

# AN ORDINANCE 81343

**ACCEPTING THE LOW, QUALIFIED BID OF F.A. NUNNELLY COMPANY IN THE AMOUNT OF \$244,627.00 IN CONNECTION WITH THE LAS PALMAS HEALTH CENTER COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) CONVERSION PROJECT; AUTHORIZING A CONTRACT; REVISING THE PROJECT BUDGET; AUTHORIZING \$49,878.00 FOR CONSTRUCTION CONTINGENCIES AND PROVIDING FOR PAYMENT.**

\*\*\*\*\*

**WHEREAS**, the City Council has approved the Las Palmas Health Center Conversion Project as part of the Nineteenth (19th) Year Community Development Block Grant (CDBG) Program; and

**WHEREAS**, in connection with said Project, there exists a need to convert a vacated library building to a general purpose health care clinic to provide preventative health care services to area residents; and

**WHEREAS**, in order to commence performance of such work, it is necessary to accept the low, qualified bid of F.A. Nunnelly Company; **NOW THEREFORE:**

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

**SECTION 1.** The low, qualified bid of F.A. Nunnelly in the amount of \$244,627.00 for performance of the above-described work in connection with the Las Palmas Health Center Conversion Project No. 28-019057 is hereby accepted. The City Manager or in his stead, either the Assistant City Manager or the Director of Public Works is hereby authorized to execute a standard form public works construction contract for the job. A copy of the contractor's bid is affixed hereto and incorporated herein as Attachment I. All other bids received are hereby rejected.

**SECTION 2.** The budget of Project No. 28-019057 is hereby authorized to be revised as follows:

<u>INDEX CODE</u>	<u>ACCOUNT</u>	<u>OBJECT CODE</u>	<u>CURRENT BUDGET</u>	<u>REVISIONS</u>	<u>REVISED BUDGET</u>
265348	Construction Cont.	05-378	\$294,505.00	\$-244,627.00	\$49,878.00
273615	Construction Cntr.	05-378	\$-0-	\$+244,627.00	\$244,627.00
			<u>\$294,505.00</u>	<u>\$-0-</u>	<u>\$294,505.00</u>

**SECTION 3.** The following sums are hereby authorized for encumbrance in and payment from Fund No. 28-019057:

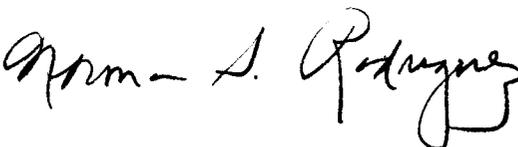
\$244,627.00 for contract work payable to F.A. Nunnally Company from Expenditure Account Index No. 273615; and

\$49,878.00 for construction contingencies payable from Expenditure Account Index No. 265348.

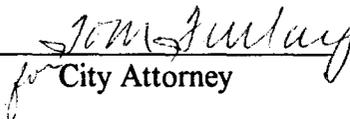
**PASSED AND APPROVED** this 15<sup>th</sup> day of December, 1994.

  
MAYOR

**ATTEST:**

  
City Clerk

**APPROVED AS TO FORM:**

  
for City Attorney

94-57,



**PROPOSAL**

ATTACHMENT I

**TO**

**CITY OF SAN ANTONIO TEXAS**

**FOR THE CONSTRUCTION OF**

**Las Palmas Health Center Conversion  
911 Castroville Rd.**

**IN SAN ANTONIO, TEXAS**

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, corporation; that Bidder has carefully examined the form of contract, instructions to bidders, profiles, grades, specifications, and the plans therein referred to, and has carefully examined the locations, conditions and classes of materials of the proposed work; and agrees that Bidder will provide all the necessary machinery, tools, apparatus, and other means of construction, and will do all the work and furnish all the materials called for in the contract and specifications in the manner prescribed therein and according to the requirements of the Director of Public Works as therein set forth.

It is understood that the following quantities of work to be done are approximate only, and are intended principally to serve as a guide in figuring out the bids.

