

AN ORDINANCE      2012-02-02-0073

**AUTHORIZING AN ECONOMIC DEVELOPMENT GRANT AGREEMENT IN THE AMOUNT OF \$1,812,142.60 AND A SAWS WAIVER OF \$500,000.00 FOR THE METROPOLITAN METHODIST HOSPITAL EXPANSION TO BE LOCATED IN CITY COUNCIL DISTRICT 1.**

\* \* \* \* \*

**WHEREAS**, Metropolitan Methodist Hospital (“Developer”) is undertaking an economic development project that will be comprised of two phases with Phase I consisting of the construction of a \$36.9 million, 65,000 sq. ft. medical facility expansion that will house twenty-four (24) Intensive Care Unit (“ICU”) beds and their respective support facilities that would enable the relocation of existing laboratory facilities and allow for the expansion of the endoscopy facilities creating approximately thirty-five (35) new full-time jobs (the “Project”) to be located at 1310 McCullough in City Council District 1 (the “Project Site”); and

**WHEREAS**, Phase II of the Project will consist of the construction of a \$7.7 million addition to Phase I that will include twelve (12) additional ICU beds and the creation of an additional five (5) new full-time jobs; and

**WHEREAS**, Developer is seeking a Chapter 380 Economic Development Grant in the amount of \$1,812,142.60 to defray construction costs associated with undertaking and completing the Project; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, the City of San Antonio (the “City”) is authorized to establish and provide for the administration of one or more programs, including programs for making grants of public money to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the “Program”) for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

**WHEREAS**, the City finds that the goals of Chapter 380 will be met by assisting the Developer in undertaking and completing the Project and has identified economic development funds for use in carrying out this purpose; and

**WHEREAS**, the Project Site is within the Inner City Reinvestment/Infill Policy (the “ICRIP”) Target Area, an area that has been identified by the City as needing reinvestment and revitalization; and

**WHEREAS**, a project located within the ICRIP is eligible for certain fee waivers and it has been determined that the Project qualifies for \$500,000.00 in SAWS impact fee waivers; **NOW THEREFORE**:

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

**SECTION 1.** The City Council approves the terms and conditions of an Economic Development Grant Agreement with Metropolitan Methodist Hospital and approves SAWS impact fee waivers in an amount not to exceed \$500,000.00 for the Project.

**SECTION 2.** The City Manager or her designee is authorized to execute an Economic Development Grant Agreement with Metropolitan Methodist Hospital in accordance with the terms and conditions of this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Attachment I**. The final Agreement shall be filed with this Ordinance upon execution.

**SECTION 3.** Funding in the amount of \$120,000.00 for this Ordinance is available in Fund 29059000, Cost Center 1604010001 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget and payment is authorized to Methodist Healthcare Systems.

**SECTION 4.** Payment not to exceed the amount of \$1,692,142.60 is authorized to Methodist Healthcare Systems through Fund 11001000 with Cost Center and General Ledger to be determined at time of payment. Annual payments to Methodist Healthcare Systems shall not exceed the amount equal to the previous year's General Fund portion of ad valorem taxes remitted to the City for a period not to exceed 15 years and at such time funds are authorized to be encumbered.

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

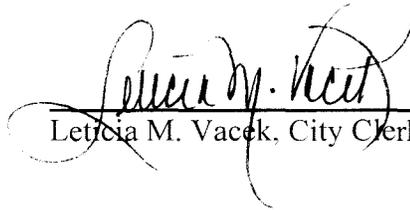
**SECTION 6.** This Ordinance shall become effective immediately upon its passage by eight (8) votes or more, or upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 2<sup>nd</sup> day of February, 2012.



