

AN ORDINANCE      2012-08-30-0661

**AUTHORIZING THE REALLOCATION OF \$225,092.00 FY 2012 DELEGATE AGENCY FUNDS FROM SAMMINISTRIES, INC. TO HAVEN FOR HOPE OF BEXAR COUNTY FOR PROSPECTS COURTYARD IMPROVEMENTS, INCLUDING THE CONSTRUCTION OF A MEDICAL HEALTH CARE UNIT; AND AUTHORIZING A CONTRACT AMENDMENT WITH SAMMINISTRIES, INC. AND A FUNDING AGREEMENT WITH HAVEN FOR HOPE OF BEXAR COUNTY.**

\* \* \* \* \*

**WHEREAS**, the FY 2012 Adopted Budget added \$1,000,000.00 in General Fund support for an overall Prospects Courtyard (PCY) improvement plan at the Haven for Hope homeless campus (Campus); and

**WHEREAS**, to expand overnight capacity from 400 to 500 and improve services, funding was allocated to increase security services and provide additional case management for PCY; and

**WHEREAS**, additionally, funding was provided to implement a mental health unit and increase residential capacity in the transformational portion of the Campus; and

**WHEREAS**, all required improvement actions have been completed in PCY; and

**WHEREAS**, residential capacity in the transformational campus was increased through funding provided by a U.S. Department of Housing and Urban Development (HUD) federal grant and City general funds; and

**WHEREAS**, available federal grant funds were expended by SAMMinistries, Inc.; and

**WHEREAS**, only \$55,524.00 in general fund dollars were utilized by SAMMinistries, Inc., leaving a balance of \$225,092.00; and

**WHEREAS**, the City's Department of Human Services (DHS) is recommending the reallocation of this fund balance from the SAMMinistries FY 2012 delegate agency contract to Haven for Hope to complete remaining improvements in Prospects Courtyard (PCY); and

**WHEREAS**, proposed upgrades for PCY will include construction of a primary medical health unit, purchase of commercial-grade personal storage bins and locks for guests, maintenance, furniture, and other improvements; and

**WHEREAS**, a downtown primary medical health care unit has been identified as a critical need for PCY and the Haven for Hope transformational campus; and

**WHEREAS**, this unit, once operational, will be managed by the Center for Health Care Services, an onsite campus partner and current operator of PCY; and

**WHEREAS**, the unit will serve a three-fold purpose of providing primary medical services for guests of PCY and Haven for Hope during afternoon and evening hours, five days per week, of reducing the number of “911” calls made to the Emergency Medical Services (EMS) division of the San Antonio Fire Department by PCY and Haven for Hope residents, and of reducing the number of visits to downtown hospital emergency rooms for non-life threatening medical issues; and

**WHEREAS**, in 2011, EMS responded to over 950 “911” emergency calls from Haven for Hope that resulted in over 600 transports to area hospital emergency rooms; and

**WHEREAS**, the Center for Health Care Services was recently awarded a \$4,557,969.00 Center for Medicare and Medicaid Health Care Innovations grant through the U. S. Department of Health and Human Services, which will supplement operating expenses for the unit; **NOW THEREFORE:**

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

**SECTION 1.** The reallocation of \$225,092.00 in FY 2012 Delegate Agency funds from SAMMinistries, Inc. to Haven for Hope of Bexar County for Prospects Courtyard improvements, including the construction of a medical health care unit is hereby authorized. The City Manager, or her designee or the Director of the Department of Human Services or her designee is authorized to execute a contract amendment with SAMMinistries, Inc. reducing its contract funding. The City Manager, or her designee or the Director of the Department of Human Services or her designee is also authorized to execute a funding agreement with Haven for Hope of Bexar County for Prospects Courtyard improvements, including the construction of a medical health care unit. A copy of said contract amendment with SAMMinistries, Inc. and funding agreement with Haven for Hope of Bexar County in substantially final form are attached hereto and incorporated herein for all purposes as **Attachment I and II**, respectively.

**SECTION 2.** Funding in the amount of \$225,092.00 for this ordinance is available in Fund 11001000, Cost Center 8511530001 and General Ledger 5202020, as part of the Fiscal Year 2012 Budget.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to Haven for Hope of Bexar County and should be encumbered with a purchase order.

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 30th day of August, 2012.



M A Y O R  
Julián Castro

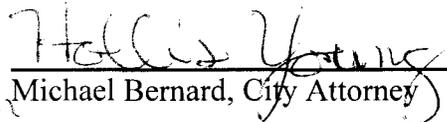
**ATTEST:**



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Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



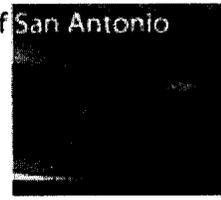
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for Michael Bernard, City Attorney



Request for  
**COUNCIL**  
ACTION

City of San Antonio



## Agenda Voting Results - 26

<b>Name:</b>	4, 6, 7, 8A, 8B, 8C, 9, 10, 13, 16, 19, 20A, 20B, 20C, 20D, 20E, 22, 23, 24, 26, 27, 28, 29						
<b>Date:</b>	08/30/2012						
<b>Time:</b>	09:27:22 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the reallocation of \$225,092.00 FY 2012 Delegate Agency funds from SAMministries, Inc. to Haven for Hope of Bexar County for Prospects Courtyard improvements, including the construction of a medical health care unit; and authorizing a contract amendment with SAMministries, Inc. and a funding agreement with Haven for Hope of Bexar County. [Peter Zanoni, Assistant City Manager; Gloria Hurtado, Director, Human Services]						
<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			x	
W. Reed Williams	District 8	x					
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Contract # 4600012010

**AMENDMENT #2  
TO DELEGATE AGENCY CONTRACT  
WITH  
SAN ANTONIO METROPOLITAN MINISTRY, INC.**

This amendment (hereinafter referred to as "Amendment") of San Antonio Metropolitan Ministry, Inc. FY 2012 Delegate Agency Contract is entered into by and between the City of San Antonio, a Texas Municipal Corporation, (hereinafter referred to as "City") acting by and through its designated representative, the Director of the Department of Human Services, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, and San Antonio Metropolitan Ministry, Inc. (hereinafter referred to as "Contractor").

WHEREAS, the City presently contracts with Contractor for the Residential Services – Haven for Hope Project through the Delegate Agency Contract (hereinafter referred to as "Contract") that was executed on October 7, 2011 pursuant to Ordinance No. 2011-09-15-0749; and

WHEREAS, funding originally allocated to Contractor to improve residential capacity exceeds the need for this service;

WHEREAS, the parties have agreed to reduce funding to Contractor in order to fund other necessary improvements in the Haven for Hope Prospects Courtyard; NOW THEREFORE:

City and Contractor agree to amend the Contract as follows:

1. The document attached hereto and incorporated herein as Exhibit I reflects agreed upon budget revisions to Attachment II, the General Fund portion of the budget for the Residential Services – Haven for Hope Project. The revisions supersede prior conflicting or inconsistent agreements with regard to the referenced project budget, and all references in the Contract to the budget shall mean the budget as revised by this Amendment.

*[The remainder of this page intentionally left blank]*

2. All other terms, conditions, covenants and provisions of the Contract are hereby continued and shall remain in effect in their original form, except for the provisions modified by this Amendment.

Executed this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CITY OF SAN ANTONIO:**

**CONTRACTOR:**

San Antonio Metropolitan Ministry, Inc.  
5254 Blanco Road  
San Antonio, Texas 78216



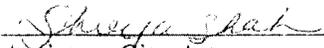
President and Chief Executive Officer

\_\_\_\_\_  
Gloria Hurtado, Director  
Department of Human Services

Date: \_\_\_\_\_

Date: July 27, 2012

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Assistant City Attorney

BUDGET REVISION II

San Antonio Metropolitan Ministry, Inc. (SAM Ministries)  
Agency

7/20/2012  
Date

Residential Services  
Project

II  
Revision Number

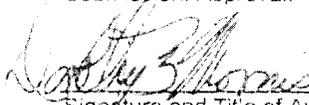
PURCHASE ORDER NO.

G/L Account	Expenditure	Original Budget	Increase or (Decrease)	Revised Budget
5206070	Rental of Facilities - CAM Fees	\$641,961	\$ -	\$ 641,961
5304080	Other Commodities - Reserved to be released by Director	\$ 225,092	\$ (225,092)	\$ -
			0.00	
			0.00	
			0.00	
			0.00	
	<b>Total</b>	<b>\$ 867,053</b>	<b>\$ (225,092)</b>	<b>\$ 641,961</b>

Justification:

G/L Account	
5304080	City of San Antonio deducting reserve for other use at Haven.

Submission Approval:

 Chief Financial Officer  
Signature and Title of Authorized Agent

\_\_\_\_\_  
Signature and Title of City Staff

7/20/2012  
Date

\_\_\_\_\_  
Date



City's funding of the Grantee's construction and build-out of the primary medical health unit at the Campus and the purchase of other authorized expenditures, including storage bins for Prospects Courtyard, locks for said storage bins, sleeping mats, power-washing, painting, tables, trash receptacles, benches, canopies, and fencing to surround the mat storage area (the "Project").

## **II. TERM**

2.01 The term of this Agreement shall be effective beginning February 1, 2012 (the "Commencement Date") and continue until (a) final payment of all allowable expenditures for the Project under this Agreement; or (b) one (1) year from the Commencement Date, whichever occurs later, unless this Agreement is terminated earlier by the City pursuant to the provisions for termination in this Agreement (the "Term").

## **III. DESIGNATED REPRESENTATIVES**

3.01 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Mark Carmona shall be Grantee's designated representative responsible for the administration and management of this Agreement.

3.02 The Director of the City's Department of Human Services of (the "DHS") or her designee shall be responsible for the administration of this Agreement on behalf of City.

3.03 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in paragraphs numbered 3.02 and 3.03 hereinabove.

## **IV. GENERAL RESPONSIBILITIES OF GRANTEE**

4.01 Grantee hereby agrees to use funding provided to Grantee pursuant to this Agreement solely for the Project.

4.02 Provided Grantee receives any funding described in this Agreement, Grantee accepts full responsibility for the performance of all services and activities described in this Agreement.

4.03 For the portion of the Project that involves construction and build-out of the primary medical health unit at the Campus, Grantee agrees that this shall be completed in compliance with the approved Plans described below. Grantee will complete design and construction of the Project by no later than one (1) year from the date of execution of this Agreement.

4.04 Current budget estimates for the portion of the Project that involves construction and build-out of the primary medical health unit at the Campus are \$109,525.00. Grantee shall provide all necessary funding for the construction and build-out of the primary medical health unit at the Campus beyond the City's commitment in this Agreement and provide evidence to City that all Project funds have been secured. In the event the scope of the construction and

build-out of the primary medical health unit is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly. \_City is not responsible for any cost overruns unless agreed to in writing in accordance with this Agreement.

4.05 Grantee shall provide to City’s Director of DHS or her designee, its plans and specifications (“**Plans**”) for the construction and build-out of the primary medical health unit and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Agreement. After initial approval by City under this Agreement, Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals, permits and licenses, including those provided by City through its relevant development departments and relevant boards and commissions including the Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102). City’s approval of the Plans does not release Grantee of the responsibility for the correction of Grantee’s mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

4.06 Grantee shall submit all future changes related to construction funded through this Agreement to the DHS Director or her designee, for review and approval to ensure their compatibility with the Plans as originally submitted.

