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Agenda Date: 10/22/2020
Council Meeting

2020 OCT 21 A 9:09

CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Information Packet

ITEM(S)

File ID 20-001402 (1-S)

Actions related to United Health Centers construction of clinics in Southeast and West Fresno:

1. Adopt a finding of Categorical Exemption pursuant to Section 15332/Class 32 of the California Environmental Quality Act (CEQA) Guidelines
2. ***RESOLUTION - 34th Amendment to AAR No. 2020-159 appropriating \$10,000,000 for the United Health Centers projects in Southeast and West Fresno (Requires 5 Votes) (Subject to Mayor's Veto)
3. Approve Agreement with United Health Centers

Contents of Supplement: Staff report, United Health Centers Agreement

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week

prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

REPORT TO THE CITY COUNCIL

October 22, 2020

FROM: MIGUEL ARIAS, Council President
LUIS CHAVEZ, Councilmember

SUBJECT

Actions related to United Health Centers construction of clinics in Southeast and West Fresno:

1. Adopt a finding of Categorical Exemption pursuant to Section 15332/Class 32 of the California Environmental Quality Act (CEQA) Guidelines
2. ***RESOLUTION - Adopting the 34th Amendment to the Annual Appropriation Resolution No. 2020-159 appropriating \$10,000,000 for the United Health Centers projects in Southeast and West Fresno
3. Approve Agreement with United Health Centers of the San Joaquin Valley

RECOMMENDATION

It is recommended the Council approve the agreement allocating a City contribution of \$10 million for United Health Centers' development and operation of full-service health clinics in Southeast and West Fresno.

BACKGROUND

United Health Centers of the San Joaquin Valley (UHC) proposes to construct full service public health centers in West Fresno and Southeast Fresno. The City proposes to contribute \$10 million to the project, allocated \$6 million to West Fresno, and \$4 million to Southeast Fresno. Major deal points include:

- UHC will acquire property and hold title for the two locations. City will have the right to approve of each site before close of escrow.
- City will release the first \$1 million of the contribution allocated for each site upon close of escrow for each site.
- The balance of the allocation for each site will be released upon satisfaction of the following conditions:
 - UHC and City execute an MOU regarding services to be provided at each site, including transportation of patients, targeted populations, and prioritization of low income and at-risk populations.
 - UHC provides proof of funding sufficient to complete the project at that site.
 - UHC has received all entitlements and paid all fees for that project site.

- The parties agree to negotiate a contribution by City, subject to future Council approval, to help fund offsite improvements at each site.
- The City agrees to assign a Project Manager from within the City Manager's Office to oversee expeditious processing of all applications for entitlements and permits.
 - If all entitlements are expeditiously processed and issued, UHC anticipates starting construction for both sites in December 2021.
- Construction of both sites is estimated to cost \$18million, and construction is estimated to take 18 months once all entitlements are received.
- Following completion of construction, UHC agrees to operate both sites as full-service public health clinics for 10 years.
- UHC's performance shall be secured by a recorded covenant that will run with the land, requiring continuous operation for 10 years. If UHC fails to perform, the City will be entitled to liquidated damages, decreasing 10% for each year of operation.

ENVIRONMENTAL FINDINGS

This project falls within the Class 32 Categorical Exemption set forth in CEQA Guidelines, section 15332, as these projects will be located on infill sites in West Fresno and Southeast Fresno, will be consistent with the General Plan and zoning designations, will be no more than five acres substantially surrounded by urban uses, and will be adequately served by all utilities and public services. None of the exceptions to Categorical Exemptions set forth in CEQA Guidelines, Section 15300.2 apply.

LOCAL PREFERENCE

Not applicable.

FISCAL IMPACT

This project will be funded by the General Fund.

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN
TO:

City of Fresno
2600 Fresno Street
Fresno, Ca. 93721
Attention: City Manager

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

CITY OF FRESNO

By: _____
Wilma Quan, City Manager

Dated: _____

OWNER PARTICIPATION AGREEMENT
and DECLARATION OF RESTRICTIONS

by and between

THE CITY OF FRESNO, a municipal corporation

And

UNITED HEALTH CENTERS OF THE SAN JOAQUIN VALLEY, a nonprofit
corporation

For health clinics in Southeast and West Fresno

OWNER PARTICIPATION AGREEMENT AND DECLARATION OF RESTRICTIONS

THIS OWNER PARTICIPATION AGREEMENT ("Agreement") is entered as of the Effective Date (defined in this Agreement), between the CITY OF FRESNO, a municipal corporation, ("City") and UNITED HEALTH CENTERS OF THE SAN JOAQUIN VALLEY, a California nonprofit corporation ("Owner").

RECITALS

The parties enter this Agreement based on the following facts, understandings, and intentions:

A. Owner is a nonprofit organization licensed by the State of California as a community health center, and designated as a Federally Qualified Health Center by both Federal and State governments. Owner is committed to lifetime community wellness by providing accessible, comprehensive quality health care to everyone with compassion and respect, regardless of ability to pay.

B. Owner holds, or will acquire, all rights, title and interest in fee to certain real property in Southeast and West Fresno (the "Properties"), which are further described in Exhibit "A" attached hereto and incorporated herein, including improvements located thereon which shall be improved by Owner as contemplated by this Agreement (the "Project"). The Property and Project are located within the territorial jurisdiction of the City.

C. Owner proposes to develop full service healthcare centers on the Properties, and operate each continuously for a period of ten years (the "Restriction Period").

D. Owner agrees to undertake improvements in accordance with the combined Performance Schedule described in Exhibit "B" attached hereto and incorporated herein (the "Performance Schedule").

E. The Properties and associated onsite and offsite improvements are collectively referred to in this Agreement as the "Improvements" or the "Project," all of which will directly benefit the Properties, the surrounding neighborhood, and the City as a whole.

F. City is willing to assist Owner's construction of the Project by making available to Owner Contribution certain Funds in the amount of \$10,000,000 (the "Contribution"), upon the terms and conditions specified in this Agreement.

G. The Contribution shall be disbursed in accordance with the terms of this Agreement and the Contribution shall be subject to certain covenants that will run with the land for the Restriction Period, in accordance with the terms of that certain

Development Agreement and Restrictive Covenants (the "DARC"), an example of which is attached hereto as Exhibit "C". The Contribution and performance of covenants and restrictions set forth in this Agreement shall be evidenced by DARC and shall be recorded against and run with and encumber each Property.