M A Y O R  
Julián Castro

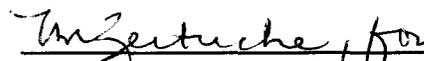
**ATTEST:**



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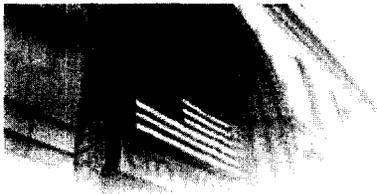
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



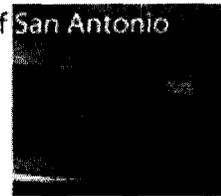
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Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 18

<b>Name:</b>	6, 7, 9, 10, 11, 12, 13, 14A, 14B, 14C, 14D, 14E, 14F, 16, 17, 18, 19, 20, 22A, 22B, 22C						
<b>Date:</b>	02/02/2012						
<b>Time:</b>	10:31:09 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing an Economic Development Grant Agreement in the amount of \$1,812,142.60 and a SAWS Fee Waiver of \$500,000.00 for the Metropolitan Methodist Hospital Expansion, located in Council District 1. [Pat DiGiovanni, Deputy City Manager; Mark Brodeur, Director, Center City Development Office]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2	x					
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
Carlton Soules	District 10	x					

STATE OF TEXAS

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**ECONOMIC DEVELOPMENT  
GRANT AGREEMENT OF THE  
CITY OF SAN ANTONIO**

COUNTY OF BEXAR

This Economic Development Program Grant Agreement (hereinafter referred to as this "**Agreement**") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas (hereinafter referred to as "**GRANTOR**"), acting by and through its City Manager or her designee, and Methodist Healthcare System of San Antonio LTD, LLP (hereinafter referred to as "**GRANTEE**") and who together may be referred to as the "Parties."

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to grant municipal funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, in accordance with City Ordinance No. 100684, GRANTOR created an economic development program for the purpose of making such grants available; and

**WHEREAS**, GRANTEE is owner and operator of a medical facility located at 1310 McCullough, San Antonio, TX 78212 ( the "Hospital") and is engaged in an economic development project consisting of the expansion of the Hospital's Intensive Care Unit and other expansion related improvements and services (the "**Project**"); and

**WHEREAS**, GRANTEE is seeking an economic development grant from the GRANTOR for the purpose of defraying costs associated with undertaking the Project; and

**WHEREAS**, the GRANTOR has identified Economic Development Incentive Funds and other funds lawfully available to GRANTOR to make available to GRANTEE for use in undertaking and completing the Project; and

**WHEREAS**, the City Council of GRANTOR has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No.2012-\_\_-\_\_-\_\_, passed and approved on \_\_\_\_\_, 2012 to grant funds to support the Project;

**NOW THEREFORE**, the Parties 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:

**ARTICLE I. AGREEMENT PURPOSE**

The Project is anticipated to further the public purposes of promoting local economic development and stimulating business and commercial activity in the City of San Antonio. The GRANTOR is supporting the Project through this Economic Development Program Grant in accordance with Chapter 380 of the Texas Local Government Code.

## ARTICLE II. PROJECT REQUIREMENTS

It is anticipated that the Project will consist of two phases. GRANTEE shall be deemed, however, to have met all Project requirements by completing Phase I (as defined below) only. The completion of Phase II (as defined below) shall entitle GRANTEE to additional incentives (as described below) beyond those given upon completion of Phase I. GRANTEE acknowledges that all incentives for the Project are contained in this Agreement and that GRANTOR is not obligated to grant any further incentives for the Project.

### A. Phase I.

1. Phase I shall consist of a 63,500 square foot expansion to the Hospital. This 63,500 square foot expansion will allow for: (a) twenty-four (24) rooms in the Hospital's Intensive Care Unit and (b) the addition of MRI, additional nursing stations, storage areas, public areas, laboratories, endoscopy suite and/or related facilities (the "Related Support Facilities") (collectively, the "**Phase I**").
2. GRANTEE's investment in Phase I shall total a minimum of THIRTY SIX MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS (\$36,900,000.00). This investment is exclusive of any funding that the GRANTOR may provide under this Agreement. GRANTEE anticipates that approximately \$25.9 Million will be invested in real property improvements and approximately \$11 Million will be invested in personal property to be located in Phase I. For purposes of this Agreement, "investment" shall mean all expenditures made by GRANTEE directly or indirectly, without limitation, to develop the Project or portion thereof, including: architectural, engineering and surveying expenses, property acquisition, demolition, construction, site preparation, traffic safety control devices and manpower, paving, landscaping, utilities, legal expenses, offsite infrastructure improvements, and reasonable fees paid to consultants, contractors and staff of GRANTEE, if applicable.
3. GRANTEE shall obtain a building permit and commence construction for Phase I on or before December 31, 2012 and a Certificate of Occupancy for Phase I on or before July 31, 2015.
4. Upon written request of the GRANTOR, GRANTEE shall provide a written summary of the GRANTEE's progress toward the completion of Phase I. Such summary shall be provided within ten (10) business days following receipt of such request by GRANTOR.
5. GRANTEE shall comply with all applicable construction laws and regulations, and shall develop Phase I in accordance with the terms and conditions of this Agreement.
6. GRANTEE shall create and maintain thirty-five (35) new full-time jobs at the Hospital directly related to the operations occurring in Phase I. The new full-time jobs shall be created no later than one year following the issuance of a certificate of occupancy for Phase I. The jobs shall be maintained throughout the Term of this Agreement. Compliance with the requirements of this subsection

