination shall not prevent CITY from enforcing the payment of any such sum(s) or claim for damages from CONTRACTOR. Instead, all rights, options, and remedies of CITY contained in this CONTRACT shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and CITY shall have the right to pursue any one or all of such remedies or any such other remedy or relief which may be provided by law or in equity whether or not stated in this CONTRACT.

31.10 Should this CONTRACT be terminated by either party hereto for any reason, including termination under Section 31.3 of this CONTRACT, if the work required hereunder of CONTRACTOR is not fully completed to the satisfaction of CITY in accordance with the terms of this CONTRACT, CONTRACTOR shall refund any and all sums of money paid by CITY to CONTRACTOR within ten (10) business days of CITY's written request therefor.

#### **XXXII. NOTIFICATION OF ACTION BROUGHT**

32.1 In the event that any claim, demand, suit, proceeding, cause of action or other action (hereinafter collectively referred to as "claim") is made or brought against CONTRACTOR, CONTRACTOR shall give written notice thereof to CITY Department within two (2) business days after itself being notified. CONTRACTOR's notice to CITY shall state the date and hour of notification to CONTRACTOR of the claim; the names and addresses of those instituting or threatening to institute the claim, the basis of the claim; and the name(s) of any others against whom the claim is being made or threatened. Written notice pursuant to this Article shall be delivered either personally or by mail in accordance with Article XLII.

#### **XXXIII. CHANGES AND AMENDMENTS**

33.1 Except when the terms of this CONTRACT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both CITY and CONTRACTOR and evidenced by passage of a subsequent CITY ordinance, as to CITY's approval under authority granted by formal action of the parties' respective governing bodies.

33.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this CONTRACT and that any such changes shall be automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

33.3 Whenever and as often as deemed necessary by CITY, CITY Department may request and require changes to CONTRACTOR's Work Statement as set forth in Exhibit "D"; such changes as requested or required by CITY, however, must be by written amendment hereto and may incorporate therein increases or decreases in the total monetary obligation of CITY to CONTRACTOR as provided for pursuant to the terms, provisions and conditions of this CONTRACT.

33.4 Except pursuant to (a) prior submission by CONTRACTOR of detailed information regarding budget and Project revisions, and (b) prior written approval thereof by CITY, CONTRACTOR shall neither make transfers between or among line items approved within the budget categories set forth in the Project Budget, nor shall CONTRACTOR alter, add to or delete from the budget detail likewise incorporated within the Project Budget. Instead, CONTRACTOR shall request budget revisions in writing; such request for revisions, however, shall not increase

the total monetary obligation of CITY as provided for pursuant to this CONTRACT, nor shall said revisions significantly change the nature, intent, or scope of the Project funded hereunder.

33.5 In the event that the level of CDBG funding for CONTRACTOR or for the Project described herein is altered, CONTRACTOR shall submit, immediately upon request by CITY Department, revised budget and Project information so as to enable re-evaluation by CITY of the original funding levels set forth in Exhibit "J."

#### **XXXIV. ASSIGNMENTS**

34.1 CONTRACTOR shall not transfer, pledge or otherwise assign this CONTRACT, any interest in and to same, or any claim arising thereunder, without first procuring the approval of the San Antonio City Council by the passage of an ordinance. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

#### **XXXV. LEGAL EXPENSES**

35.1 Under no circumstances will CDBG Funds received under this CONTRACT be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY or any other public entity.

35.2 During the term of this CONTRACT, if Contractor files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this CONTRACT and all access to the CDBG funding provided for hereunder may terminate if Contractor is in violation of paragraph 35.1.

35.3 For purposes of this Article, "adversarial proceeding" includes any cause of action filed by the Contractor in a state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

#### **XXXVI. SEVERABILITY OF PROVISIONS**

36.1 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this CONTRACT that is invalid, illegal, or unenforceable, there be added as a part of the CONTRACT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

### **XXXVII. AMENDMENTS**

37.1 Except when the terms of this CONTRACT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONTRACTOR and evidenced by passage of a subsequent City ordinance, as to CITY's approval.

### **XXXVIII. NON-WAIVER OF PERFORMANCE**

38.1 No waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this CONTRACT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this CONTRACT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this CONTRACT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

38.2 No act or omission of either party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

38.3 No representative or agent of CITY may waive the effect of the provisions of this Article XXXVIII without formal action from the San Antonio City Council.

### **XXXIX. SPECIAL CONDITIONS**

39.1 CONTRACTOR shall include the following language in all contracts to provide services on the Project:

By signing this CONTRACT or providing or causing to be provided a certificate of coverage, the person signing this CONTRACT is representing to the governmental entity that all employees of the person signing this CONTRACT who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.



39.2 CONTRACTOR must complete all Site Specific Environmental Review Records for the Property, and submit such records to CITY Department with submission of CONTRACTOR's first invoice.

39.3 On all construction-related activities associated with the Project, CONTRACTOR shall comply with all local and federal requirements including, but not limited to, bidding procedures, plans and specifications, building permits and Davis-Bacon Wage Rates, and from the Effective Date of this CONTRACT forward, CONTRACTOR shall coordinate all construction-related activities with the CITY's Department of Public Works and Developmental Services to ensure such compliance.