It is understood and agreed that the work is to be completed in full in EIGHTY  
(80) WORKING DAYS

Accompanying this Proposal is a Bid Guaranty in the amount of 05% (GAB)

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), said amount being

05 per cent of the total bid. Said Bid Guaranty, in the form of a Certified or Cashier's Check on a State or National Bank, or Bid Bond, is submitted as a guaranty of the good faith of the Bidder and that the Bidder will execute and enter into a written contract to do the work, if his bid is accepted. It is hereby agreed that the Bidder may, at any time prior to opening of the bids withdraw this Proposal without penalty; it is also agreed that if Bidder shall, at any time after opening of bids, withdraw this Proposal or if this Bid is accepted and Bidder shall fail to execute the written contract and furnish satisfactory bond, as herewith provided, within ten (10) days after such acceptance, the City of San Antonio shall, in any of such events, be en-

titled and is hereby given the right to retain said Bid Guaranty as liquidated damages. It is understood that the City of San Antonio reserves the right to reject any and all bids whenever the City Council deems it in the interest of the City to do so, and also the right to waive any informalities in a bid.

In the event of the award of a contract to the undersigned, the undersigned will execute same on Standard Form City Construction Contract and make bond for the full amount of the contract, to secure proper compliance with the terms and provisions of the contract, and to insure and guarantee the work until final completion and acceptance or the end of the guarantee period where so stipulated, and to guarantee payment of all lawful claims for labor performed and materials furnished in the fulfillment of the contract.

The work proposed to be done shall be accepted when fully completed and finished to the entire satisfaction of the Director of Public Works.

The undersigned certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final.

Bidder is:

- An individual proprietorship;
- A partnership composed of \_\_\_\_\_ and \_\_\_\_\_;
- A corporation chartered under the laws of the State of TEXAS \_\_\_\_\_, acting by its officers pursuant to its by-laws or a resolution of its Board of Directors.

F.A. NUNNELLY COMPANY

(Name of Bidder)

ATTEST:

Linda Blize

LINDA BLIZE

By: Philip Nunnelly  
PHILIP NUNNELLY (Signature)

PRESIDENT

(Title)

ACKNOWLEDGE 03 ADDENDUMS

103 SEALE RD. SAN ANTONIO, TX 78219  
(Address)

Amount of Base Bid (Insert Amount in Words and Numbers): Two Hundred Forty Four Thousand Six Hundred Twenty Seven Dollars (\$ 244,627.<sup>00</sup>)

Alternates (if applicable):

- (1) DEDUCT \$8,000.00 (3) \_\_\_\_\_
- (2) DEDUCT \$4,000.00 (4) \_\_\_\_\_

Please return bidders check to F.A. NUNNELLY COMPANY  
(Name)

Tel. No. 210-337-5121 103 SEALE ROAD  
(Address)

Date: 11-09-94 SAN ANTONIO, TEXAS 78219  
(Address)

**CONSTRUCTION CONTRACT  
(General Form)**

STATE OF TEXAS  
COUNTY OF BEXAR  
CITY OF SAN ANTONIO

CONTRACT FOR

**LAS PALMAS HEALTH CENTER CONVERSION**

THIS AGREEMENT made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a municipal corporation, in the State of Texas, hereinafter termed "City", and

**F.A. Nunnelly Company  
103 Seale Rd.  
San Antonio, Texas 78219**

hereinafter termed "Contractor", said agreement being executed by the City pursuant to the City Charter and Ordinances and Resolutions of the City Council, and by said Contractor,

**WITNESSETH:** That the parties hereto, each in consideration of the agreements on the part of the other herein made and referred to, have covenanted mutually, and hereby mutually covenant, the City for itself and its successors, and the Contractor for itself or himself or themselves and his or their heirs, executors and administrators or successors, as follows, to-wit:

**A. DEFINITIONS & SCOPE OF CONTRACT**

1. **CITY AND OFFICIALS.** Whenever in this contract is found the term "City", "City Council", "City Manager", "Director of Public Works", "Director of Finance", "City Clerk" or other designation of any City institution, officer, employee or title, or a pronoun in its, his or their place, the same shall, unless indicated otherwise, be understood to mean the City of San Antonio or its successors, or the governing body, or the person or persons now or hereafter holding or exercising the duties of such designated official position, office, employment or title, in said City, or any person or persons acting lawfully in the corresponding official capacity on behalf of said City at such time and within the powers and authority held by him or them;

2. **CONTRACTOR.** Whenever the term "Contractor" or a pronoun in its place is used herein, it shall be taken to include any person, association of persons, firm or corporation, notwithstanding such pronoun may be used in the masculine gender or singular number, and said term or pronoun shall include in their respective capacities, the President, Manager, or other officer or agent for the time being, representing or locally managing the work of any corporation contracting herein.

3. **INCLUDED INSTRUMENTS.** The notice to Contractors, specifications including any Special and General Conditions, plans, instructions to bidders, advertisement for bids, the bid proposal, and the construction bond, payment bond, and other bonds, if any, made by the Contractor, the Charter, Ordinances and Resolutions of the City, all in so far as prepared for or relating to said work herein undertaken are hereby made a part of this agreement and are included in this contract as if rewritten or copied in full herein, and shall be deemed "included instruments" when that term is used.

4. **CONTRACT TO CONTROL.** In case of conflict or inconsistency between this contract and the specifications or other included instruments, this contract shall control, but insofar as such provisions can stand together they shall all be regarded as cumulative.

5. **SCOPE OF CONTRACT AND SPECIAL PROVISIONS FOR SUPERVISION OF WORK.** It is contemplated that this contract shall be used as a general form of construction contract for public works projects and for some of said work independent consulting Architects or Engineers may be engaged, their identity and capacity shall be designated herein; however, Contractor understands that City may abrogate the authority of such consultant as provided in the terms of its contract relationship with the latter, and the Director of Public Works shall, in such event, be vested with all powers formerly exercised by such consultant, provided written notice of such substitution shall be immediately served on the Contractor in writing. Nothing herein shall authorize independent agreements between Contractor and such Engineer or Architect, nor shall the latter be deemed to bear a legal relationship to either Contractor or City other than as evidenced by the City's contract with such consultant.

6. **DEFAULT AND VIOLATIONS OF CONTRACT.** If Contractor shall fail or refuse to take such measures as the Director of Public Works may determine to be necessary to insure the completion of the work within the time allowed therefor, or if the work to be done under this contract shall be abandoned by Contractor, or if this contract, or any right or interest therein shall be assigned or sub-let by Contractor otherwise than is herein specified, or if at any time said Director of Public Works shall certify in writing that Contractor is willfully violating or refusing to observe any of the conditions, provisions or stipulations of this contract or of the specifications, or is executing the same in bad faith or not in accordance with the terms thereof, or if the work is not fully completed within the time allowed for its completion, then, in any such event, the City Manager shall be authorized at his election to order Contractor to discontinue all work under this contract by written notice given as herein provided; and Contractor and his employees shall thereupon discontinue all work upon said premises; and the City shall, upon such notice having been given, be authorized fully to enter upon said premises, through any designated officer, agent or contractor, and to take full possession of said work, and to order or contract for the completion of said work in any manner it may deem proper; and said City shall thereupon have a right to take full possession of, and to use for the purposes of said work, all materials, tools, implements or machinery previously provided by the Contractor for the performance of the work and located at the project site. All costs and expenses requisite to the completion of the work by the City whether

4. **IMPLIED WORK.** Any work or materials that may have been omitted in the description of said project, but the use of which is implied or necessary to the project's completion, shall be deemed to be included in this contract and shall be furnished by the Contractor as if the same had been stated specifically, without any additional charge to the City.

5. **INCIDENTAL WORK, CONNECTIONS AND PASSAGEWAYS.** The Contractor shall do and perform all implied or incidental work necessary to completion of this contract including, but not by way of limitation, the following: Shall make and provide all suitable connections with existing improvements as are necessarily implied herein for proper completion of the project; shall provide passageways or leave open such thoroughfares in the work area as may be required by the City and shall protect and guard same at his own risk as more specifically detailed in Paragraph E-1 hereof; and shall continuously maintain the work area in a clean and workman like manner and prior to final acceptance of the work, restore the site to its prior condition to the extent permitted by the improvement. All of said incidental work to be done to the satisfaction of the City at Contractor's own cost and expense.

6. **WORK AND MATERIALS.** All materials used by the Contractor shall conform to the specifications. However, if the specifications are silent, only the best quality materials shall be used, and in the event of dispute as to the relative quality of materials, the selection of the Director of Public Works shall be final. All of said work shall be executed in a good, thorough and workmanlike manner, to the satisfaction of the Director of Public Works, who, together with all assistants and inspectors under his direction, or in the employ of the City for the purpose of said work, shall at all times have free access to the project site, stores and materials, and shall be privileged to take such samples of all materials and to cause tests of materials or of any part of the work to be made except as otherwise provided in the specifications. Contractor shall render all assistance required of him by the Director of Public Works or his aforementioned assistants or inspectors in connection with any such tests, and if any part of the work or the materials used shall be found unsuitable or improper, either wholly or in part, Contractor shall correct or remove such defective work or materials from the project site. In connection with the visual inspection or materials testing contemplated herein, it is clearly understood that the City exercises no right to control the means of accomplishing the end product of the work and no approval of any phase of the construction project by any of the City's agents or inspectors shall relieve the Contractor from full compliance with the specifications regarding the ultimate work product and any additional cost or delay occasioned by defects in the work or failure to meet specifications at any such phase shall be borne by the Contractor.

7. **CONTRACTOR'S RISK.** Contractor shall be responsible for the complete performance of and compliance with this contract, and for all materials on the ground or elsewhere, and for all the work performed under this contract, and shall protect the same from all loss or damage from any cause whatsoever until final completion and acceptance; and shall deliver said structures, work and improvements to the City in a completed and perfect condition in accordance with this contract.

**C. BEGINNING AND COMPLETION OF WORK, DAMAGES FOR DELAY**

1. **TIME TO BEGIN WORK.** The work embraced in this contract shall be begun by contractor within seven (7) days after City shall notify Contractor in writing to begin, and if such work be actually begun by Contractor before such notice, then the period of time herein allowed for the completion of the work shall begin to run from such date when work is actually commenced.

**2. COMPLETION OF WORK.**

a. **Work Day Contract** -- After beginning work as outlined in Paragraph C-1 above, the Contractor shall prosecute same continuously and diligently for and during the period of 80 ~~working days~~ working days, during which period of time Contractor binds and obligates himself at all times to employ sufficient force and diligence to complete said structures, work and improvements, and to deliver same over to the City in a completed, undamaged, and clean condition; and the time of beginning, rate of progress and time of completion of said work are hereby declared and understood to be of the essence of this contract; provided, however, said Director of Public Works may suspend said work wholly or in part by his written order whenever in his opinion the interests of the City require the suspension of such work, such orders not to continue in effect longer than one week at any one time. The City may, at its discretion, establish phases of the project or areas of the work to be performed and in such order or sequence as the City shall deem best in the public interest.

Should the work be delayed necessarily by any damage that may happen thereto by any unusual, unavoidable accident, or by the condition of the weather, or by action of the elements, or by any general strike of employees, or by shortage of materials, or by suspension of the work, or by any injunction or other court action or by any delay which may exist for the City to procure any title to lands or any right or interest therein needed for the purposes of said work, Contractor shall have no claim for damages on account of such delay, but working days will not be charged during the period of any such delays.

b. **Date Certain Contract** -- After beginning work as outlined in Paragraph C-1 above, the Contractor shall complete the work

during which period of time Contractor binds and obligates himself at all times to employ sufficient force and diligence to complete said structures, work and improvements, and to deliver same over to the City in a completed, undamaged and clean condition; and the time of beginning, rate of progress and time of completion of said work are hereby declared and understood to be of the essence of this contract; provided, however, said Director of Public Works may suspend said work wholly or in part by his written order whenever in his opinion the interests of the City require the suspension of such work, such orders not to continue in effect longer than one week at any one time. The City may, at its discretion, establish phases of the project or areas of the work to be performed and in such order or sequence as the City shall deem best in the public interest. No additional time for completion will be allowed unless granted in writing by the Director of Public Works.

3. **DAMAGES FOR DELAY.** If Contractor shall fail to complete the work within the time herein specified or otherwise allowed therefor, he shall be liable for the wages of any inspector or

and until said structures, work and improvements shall be entirely completed, and delivered to and accepted by the City in accordance with this contract; and such completion, delivery and acceptance is evidenced by the final certificate of the Director of Public Works and such certificate of acceptance is approved by the City Manager. Simultaneous with the transmittal of the final certificate of completion, delivery and acceptance, the Director of Public Works shall prepare his final estimate as the basis for final settlement upon this contract, whereupon the same having been first approved by the signature of the City Manager and Director of Finance, City shall pay to Contractor the amount of such final estimate, taking into account all amounts previously retained and deducted from such monthly estimates and remaining payable to Contractor, but deducting from the amount of such final estimate and retaining any and all sums which are to be deducted by the City or paid or allowed by the Contractor to City, or claimed for labor or materials furnished by any person, firm or corporation, or which are to be retained and held by City for any reason.