shall be evidenced by a letter from an authorized officer of the GRANTEE certifying the creation and maintenance of the jobs referenced in this subsection.

**B. Phase II.**

1. Notwithstanding any other provision contained herein, GRANTEE shall have no obligation to complete Phase II. However, if GRANTEE elects, in its sole discretion, to complete Phase II in accordance with terms and provisions set forth herein, then GRANTEE shall be entitled to the economic incentives described below that are expressly conditioned upon completion of Phase II.
2. Phase II shall consist of a complete interior finish out of a portion of the 63,500 square foot expansion of the Hospital included in Phase I in order to accommodate an additional twelve (12) rooms in the Hospital's Intensive Care Unit and additional Related Support Facilities (the "Phase II").
3. GRANTEE's investment in Phase II shall total a minimum of SEVEN MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,700,000.00). This investment is exclusive of any funding that the GRANTOR may provide under this Agreement. GRANTEE anticipates that approximately \$5.95 Million will be invested in real property improvements and approximately \$1.75 Million will be invested in personal property to be located in Phase II.
4. GRANTEE shall obtain a building permit for Phase II and commence construction on or before January 1, 2016 and a Certificate of Occupancy for Phase II on or before December 31, 2017.
5. Upon written request of the GRANTOR, GRANTEE shall provide a written summary of the GRANTEE's progress toward the completion of Phase II. Such summary shall be provided within ten (10) business days following receipt of such request by GRANTOR.
6. GRANTEE shall comply with all applicable construction laws and regulations, and shall develop Phase II in accordance with the terms and conditions of this Agreement.
7. If GRANTEE elects to complete Phase II in accordance with terms and provisions set forth herein, GRANTEE shall create and maintain five (5) new full-time jobs at the Hospital directly related to operations occurring in Phase II. The new full-time jobs shall be created no later than one year following the issuance of a certificate of occupancy for Phase II. The jobs shall be maintained throughout the Term of this Agreement. Compliance with the requirements of this subsection shall be evidenced by a letter from an authorized officer of the GRANTEE certifying the creation and maintenance of the jobs referenced in this subsection.

### ARTICLE III. ECONOMIC DEVELOPMENT PROGRAM GRANT.

#### A. Economic Development Program Grant.

GRANTOR is providing GRANTEE with an Economic Development Program Grant in the cumulative amount of ONE MILLION EIGHT HUNDRED TWELVE THOUSAND ONE HUNDRED AND FORTY-TWO AND SIXTY/100 DOLLARS (\$1,812,142.60) (the "**Grant Funds**") in accordance with the disbursement conditions below. The Grant Funds shall be used for the purpose of undertaking and completing the Project.

#### B. Impact Fee Waiver.

In addition to the Grant Funds, GRANTOR is allocating a fee waiver in the amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) (the "**Fee Waiver**") available to GRANTEE for the purpose of reducing any applicable impact fees assessed by the San Antonio Water System ("SAWS") in accordance with SAWS policies. GRANTOR shall provide all necessary documentation to GRANTEE to secure the Fee Waiver prior to the fee assessment by SAWS.