AGREEMENT

1. **DEFINITIONS.** Besides definitions contained elsewhere in this Agreement, the definitions in this Section will govern the construction, meaning, application, and interpretation of the various terms used in this Agreement.
 - 1.1 "Certificate of Completion" means that Certificate issued to Owner by City in the form attached as Exhibit "D," evidencing completion of construction of the Project at a Project Site and Owner's commencement of services, for purposes of this Agreement.
 - 1.2 "City Manager" means the City Manager of the City of Fresno, or his or her designee.
 - 1.3 "Construction Completion Date" means the date specified in Exhibit B, subject to extension pursuant to Section 4.5.
 - 1.4 "Continuous Operations" (whether capitalized or not), means the continuing operation of the Projects during days and hours normally associated with a medical clinic, but excusing any period of time where normal operations are impaired or frustrated by damage, governmental actions or other force majeure events.
 - 1.5 "Day" whether or not capitalized, means a calendar day, unless stated otherwise.
 - 1.6 "Effective Date" means the date of complete execution of the Agreement following City Council approval thereof.
 - 1.7 "Entitlements" mean all land use and other entitlements and development approvals, permits and fees that the City, County of Fresno, and other governmental agencies with jurisdiction over the Project, the Improvements, or the Property may require prior to commencement of constructing the Improvements.
 - 1.8 "Environmental Laws" means any federal, state, or local law, statute, ordinance, or regulation pertaining to environmental regulation, contamination, or cleanup of any Hazardous Materials or waste including, without limitation, any state or federal lien or "super lien" law, any environmental cleanup statute or regulation, or any governmentally required permit, approval, authorization, license, variance or permission.

- 1.9 "Funding Source" means the Contribution and other funding sources secured by Owner to construct the Improvements.
- 1.10 "Financing Plan" means the Budget including sources and uses of funds sufficient for Owner to complete the Improvements according to the Performance Schedule, and demonstrate sufficient financial capacity to carry out the Project.
- 1.11 "Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government including, without limitation, any material or substance which is: (a) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, (b) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, (c) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, (d) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, (e) petroleum, (f) friable asbestos, (g) polychlorinated biphenyls, (h) listed under Article 9 or defined as "hazardous" or "extremely hazardous" under Article 11 of Title 22, California Administrative Code, (i) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (j) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq., or (k) defined as "hazardous substances" pursuant to Section of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, et seq.); provided, however, hazardous materials shall not include: (1) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of residential rental housing or associated buildings and grounds, or typically used in household activities, in a manner typical of other residential rental housing developments which are comparable to the Improvements; and (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages aspirin, tobacco products, NutraSweet and saccharine.
- 1.12 "Improvements" mean the construction of the public health clinics and related improvements that Owner will complete on the Properties as part

of the Project, including associated parking and landscaping improvements.

- 1.13 "Contribution" means the sum of \$10,000,000, provided by City to Owner upon the terms and conditions set forth in this Agreement and the DARC attached hereto. If the DARC is recorded prior to the recordation of the deed or deeds of trust (bonds, indentures or other financial instruments) securing the other Funding Sources consistent with the Financing Plan, the City shall subordinate its DARC thereto to no more than senior lenders.
- 1.14 "Owner" means United Health Centers of the San Joaquin Valley, a California nonprofit, or an affiliated company in which it is a member, managing member, general partner, or principal.
- 1.15 "Project" means the development of two full service public healthcare centers and associated improvements, one on each of the Properties.
- 1.16 "Properties," "Property," or "Project Site" means the real property to which Owner now has, or to which Owner will acquire, fee title for construction of the Project. The Properties shall be generally located one in Southeast Fresno and one in West Fresno, within the jurisdiction of the City.
- 1.17 "Release of Restrictions" means a release of those covenants, conditions, and restrictions contained in this Agreement and the DARC.
- 1.18 "Restrictions" (or, "Restricted Use") means the performance restrictions contained in this Agreement, specifically that the public health clinics constructed on the Properties be operated continuously from the date of recording of the Certificate of Completion for each Project Site for a period of ten years. The Restrictions shall run with the Properties and burden such for the Restriction Period.
- 1.19 "Restriction Period" means a period of ten years commencing from the date of recording of the Certificate of Completion for each Project Site, during which the Project shall be continuously operated as a public health clinic.
- 1.20 "Performance Schedule" means the schedule attached as Exhibit "B," setting forth the dates and times by which the parties must accomplish certain obligations under this Agreement. The parties may revise the Performance Schedule from time to time on mutual written agreement of Owner and City, but any delay or extension of the Construction Completion Date is subject to the requirements in this Agreement.

2. **RELEASE OF FUNDS.** The following sections contain conditions precedent to City's obligation to perform under this Agreement. So long as the Owner fulfills its obligations under this Agreement, the City shall be deemed committed to the funding provided below, and the Contributions shall be considered "lawfully encumbered" within the meaning of the City's Charter Section 1206. City, in writing by its authorized representative, may waive any condition or agree to extend the time for satisfaction of any condition set forth in this Section. City may terminate this Agreement only as provided herein for the failure of a condition.

2.1 The \$10,000,000 Contribution shall be allocated among the Project Sites as follows: \$6,000,000 to the West Fresno Project site, and \$4,000,000 to the Southeast Fresno Project site. Funds shall be released in two phases, in accordance with the terms of this Agreement.

2.2 The City shall release the first phased payment of \$1,000,000 for each Project Site upon the close of escrow for that Property, upon satisfaction of the following conditions precedent related to the Project Site:

2.2.1 City shall have provided to Owner in writing its approval of the location of the Project Site, with such approval not unreasonably withheld.

2.2.2 Owner has submitted a general or basic concept drawing to serve as a Scope of Development and Project Design.

2.2.3 Owner will have provided proof of insurance as required by this Agreement.

2.2.4 This Agreement and the executed DARC, which shall have been recorded against the Property with the Fresno County Recorder's Office, or shall be recorded concurrent with the release of the Contribution funds.

2.2.5 Owner, at Owner's expense, shall have investigated and determined all environmental, soil, seismic, and other surface and subsurface conditions of the Property and the suitability of such conditions for the Project. Owner's responsibility and due diligence includes, but is not limited to, determining the presence of Hazardous Materials. Owner will indemnify, defend, and hold City harmless from any damages or claims arising out of Owner's inspections and tests.

2.2.6 Should Owner's property assessment/inspection reveal any Hazardous Materials or environmental conditions requiring

remediation, Owner will promptly notify City. Not later than ten days from and after such notice, Owner shall, at its sole cost and expense, commence to make required submittals, develop required remedial action plans, and thereafter pursue remediation activities as to such Hazardous Materials or environmental conditions and to diligently prosecute such to completion as required by applicable federal, state and local law and in a manner and according a reasonable time frame agreeable to City. Without limiting the foregoing, any remediation will be performed pursuant to a remedial action plan, if needed, approved by the governmental agencies having jurisdiction and will be performed according to applicable environmental laws and governmental requirements.

- 2.3 The second phased payment shall be paid and released from City to Owner, including the entire balance of the Contribution allocation for each Project Site not paid under Section 2.2, upon satisfaction of the following conditions precedent related to that Project Site:
 - 2.3.1 Owner shall provide a title report, recorded deed, or other evidence acceptable to City that Owner owns the Property.
 - 2.3.2 City and Owner have negotiated a memorandum of understanding regarding services to be provided by Owner at each Project Site, including such topics as transportation of patients, targeted populations, and prioritization of certain low income and at-risk populations substantially similar to those other medical clinics operated by Owner in the Fresno Metropolitan area.
 - 2.3.3 Owner has entered into, and provided City copies of agreements with any and all Funding Sources and the general contractor for the Project. All such Funding Source agreements shall contain a provision whereby the party(ies) to each such agreement, other than Owner, agree to make reasonable efforts to (i) notify City immediately of any event of default by Owner under such agreement; (ii) notify City immediately of termination or cancellation of such agreement; and (iii) provide City, upon City's request, an estoppel certificate certifying that such agreement is in full force and effect and Owner is not in default under such agreement.
 - 2.3.4 Owner has submitted evidence that the combined monies from the Funding Sources, are not less than the greater of a total development cost of \$18,000,000, or the amount which City determines is necessary to complete the Improvements at a given Project Site, including evidence of such Funding Sources acceptable to the City.

- 2.3.5 Owner will submit its Financing Plan to the City for review and City has provided acceptance, provided the purpose of City's review is solely to confirm Owner has sufficient funds available to complete the Improvements and operate and maintain the Project as this Agreement requires. After City accepts the Financing Plan, Owner will not make any material change in the Financing Plan without first submitting such change to City for review and acceptance, which shall not be unreasonably withheld, delayed, or conditioned.
- 2.3.6 Owner will submit financial information, as appropriate, to demonstrate sufficient financial capacity to carry out the Project, including continuous operation during the Restriction Period.
- 2.3.7 Owner shall not be in default of this Agreement and all representations and warranties of Owner contained herein shall continue to be true and correct in all material respects.
- 2.3.8 Owner will have signed and delivered all documents required hereunder.
- 2.3.9 Owner will have received all Entitlements and paid all fees, if any, required for that Project Site. City shall assign a Project Manager from within the City Manager's Office to oversee the expeditious processing of applications for entitlements and permits, however, nothing in this Agreement shall be deemed a precommitment to any legislative act or discretionary approval. In addition, City will cooperate with the Owner to determine whether any program currently exists pursuant to which fees may be waived, reduced, or deferred.
- 2.3.10 Owner shall be in substantial compliance with the Performance Schedule.

3. **OWNER OBLIGATIONS AFTER SATISFACTION OF CONDITIONS PRECEDENT.** The following obligations of Owner will run with the land and survive this Agreement, and will become effective upon the date Owner acquires fee title to the Property:

- 3.1 Owner covenants to continuously operate each Property as a full service public health clinic open to the public for the benefit of City residents continuously for the Restriction Period. The Restrictions shall be evidenced by recording the DARC against each Property.

- 3.2 City and Owner will comply with the terms of the memorandum of understanding referenced in Section 2.3.2 regarding services to be provided by Owner at each Project Site.
- 3.3 Owner will take all reasonable precautions to prevent the release into the environment of any Hazardous Materials in, on, or under the Property in violation of applicable laws or regulations. Owner will comply with all governmental requirements with respect to Hazardous Materials. In addition, Owner shall install and use equipment and implement and follow procedures that are consistent with reasonable standards for the disclosure, storage, use, removal, and disposal of Hazardous Materials.
- 3.4 Owner will notify the City and give City a copy of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Property including, without limitation, notices of violation, notices to comply, citations, inquiries, cleanup or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any governmental regulation relating to Hazardous Materials. Within 3 days after each incident, Owner will report to City any unusual or potentially important incidents respecting the environmental condition of the Property.

If a release of any Hazardous Materials into the environment occurs, Owner will, as soon as possible after the release, furnish City with a copy of any reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, Owner will furnish City with a copy of any other environmental entitlements or inquiries relating to or affecting the Property including, without limitation, all permit applications, permits, and reports, even reports and other matters.

- 3.5 Owner shall indemnify, hold harmless and defend City, and each of its officers, officials, employees, agents and volunteers from any and all claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), arising out of (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about the Property, or the transportation of any Hazardous Materials to or from the Property, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to any use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property. This indemnity will include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing, cost or expense arising from or out of any claim, action, suit or proceeding for

personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination leak, spill, release or other adverse effect on the environment. Owner's obligations under the preceding sentence shall apply regardless of whether City, or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense caused solely by the gross negligence, or caused by the willful misconduct, of City, or any of its officers, officials, employees, agents or volunteers. This section shall survive expiration or termination of this Agreement.

- 3.6 The status and qualifications of Owner are of particular concern to City. Until the Restrictions expire, no voluntary or involuntary successor-in-interest of Owner will acquire any rights or powers under this Agreement. Notwithstanding anything to the contrary herein, Owner shall have the right to transfer ownership of the Property to a related entity having experience in the ownership and operation of health clinics, as reasonably determined by City, which approval shall not be unreasonably withheld.

4. DEVELOPMENT OF THE PROPERTY.

- 4.1 Except as set forth in this Agreement, before Owner begins constructing the Improvements or undertakes any other work of improvement on the Property, Owner, at its own cost and expense, will secure all Entitlements that City or any other governmental City with jurisdiction over the Project requires for construction of the Project. Without waiver or limitation, Owner will secure and pay all costs, charges and fees associated with, the following:

4.1.1 All permits and fees that the City, County of Fresno, and other governmental agencies with jurisdiction over the Project, the Improvements, or the Property may require.

4.1.2 Americans with Disabilities Act (ADA)/Barriers to the Disabled. The Project shall comply with all applicable federal, state, and local accessibility requirements.

4.1.3 Notwithstanding the foregoing, the parties shall negotiate in good faith, subject to City Council approval, to determine the amount of the contributions or reimbursements by City for the cost of all off-site work at each site required for the Entitlements and use of the Projects as contemplated herein, including without limitation: streetscape upgrades; installing or widening sidewalks; off-site landscaping; utility upgrades, tie-

in and/or connections; undergrounding any above ground utilities that are required (whether such utilities are on the Property or off-site); installing, moving or improving any systems or off-site areas for flood, drainage, traffic and otherwise.

- 4.2 **Scope of Development and Project Design.** For each Project Site, Owner has submitted or will submit to the City for approval a general or basic concept drawing, pursuant to the Performance Schedule. Owner will complete the Improvements on the Property in one phase, according to the Scope of Development and Project Design, and the plans, drawings, and documents that Owner submits to City. Owner shall carry out construction of the Project including the Improvements in accordance with all applicable local, state and federal laws, codes, ordinances and regulations, including without limitation all applicable state and federal labor standards, and prevailing wage.
- 4.3 **Books and Records.** Owner shall make available for examination at reasonable intervals and during normal business hours, all books, accounts, reports, files and other papers or property with respect to all matters covered by this Agreement, and shall permit City to audit, examine, and make excerpts or transcripts from such records. City may audit any conditions relating to this Agreement at City's expense, unless such audit shows a materially significant discrepancy in information reported by Owner to City in which case Owner shall bear the cost of such audit. This section shall survive for a period of four years after the expiration or termination of this Agreement.
- 4.4 **Audit.** Owner shall be accountable to City for all Contribution funds disbursed to Owner pursuant to this Agreement. Owner will cooperate fully with City and the State of California in connection with any interim or final audit relating to the Project that may be performed. Owner will maintain accurate and current books and records for the Project using generally accepted accounting principles. Owner agrees to maintain books and records that accurately and fully show the date, amount, purpose and payee of all expenditures financed with Contribution funds and to keep all invoices, receipts and other documents related to expenditures financed with Contribution funds for not less than four years after the fiscal year in which such expenditures are incurred. For purposes of this section, "books, records, and documents" include, without limitation, plans, drawings, specifications, ledgers, journals, statements, contracts/agreements, funding information, purchase orders, invoices, loan documents, computer printouts, correspondence, memoranda and electronically stored versions of the foregoing. This section shall survive for a period of four years after the expiration or termination of this Agreement.

- 4.5 Construction Completion Date. Construction for each Project Site shall be completed according to the Performance Schedule attached as Exhibit "B." City, acting through and in the discretion of its City Manager, may extend the Construction Completion Date of the Project for that period of time that City, in its reasonable discretion, determines necessary to overcome any delay if and to the extent such delay is due to a cause which is beyond Owner's reasonable control, and if Owner could not, with reasonable diligence, have foreseen and avoided such cause for delay. Such causes include, without limitation, acts of God, pandemic, "shelter in place" orders, unusually severe weather or flood, war, terrorism, riot or act of the public enemy, labor disputes, unavoidable inability to secure labor, materials, supplies, tools or transportation, or acts or omissions of any governmental authority having jurisdiction. City will not extend the Construction Completion Date for acts or omissions occurring through the fault of Owner, or for acts of City permitted or contemplated by this Agreement. An extension of time as provided in this subsection will be Owner's sole remedy for any delays in the Performance Schedule.

As a condition precedent to any extension requested by Owner, Owner will give the City notice within ten days after any cause for delay occurs, stating the cause and the additional time Owner anticipates needed to complete the Project. Any extension by City must be in writing and signed by the City Manager or the City Manager's designee, which approval shall not be unreasonably withheld, delayed, or conditioned.

- 4.6 All Contribution funds shall be used solely for costs of the Project and Improvements. In the event Owner does not complete construction of the Project by the Construction Completion Date, as may be extended pursuant to Section 4.5, or otherwise does not go forward with the Project, any portion of the Contribution advanced to the Owner shall be immediately due and payable upon the written demand of City.
- 4.7 Certificate of Completion. Owner will notify City when Owner deems the Project at a Project Site complete. Within ten business days after such notice, City will inspect the Improvements. When City reasonably determines Owner has completed the Improvements as required in this Agreement, the Plan, and the Law, City will furnish Owner with a Certificate of Completion. City will not unreasonably delay, condition or refuse to issue the Certificate of Completion. The recorded Certificate of Completion will be a conclusive determination that Owner has satisfactorily completed the Improvements required under this Agreement as to that Project Site. Any parties then owning or subsequently purchasing, leasing or otherwise acquiring any interest in the Property will not (because of that ownership, purchase, lease or acquisition) after the recording, incur any obligation or liability under this Agreement for

constructing the Improvements, but will take such interest in the Property subject to the continuing restrictions set forth in this Agreement.

4.7.1 If City determines not to furnish the Certificate of Completion, in accordance with Section 4.7 above, City will give Owner a written notice stating why City has decided not to issue the Certificate of Completion, or why it is delaying the issuance, and the reasonable actions that, in City's opinion, Owner must take before City can issue the Certificate of Completion. City's failure to give the notice within ten days, however, will not cause the Owner to be entitled to the Certificate of Completion. The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

4.7.2 The following are conditions precedent to City issuing the Certificate of Completion, and each submission will be in form and substance satisfactory to the City Manager: Evidence that the time to file all mechanics' liens or material men's liens has expired and any such liens recorded against the Property or Improvements have been released or, if not released, sufficiently bonded (i.e. 150%) against as required by law.

- 4.8 To the extent economically feasible, consistent with the requirements of any permitted encumbrance, or as otherwise approved by City or provided in the Agreement, if any building or improvement on the Property is damaged or destroyed by an insurable cause, Owner shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements consistent with the Scope of Development and Project Design for the Project. Such work or repair shall commence within ninety days after the insurance proceeds are made available to Owner and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, Owner shall make up the deficiency.
- 4.9 Inspections. Owner shall permit, facilitate, and require its contractors to permit and facilitate observation and inspection of the Project by City during reasonable business hours and upon reasonable notice for the purpose of determining compliance with this Agreement.
- 4.10 If and to the extent that development of the Project results in the permanent or temporary displacement of residential tenants, homeowners or businesses, Owner shall comply with all applicable local, state and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits. Owner shall be solely responsible for payment of any relocation

benefits to any displaced persons and any other obligations associated with complying with said relocation laws.

5. INDEMNITY; INSURANCE.

- 5.1 Owner shall indemnify, hold harmless and defend City and each of their officers, officials, employees, agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Owner, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of Owner's performance of this Agreement. Owner's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but reduced by any comparative fault, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the gross negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.
- 5.2 If Owner should subcontract all or any portion of the work to be performed under this Contract, Owner shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive expiration or termination of this Agreement.

- 5.3 Throughout the life of this Agreement, unless otherwise specified below, the following is required:

INSURANCE REQUIREMENTS

(a) During the construction phase of this Agreement, Owner shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her commercially reasonable judgement. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement for the construction phase or any extension, Owner or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Owner shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Owner of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Owner shall not be deemed to release or diminish the liability of Owner, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Owner. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Owner, vendors, suppliers, invitees, contractors, sub-contractors, consultants, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Builders Risk (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

MINIMUM LIMITS OF INSURANCE

Owner shall procure and maintain for the duration of the DARC, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY

- (i) \$4,000,000 per occurrence for bodily injury and property damage;
- (ii) \$4,000,000 per occurrence for personal and advertising injury;
- (iii) \$5,000,000 aggregate for products and completed operations; and,
- (iv) \$5,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions.

5. POLLUTION LEGAL LIABILITY: In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by Owner pursuant to the Agreement.

UMBRELLA OR EXCESS INSURANCE

In the event Owner purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-

contributory basis for the benefit of the City, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Owner shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Owner shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or
- (ii) Owner shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to City, except ten (10) days for nonpayment of premium. Owner is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Owner shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Owner shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) If Owner maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by Owner.
- (iv) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (v) For any claims related to this Agreement, Owner's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City,

its officers, officials, agents, employees and volunteers shall be excess of the Owner's insurance and shall not contribute with it.

(vi) The Builder's Risk Insurance shall have the policy endorsed to provide the City to be named as a Loss Payee.

The Commercial General, Automobile and Pollution Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. Owner shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

3. The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the Owner's insurance shall be primary to and require no contribution from the City. The Commercial General and Owners Pollution policies are required to include primary and non contributory coverage in favor of the City for both the ongoing and completed operations coverage. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of Owner's insurance and shall not contribute with it. Owner shall establish primary and non-contributory status for both ongoing and completed operations coverage under the Commercial General by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation, Commercial General, Automobile and Pollution insurance policy are to contain, or be endorsed to contain, the following provision: Owner and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents and volunteers.

PROVIDING OF DOCUMENTS - Owner shall furnish City with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Owner shall promptly furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified

by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Owner shall also be required to provide all documents noted herein.

CLAIMS-MADE POLICIES - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Owner.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, Owner must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to City for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

SUBCONTRACTORS - If Owner subcontracts any or all of the services to be performed under this Agreement, Owner shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, Owner will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

(a) Following the recording of the Certificate of Completion, Owner shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Owner of its responsibilities under this Agreement.

The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Owner shall not be deemed to release or diminish the liability of Owner, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Owner. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Owner, vendors, suppliers, invitees, contractors, sub-contractors, consultants, or anyone employed directly or indirectly by any of them.

- 5.4 To the extent Owner has not provided City with evidence of sources of funds necessary to complete the Projects; then Owner will obtain and deliver payment and performance bonds issued by an insurance company admitted in California in good standing as a surety and meeting the criteria for Owner's other insurance under this Agreement, each bond in an amount at least equal to 100% of Owner's estimated construction costs, provided that the City hereby waives any requirement for said bonds at all times during which Owner is in full compliance with this Agreement and the Project remains fully funded.
- 5.5 Owner will design and construct the Improvements, and after that, Owner will maintain the Property according to all applicable laws including, without limitation, all applicable state labor standards, City zoning, and development standards, building, plumbing, mechanical and electrical codes, all provisions of the Fresno Municipal Code and all applicable access requirements. City makes no representation about which, if any, of such laws, ordinances, regulations, or standards apply to development of the Project.

Owner acknowledges that Owner, not City, is responsible for determining applicability of and compliance with all local, state, and federal laws including, but not limited to, any applicable provisions of the California Labor Code, Public Contract Code, and Government Code. City makes no express or implied representation as to the applicability or inapplicability of any such laws to this Agreement or to the parties' respective rights or obligations hereunder including, but not limited to, payment of prevailing wages, competitive bidding, subcontractor listing, or similar or different matters. Owner further acknowledges that City shall not be liable or responsible at law or in equity for any failure by Owner to comply with any such laws, regardless of whether City knew or should have known of the need for such compliance, or whether City failed to notify Owner of the need for such compliance.

- 5.6 Prevailing Wages. Owner shall: (a) be required to pay, and shall cause its contractor and subcontractors to pay, prevailing wages for the construction of those works that are public works under California Labor Code Section 1720(a) (unless exempted pursuant to California Labor Code Section 1720(c)) and, (b) comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations. Owner shall or shall cause its contractor and subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as required by law. During the construction of the Improvements, Owner shall, or shall cause its contractor to, post at the Property the applicable prevailing rates of per diem wages. Owner shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Owner, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations in connection with construction of the Improvements. Owner shall also indemnify, hold harmless, and defend (with counsel reasonably acceptable to the City) the City against any claim brought pursuant to California Labor Code Section 1781 for work related to the development of Owner's Property under this Agreement. The Parties acknowledge and agree that the City is making no representation that development of Owner's Property is not a public work subject to prevailing wage and that no City employee or representative is authorized to make such a representation.
- 5.7 Following acquisition of the Property, Owner will take reasonable efforts to not permit any involuntary lien or stop notice to be filed against the Property, provided Owner may reasonably determine to contest any such lien or stop notice. If Owner discovers that any lien or stop notice has been recorded against the Property, Owner will notify the City within fifteen days following such discovery. If a claim of lien or stop notice is recorded against the Property or Improvements, Owner, within 30 days after recordation of a claim of lien or stop notice or within 5 days after City's demand, whichever first occurs, will do the following:
- 5.7.1 Pay and discharge the same; or
 - 5.7.2 Effect the release of such lien by recording and serving upon the claimant a surety bond in sufficient form and amount (i.e. 150%), or otherwise, and provide evidence of same to City; or
 - 5.7.3 Give City other assurance which City, in its sole discretion, deems satisfactory to protect the City from the effect of the lien or stop notice.

6. **SECURITY FINANCING AND RIGHTS OF HOLDERS.** Notwithstanding any other provision of this Agreement, any security interest in the Properties shall not be granted except as expressly permitted in this Agreement.

7. **CONTINUING OWNER OBLIGATIONS**

7.1 In its performance of this Agreement, Owner covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person, including contractors, subcontractors, bidders and vendors, on account of race, color, religion, ancestry, national origin, sex, sexual preference, age, pregnancy, childbirth or related medical condition, medical condition (e.g., cancer related) or physical or mental disability, and in compliance with all applicable federal, state and local laws, regulations and rules including without limitation Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Owner will allow City representatives access to its employment records related to this Agreement during regular business hours and upon reasonable notice to verify compliance with these provisions when so requested by the City.

7.2 Following acquisition of the Property, Owner will pay before delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Owner's right to contest in good faith any such taxes. Owner will remove any levy or attachment on the Property or any part of it, or assure the satisfaction of the levy or attachment within a reasonable time. Owner will notify City prior to applying for or receiving any exemption from the payment of property taxes or assessments on any interest in or to the Property or the Improvements. Owner further agrees that the prior consent of City shall be required if the basis for such exemption is other than for qualified property held by a nonprofit entity that has been determined to be exempt from federal and state income taxation, which consent shall not be unreasonably withheld.

8. **COVENANTS AND RESTRICTIONS RUNNING WITH THE LAND.** The following covenants shall run with the land and shall bind Owner, and

Owner's successors in interest to the Property for the periods stated, and shall be fully binding for the benefit of the Plan community and City without regard to technical classification or designation, legal or otherwise.

- 8.1 Owner covenants for itself, its successors, assigns, and every successor in interest to the Property or any part of it that, after closing of any applicable escrow, during construction, and after completing the Improvements, the Owner shall devote the Property to the uses specified in this Agreement for the Restriction Period. All uses of the Property including, without limitation, all activities Owner undertakes pursuant to this Agreement, shall conform with this Agreement and the law.
- 8.2 Owner and those taking under Owner will maintain the Property and all Improvements on site in reasonably good-condition and repair (and, as to landscaping, if any, in a healthy condition), all according to applicable design standards and related plans, as-amended from time to time. Owner and those taking under Owner shall: (i) maintain all on-site Improvements according to all other applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials; (ii) keep the Improvements free from graffiti; (iii) keep the Property free from any accumulation of debris or waste material; (iv) promptly make repairs and replacements to the on-site Improvements; and (v) promptly replace any dead, or diseased plants and/or landscaping (if any) with comparable materials.

City will give Owner written notice of any breach of this Section. Within 10 days from receipt of such notice, City and Owner will meet and confer, and agree to corrective actions and a schedule of performance for such corrective actions. Owner must cure the default within the agreed schedule or within (a) 10 days after the City's notice for any default involving landscaping, graffiti, debris, waste material, or general maintenance on the Property; or (b) 30 days after City's notice for any default involving the Improvements. If Owner does not cure the default within the agreed schedule, City, without obligation to, may enter the Property, cure the default, and protect, maintain, and preserve the Improvements and landscaping.

City may lien or assess the Property for the City's expenses in protecting, maintaining, and preserving the on-site Improvements and aesthetics of the Property, including any lawful administrative charge in the manner used by the City in the abatement of public nuisances. The notice and opportunity to cure provided for herein will supplement the noticing, hearing, and nuisance abatement order used by City. Owner will promptly pay all such amounts to City upon demand.

- 8.3 From the Effective Date until the expiration of the Restriction Period, Owner covenants to use and operate the Property as a public health clinic pursuant to this Agreement.
- 8.4 City is the beneficiary of the restrictions running with the land for itself and for protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the restrictions are provided, without regard to whether City has been, remains, or is an owner of any land or interest in the Property. City may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the restrictions for itself or any other beneficiaries.

9. **DEFAULTS AND REMEDIES**

- 9.1 Subject to the extensions of time permitted under this Agreement, either party's failure to perform any material action or material covenant as required by this Agreement, following notice and failure to cure, is a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of, and the cure demanded. Except as otherwise expressly provided in this Agreement, the noticing party shall not begin any proceeding against the other party until the other party is given an opportunity to cure the Default. The other party will have 30 calendar days after receiving the notice to cure the Default, or, if the party cannot reasonably cure the Default within such 30 days, the other party must begin to cure within the 30 days and diligently pursue the cure to completion, whereupon there shall be no event of Default.
- 9.2 Subject to first giving the notice and opportunity to cure, a party may begin an action at law to enforce, or in equity to seek specific performance of, the terms of this Agreement, or to cure, correct, or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. A party must bring any legal action in the Superior Court of the County of Fresno, State of California, in an appropriate municipal court in Fresno County, or in the District of the United States District Court serving Fresno County.
- 9.3 If Owner begins any legal action against City, it shall serve process on the City by personal service on the City Manager, or in any other manner the law permits. If City begins any legal action against the Owner, it will serve process on the Owner by personal service on Owner, Owner's Agent or in any other manner the law permits.

- 9.4 Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and a party's exercise of one or more rights or remedies will not preclude the party's exercise, at the same or different times, of any other rights or remedies for the same or any other Default of the other party.
- 9.5 A party's failure or delay in asserting any right or remedy will not be a waiver of any Default or of any right or remedy, and will not deprive the party of its right to begin and maintain any action or proceeding to protect, assert or enforce any right or remedy.
- 9.6 The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

10. GENERAL PROVISIONS

- 10.1 Any notice, demand, or other communication permitted or required under this Agreement will be in writing and given by personal delivery, or by first-class U.S. mail, postage prepaid, to a party at its respective address below:

To City:

City of Fresno
ATTN: City Manager
2600 Fresno Street
Fresno, CA 93721

To Owner:

United Health Center
ATTN: Justin Preas
3875 W. Beechwood Ave.
Fresno, CA 93722

A party may change its address for notices, demands and communications by giving notice of the new address as provided in this section. The notice shall be deemed given three business days after the date of mailing, or, if personally delivered, when received.

- 10.2 All of the terms, covenants, and conditions of this Agreement shall be binding upon the Owner and its permitted successors and assigns. Whenever the term "Owner" is used in this Agreement, such term shall include Owner's successors and assigns as permitted under this Agreement.

- 10.3 No member, official, or employee of the City shall be personally liable to the Owner, or any successor in interest to Owner, for any Default or breach by the City.
- 10.4 The relationship between the City and the Owner is not that of a partnership or joint venture. City and Owner shall not be deemed or construed for any purpose to be the agent of the other.
- 10.5 Whenever this Agreement references an action or approval required or permitted by the City, the City Manager or his or her designee is authorized to act for the City as agent of the City unless this Agreement, the Law, Constitutional and/or local law provide otherwise, or the context otherwise requires. Whenever this Agreement requires reasonable notice to be provided, such notice shall be in writing.
- 10.6 This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement. The parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile or e-mail transmission. A facsimile or e-mail signature shall be treated in all respects as having the same effect as an original signature. The parties will sign three copies of this Agreement, each of which is deemed to be original.
- 10.7 This Agreement includes the exhibits and attachments referenced and incorporated in it. This Agreement contains the entire agreement between the parties relating to the transaction contemplated by this Agreement and supersedes all prior or contemporaneous agreements, understanding, representation and statements, whether oral or written.
- 10.8 If either party begins a lawsuit or arbitration proceeding, in law or equity, to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees, court costs, and legal expenses as determined by the court or tribunal having jurisdiction.
- 10.9 Any waiver, alteration, change, or modification of or to this Agreement, to be effective, must be in writing, and signed by each party.
- 10.10 If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances is held invalid or unenforceable, the remainder of this Agreement and its application to persons or circumstances, other than those about whom or which it is held invalid or unenforceable, shall not be affected, and shall remain valid and enforceable to the fullest extent permitted by law.

- 10.11 Each party represents and warrants to the other that (a) each has read this Agreement, and (b) is signing this Agreement with full knowledge of any rights and obligations each may have, and (c) each has received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel, and (d) has signed this Agreement without relying on any agreement, promise, statement or representation by or for the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.
- 10.12 No member, official or employee of City has or shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. Owner represents and warrants that it has not paid or given, and will not pay or give, to any third party any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, consultants, engineers, and attorneys.
- 10.13 The parties will execute such other and further documents, and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Agreement.
- 10.14 No contractor, subcontractor, mechanic, material man, laborer, vendor, or other person hired or retained by with Owner shall be, nor shall any of them be deemed to be, third-party beneficiaries of this Agreement, rather each such person shall be deemed to have agreed (a) that they shall look to Owner as their sole source of recovery if not paid, and (b) except as otherwise agreed to by City and any such person in writing, they may not enter any claim or bring any such action against City under any circumstances. Except as provided by law, or as otherwise agreed to in writing between City and such person, each such person shall be deemed to have waived in writing all right to seek redress from City under any circumstances whatsoever.
- 10.15 Owner hereby covenants and warrants that it is a duly authorized and existing California nonprofit corporation, in good standing; that it shall remain in good standing; that it has the full right, power and authority to enter into this Agreement and to carry out all actions on its part contemplated by this Agreement; that the execution and delivery of this Agreement were duly authorized by proper action of the Owner and no consent, authorization or approval of any person is necessary in connection with such execution and delivery or to carry out all actions of

the Owner's part contemplated by this Agreement, except as have been obtained and are in full force and effect; and that this Agreement constitutes the valid, binding and enforceable obligation of the Owner.

10.16 In the event of any conflict between the body of this Agreement and any exhibit or attachment to it, the terms and conditions of the body of this Agreement will control.

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IN WITNESS WHEREOF, City and Owner have signed this Agreement, and the City has approved this Agreement, on the dates and in the year set forth below.

CITY OF FRESNO,
a California municipal corporation

UNITED HEALTH CENTERS OF THE
SAN JOAQUIN VALLEY,
a California nonprofit corporation

By: _____
Wilma Quan Date
City Manager, City of Fresno

By: _____
Colleen Curtis
Its: Chief Executive Officer

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Date
Deputy City Attorney

By: _____
Name: _____

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

Title: _____
(If corporation or LLC., CFO,
Treasurer, Secretary or Assistant
Secretary)

By: _____
Date
Deputy

- Exhibit A: Legal Description of Properties
- Exhibit B: Performance Schedule
- Exhibit C: Development Agreement & Restrictive Covenants
- Exhibit D: Form of Certificate of Completion

Notary acknowledgement

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

[To be inserted at time of recording.]

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

(AS TO THE SOUTHWEST FRESNO PROJECT)

Construction to commence within 60 days of all Entitlements.

Construction to be completed within 18 months of the start of construction ("Completion Date")

(AS TO THE WEST FRESNO PROJECT)

Construction to commence within 60 days of all Entitlements.

Construction to be completed within 18 months of the start of construction ("Completion Date")

EXHIBIT "C"
DEVELOPMENT AGREEMENT AND RESTRICTIVE COVENANTS

**Recording requested by,
and when recorded mail to:**

City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attention: City Manager

Space above for Recorder's Use

DEVELOPMENT AGREEMENT & RESTRICTIVE COVENANT

THIS DEVELOPMENT AGREEMENT & RESTRICTIVE COVENANT ("Agreement") is entered into between United Health Centers of the San Joaquin Valley, a California nonprofit corporation, whose principal executive office is at 3875 W. Beechwood Avenue, Fresno, CA 93722 (the "UHC"), and, the City of Fresno (the "City"), with offices at 2600 Fresno St., Fresno, California 93721.

WHEREAS, UHC and the City entered into that certain OWNER PARTICIPATION AGREEMENT AND DECLARATION OF RESTRICTIONS ("OPA") executed contemporaneously hereto, which is incorporated by this reference, and capitalized terms herein shall have the meaning prescribed to them in the OPA.

WHEREAS, the fundamental purpose of the OPA was to describe the mutual exchange of promises between the parties hereto, wherein the City would pay Contributions to UHC in the cumulative sum of \$10,000,000 (along with other obligations), and in exchange, UHC committed to construct two medical clinics in the Southwest and Western areas of the City of Fresno ("Projects" or "Properties"), and further committed to operate the Projects as medical clinics (the "Restricted Use") for a period of ten years (the "Restriction Period"). The Restriction Period shall commence on the date the Certificate of Completion is recorded in the Office of the County Recorder.

WHEREAS, in order to ensure that UHC constructs the Projects and operates them in accordance with the Restricted Use for the duration of the Restriction Period, the Parties desire to impose the recorded covenants herein.

NOW, THEREFORE, the Parties agree as follows:

1. Dedication of Properties to Restricted Use for Restriction Period: So long as City pays the Contributions to UHC, each of the Properties, which are legally described in Exhibit "A", attached hereto, shall be constructed and thereafter continuously used for a period of TEN (10) years from commencement of the

Restriction Period.

2. Remedies in the Event of Default: In the event that UHC defaults in the performance of any of its obligations under Section 1, above, or any material term, condition or covenant in the OPA, and such default or defaults are not cured within thirty (30) days of a written demand by the City (or a longer period to cure if a longer period is granted in the OPA), then UHC shall reimburse a portion of the Contributions as provided in Sections 3, 4 & 5, below (the "Liquidated Damages"). UHC expressly acknowledges and agrees that the Liquidated Damages are a fair approximation of the actual harm that the City would suffer from a breach by UHC, and that proving actual damages would be difficult (if not impossible). To the maximum extent permitted by law, UHC waives any defense to the strict imposition of the Liquidated Damages. Upon the occurrence of a default that is not cured, UHC shall pay City the Liquidated Damages required under this Agreement within sixty (60) days.
3. Allocation of Liquidated Damages Between Projects: In the event the default by UHC affects only one Project site Liquidated Damages shall initially be allocated between the two Projects, wherein, \$6,000,000 shall be allocated to the West Fresno Project (to the extent the City made actual Contributions equal to such amount), and \$4,000,000 shall be allocated to the Southeast Fresno Project (to the extent the City made actual Contributions equal to such amount). In the event the default by UHC affects both Project Sites, then no such allocation shall be made.
4. Determining Liquidated Damages if Restricted Use Does not Commence. In the event the City pays the Contributions, or any portion thereof, and the Restrictive Use does not commence within three years of recording of this Agreement, as a result of a default by UHC, then UHC shall pay City the entire amount of the Contributions actually paid by the City within sixty (60) days of written demand by City.
5. Allocation of Liquidated Damages over Restriction Period: Following commencement of the Restriction Period, the Parties intend that the Contributions shall be equally allocated over the term of the Restriction Period of ten (10) years, so that one-tenth (1/10th) of total amount of Contributions shall be deducted from the total Liquidated Damages sum for each full year the Projects are used in accordance with the OPA. By way of example only, if UHC constructed and used the Projects in accordance with the OPA for a period of seven years, but then breached its obligations triggering the Liquidated Damages herein, then UHC would pay City Liquidated Damages equal to \$3,000,000 [calculated as, total Contributions of \$10,000,000, allocated equally over 10 years to match the Restriction Period; and with UHC fulfilling 7/10ths of the Restriction Period, leaving 3/10ths unfulfilled, or \$1,000,000 for each of the three years remaining in the

Restriction Period, for a total of \$3,000,000].

6. No Discrimination: In its performance of this Agreement, UHC covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person, including contractors, subcontractors, bidders and vendors, on account of race, color, religion, ancestry, national origin, sex, sexual preference, age, pregnancy, childbirth or related medical condition, medical condition (e.g., cancer related) or physical or mental disability, and in compliance with all applicable federal, state and local laws, regulations and rules including without limitation Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other applicable anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. UHC will allow City representatives access to its employment records related to this Agreement during regular business hours and upon reasonable notice to verify compliance with these provisions when so requested by the City.
7. Covenant to Use Properties for Restricted Use: From the execution date hereof until the expiration of the Restriction Period, UHC covenants to use and operate the Property as a public health clinic pursuant to this Agreement.
8. Run with the Land: The following covenants shall run with the land and shall bind UHC, and UHC's successors in interest to the Property for the periods stated, and shall be fully binding for the benefit of the community and City without regard to technical classification or designation, legal or otherwise. City is the beneficiary of the restrictions running with the land for itself and for protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the restrictions are provided, without regard to whether City has been, remains, or is an owner of any land or interest in the Property. City may exercise all rights and remedies, and maintain any actions or suits at law or in equity or other proceedings to enforce the restrictions for itself or any other beneficiaries.
9. No Waiver; Formal Modification: A party's failure or delay in asserting any right or remedy will not be a waiver of any Default or of any right or remedy, and will not deprive the party of its right to begin and maintain any action or proceeding to protect, assert or enforce any right or remedy. Any waiver, alteration, change, or modification of or to this Agreement, to be effective, must be in writing, and

signed by each party.

10. Governing Law: The laws of the State of California shall govern the interpretation and enforcement of this Agreement.
11. Successors and Assigns: All of the terms, covenants, and conditions of this Agreement shall be binding upon the UHC and its permitted successors and assigns. Whenever the term "UHC" is used in this Agreement, such term shall include UHC's successors and assigns as permitted under this Agreement.
12. No Partnership or Agency: The relationship between the City and the UHC is not that of a partnership or joint venture. City and UHC shall not be deemed or construed for any purpose to be the agent of the other.
13. Execution in Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement. The parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile or e-mail transmission. A facsimile or e-mail signature shall be treated in all respects as having the same effect as an original signature. The parties will sign three copies of this Agreement, each of which is deemed to be original.
14. Attorneys' Fees: If either party begins a lawsuit or arbitration proceeding, in law or equity, to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees, court costs, and legal expenses as determined by the court or tribunal having jurisdiction.
15. Severance; Savings Clause: If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances is held invalid or unenforceable, the remainder of this Agreement and its application to persons or circumstances, other than those about whom or which it is held invalid or unenforceable, shall not be affected, and shall remain valid and enforceable to the fullest extent permitted by law.
16. Authority to Act: Each party represents and warrants to the other that (a) each has read this Agreement, and (b) is signing this Agreement with full knowledge of any rights and obligations each may have, and (c) each has received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or has knowingly chosen not to consult legal counsel, and (d) has signed this Agreement without relying on any agreement, promise, statement or representation by or for the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.
17. Future Assurances: The parties will execute such other and further documents,

and will take any other steps, necessary, helpful, or appropriate to carry out the provisions of this Agreement.

18. Ancillary Documents: This Agreement includes the exhibits and attachments referenced and incorporated in it. This Agreement contains the entire agreement between the parties relating to the transaction contemplated by this Agreement and supersedes all prior or contemporaneous agreements, understanding, representation and statements, whether oral or written.
19. Notice Provisions: Any notice, demand, or other communication permitted or required under this Agreement will be in writing and given by personal delivery, or by first-class U.S. mail, postage prepaid, to a party at its respective address below. A party may change its address for notices, demands and communications by giving notice of the new address as provided in this section. The notice shall be deemed given three business days after the date of mailing, or, if personally delivered, when received.

If to City:

City of Fresno
ATTN: City Manager
2600 Fresno Street
Fresno, CA 93721

If to UHC:

United Health Center
ATTN: Justin Preas
3875 W. Beechwood Ave.
Fresno, CA 93722

20. Automatic Extinguishment of Agreement from Title. Notwithstanding anything to the contrary in this Agreement or otherwise, this Agreement shall be terminated, extinguished and otherwise cleared from title to each Property described herein, without further action, notice, consent or otherwise, not later than the fourth (4th) anniversary date after the expiration of the Restriction Period.

IN WITNESS HEREOF, this Agreement is made in the City of Fresno, State of California on the date shown herein.

CITY OF FRESNO,
a California municipal corporation

UNITED HEALTH CENTERS OF THE
SAN JOAQUIN VALLEY,
a California nonprofit corporation

By: _____
Wilma Quan Date

By: _____

City Manager, City of Fresno

Colleen Curtis
Its: Chief Executive Officer

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Date
Deputy City Attorney

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____
Date
Deputy

ADD NOTARY AND LEGAL DESCRIPTIONS

EXHIBIT "D"
Certificate of Completion

CERTIFICATE OF COMPLETION

RECORDED AT THE REQUEST OF AND WHEN RECORDED RETURN TO:

City of Fresno
2600 Fresno St.
Fresno, Ca. 93721
Attention: City Manager

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Certificate of Completion is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

City of Fresno, a municipal corporation

By: _____
Its: City Manager

Dated: _____

Certificate of Completion and Notice of Commencement of Services

RECITALS:

- A. By an Owner Participation Agreement (the "Agreement") dated _____, between United Health Centers of the San Joaquin Valley, a California nonprofit corporation ("Owner") and the City of Fresno, a municipal corporation ("City"), Owner agreed to construct certain health care center improvements on the premises legally described in Attachment "A" hereto (the "Property") and preserve the premises, as defined in the Agreement as a public health clinic for ten years from the date of recording of this Certificate of Completion according to the terms and conditions of the Agreement.
- B. The Agreement was recorded on [_____] , 20__ in the Official Records of Fresno County, California as Instrument No. _____.
- C. Under the terms of the Agreement, after Owner completes the construction on the Property, Owner may ask City to record a Certificate of Completion.
- D. Owner has asked City to furnish Owner with a recordable Certificate of Completion.
- E. City's issuance of this Certificate of Completion is conclusive evidence that Owner has completed the construction on the Property as set forth in the Agreement.

NOW THEREFORE:

1. Owner commenced the construction work on the Project on [_____] , 20__ , and completed the construction work on the Project on _____ , 20__ , and has done so in full compliance with the Agreement.
2. Owner intends to commence providing services as a full-service health clinic on _____ , 20__ .
3. This Certificate of Completion is not evidence of Owner's compliance with, or satisfaction of, any obligation to any mortgage or security interest holder, or any mortgage or security interest insurer, securing money lent to finance work on the Property or Project, or any part of the Property or Project.
4. This Certificate of Completion is not a notice of completion as referred to in California Civil Code section 3093.
5. Nothing contained herein modifies any provision of the Agreement.

IN WITNESS WHEREOF, the City has executed this Certificate of Completion as of this ___ day of _____, 20__

The City of Fresno,
a municipal corporation

By: _____
City Manager

Dated: _____

Owner hereby consents to recording this Certificate of Completion against the Property described herein.

Dated: _____, 20__

United Health Centers of the San Joaquin Valley, a California nonprofit corporation

By: _____

THE ABOVE PARTIES ARE TO SIGN THIS INSTRUMENT BEFORE A NOTARY PUBLIC.

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM
DOUGLAS T. SLOAN
City Attorney

By: _____
Deputy

EXHIBIT A to Certificate of Completion

LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS: