

AN ORDINANCE 2006-03-02-0280

AUTHORIZING THE EXECUTION OF A PUBLIC USE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, TEXAS, THE BOARD OF DIRECTORS FOR TAX INCREMENT REINVESTMENT ZONE NUMBER ELEVEN, CITY OF SAN ANTONIO, TEXAS AND BARRIO COMPREHENSIVE FAMILY HEALTH CARE CENTER, INC. FOR THE PROVISION OF PREVENTIVE HEALTH CARE SERVICES AT THE FRANK BRYANT HEALTH CLINIC LOCATED IN CITY COUNCIL DISTRICT 2.

* * * * *

WHEREAS, the City of San Antonio recognizes the importance of its continued role in economic development; and

WHEREAS, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the "Act"), the City of San Antonio, Texas (the "City") created Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas (the "Zone"), created a Board of Directors for the Zone (the "Board") and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, the Board continues to support the City in development activities for the Inner City Revitalization Project and actively participates in planning and identifying potential Zone projects; and

WHEREAS, on February 13, 2006, the Board approved the proposed Agreement and recommended to the City that the City enter into the proposed Agreement; and

WHEREAS, it is now necessary to authorize the execution of this Agreement with the Board and Barrio for the provision of preventive health care services at the Frank Bryant Health Clinic located in City Council District 2; and

WHEREAS, the City Council finds that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code; **NOW, THEREFORE:**

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

SECTION 1. The City Manager, or her designee, is authorized and directed to execute the Public Use Agreement ("Agreement") with the Board of Directors for Tax Increment Reinvestment Zone Number Eleven, City of San Antonio ("Board") and Barrio Comprehensive Family Health Care Center, Inc. ("Barrio"), attached and incorporated into this Ordinance for all purposes as Exhibit 1. The terms of said agreement are approved.

SECTION 2. Payments to Barrio Comprehensive Family Health Care Center, Inc in FY06 should be made from Fund 29086007, TIRZ - INNER CITY, Cost Center 0703290001, TIRZ - INNER CITY, General Ledger 5201040, based upon availability of the increment generated through the fund and in compliance with the Ordinance authorized this day which amended the Project and Financing Plans for the Zone. That Ordinance authorized the City to pay Barrio up to

a maximum total payment of \$1,700,000.00 beginning in Fiscal Year 2006 and extending through September 30, 2013, as compensation for the provision of preventive health care services at the Frank Bryant Health Clinic, pursuant to the provisions of the Tax Increment Financing Act (Chapter 311 of the Texas Tax Code). Tax Increment Reinvestment Zone Number Eleven, City of San Antonio has a termination date of September 30, 2015, unless otherwise terminated earlier as authorized or permitted by law.

SECTION 3. 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 allocation 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 4. The statements set forth in the recitals of this Ordinance are true and correct, and are incorporated as a part of this Ordinance.

SECTION 5. This Ordinance shall take effect on the tenth (10th) day after passage.

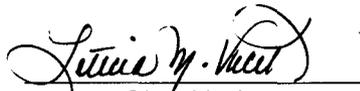
PASSED AND APPROVED this 2nd day of March 2006.



M A Y O R

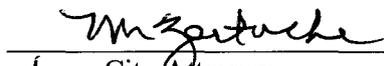
PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



for City Attorney

EXHIBIT 1

PUBLIC USE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

THIS PUBLIC USE AGREEMENT ("Agreement") is made this ____ day of _____, 2006 ("Effective Date"), by and between the CITY OF SAN ANTONIO, TEXAS, a municipal corporation of the State of Texas (the "City"), acting by and through its City Manager pursuant to Ordinance No. _____ passed and approved on _____, 2006, BARRIO COMPREHENSIVE FAMILY HEALTH CARE CENTER INC., a Texas non-profit corporation ("Barrio"), and the Board of Directors for Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas (the "Board"):

WITNESSETH:

WHEREAS, in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the "Act"), the City created Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas (the "Zone"), created the Board and authorized the Board to exercise all the rights, powers, and duties as provided to such boards under the Act; and

WHEREAS, the Board continues to support the City in development activities for the Inner City Revitalization Project and actively participates in planning and identifying potential Zone projects; and

WHEREAS, pursuant to said authority above, the Board, the City and the Developer each hereby enters into a binding agreement with the others to develop and/or redevelop the Zone Property as specified in the Project Plan, Financing Plan and this Agreement; and

WHEREAS, the City, by Ordinance Number _____, dated March 2, 2006, authorized the City Manager or her designated representative to execute this Agreement on behalf of the City, to bind the City to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the City, the Board, and the Developer hereby agree as follows:

I. PUBLIC USE FOR HEALTH SERVICES

1.1 During the Term (defined below), Barrio hereby agrees and covenants to: 1) accept referrals of patients, including those requiring preventive health care services and the exchange of patient data from the San Antonio Metropolitan Health District (SAMHD) and become the health care provider of record for such referrals to the extent of the available capacity at the Dr. Frank Bryant Health Clinic ("Health Clinic") as described in Exhibit A and in accordance with federal law; 2) charge fees to such referrals on a sliding scale based on their income as provided by federal law; 3) cooperate and coordinate with the SAMHD to attempt to coordinate the provision of preventive health care services to the community surrounding the Health Clinic; and

4) submit quarterly reports to the City's Neighborhood Action Department ("NAD") and SAMHD indicating the referrals accepted and service provided for said referrals using the referral form as described in Exhibit D.

1.2 In addition to the above, during any calendar quarter in the Term for which the City indicates that it intends to make a public use fee payment for services provided during the preceding calendar quarter, Barrio hereby agrees and covenants that: 1) the Health Clinic will be open to the public as a comprehensive public health facility, and 2) will provide the services to the individuals referred by the SAMHD, pursuant to the provisions of Section 1.1 above.

1.3 Prior to the first anticipated payment of the fees in connection with this Agreement, Barrio agrees to make any required adjustments to meet the requirements of Section 1.1. For any period of time that the City will not pay a public use fee (except for temporarily insufficient TIRZ funds as provided in Section 3.2), neither Barrio nor the Health Clinic has any obligation to meet the levels of preventive health care service defined in Section 1.1.

II. TERM

2.1 The term of this Agreement shall commence upon execution of this Agreement. Barrio agrees to provide the services described in Article I beginning on April 1, 2006, which date is one full calendar quarter before the first date the City agrees to pay the public use fee (the "Commencement Date"), July 31, 2006. Except as provided herein, the services provided under this Agreement shall continue in full force and effect through September 30, 2013, (the "Termination Date"), subject to early termination and satisfaction of the conditions set forth herein, and Section 3.3, below. The period from the Commencement Date to the Termination Date shall hereinafter be referred to as the Term.

III. PUBLIC USE FEE

3.1 The sole source of the funds to pay Barrio the public use fee shall be the Available Tax Increment Funds levied and collected in the Zone and contributed by the City to the TIF fund created and maintained by City for the purpose of implementing the Zone projects.

3.2 If Available Tax Increment Funds do not exist in an amount sufficient to make such payments in full when the payments are due to Barrio under this Agreement, partial payments shall be made to Barrio as provided below, and the remainder shall be paid as Available Tax Increment Funds become available. No fees, costs, expenses, or penalties shall be paid to Barrio on any late payment.

3.3 Upon Board approval and direction, Barrio shall receive a maximum payment of up to one million seven hundred thousand dollars (\$1,700,000) (the "Maximum Payment") for the public uses provided herein. Subject to the terms contained herein, City shall pay to Barrio during the Term a quarterly public use fee for health services provided during the preceding quarter, as more particularly set forth in Exhibit B, and as approved in the Finance Plan. Barrio shall not receive in any given year more than the amount shown on Exhibit B for that year (an "Annual Payment") unless Barrio has not been fully paid in a prior year the amounts shown on

Exhibit B for all prior years (a "Deficiency"). In such event, and notwithstanding the Term of this Agreement above, Barrio may be paid the Deficiency and Annual Payment from Available Tax Increments until September 30, 2015, the termination date of the TIRZ. The City shall pay to Barrio the sum available from the TIF Fund, as determined by City, on January 31, April 30, July 31, and October 31 of each year of the Term, with the first payment to occur on July 31, 2006.

3.4 When a shortfall of Available Tax Increments occurs in the TIF fund during a given year, Barrio shall receive a pro-rata share of its proposed annual payment from the Available Tax Increment Funds, based on the priorities as shown in the Final Project and Financing Plans as amended by the Board on February 13, 2006, and by the City Council on March 2, 2006, which reflect that ACTN has first disbursement priority, and that Barrio, SSG Hotel, LLC., SAHA and Park Centre, Ltd. share second priority of disbursement, and all other projects with approved reimbursement agreements share third disbursement priority.

3.5 The parties agree that fifteen (15) days before each anticipated public use fee payment Barrio shall submit to the City's Neighborhood Action Department and the SAMHD a Public Use Health Services Report, as set forth in Exhibit D. The parties further agree to compliance audits as may be deemed necessary by the City, in order to confirm information contained in the Public Use Health Services Report. Such audit shall be conducted during regular business hours of the Health Clinic and the City, at times and dates agreed to in writing between the parties.

IV. FACILITY

4.1 During the Term, Barrio shall, at its own risk and expense, maintain and repair the Health Clinic and make repairs, restorations, and replacements to the Health Clinic. Barrio shall keep the Health Clinic in a clean, sanitary and safe condition in accordance with all applicable laws, ordinances and regulations of any governmental authority having jurisdiction.

4.2 During the Term, Barrio shall pay all ad valorem taxes due on the Health Clinic, if any.

4.3 During the Term, Barrio shall pay, when due and payable, all bills for gas, electricity, water, sewer, garbage removal and such other like utilities and services supplied to or for the Health Clinic. Notwithstanding the foregoing, Barrio does not warrant that any of said specified services will be free from interruption or stoppage, but nevertheless Barrio shall use reasonable diligence to resume any such interrupted or stopped service. In the event such interruption or stoppage materially prevents the public from using all or part of the Health Clinic premises and/or services, the public use fee shall abate in proportion to the amount of unusable area and/or services for the period that the public is unable to utilize the space and/or services. Except as provided above, no failure, to any extent, to furnish such services or any stoppage or interruption of these services shall render Barrio liable in any respect for damages to the City.

4.4 If the Health Clinic premises are partially destroyed or otherwise made unusable in whole or in part by fire, other casualty, or for any other reason during the term of this Agreement the public use fee for the Health Clinic premises will be reduced proportionately to the extent to

which the normal Public Use of the Health Clinic premises is diminished. If the repairs cannot be so made within one hundred eighty (180) days after the destruction, City has the option to terminate this Agreement.

V. INSURANCE

5.1 During the Term, Barrio shall provide and maintain, at its sole cost and expense, the following policies of insurance:

- a. Fire, extended coverage and "all other peril" insurance (or its then equivalent coverage) (being not less than ninety percent (90%) of actual replacement value and sufficient to meet co-insurance requirements) for the full insurable value of the Health Clinic. Barrio shall also provide and maintain contents insurance (or its then equivalent coverage) fully insuring Barrio's furniture, trade fixtures and all equipment, and such coverage shall be written on a replacement cost basis.
- b. Comprehensive/Commercial General Liability Insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 per occurrence and in the aggregate, including the Broad Form Comprehensive General Liability endorsement (or its equivalent), completed operations and products liability coverage, covering the insuring provisions of this Agreement and the performance of Barrio of the indemnity agreements set forth herein below.
- c. Worker's compensation insurance to the extent required by law and employer's liability insurance with the following minimum limits:
 - (i) Bodily Injury by Accident: \$500,000 each accident;
 - (ii) Bodily Injury by Disease: \$500,000 policy limit; and
 - (iii) Bodily Injury by Disease: \$500,000 each employee.

5.2 All insurance required in this Section and all renewals of it will be issued by companies authorized to transact business in the State of Texas and rated at least A+ or better in Best's Insurance Guide. All insurance policies will expressly provide that the policies will not be canceled or altered without thirty (30) days' prior written notice, which Barrio shall be obligated to provide the City. All insurance shall contain appropriate cross-liability endorsements denying Barrio's insurers the right of subrogation against the City and the City's representatives as to risks covered by such insurance, without prejudice to any waiver or indemnity provisions applicable to Barrio and any limitation of liability provisions applicable to the City hereunder, of which provisions Barrio shall notify all insurance carriers. On or before the Commencement Date, Barrio shall furnish the City with certificates evidencing the aforesaid insurance coverage and the current version of the appropriate ISO FORM endorsement naming the City as express additional insured on Barrio's policies of General Liability Insurance. Renewal certificates shall be furnished to the City at least thirty (30) days prior to the expiration date of such insurance. Claims Made insurance does not satisfy the above requirements.

VI. INDEMNITY

6.1 Barrio and City acknowledge that the City is a political subdivision of the State of Texas and that the City is subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practice and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. This Agreement will be interpreted according to the Constitution and laws of the State of Texas.

6.2 Barrio hereby agrees to indemnify and hold the City harmless from any injury, expense, damage, liability or claim imposed on the City by any person whosoever whether due to claims for injuries to the person or property, when such injury, expense, damage, liability or claim results either directly or indirectly from the negligent acts or omissions, willful misconduct or breach of any provisions of the Agreement by Barrio, its agents, servants, or employees. Barrio further agrees to reimburse the City for any costs or expenses, including court costs and reasonable attorney's fees which the City may incur in investigating, handling or litigating any such claims.

VII. DEFAULTS AND REMEDIES

7.1 In the event that funds are available for the City to remit the public use fee as detailed in Article III above and the City has agreed that Barrio has demonstrated in a completed Public Use Report that it has satisfied all requirements of this Agreement, yet the City does not make payment of the public use fee within fifteen (15) days after its due date; or shall fail to perform any of the other material covenants or conditions which the City is required to observe and to perform then Barrio may treat the occurrence of any one or more of the foregoing events as an event of default ("Event of Default" or "Default") under this Agreement and thereupon, Barrio may, at its option, without further notice or demand, do any one or more of the following:

- a. terminate this Agreement; or
- b. exercise any right or remedy available to Barrio at law or in equity for the breach of this Agreement.

7.2 In the event that Barrio shall fail to hold the Health Clinic open for public use; has failed to submit a completed Public Use Report; or shall fail to perform any of the other material covenants or conditions which Barrio is required to observe and to perform, the City shall provide written notice of the occurrence of any one or more of the foregoing events to Barrio within ten (10) days from the date City learns of said occurrence(s). Barrio shall have five (5) business days to cure the occurrence(s). In the event Barrio does not cure the occurrence(s) within the cure period, the City may treat the occurrence(s) as an event of default ("Event of Default" or "Default") under this Agreement and thereupon, the City may, at its option, without further notice or demand, do any one or more of the following:

- a. terminate this Agreement and discontinue payment of the public use fee;

b. The public use fee shall be proportionately reduced in the event the City determines that Barrio has not complied with the terms of this Agreement; or

c. exercise any right or remedy available to the City at law or in equity for the breach of this Agreement.

7.3 No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing and signed by said party. Nor shall any custom or practice which may develop between the parties in the administration of the terms of this Agreement be construed to waive or lessen either party's right to insist upon strict performance of the terms of this Agreement. The rights granted to both parties in this Agreement shall be cumulative of every other right or remedy which they may otherwise have at law or in equity or by statute and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

VIII. SUBORDINATION

8.1 In accordance with the terms and conditions of this Article, the City accepts this Agreement subject and subordinate to any deeds of trust, mortgages, land leases, ground leases, master leases, or security interests which might now or hereafter affect title to the Health Clinic. This Agreement is further subject and subordinate to zoning ordinances and other building and fire ordinances, all utility easements and agreements, and governmental regulations relating to the use of the Health Clinic. With respect to any deed of trust, security interest or mortgage constituting a lien against the Health Clinic, Barrio, upon the request of the holder of any such deed of trust, security agreement or mortgage, shall have the right to waive the applicability of this Section so that this Agreement will not be subject and subordinate to such deed of trust, security interest or mortgage. In the event application of this section deprives the City of any of its rights hereunder, the City shall have the right to terminate this Agreement with no further obligation whatsoever to Barrio, notwithstanding anything else contained herein to the contrary. Notwithstanding any other provision of this Agreement, upon any assignment or foreclosure under any deed of trust or mortgages, the City shall have the right to terminate this Agreement with no further obligation to Barrio.