4.07 City shall have authority, but not the obligation, to inspect Campus construction involving Agreement funds throughout the construction process to ensure compliance with the Plans. Grantee shall provide evidence of the completion of any construction funded through this Agreement by providing a certificate of occupancy, as applicable. Grantee shall cause its design or construction professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Upon request by City, any and all drawings must be certified by a qualified engineer or architect, licensed by the State of Texas and must conform to all applicable federal, state and local laws and regulations. Grantee shall submit said certification to the Director of DHS or her designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

4.08 Within ninety (90) days of the date of expiration or earlier termination of this Agreement, Grantee shall provide to City a report, which shall include (i) non-identifying data, which may be provided without violating applicable confidentiality laws, related to the medical services provided through the clinic during the term of the Agreement , (ii) evidence of insurance coverages, with City as additional insured, as outlined in Article XIII below, (iii) a description of all maintenance activities, including routine, capital, and any deferred maintenance, for the term of the Agreement and planned maintenance activities for the upcoming calendar year as they relate to the equipment or other improvements funded through this Agreement, (iv) a copy of its annual audit, and (v) any and all monitoring reports relating to the Campus produced for or received from federal, state or local governmental agencies, offices or departments.

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

5.01 Grantee warrants and represents that it will comply with all applicable federal, state and local laws and regulations in the performance of the obligations set forth in this Agreement. Grantee also agrees to require by written agreement that its consultants, contractors and subcontractors (and their respective officers, agents, employees, directors and representatives) shall be responsible for spending funds, purchasing goods or performing services paid for with funds provided through this Agreement in compliance with applicable federal, state and local laws and regulations.

5.02 To the extent applicable, Grantee agrees to abide by Chapters 252, and 271 of the Texas Local Government Code, and Chapters 2254 and 2267 of the Texas Government Code or other competitive contracting processes allowed for as express exceptions to these laws.

5.03 Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

#### 5.04 PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS.

A. The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this Agreement. Grantee agrees that its construction contractor will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

B. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Grantee shall request upon advertisement of construction bids, and the City will provide Grantee with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. The Grantee is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Grantee calls for bids for construction of a given phase. The Grantee is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Grantee's general contractor and all subcontractors for construction of each Phase. Grantee is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this Agreement.

C. Upon audit of the records and certified payrolls under this section, should the City or its auditors find any violations, the Grantee shall cause its Construction Contractor to forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be

construed to relieve the Grantee from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

5.05 ENVIRONMENTAL Construction shall be in accordance with the all local, state and federal environmental requirements including all City applicable construction and development regulations as well as federal Environmental Protection Agency (EPA), Texas Department of State Health Services (TDSHS) and Texas Commission on Environmental Quality (TCEQ) rules and regulations and all other regulations and laws relating to the environment, asbestos containing materials, Hazardous Substances or exposure to such and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.

## **VI. USE AND OPERATIONS**

6.01 Grantee hereby acknowledges that it will perform the Project in a manner (i) consistent with the purpose for which the Campus is being constructed and is operated, and (ii) consistent with the proposed uses of the population to be served. Further, Grantee shall not employ discriminatory practices in the provision of services at the Campus, and shall require the inclusion of, or include language (as applicable), in its contracts with on-site contractors and providers requiring that such contractors and providers comply with applicable laws and regulations.

6.02 Grantee hereby agrees that the Project improvements and goods shall be used for Campus purposes for the term of the Lease.

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

7.01 The Lease provides that Grantee shall make all improvements and modifications to the leased property as may be required to construct the Campus without cost or expense to the City, unless jointly agreed to by the Parties hereto. The Parties agree that they have a common interest and mission in certain improvements to the Campus to be funded under this Agreement. City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$225,092.00. It shall be Grantee's sole responsibility to confirm the availability of proceeds from the City and to obtain prior approval of an expenditure in order to receive reimbursement pursuant to this Agreement.

7.02 City shall neither be obligated nor liable under this Agreement to any third party for payment of any monies or provision of any goods or services. All other costs beyond that which are provided as reimbursement to Grantee under this Agreement, or as may be agreed upon by the Parties hereto by separate written agreement with respect to the Campus, are the sole responsibility of Grantee.

## **VIII. ALLOWABLE EXPENDITURES**

8.01 Upon preparation of a construction plan and budget by Grantee for any construction portion of the Project intended to be covered by this Agreement or a budget

associated with non-construction related costs, Grantee shall submit said budget to City for prior approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Grantee's budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all city, state and federal laws, regulations and ordinances affecting Grantee's operations hereunder. Only the following categories of costs shall be considered allowable, and only to the extent that expenditures are made for authorized needs and purposes relating to the Campus:

- Construction contract
- Construction change orders
- Architectural / Engineering Design contract and amendments
- Furniture, fixtures and equipment
- Commodities

8.02 The following shall not be considered allowable costs under this Agreement:

- Personnel costs, salaries or wages paid directly by Grantee or other similarly affiliated organization
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the construction projects intended to be covered by this Agreement
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation, except as approved by the City
- Fundraising

8.03 Written requests for prior approval shall be Grantee's responsibility and shall be made ten (10) business days prior to the date on which Grantee desires such approval, in order to permit a thorough review by City. Procurements and/or purchases that must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

**IX. REIMBURSEMENT BY CITY;  
RECEIPT, DISBURSEMENT AND ACCOUNT  
OF FUNDS BY GRANTEE**

9.01 City shall reimburse Grantee for work completed or purchases made in accordance with the following procedure:

- 9.01.1 Grantee shall submit any applicable invoices and documentation supporting Grantee's expenditure in question to Director of the DHS or his designee for unreimbursed expenditures from the preceding month. Allowable expenditures for construction/purchases which have occurred before execution of this Agreement, but within its term, may be submitted to the Director of the DHS with the first invoice for unreimbursed expenditures. The supporting documentation

shall include copies of paid third-party itemized invoices that include information regarding the amount of funds expended, the payee, the date paid, the purpose of the payment, and any other related information reasonably requested by the City. Grantee shall certify on each invoice that the expenditures for which Grantee seeks reimbursement in the invoice were made in compliance with federal, state and local laws, and, for construction-related expenditures, Grantee shall cause its design professional to certify that construction has been conducted in compliance with the Plans. Prior to reimbursement for construction-related costs, City will have the right to inspect work completed to ensure conformance with the approved Plans. City shall have the right to withhold funding until such certifications are provided. None of the proceeds from the City's funds shall be paid as a developer fee or as compensation to Grantee.

9.01.2 After the Director of the DHS or her designee reviews and approves each invoice, the Director of DHS or her designee will process or forward the invoice and supporting documentation to the appropriate individual(s) for processing payment.

9.02 Grantee shall maintain an interest bearing account in an FDIC-insured financial institution for the receipt and disbursement of all funds received pursuant to this Agreement 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 Agreement. All interest earned on funds in the account shall be applied to additional allowable expenses in accordance with the provisions hereof.

9.03 City shall provide Grantee written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money previously provided by City to Grantee determined to:

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

9.04 For the period described in Section 9.05, Grantee agrees to maintain readily identifiable records that will provide accurate, current, separate and complete disclosure of the status of any funds received pursuant to this Agreement. Grantee further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and
- (B) That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

9.05 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities related to this Agreement for a minimum of four (4) years from the expiration or early termination of this Agreement. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four (4) year period.

9.06 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 9.03 as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) days of City's written request therefor wherein the amount disallowed or disapproved shall be specified.

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

10.01 Grantee further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to City 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.
- (B) It is financially stable and capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely affect its obligations hereunder.
- (C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee.
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

#### **XI. ACCESSIBILITY OF RECORDS AND MONITORING**

11.01 At any time and as often as City may deem reasonable and necessary, upon three (3) business days written notice, Grantee shall make all of its records pertaining to this Agreement available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine and make excerpts and/or copies of same.

11.02 Grantee 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 Agreement.

11.03 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide

reasonable access to City related to such activities, and with all other laws, regulations and ordinances related to the performance hereof.

## **XII. INDEMNITY, LIMITATION OF LIABILITY**

**12.01 GRANTEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to GRANTEE'S activities under this AGREEMENT, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or the performance of the duties under this AGREEMENT. .**

**12.02 IN THE EVENT GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**12.03 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. GRANTEE shall advise the CITY within 24 hours of any claim or demand against the CITY or GRANTEE known to GRANTEE related to or arising out of GRANTEE's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at GRANTEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.**

**12.04 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Grantee in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Grantee shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Grantee fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Grantee shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.**

**12.05 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Grantee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the**

**indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Grantee or any subcontractor under worker's compensation or other employee benefit acts.**

12.06. Acceptance of the Plans by the City shall not constitute nor be deemed a release of the responsibility and liability of the Grantee, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, work drawings, Plans and Specifications or other documents; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the designs, drawings, Plans and Specifications or other documents prepared for the Project.

### **XIII. INSURANCE AND BONDS**

13.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the DHS, which shall be clearly labeled "Haven for Hope – Medical Health Unit Construction Funding Agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the DHS. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

13.02 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

13.03 A Grantee's financial integrity is of interest to the City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Grantee's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

13.04 Grantee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Grantee herein, and provide a certificate of insurance and endorsement that names the Grantee and the CITY as additional insureds. Grantee shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Agreement for all purposes.

13.05 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the 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). Grantee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Grantee shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Department of Human Services  
P.O. Box 839966  
San Antonio, Texas 78283-3966

13.06 Grantee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, 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;
- 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;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

13.07 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

13.08 In addition to any other remedies the City may have upon Grantee'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 Grantee to stop work hereunder, and/or withhold any payment(s) which become due to Grantee hereunder until Grantee demonstrates compliance with the requirements hereof.

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

13.10 It is agreed that Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

13.12 Grantee and any Subcontractors are responsible for all damage to their own equipment and/or property.

13.13 Grantee shall comply with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

#### **XIV. TERMINATION**

14.01 City has the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion of the Term whenever City determines that Grantee has failed to comply with any term of this Agreement. City will provide Grantee with written notification as to the nature of the non-compliance, and give Grantee a sixty (60) day period from the date of the City's written notification to cure any issue of non-compliance. Should Grantee fail to cure any default within this period of time, City may terminate this Agreement immediately by providing written notice to Grantee and withhold further payments to Grantee.

14.02 City may immediately terminate this Agreement in the event that City terminates its Lease with Grantee in accordance with the provisions of the Lease. Grantee shall have no opportunity to cure under this Section in this Agreement given that an opportunity to cure a default, if any, under the Lease, shall be afforded prior to termination of the Lease.

14.03 Within thirty (30) days of termination of this Agreement, Grantee shall return to the City all funds that the City finds, within its sole discretion, to be a disallowable expenditure under this Agreement. Within thirty (30) days after the expiration or termination of this Agreement, Grantee shall also turn over to the City copies of all records, documents, files and other instruments in its possession pertaining to the Grantee's performance under this Agreement.

#### **XV. NONDISCRIMINATION**

15.01 Grantee covenants that it, or its 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 Campus, which said discrimination Grantee acknowledges is prohibited.

#### **XVI. CONFLICT OF INTEREST**

16.01 Grantee 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 Agreement. Grantee further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

16.02 Grantee 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.

16.03 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 Agreement shall:

- (A) Participate in any decision relating to this Agreement 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;
- (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

### **XVII. POLITICAL OR RELIGIOUS ACTIVITY**

17.01 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.

17.02 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.

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

18.01 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 Grantee, shall, upon receipt, become the property of City.

### **XIX. CONTRACTING**

19.01 Any work or services contracted hereunder shall be 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 Agreement. It is Grantee's responsibility to ensure compliance by contractors of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

19.02 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

19.03 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 programs with the City.

## **XX. CHANGES AND AMENDMENTS**

20.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both City and Grantee under authority granted by formal action of the Parties' respective governing bodies.

20.02 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 Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

## **XXI. ASSIGNMENT**

21.01 Neither party shall transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of the other party. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

## **XXII. SEVERABILITY OF PROVISIONS**

22.01 If any clause or provision of this Agreement 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 Agreement 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 Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement 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.

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

23.01 No waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement 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 Agreement, 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 Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

23.02 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.

23.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council.

#### **XXIV. ENTIRE AGREEMENT**

24.01 This Agreement 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 Agreement shall be deemed to exist or to bind the Parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the Parties.

#### **XXV. NOTICES**

25.01 For purposes of this Agreement, all official communications and notices between the Parties shall be deemed sufficient if in writing and delivered personally with acknowledgement of receipt, or mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY: Director, Department of Human Services  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

GRANTEE: Haven for Hope of Bexar County  
Attention: Chief Executive Officer  
1 Haven for Hope Way  
San Antonio, Texas 78207

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.

#### **XXVI. PARTIES BOUND**

26.01 This Agreement 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.

#### **XXVII. RELATIONSHIP OF PARTIES**

27.01 Grantee is an independent contractor. Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of employer and employee, officer, principal and agent, partners, joint venturers or any other similar such

relationship between the Parties.

#### **XXVIII. TEXAS LAW TO APPLY**

28.01 This Agreement 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 and venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

#### **XXIX. GENDER**

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

#### **XXX. CAPTIONS**

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

#### **XXXI. LEGAL AUTHORITY**

31.01 Each of the City and Grantee 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 Agreement and to perform the responsibilities herein required.

31.02 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained. The signer of this Agreement for the City represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of the City and to bind the City to all terms, performances and provisions herein contained.

#### **XXXII. MISCELLANEOUS**

32.01 Remedies Cumulative. All rights, options and remedies of the Parties contained in this Agreement shall be cumulative of the other, and either party shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Agreement.

32.02 Time of the Essence. Time is of the essence in this Agreement. The Parties will comply with any timing requirements stated in this Agreement, subject only to Force Majeure and use any and all reasonable efforts to cure any delay caused by Force Majeure. If the date specified in this Agreement for giving any notice or taking any action is not a business day (or if the period during which any notice is required to be given or any action taken expires on a date

that is not a business day), then the date for giving such notice or taking such action shall be the next day that is a business day.

32.03 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and its successors, and nothing in this Agreement, express or implied, is intended to or shall confer upon any person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

32.04 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

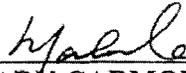
32.05 Force Majeure. Both Parties shall be excused from performance (except for payment obligations), and shall incur no liability for any loss or damage due to any delay or failure to perform its obligations under this Agreement when caused by occurrences beyond the reasonable control of the affected party ("Force Majeure"), including, but not limited to, riots, wars or hostilities between any nations, acts of God, fires, storms, floods, earthquakes, labor disputes or strikes, shortages or curtailments of raw materials, and power or other utility services. Performance shall be excused hereunder only if the affected party delivers written notice of the occurrence, including a full description thereof, to the other party and endeavors to remedy such non-performance with all reasonable dispatch.

In witness of which this Agreement has been executed effective the 1st day of February, 2012.

**CITY OF SAN ANTONIO, TEXAS**

**HAVEN FOR HOPE OF BEXAR  
COUNTY, A TEXAS NON-PROFIT  
CORPORATION**

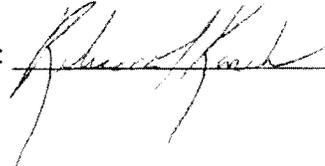
By: \_\_\_\_\_  
**GLORIA HURTADO, DIRECTOR  
DEPARTMENT OF HUMAN SERVICES**

By:  \_\_\_\_\_  
**MARK CARMONA, INTERIM CHIEF  
EXECUTIVE OFFICER**

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

By:  \_\_\_\_\_