39.4 CONTRACTOR shall ensure that all professional and contractual services in connection with Project implementation be procured in accordance with 24 C.F.R. 570, Part 85, The Common Rule, Procurement, Competitive Standards and local procurement and bidding policies.

39.5 CONTRACTOR understands and agrees that any and all Project costs over the actual allocation herein shall be borne solely by CONTRACTOR. Notwithstanding, CONTRACTOR agrees and ensures that the Project shall be fully completed to CITY's satisfaction, in accordance with the Work Statement in Exhibit "D" attached hereto.

39.6 CONTRACTOR ensures that the head of household for each Project participant fully and accurately complete a Patient Information Form, a sample of which is attached hereto as Exhibit "S," for household income verification to determine Project participant eligibility, and that each such head of household provide income verification satisfactory to CITY. CONTRACTOR shall thereafter submit each such completed form and income verification immediately upon completion to CITY. CONTRACTOR understands and agrees that notwithstanding the term of this CONTRACT, this paragraph 39.6 shall survive the expiration of this CONTRACT until the ending date of the Affordability Period.

39.7 CONTRACTOR acknowledges, understands and agrees to comply with the following federal regulations as promulgated in Section 3 clause of the Housing and Urban Development Act of 1968, as amended, when applicable:

- (A) The work to be performed under this CONTRACT is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170(l)(u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low income persons, particularly persons who are recipients of HUD assistance for housing;
- (B) The parties to this CONTRACT agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this CONTRACT, the parties to this CONTRACT certify that they are under no

contractual or other impediment that would prevent them from complying with the Part 135 regulations;

- (C) CONTRACTOR agrees to send to each labor organization or representative of workers with which the contract has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of CONTRACTOR's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin;
- (D) CONTRACTOR agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. CONTRACTOR will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135;
- (E) CONTRACTOR will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the CONTRACTOR's obligations under 24 C.F.R. Part 135;
- (F) Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this CONTRACT for default, and debarment or suspension from further HUD-assisted contracts; and
- (G) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this CONTRACT. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this CONTRACT that are subject to the provision of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

## **XL. ENTIRE AGREEMENT**

40.1 This CONTRACT 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 CONTRACT shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereof, and duly executed by the parties.

## **XLI. INTERPRETATION**

41.1 In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible to HUD for matters of compliance, shall have the final authority to render or secure an interpretation.

## **XLII. NOTICES**

42.1 For purposes of this CONTRACT, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

**CITY:**

Director  
Department of Housing and Community Development  
1400 S. Flores Street  
San Antonio, Texas 78204

**CONTRACTOR:**

Debbora Thompson  
Chief Executive Director  
Barrio Comprehensive Family Health Care Center, Inc.  
1102 Barclay  
San Antonio, Texas 78207-7161

**With copy to:**

Jane Macon  
Fulbright & Jaworski L.L.P.  
300 Convent Street, Suite 2200  
San Antonio, Texas 78205

Notice of change of address by either party must be made in writing and mailed to the other party's last known address within five (5) business days of such change.

**XLIII. PARTIES BOUND**

43.1 This CONTRACT shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

**XLIV. GENDER**

44.1 Words of gender used in this CONTRACT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**LV. RELATIONSHIP OF PARTIES**

45.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

**XLVI. TEXAS LAW TO APPLY**

46.1 This CONTRACT 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. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

**XLVII. CAPTIONS**

47.1 The captions contained in this CONTRACT are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this CONTRACT.

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this the \_\_\_\_\_ day of \_\_\_\_\_, 2005 ("Effective Date").

**CITY OF SAN ANTONIO**

**BARRIO COMPREHENSIVE FAMILY  
HEALTH CARE CENTER, INC.**

By: \_\_\_\_\_  
Frances A. Gonzalez  
Assistant City Manager

By: \_\_\_\_\_  
Debbora Thompson  
Executive Director

ATTEST: \_\_\_\_\_  
CITY CLERK

ATTEST: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Denise Monday  
ASSISTANT CITY ATTORNEY

\_\_\_\_\_  
Karmen Binka  
ASSISTANT CITY ATTORNEY

**Attachments:**

- Exhibit "A" – Bond Election
- Exhibit "B" – Election Canvassing Ordinance
- Exhibit "C" – Board Resolution
- Exhibit "D" – Work Statement
- Exhibit "E" – Project Construction Timeline and Draw Schedule
- Exhibit "F" – Property Description
- Exhibit "G" – Payment and Performance Bonds
- Exhibit "H" – City's Federal Compliance Manual
- Exhibit "I" – Restrictive Covenant Agreement
- Exhibit "J" – Project Budget
- Exhibit "K" – [Intentionally Deleted]
- Exhibit "L" – Kronkowski Grant
- Exhibit "M" – Frost Loan
- Exhibit "N" – Contract Close-out Package
- Exhibit "O" – Project Pro Forma Operating Cash Flows Statement
- Exhibit "P" – Title Search
- Exhibit "Q" – Determination Letter
- Exhibit "R" – Performance Records
- Exhibit "S" – Patient Information Form