#### C. Grant Disbursement.

1. Initial Disbursement. GRANTOR shall disburse ONE HUNDRED AND FIVE THOUSAND AND NO/100 DOLLARS (\$105,000.00) (the "**Initial Disbursement**"), to GRANTEE following approval of this Agreement by a duly authorized City Ordinance and the occurrence of all of the following: (a) execution of the Agreement by both Parties; (b) evidence of the issuance of a building permit from the City of San Antonio for Phase I; (c) receipt by the City of a letter from the an authorized officer of GRANTEE certifying that (i) construction on Phase I has commenced and (ii) funds have been allocated or secured by GRANTEE for the entire amount of the Phase I budget. The Initial Disbursement shall be made no later than sixty (60) days following GRANTEE's satisfaction of all requirements listed above in this Section III(C)(1).
2. Second Disbursement. No sooner than one year following the initial disbursement, GRANTOR shall disburse FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) (the "**Second Disbursement**"), to GRANTEE following receipt by the City of a letter from an authorized officer of GRANTEE certifying that (i) construction on Phase II has commenced and (ii) funds have been allocated or secured by GRANTEE for the entire amount of the Phase II budget.
3. Annual City Property Tax Reimbursement. The increased real and personal property taxes paid by GRANTEE for the Hospital as a result of the Project shall be referred to herein as the "**Tax Increment.**" Subject to the terms and conditions of this Agreement, for each "Tax Year" (January 1 through December 31) commencing with the Tax Year following the issuance of a Certificate of Occupancy for Phase I and then continuing throughout the remainder of the Term of this Agreement as defined in Article IV, GRANTOR shall pay to GRANTEE, no later than forty-five (45) business days following the submission of a tax

invoice by GRANTEE indicating payment of all taxes on the Project, the following:

a) for Phase I of the Project, GRANTOR shall reimburse annually, for a period not to exceed fifteen (15) years, an amount equal to two-thirds (2/3rds) of ~~the Tax Increment~~. The cumulative amount ~~to be reimbursed under this subsection~~ shall not exceed ONE MILLION THREE HUNDRED SEVENTY-SIX THOUSAND TWENTY-EIGHT AND NO/100 DOLLARS (\$1,376,028.00).

b) for Phase II of the Project, GRANTOR shall reimburse annually, for a period not to exceed fifteen (15) years following the completion of Phase II an ~~additional~~ amount equal to two-thirds (2/3rds) of ~~the Tax Increment~~. The cumulative amount of the reimbursements ~~under this subsection~~ shall not exceed THREE HUNDRED SIXTEEN THOUSAND ONE HUNDRED FOURTEEN AND FIFTY-SEVEN/100 DOLLARS (\$316,114.57).

**Deleted:** City real and personal property tax payments made by GRANTEE in excess of \$XXXXXXXX, which represents the tax assessment for the tax year prior to the effectiveness of this Agreement. for the respective Tax Year.

**Deleted:** GRANTEE's City real and personal property tax payments made by GRANTEE in excess of \$XXXXXXXX, which represents the tax assessment for the tax year prior to the effectiveness of this Agreement. for the respective Tax Year.

GRANTEE agrees to take reasonable commercial efforts to prompt the Bexar County Appraisal District ("**BCAD**") to establish new property tax accounts for both (a) the improvements to be created by the Project and (b) the personal property to be installed within the Project. The Parties acknowledge that GRANTEE cannot cause BCAD to act on or satisfy the request of GRANTEE.

If BCAD, acting in its authority, elects not to establish new tax accounts as described, above, the Parties agree to cooperate throughout the Term of this Agreement in order to determine the Tax Increment.

It is understood that GRANTEE shall continue to pay all property taxes owed on the Hospital as required by law. Property taxes owed or paid shall be determined by the Bexar County Appraisal District and/or the Tax Assessor's Office. Prior to GRANTOR disbursing funds under this Article III(C)(3), GRANTEE must provide to GRANTOR evidence indicating that all taxes owed on the Hospital have been paid in full for the Tax Year for which disbursement is sought, subject to GRANTEE's right to protest taxes as permitted by law.

If, during the Term of this Agreement, GRANTEE allows its ad valorem taxes due on the Hospital to become delinquent and fails to timely and properly follow the legal procedures for the protest and/or contest of the taxing value, then GRANTEE shall be in default and the suspension provisions of Article XIII of this Agreement shall apply.

