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Agreement of Development Corporation of Harlingen, Inc. and Valley Baptist Medical Center: 1998-09-21

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MASTER

STATE OF TEXAS }
COUNTY OF CAMERON }

AGREEMENT

THIS AGREEMENT is entered into as of the ____ day of September, 1998 by and between the Development Corporation of Harlingen, Inc. (the "Development Corporation") and Valley Baptist Medical Center ("VBMC").

RECITALS:

WHEREAS, the Development Corporation is a development corporation duly created by the City of Harlingen, Texas pursuant to Section 4A, Article 5190.6, Texas Revised Civil Statutes (the "Act");

WHEREAS, pursuant to the Act, the voters of the City of Harlingen, Texas have approved the adoption of a sales and use tax for the promotion and development of new and expanded business enterprises;

WHEREAS, the medical and health care service industry and its component business enterprises have been identified and confirmed as one of the most important clusters of business enterprises and employers in the City of Harlingen and one of the most significant stimulators of economic development and employment opportunities in our community;

WHEREAS, VBMC is a non-profit corporation which owns and operates a major hospital and medical center in Harlingen, Texas;

WHEREAS, VBMC is one of the largest employers in Harlingen, has grown significantly and developed into an outstanding and well-respected medical center in South Texas, and is a critical element in the future economic development and expansion of employment opportunities in Harlingen;

WHEREAS, the University of Texas System (the "University"), pursuant to Senate Bill 606 enacted by the 75th Texas Legislature, has requested proposals for the establishment of a regional academic health center (the "RAHC") in the Lower Rio Grande Valley;

WHEREAS, the RAHC will include (i) the construction by the University of a \$30 million dollar educational facility, (ii) medical clerkships for 3rd and 4th year medical students, (iii) residency training programs for graduate physicians and (iv) the development of a new multi-specialty health care clinic;

WHEREAS, the University is currently considering proposals for the location of the RAHC in one of several communities in the Rio Grande Valley including a proposal submitted to the University by VBMC;

WHEREAS, VBMC and the Development Corporation have thoroughly reviewed all of the information available to them regarding the RAHC and its potential for the enhancement of economic development and the expansion of employment opportunities;

WHEREAS, based on that review, the directors of the Development Corporation have concluded and do find that (i) the location and establishment of the RAHC in Harlingen will stimulate and enhance economic development in the community, will promote the creation and development of new and expanded business enterprises in Harlingen and will result in the creation of significant new and enhanced employment opportunities for the citizens of Harlingen thereby resulting in a higher level of economic activity and stability and (ii) Harlingen will lose the positive benefits of that economic stimulation and expanded business and employment opportunities if the RAHC is located

elsewhere;

WHEREAS, VBMC has made a substantial financial commitment, including the donation of approximately 18.6 acres of land, to the development of the RAHC if the University selects Harlingen as the site;

WHEREAS, the University has indicated a need for additional land to accommodate the future growth and expansion of the RAHC and the Development Corporation has determined that the availability of additional land for the beneficial use of the RAHC would substantially enhance the proposal submitted to the University by VBMC;

WHEREAS, the Development Corporation is willing to enter into a contract with VBMC for the acquisition of additional land adjacent to the proposed site of the RAHC in the event the University accepts the proposal by VBMC and in consideration for the agreement by VBMC that such land will be made available to the University and will be used solely for the benefit of the RAHC and to secure the enhancement of economic development and expanded employment opportunities described herein; and

WHEREAS, the directors of the Development Corporation have determined and concluded and do find that such a contract between the Development Corporation and VBMC for such purpose is entirely consistent with the objectives of the Act and the purposes for which the Development Corporation was created;

NOW, THEREFORE, the Development Corporation and VBMC, in consideration of the premises and the mutual performance of the promises and obligations described herein, do hereby agree as follows:

1.

Subject to the express terms and conditions contained in Paragraph 4 hereof,

VBMC agrees to:

- (a) take such immediate actions as may be reasonably required and to make a good faith effort to enter into an agreement (the "Purchase Agreement") for the purchase of that certain real property described on Exhibit "A" attached hereto (the "Property") and to acquire the Property for a purchase price and on such terms and conditions as are acceptable to the Development Corporation; and
- (b) donate or otherwise make the Property, together with the approximately 18.6 unimproved acres or other unimproved property which may presently or in the future be owned by VBMC, available to the University for the current use or future expansion and growth of the RAHC.