8.2 With respect to any future mortgages against, or transfers of the Health Clinic, the City reserves the right to terminate this agreement during the ninety (90) day notice period contained in Section 8.3 below, by written notice to Barrio. This provision does not apply to the consent granted by the City Council on February 2, 2006, as evidenced by Resolution Number 2006R-02-02-0149, to the issuance of tax-exempt bonds by the Fayette County Health Development Corporation, to provide financing for the Health Clinic.

8.3 Barrio shall notify City not less than ninety (90) days prior to any future mortgage, assignment or transfer of the Health Clinic premises.

IX. CONFLICT OF INTEREST

9.1 Barrio acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City agency, such as City owned utilities. An offer or employee has a "prohibited financial interest" in a contract with the City if any of the following individuals or entities is part to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

9.2 Barrio warrants and certifies that its officers, employees and agents are neither officers nor employees of the City.

X. ATTORNEY'S FEES

10.1 In the event that suit is brought by either party against the other for a breach or default under the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees that shall be fixed by the court.

XI. CAPTIONS

11.1 The captions contained in this Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

XII. WRITING REQUIRED

12.1 This Agreement may not be altered, changed or amended, except by an instrument in writing signed by all parties hereto. The parties hereto may amend the Exhibits attached hereto by mutual agreement as many times as needed by attaching an initialed Exhibit hereto with the same name as the Exhibit they are replacing but with a consecutive number added to the end of the Exhibit letter for each amendment (e.g. Exhibit C-1, followed by Exhibit C-2). Authorization of the Board Chairman to amend the Exhibits to this Agreement shall be shall be evidenced by the passage of a Board Resolution at such time as any amendments are requested. The City Council specifically authorizes the Director of Neighborhood Action Department to amend the Exhibits to this Agreement without further City Council approval.

XIII. NO REPRESENTATIONS

13.1 Neither Barrio nor its agents or brokers have made any representations or promises with respect to the Health Clinic except as may be expressly set forth in this Agreement, and any reliance by the City on any representations or promises of Barrio, its agents or brokers shall be solely on the representations or promises, if any, expressly contained in this Agreement. No

rights, easements or licenses are acquired by the City under this Agreement by implication or otherwise except as expressly set forth in this Agreement.

XIV. NO PARTNERSHIP

14.1 Nothing herein contained shall be deemed or construed by the parties hereto, nor by a third party, to create a relationship between the parties of principal and agent, partnership, or joint venture. Neither computation of public use fee, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than set forth herein.

XV. NOTICES

15.1 Any notice required or permitted to be given hereunder may be given by mail and shall be deemed sufficiently given if sent by registered or certified mail addressed to the City or to Barrio at the following address:

If to City:

CITY OF SAN ANTONIO
Office of the City Manager
P.O. Box 839966
San Antonio, Texas 78283-8966

and NEIGHBORHOOD ACTION DEPARTMENT
City of San Antonio
1400 S. Flores
San Antonio, Texas 78204
Attn: David D. Garza, Director

If to BARRIO:

BARRIO COMPREHENSIVE FAMILY HEALTH CARE CENTER, INC.
1102 Barclay
3066 East Commerce
San Antonio, Texas 78207-716178220
Attn: Debhora Thompson, Chief Executive Officer

With copy to:

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

15.2 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.

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XVI. BINDING EFFECT

16.1 This Agreement shall be binding upon, and inure to the benefit of the parties hereto, their heirs, successors, assigns, executors and administrators.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have duly executed this Agreement the day and year first above written.

CITY:
CITY OF SAN ANTONIO

By: _____
Name: Sheryl Sculley
Title: CITY MANAGER

BARRIO:
BARRIO COMPREHENSIVE FAMILY HEALTH CARE CENTER, INC.

By: 
Name: Debbora Thompson
Title: Chief Executive Officer

BOARD:
Reinvestment Zone Number Eleven, City of San Antonio, Texas

By: _____
Name: Sheila McNeil
Title: Chair

Approved as to form

By: _____
City Attorney