**D. ICRIP Fee Waivers.**

This Agreement does not preclude GRANTEE from submitting the Project for consideration for additional City fee waivers under GRANTOR's Inner City Reinvestment Infill Policy ("**ICRIP**"). Any such fee waivers received pursuant to ICRIP shall be in addition to any incentives, disbursements and/or waivers received by GRANTEE in accordance with the terms and conditions of this Agreement.

#### ARTICLE IV. AGREEMENT PERIOD

This "Term" of this Agreement shall commence upon the Effective Date and terminate on December 31st of the fifteenth (15th) year following completion of Phase II of the Project; provided, however, that if Phase II is not developed, then this Agreement will terminate on December 31st of the fifteenth (15th) year following completion of Phase I of the Project. Notwithstanding any other provision contained herein, this Agreement shall terminate upon the payment of the final payment due to GRANTEE under Article III or upon termination pursuant to Article XIV below.

#### ARTICLE V. GRANTOR'S OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by this Agreement, GRANTOR will disburse the Grant Funds to GRANTEE in accordance with the terms and conditions herein.

B. GRANTOR shall not be liable to GRANTEE or other entity for any costs associated with the Project incurred by GRANTEE.

#### ARTICLE VI. RETENTION AND ACCESSIBILITY OF RECORDS

A. GRANTEE shall maintain records and supporting documentation for the jobs created and investments made for the Project under this Agreement (the "Records"). GRANTEE shall retain such Records for the greater of (a) five (5) years following the completion of Phase I and/or Phase II; or (b) the period required by other applicable laws and regulations.

Deleted: Article II of

B. GRANTEE shall, following reasonable advance written notice from the GRANTOR, give the GRANTOR, its designee, or any of their duly authorized representatives, access to and the right to examine the Records. The GRANTOR's access to GRANTEE's Records will be limited to information needed to verify that GRANTEE is and has been complying with the terms of this Agreement and to verify the accuracy of representations made by GRANTEE in connection with this Agreement. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to GRANTOR any information that GRANTEE is legally required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue as long as the Records are retained by GRANTEE. Failure to provide reasonable access to the Records to authorized GRANTOR representatives shall give GRANTOR the right to suspend payments due under this Agreement pursuant to Article XIII. All Records shall be retained by GRANTEE in accordance with this Article.

#### ARTICLE VII. MONITORING

A. GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE. Should GRANTEE fail to fulfill those requirements for GRANTEE to meet its obligations under this Agreement, GRANTOR may pursue its remedies provided herein, including suspension or termination of the Agreement.

B. Upon request by GRANTOR, GRANTEE shall provide to GRANTOR a statement with reasonable supporting information evidencing satisfaction of the job-creation requirements under Article II of this Agreement.

~~Deleted: Article VIII and Article IX and Article X and Article XI~~

### ARTICLE VIII. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. GRANTEE shall, to the best of its knowledge and belief, ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. GRANTEE shall, to the best of its knowledge and belief, include the substance of Article III(A) in all agreements with its contractors directly associated with the development of Phase I and/or Phase II.

### ARTICLE IX. LEGAL AUTHORITY

A. Each of the Parties assures and guarantees to the other that it possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. Notwithstanding any other provisions of this Agreement to the contrary, GRANTOR will have the right to suspend or terminate this Agreement in accordance with Articles XIII or XIV herein if there is a dispute as to the legal authority of either GRANTEE, or the person signing this Agreement on behalf of GRANTEE, to enter into this Agreement or any amendments hereto.

### ARTICLE XI. LITIGATION AND CLAIMS

A. GRANTEE shall give GRANTOR prompt notice in writing of any action, including any proceeding before an administrative agency, filed against GRANTEE directly arising out of this Agreement. GRANTEE shall notify the GRANTOR promptly of any legal action or of any proceeding filed under the federal bankruptcy code by GRANTEE. GRANTEE shall submit a copy of such notice to GRANTOR within thirty (30) calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations

#### **Deleted: ARTICLE VIII. CONFLICT OF INTEREST**

**Deleted:** A. GRANTEE shall use reasonable business efforts to ensure that no employee, officer, or individual agent of GRANTEE shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. GRANTEE shall comply with Chapter 171, Texas Local Government Code as well as the GRANTOR's Code of Ethics.

or settlements of, or failure to comply with, federal and state regulations. It is expressly agreed by the Parties that GRANTEE is not required to notify GRANTOR of any claim or litigation that may arise out of GRANTEE's operations at the Project site, including without limitation, landlord-tenant disputes, personal injury actions (slip and falls), employer-employee disputes, and other operational activities or relationships.