4. CLAIMS FOR LABOR OR MATERIALS. Contractor hereby agrees to promptly pay all persons supplying labor, services and materials in the prosecution of the work provided for in this contract and any and all duly authorized modifications of said contract that may hereafter be made, and shall and will fully indemnify and hold harmless the City against any and all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished such Contractor during the prosecution of the work herein undertaken and Contractor shall execute a bond for this purpose as hereinafter set out. Before the City shall be obliged to pay any amount to Contractor on final settlement, Contractor shall furnish to the satisfaction of the Director of Finance, evidence that all labor employed and all materials used in the construction of the work have been fully paid for by Contractor.

5. DIRECTOR OF PUBLIC WORKS TO FINALLY DETERMINE ALL AMOUNTS PAYABLE OR CHARGEABLE. It is specially understood and agreed that subject only to the prices, terms and provisions specifically set forth in this contract and included instruments, the written estimates and certificates of the Director of Public Works shall be final in fixing and determining amounts payable or chargeable hereunder to Contractor by City as required by the other terms and conditions hereof, also in case of controversy, in fixing and determining all unliquidated sums to be deducted and retained by City for any purpose whatever out of any funds estimated as payable to Contractor by City.

6. ALTERATIONS AND EXTRA WORK. Said Director of Public Works may, by his written order, approved by the signature of the City Manager, make deletions, alterations, modifications or additions in the specifications and plans for the work for the purpose of perfecting the work herein undertaken or the ramifications thereof, and the Contractor shall execute the work as so changed, provided the entire cost of such extra work as results from such changes, including the cost of extra work resulting from any prior alterations modifications, or additions so ordered, shall not exceed twenty-five percent (25%) of the original amount of the contract, as set out in Paragraph D-1 hereof; and provided further that the price is agreed upon in writing before the work is done or materials furnished and that such agreement is signed by the Contractor and by the Director of Public Works and the City Manager, it being further agreed and understood that if no such agreement as to price can be reached after discussions, that payment by the City shall be upon the basis of cost of labor and materials plus ten percent (10%). The cost of such extra work shall be added to the estimates payable to the Contractor by the City, all of which shall be effected under the terms and provisions of this contract. The Director of Public Works may order the Contractor to omit any part of parts of the work remaining to be done and the City shall not be bound to pay for extra work so ordered to be omitted. No additional working time will be granted for alterations and/or extra work unless specified in said written order approving work.

#### E. INDEMNIFICATION

1. CARE TO AVOID ACCIDENTS OR INJURY TO PERSON OR PROPERTY. During the performance of the work within the contemplation of this contract and until final completion and acceptance thereof, Contractor shall exercise the utmost care to avoid accident or injury to persons or property. He shall place and maintain all necessary barriers and safeguards, including watchmen, if necessary, about the work site for the prevention of accidents and at night shall maintain adequate lights and other warning devices, and generally shall take all precautions requisite to the protection of the general public and properties adjacent to the work site. Contractor shall and will indemnify and save harmless the City from and against any and all actions and claims, and against all costs, damages and expenses to which the City may be put by reason of any injury or alleged injury to person or property, resulting or alleged to result from or to be occasioned by the acts or omissions of the Contractor, whether negligent or otherwise, in the performance, conduct or maintenance of the work, or in guarding same, or from any improper methods, tools, implements or materials employed therein, or on account of any such acts or omissions of Contractor's agents, servants, employees, assignees or sub-contractors (including the agents, servants and employees of such sub-contractor); and Contractor or his insurer shall well and truly make payment of any and all sums recovered against the City in any suit or suits on account of such alleged injury or damage, to which the City may be made a party, together with all costs, damages and expenses borne by the City in connection with such suits, all in a manner as to save the City harmless from any expense connected with such actions and claims. The City is further authorized, upon the order of the Director of Public Works, to deduct or retain from any estimate or estimates or amounts retained hereunder, such sum as may be claimed for any injury or damage described above unless and until Contractor shall give a further and special bond or deposit adequate to cover such contingent liability as determined by the Director of Public Works or otherwise present evidence of full indemnification to the City in connection with such claims or actions.

2. PATENTS, ETC. Contractor agrees that he will at all times pay all fees, royalties or license charges on all patented, registered or copyrighted machines, materials, methods or processes used in the construction of said work and supplied as a part of the finished work, or appurtenant thereof; and that he will ever hold the City free and harmless from any and all claims on account of the use of any machines, materials, methods, or processes.

#### F. INSURANCE

1. The following types of insurance shall be furnished for the duration of the project, and two copies of Certificates of Insurance showing compliance with the provisions of this paragraph

PERFORMANCE BOND

STATE OF TEXAS )  
COUNTY OF BEXAR ) Know all men by these presents:  
CITY OF SAN ANTONIO )

1. That we F.A. Nunnelly Company, a Texas Corporation, acting by and through Philip Nunnelly, President, as Principal, and

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas, in the sum of \$ 244,627.00 for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally;

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said F.A. Nunnelly Company

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as

LAS PALMAS HEALTH CENTER CONVERSION

and for the performance and observance of divers other matters and things in connection with said work; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation.

3. NOW THEREFORE, if Contractor, the principal party of this obligation, shall faithfully construct and complete said structures, work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said contract and all included instruments, according to their intent and purpose insofar as the same relate to or are incident to the construction and completion of said structures, work and improvements then and thereupon this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had hereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy provided by the contract or specifications or by any law or ordinance.

4. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this 29th day of December, A.D. 19 94.

5. The foregoing bond is approved and accepted this 10th day of January, 19 95.

City Manager

(SEAL)

F.A. NUNNELLY COMPANY

By Philip Nunnelly, President

Fidelity and Deposit Company of Maryland  
Surety

By A. C. Tinch, Jr., Attorney-In-Fact  
P. O. Box 29069, San Antonio Tx. 78229  
Address of Surety for Service Purposes

PAYMENT BOND

STATE OF TEXAS )  
COUNTY OF BEXAR ) Know all men by these presents:  
CITY OF SAN ANTONIO )

1. That we F.A. Nunnelly Company, a Texas Corporation, acting by and through Philip Nunnelly, President, as Principal, and

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas, in the sum of \$ 244,627.00 for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said F.A. Nunnelly Company

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as

LAS PALMAS HEALTH CENTER CONVERSION

and for the performance and observance of divers other matters and things in connection with said work, and, interalia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation;

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to Vernon's Annotated Civil Statutes, Article 5160, as amended and that this obligation is for the benefit and sole protection of all persons supplying labor and materials in the prosecution of said contract.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this 29th day of December A.D. 19 94.

6. The foregoing bond is approved and accepted this 10th day of January 19 95.

*[Signature]*  
City Manager

F.A. NUNNELLY COMPANY

By *[Signature]*  
Philip Nunnelly, President

Fidelity and Deposit Company of Maryland  
Surety

By *[Signature]*  
A. C. Tinch, Jr., Attorney-In-Fact

(SEAL)

P. O. Box 29069, San Antonio, Tx. 78229  
Address of Surety for Service Purposes



FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

HOME OFFICES: BALTIMORE, MD. 21203

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, corporations of the State of Maryland, by C. M. PECOT, JR., Vice-President, and C. W. ROBBINS, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2 of the respective By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute and appoint A. C. Tinch, Jr., T. A. Drawert, Maryanna S. Christensen and Paul W. Poettgen, all of San Antonio, Texas, EACH.....

the true and lawful agent and Attorney-in-Fact of each, to make, execute, seal and deliver for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings... EXCEPT bonds on behalf of Independent Executors, Community Survivors and Community Guardians.....

And the execution of such bonds or undertakings in pursuance of these presents shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been executed and acknowledged by the regularly elected officers of the respective Companies at their offices in Baltimore, Md. in their own proper persons. This power of attorney revokes that issued on behalf of A. C. Tinch, Jr., et al dated January 1, 1992.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seals of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY this 7th day of September, A.D. 1993

ATTEST:



FIDELITY AND DEPOSIT COMPANY OF MARYLAND

C. W. Robbins
Assistant Secretary

By

C. M. Pecot, Jr.
Vice-President



COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

C. W. Robbins
Assistant Secretary

By

C. M. Pecot, Jr.
Vice-President

STATE OF MARYLAND
COUNTY OF BALTIMORE

SS:

On this 7th day of September, A.D. 1993, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came C. M. PECOT, JR., Vice-President and C. W. ROBBINS, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, to me personally known to be the individuals and officers described herein and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Companies aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



CAROL J. FADER

[Signature of Carol J. Fader]

Notary Public

My commission expires August 1, 1996

CERTIFICATE

I, the undersigned Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2 of the respective By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY.

This certificate may be signed by facsimile under and by authority of resolutions of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 16th day of July, 1969 and of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of December, 1991.

RESOLVED: "That the facsimile or mechanically reproduced signature of any Assistant Secretary of the Company, whether made heretofore or hereafter, whenever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 29th day of December, 1994

[Signature of Assistant Secretary]

Assistant Secretary