In the event that VBMC should enter into a Purchase Agreement for the purchase of the Property, VBMC shall promptly deliver a true and correct copy thereof to the Development Corporation.

2.

Subject to the express terms and conditions contained in Paragraph 4 hereof, the Development Corporation agrees to pay to VBMC an amount not to exceed _____ and no/100ths Dollars (\$ _____) which amount shall be used by VBMC solely for the purpose of acquiring the Property. The hereinabove described payment shall be made by the Development Corporation to VBMC upon written request by VBMC; provided, however, the Development Corporation shall not be obligated in any event to make such payment more than three (3) days prior to the closing date for the purchase of the Property pursuant to the Purchase Agreement.

3.

The parties acknowledge that (i) VBMC is currently the owner of approximately 18.6 acres of unimproved property and has proposed to donate said property to the University for the RAHC, (ii) VBMC is currently negotiating for the purchase of an additional 7.598 acres of unimproved property from Su Clinica Familiar which property is proposed to be used for the construction of a clinic for the joint use and benefit of Su Clinica Familiar and the University and (iii) VBMC, as part of its proposal to the University, intends to donate or otherwise make available approximately 26 acres of property to the University for the RAHC. VBMC agrees that the Property to be purchased with the payment provided hereunder shall be used by VBMC solely for the RAHC; provided, however, VBMC may substitute for the Property, in whole or in part, the property or some portion thereof which may be purchased by VBMC from Su Clinica Familiar. The Development Corporation and VBMC acknowledge and agree that it is the intention of the parties to make available to the University that combination of the above-described properties which is most beneficial to the University and which is most likely to result in the location of the RAHC in Harlingen and the realization of the economic benefits and expansion of employment opportunities associated with the RAHC.

4.

Notwithstanding anything contained herein to the contrary, the parties expressly agree that the purpose of this Agreement is to secure the economic benefits resulting from the location of the RAHC in Harlingen. Accordingly, VBMC shall not be obligated to purchase the Property and the Development Corporation shall not be obligated to make

the payment provided herein in the event that (i) the University does not accept the proposal by VBMC for the location of the RAHC in Harlingen or (ii) in the event the University does accept the proposal by VBMC but does not require VBMC to make the Property, or any portion thereof, available for the beneficial use of the RAHC.

In the event that VBMC should fail to utilize the Property for the purposes described herein, VBMC agrees to reimburse the Development Corporation for the full amount of the payment provided in Paragraph 2 hereof, or any portion thereof, which may have been made by the Development Corporation.

The parties hereto expressly acknowledge that VBMC may elect to purchase the Property whether or not the University accepts the proposal by VBMC and whether or not the Property is required for the beneficial use of the University for the RAHC; provided, however, the parties expressly agree that, in such event, the Development Corporation shall not be obligated to make the payment to VBMC provided in Paragraph 2 hereof or any portion thereof.

5.

All notices, demands and requests which may be given or which are required to be given by either party to the other and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when personally delivered to the address of the party to receive such notice set forth below or, whether actually received or not, when deposited in any post office or mail receptacle regularly maintained by the United States Government, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Development Corporation: Development Corporation of Harlingen, Inc.
c/o City Manager
City of Harlingen
118 East Tyler
Harlingen, Texas 78550

If to VBMC: Mr. Ben McKibbens
President
Valley Baptist Medical Center
2101 Pease Street
Harlingen, Texas 78550

or such other place as the Development Corporation or VBMC, respectively, may from time to time designate by written notice to the other.

This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State of Texas, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

This Agreement shall be governed by the laws of the State of Texas and the laws of the United States pertaining to transactions in such State.

This Agreement shall bind and inure to the benefit of the Development Corporation

and VBMC and their respective successors and assigns. VBMC shall not assign its rights under this Agreement without the prior written consent of the Development Corporation.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages, as provided herein, reasonable attorneys' fees incurred in such suit.

This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

DEVELOPMENT CORPORATION OF HARLINGEN, INC.

By: _____
Its _____

VALLEY BAPTIST MEDICAL CENTER

By: _____
Ben McKibbens, President