B. GRANTOR and GRANTEE acknowledge that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

#### **ARTICLE XI. ATTORNEY'S FEES**

A. In the event GRANTEE is found by a court of law having jurisdiction over GRANTEE to be in default under any of the provisions of this Agreement and GRANTOR should employ attorneys or incur other expenses for the collection of any payments due under this Agreement or the enforcement of performance or observance of any obligation to GRANTOR on the part of GRANTEE herein contained, GRANTEE agrees to pay to the GRANTOR reasonable attorneys' fees.

B. In the event GRANTOR is found by a court of law having jurisdiction over GRANTOR to be in default under any of the provisions of this Agreement and GRANTEE should employ attorneys or incur other expenses for the collection of any payments due under this Agreement or the enforcement of performance or observance of any obligation to GRANTEE on the part of GRANTOR herein contained, GRANTOR agrees to pay to the GRANTEE reasonable attorneys' fees.

#### **ARTICLE XII, CHANGES AND AMENDMENTS**

A. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement.

B. It is understood and agreed by the Parties that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in applicable state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

### **ARTICLE XIII. DEFAULT/CURE PERIOD/SUSPENSION**

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event GRANTEE fails to comply with the terms of this Agreement, such non-compliance shall be deemed a default. GRANTOR shall provide GRANTEE with written notification as to the nature of the default and grant GRANTEE a sixty (60) day period from the receipt date of the GRANTOR's written notification to cure such default. Should GRANTEE fail to cure the default within the cure period, GRANTOR may, upon written notification (a "Notice of Suspension"), suspend this Agreement in whole or in part and withhold further payments to GRANTEE. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended. Notwithstanding any other provision contained herein, GRANTOR may only suspend the payments granted under Article III(C)(3)(a) if GRANTEE has failed to satisfy one of the requirements under Article II(A) and GRANTOR may only suspend the payments granted under Article III(C)(3)(b) if GRANTEE has failed to satisfy one of the requirements under Article II(B).

B. In the case of default for causes beyond GRANTEE's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, GRANTOR shall extend the cure period so long as GRANTEE: (1) within five (5) business days following receipt of Notice of Default advises GRANTOR of GRANTEE's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institutes and thereafter prosecutes to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this article may be lifted only upon a showing of compliance with or written waiver by GRANTOR of the term(s) in question.

D. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

### **ARTICLE XIV. TERMINATION**

A. GRANTOR shall have the right to terminate this Agreement in whole or in part should GRANTEE fail to cure a default in accordance with Article XIII above. GRANTOR may as its sole and exclusive remedies, upon issuance to GRANTEE of a written Notice of Termination, terminate this Agreement and withhold further payments to GRANTEE. A Notice of Termination shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated. Notwithstanding any other provision contained herein, GRANTOR may only terminate the portion of this Agreement concerning the payments granted under Article III(C)(3)(a) if GRANTEE has failed to satisfy one of the requirements under Article II(A) and GRANTOR may only terminate the portion of this Agreement concerning the payments under Article III(C)(3)(b) if GRANTEE has failed to satisfy one of the requirements under Article II(B).

B. Should GRANTEE fail to meet the obligations of Article II(A)( 5) of this Agreement, GRANTOR shall have the right to recapture those grant funds or portion thereof disbursed under Article III(C)(1) of this Agreement. Should GRANTEE's fail to meet the obligations of Article II(B)(6) of this Agreement, GRANTOR shall have the right to recapture those grant funds or portion thereof disbursed under Article III(C)(2) of this Agreement. Upon written notice exercising the recapture rights provided for in this Article XIV(B), GRANTOR shall be entitled to the payment of such grant funds within sixty (60) calendar days from the date it notifies

GRANTEE that it is terminating the Agreement or a portion thereof and exercising its recapture right under this Article XIV(B). Except as provided in this Article XIV(B), GRANTOR shall have not right to recapture any funds granted under this Agreement.

C. In addition to Sections XIV (A) above, this Agreement may be terminated in whole or in part as follows:

1. By agreement between GRANTOR and GRANTEE under which the Parties shall agree upon the termination conditions, including the repayment of funds (if applicable), the effective date and in the case of partial termination, and the portion to the Agreement to be terminated; or
2. By GRANTEE upon written notification to GRANTOR, setting forth the reasons of such termination, a proposed pay-back plan of any funds disbursed (if applicable), the effective date of such termination, and in the case of partial termination, the portion to be terminated.

D. Notwithstanding any exercise by GRANTOR of its right of suspension under Article XIII of this Agreement, or of early termination pursuant to this Article XIV, GRANTEE shall not be relieved of repayment of disbursed funds under this Agreement.

#### **ARTICLE XV. SPECIAL CONDITIONS AND TERMS**

GRANTEE understands and agrees that if GRANTEE is a "business" and if the GRANTOR's contribution under this Agreement is a "public subsidy" as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), then GRANTEE is required to refund money, pursuant to 80(R) HB 1196, that GRANTEE has received from GRANTOR under this Agreement, in the event of a conviction of knowingly employing an undocumented worker, with repayment required within six months of final conviction. Interest shall accrue at the rate of 0.5% per month until the time of such repayment from the date of final conviction.

#### **ARTICLE XVI. SUBCONTRACTS**

A. GRANTEE shall use reasonable business efforts to ensure that the performance rendered under all subcontracts for the construction of Phase I and/or Phase II complies with all terms and provisions of this Agreement as if such performance were rendered by GRANTEE.

B. GRANTEE, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, GRANTOR is in no way liable to GRANTEE's subcontractor(s).

#### **ARTICLE XVII. DEBARMENT**

By signing this Agreement, GRANTEE certifies that it will not award any funds provided under this Agreement to any party which **it knows to be** debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the GRANTOR.

## ARTICLE XVIII. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the Parties hereto that the remedies provided for under Article XIII and/or Article XIV herein shall constitute the exclusive remedies of GRANTOR under the terms and conditions of this Agreement. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## ARTICLE XIX. NON-ASSIGNMENT

This Agreement may be assigned by GRANTEE to any entity that is the successor entity of GRANTEE as a result of acquisition, merger or sale. Notwithstanding the foregoing, this Agreement is not assignable without the written consent of GRANTOR and the passage of a City Ordinance approving such assignment. Any other attempt to assign the Agreement shall not relieve GRANTEE from liability under this Agreement and shall not release GRANTEE from performing any of the terms, covenants and conditions herein.

## ARTICLE XX. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

## ARTICLE XXI. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

GRANTOR shall grant temporary relief from performance under this Agreement if GRANTEE is prevented from compliance and performance by an act of war, order of legal authority, act of God, fire or casualty or other unavoidable cause not attributed to the fault or negligence of the GRANTEE (a "**Force Majeure Event**"). To obtain release based upon *force majeure*, GRANTEE must file a written request with GRANTOR.

[SIGNATURES ON NEXT PAGE]

WITNESS OUR HANDS, EFFECTIVE as of \_\_\_\_\_, 2012 (the "Effective Date");

Accepted and executed in two duplicate originals on behalf of GRANTOR pursuant to Ordinance Number 2012- - - , dated \_\_\_\_\_, 2012, and GRANTEE pursuant to the authority of its \_\_\_\_\_.

**GRANTOR:**

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

\_\_\_\_\_  
Sheryl L. Sculley  
GRANTOR MANAGER

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
GRANTOR CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bernard  
GRANTOR ATTORNEY

**GRANTEE:**

**METHODIST HEALTHCARE  
SYSTEM OF SAN ANTONIO LTD.,  
LLP**

\_\_\_\_\_  
Name:  
Title:

ATTEST:

\_\_\_\_\_  
Name:  
Title: