

AN ORDINANCE 2013-06-06-0392

**AUTHORIZING A PUBLIC USE AGREEMENT WITH THE UNIVERSITY OF THE INCARNATE WORD, THE BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER 11, CITY OF SAN ANTONIO, TEXAS KNOWN AS THE INNER CITY TIRZ AND THE CITY OF SAN ANTONIO FOR UP TO \$831,797.00.**

\* \* \* \* \*

**WHEREAS**, through City Ordinance No.2009-02-12-0099, the City of San Antonio (the "City") has executed a Development Agreement for \$410,423.00 with the University of the Incarnate Word ("UIW") and the Board of Directors of Tax Increment Reinvestment Zone Number 11 (the "TIRZ Board") for the public improvement portion of the UIW Eastside Community Eye Clinic which included an additional \$831,797.00 for the Public Use Agreement in the Project and Finance Plans of the Inner City TIRZ; and

**WHEREAS**, the City, the TIRZ Board and UIW desire to enter into an Agreement committing up to \$831,797.00 in available tax increment funds to provide services to the public and to promote local economic development and commercial activity within the Inner City TIRZ; **NOW THEREFORE:**

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

**SECTION 1.** The City of San Antonio approves and authorizes the City Manager or her designee to execute the Agreement with the TIRZ Board and UIW, a copy of which is attached and incorporated into this Ordinance as Exhibit I.

**SECTION 2.** Funding in an amount up to \$831,797.00 for this ordinance is contingent upon City Council approval of Fiscal Year 2014, Fiscal Year 2015 and Fiscal Year 2016 budgets for Fund 29086007.

**SECTION 3.** If approved by City Council, payment not to exceed the budgeted amount is authorized to the University of the Incarnate Word and should be encumbered with a purchase order.

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

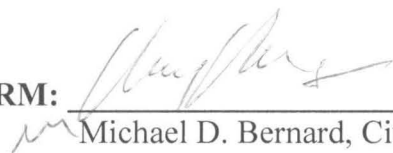
XPR  
06/06/13  
Item No. 14

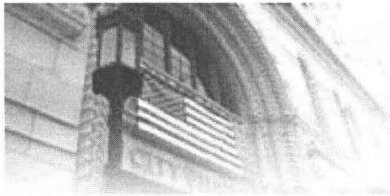
**SECTION 5.** This Ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED AND APPROVED** this 6<sup>th</sup> day of June, 2013.

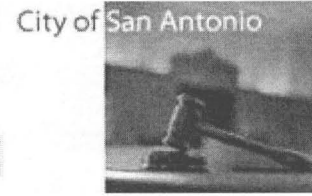
  
M A Y O R  
Julián Castro

ATTEST:   
Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:   
Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**



## Agenda Voting Results - 14

<b>Name:</b>	5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19						
<b>Date:</b>	06/06/2013						
<b>Time:</b>	10:50:46 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the Public Use Agreement with the University of the Incarnate Word and the Board of Directors of Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas also known as the Inner City TIRZ for up to \$831,797.00. [David Ellison, Assistant City Manager; John Dugan, Director, Planning and Community Development]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

# **EXHIBIT I**

**PUBLIC USE AGREEMENT**

**STATE OF TEXAS           §**  
**§           UNIVERSITY OF THE INCARNATE WORD**  
**COUNTY OF BEXAR       §**

THIS PUBLIC USE AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date"), by and between the City of San Antonio, Texas, a municipal corporation of the State of Texas, hereinafter called the "City" acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, the University of the Incarnate Word (UIW) hereinafter called "UIW and the Board of Directors for Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas, hereinafter the "Board" and together referred to as the "Parties".

**WHEREAS**, on December 14, 2000, the City Council of the City of San Antonio approved Ordinance No. 93101, establishing the Tax Increment Reinvestment Zone Number Eleven, City of San Antonio, Texas (the "Zone") and the Board in accordance with the Tax Increment Financing Act (Texas Tax Code, Chapter 311 hereinafter the "Act"), to promote development and redevelopment in the Zone, which would not otherwise occur solely through private investment in the reasonably foreseeable future; and

**WHEREAS**, UIW is constructing the University of the Incarnate Word Eastside Community Clinic and other improvements on the Site in accordance with the specifications referenced in Exhibit A (such Clinic and other improvements on the Site herein defined as "Clinic"), and is solely responsible for all costs and expenses incurred in connection therewith; and

**WHEREAS**, UIW proposes to offer the Clinic for public usage in return for a public use fee as set forth in Exhibit C Public Use Fee Schedule. Pursuant to the Finance Plan, TIRZ funds would be used to pay UIW the public use fee; and

**WHEREAS**, the City, UIW and Board enter into this Agreement to outline the specifics of the public use of the Clinic and payment of the public use fee. The maximum UIW could receive for public use fees beginning in FY 2014 is up to \$831,797.00; and

**WHEREAS**, pursuant to Section 311.011 of the Act, the City Council approved the Final Project Plan and Final Finance Plan after their adoption by the Board; and

**WHEREAS**, in addition to improving the attractiveness of the neighborhood and increasing access to health services, the Clinic will offer opportunities to address health and wellness for residents of the eastside and San Antonio in general; and

**NOW, THEREFORE**, in consideration of the mutual benefits, covenants and obligations herein, and for other good, fair and valuable considerations, the Parties agree as follows:

## I. PUBLIC USE AND ACCESS

1.1 During the Term, UIW agrees to: 1) provide the services described in Exhibit D to the public as described herein; 2) accept referrals of patients and the exchange of patient data from the San Antonio Metropolitan Health District (SAMHD) and become the care provider of record to the extent there is available capacity at the Clinic and in accordance with federal law; 3) cooperate and coordinate with SAMHD to coordinate the provision of health care services to the community surrounding the Clinic; 4) submit regular reports to the City as described in Exhibit B Public Use Health Services Report starting October 15, 2013 and comply with all of the terms and conditions in Exhibit D Services Offered and Fees During Public Use Agreement.

1.2 The term "public use" shall include, but not be limited to holding the facility open to the public including low-income patients. UIW may charge a fee to members of the public and referrals from SAMHD on a sliding scale based on their income as provided by federal law and referred to in Exhibit D.

1.3 If requested by UIW, City agrees to communicate with UIW regarding anticipated payments of the public use fee so that UIW can make any required adjustments to ensure public use under this Agreement. Except for temporarily insufficient TIRZ funds as per Section 3.2, for any period of time that the City does not pay a public use fee UIW has no obligation to make the Clinic available to the public.

1.4 In addition, during the Term for which the City indicates that it intends to make a public use payment for services provided, UIW agrees and covenants that the Clinic: 1) will be open to the public as a public health facility, and 2) will provide services to the individuals referred by SAMHD.

1.5 Prior to the first anticipated payment of the fee in connection with this Agreement, UIW agrees to make any required adjustments to meet the requirements of Section 1.1. Except for temporary insufficient TIRZ funds as provided in Section III, for any period of time that the City does not pay a public use fee, neither UIW nor the Clinic has any obligation to meet the levels of health care service defined herein.

1.6 UIW shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations as amended from time to time.

1.7 UIW shall allow the City and the Board access to the Project property owned or controlled by UIW and to documents and records considered necessary by the City and the Board for inspection and to assess UIW's compliance with this Agreement

## II. TERM

2.1 The term shall commence upon execution of this Agreement (the "Commencement Date") and terminate by October 1, 2015 (the "Termination Date"), unless terminated sooner in accordance with this Agreement. UIW agrees to provide the services described in Article I beginning on September 1, 2013, which is approximately six months before the first date the

City agrees to pay the public use fee, \$103,974.62. Except as indicated, the services provided under this Agreement shall continue in full force and effect subject to early termination and satisfaction of the conditions set forth.

### **III. PUBLIC USE FEE**

3.1 Subject to the terms contained herein, City shall pay to UIW during the Term a public use fee for public uses provided during the preceding reporting period, as set forth in Exhibit C, and as approved in the Finance Plan. The sole source of the funds to pay the public use fee shall be the available Tax Increment Funds levied and collected in the Zone and contributed by the City to the TIF fund established to reimburse eligible project costs for the TIRZ. The City shall pay to UIW the sum available from the TIRZ fund after review of priority of payment applicable to Inner City TIRZ fund, as determined by City and listed in Exhibit C Public Use Fee Schedule. The first payment to UIW is anticipated by or before March 1, 2014, the last payment to UIW shall occur by or before October 15, 2015, for the public use of the Clinic through October 1, 2015. Total payments for Public Use Fee owed to UIW shall not exceed \$831,797.00.

3.2 If available Tax Increment Funds do not exist in an amount sufficient to make such payments in full when the payments are due to UIW, partial payments shall be made to UIW as provided, and the remainder shall be paid as available Tax Increment Funds become available and in accordance with the priority of payment imposed by existing Agreements and obligations. The Parties agree that the City shall not be subject to default if sufficient TIRZ funds are temporarily unavailable to pay the public use fee when due. Lack of funding is not a breach of this Agreement, provided the City expects sufficient funds to become available in the future. Once funding under this Agreement commences, the obligations of the City shall be cumulative and any prior shortfalls in the payment of the public use fee shall be made up as soon as TIRZ funds are again available, as long as the Clinic was made available to the public during the period of prior shortfalls. No fees, costs, expenses, or penalties shall be paid to UIW on any late payment.

3.3 If UIW complies with all requirements of the Agreement and TIRZ funds are available, City will have 45 days after receiving the Public Use Health Service Report, as set forth in Exhibit B, from UIW to process the public use fee payment. The Parties further agree to compliance audits as may be deemed necessary by the City, to confirm the information contained in the Public Use Health Service Report. City shall conduct such audit during the regular business hours of the Clinic and the City, at times and dates agreed to in writing by the Parties.

### **IV. REPAIRS AND MAINTENANCE**

4.1 During the Term, UIW shall, at its own risk and expense, maintain and repair the Clinic and make repairs, restorations, and replacements to the Clinic including but not limited to heating, ventilating, air conditioning, mechanical, electrical, elevator and plumbing systems, structural, roof, walls, foundations, and the fixtures and appurtenances, including equipment contained therein as and when needed to preserve them in good working condition with reasonable wear and tear excepted. UIW shall keep the Clinic in a clean, sanitary and safe condition in accordance with all applicable laws, ordinances and regulations of any governmental authority having jurisdiction.

4.2 If the Clinic premises are partially destroyed or otherwise made unusable in whole or in part by fire, other casualty, or for any other reason during the term of this Agreement the public use fee for the Clinic premises will be reduced proportionately to the extent to which the normal Public Use of the Clinic premises is diminished. If UIW cannot make the repairs within 180 days after the destruction, City has the option to terminate this Agreement.

## V. TAXES

5.1 During the Term, UIW shall pay all ad valorem taxes on the Clinic, if any.

## VI. INSURANCE

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

6.1.1 Fire, extended coverage and "all other peril" insurance (or its then equivalent coverage) being not less than 90% of actual replacement value and sufficient to meet co-insurance requirements for the full insurable value of the Clinic. UIW shall also provide and maintain contents insurance (or its then equivalent coverage) fully insuring UIW's furniture, trade fixtures and all equipment, and such coverage shall be written on a replacement cost basis.

6.1.2 Comprehensive/Commercial General Liability Insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence and in the aggregate, including the Broad Form Comprehensive General Liability endorsement (or its equivalent), completed operations, and products liability coverage, covering the insuring provisions of this Agreement.

6.1.3 Worker's compensation insurance to the extent required by law and employer's liability insurance with the following minimum limits:

- (i) Bodily Injury by Accident: \$500,000 each accident;
- (ii) Bodily Injury by Disease: \$500,000 policy limit; and
- (iii) Bodily Injury by Disease: \$500,000 each employee.

6.1.4 Medical Professional Liability of at least \$1,000,000 per claim/\$3,000,000 aggregate broad enough to cover all medical professional personnel providing medical services at or through the Clinic.

6.2 All insurance required in this Section and all renewals of it will be issued by companies authorized to transact business in the State of Texas and rated at least A-(VII) or better in Best's Insurance Guide. All insurance policies will expressly provide that the policies will not be canceled or altered without 30 days' prior written notice, which UIW shall be obligated to provide City. All insurance shall contain appropriate cross-liability endorsements denying UIW's insurers the right of subrogation against City and City's representatives as to risks covered by such insurance, without prejudice to any waiver or indemnity provisions applicable to UIW and



any limitation of liability provisions applicable to City hereunder, of which provisions UIW shall notify all insurance carriers. On or before the Commencement Date, UIW shall furnish City with certificates evidencing the previously mentioned insurance coverage and the current version of the appropriate ISO FORM endorsement naming City as express additional insured on UIW's policies of General Liability Insurance. Renewal certificates shall be furnished to City at least 30 days prior to the expiration date of such insurance. All coverages shall be written on an occurrence basis, except professional liability, which shall be claims-made.

## VII. UTILITIES

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

## VIII. INDEMNITY

8.1 **UIW hereby agrees to FULLY DEFEND, INDEMNIFY and HOLD HARMLESS the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from any and all costs, liens, injury, expense, damage, losses, expenses, fees, fines, penalties, proceedings, causes of action, liability or claim of any kind and nature made upon the City, directly or indirectly, by any person whosoever whether due to claims for injuries to the person or property, arising out of, resulting from or related to either directly or indirectly UIW'S activities under this Agreement including any acts or omissions, willful misconduct or breach of any provisions of the Agreement by UIW, its respective officers, agents, servants, representatives, or employees. UIW further agrees to reimburse City for any costs or expenses, including court costs and reasonable attorney's fees, which City may incur in investigating, handling or litigating any such claims. IN THE EVENT UIW AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

8.2 UIW and City acknowledge that the City is a political subdivision of the State of Texas and that the City is subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practice and Remedies Code, Section 101.001 *et seq.* and the

remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. This Agreement will be interpreted according to the Constitution and laws of the State of Texas.

**8.3 The provisions of this INDEMNIFICATION are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

**8.4 UIW shall advise the City in writing within 5 business days of any claim or demand against the City or UIW known to UIW related to or arising out of UIW's activities under this Agreement.**

## **IX. TERMINATION**

9.1 If funds are available for City to remit the public use fee as detailed in Article III above and City has agreed that UIW has demonstrated in a completed Public Use Health Service Report, attached as Exhibit B, that it has satisfied all of the Agreement's requirements, yet City does not make payment of the public use fee within 30 days after its due date; or fails to perform any of the other material covenants or conditions which City is required to observe and to perform then UIW may treat the occurrence of any one or more of the foregoing events as a default ("Default") under this Agreement. If City Defaults then UIW may, at its option and with 45 days notice do any one or more of the following:

9.1.1 terminate this Agreement; or

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

9.2 If UIW fails to hold the Clinic open for public use; to submit a completed Public Use Health Service Report; or to perform any of the other material covenants or conditions which UIW is required to observe and to perform, then City shall provide written notice of the occurrence of any one or more of the foregoing events to UIW. UIW shall have 10 business days to cure the occurrence(s). In the event UIW does not cure the occurrence(s) within the cure period, the City may treat the occurrence(s) as a Default under this Agreement. If UIW Defaults then City may, at its option, without further notice or demand, do any one or more of the following:

9.2.1 terminate this Agreement and discontinue payment of the public use fee;

9.2.2 require reimbursement within 30 days from UIW of any payment(s) processed during any period of Default;

9.2.3 proportionately reduce the public use fee; and/or

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

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

## **X. SUBORDINATION**

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

10.2 With respect to any future mortgages against, or transfers of, the Property, City reserves the right to terminate this agreement during the 90-day notice period contained in Section 10.3 below, by written notice to UIW. Furthermore, UIW agrees to secure a Non-Disturbance and Attornment Agreement from any future mortgage holder, lien holders, and any subsequent purchaser of the Property if requested by the City.

10.3 UIW shall notify City not less than 90 days prior to any future mortgage, assignment or transfer of the Clinic premises.

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

11.1 If the non-defaulting Party files and recovers a judgment in an action to enforce any provision in this Agreement, the defaulting Party will pay the non-defaulting Party's reasonable attorneys' fees in the action and court costs.

## **XII. AMENDMENTS**

12.1 Unless an exception applies as provided herein, this Agreement may not be altered, changed or amended, except by an instrument in writing signed by the Parties.

12.2 The City Council specifically authorizes the Director in charge of the Tax Increment Finance Unit to amend the Exhibits to this Agreement without further City Council approval so long as the total public use payment does not increase above \$831,797.00 and there are no material changes to the services offered by UIW and delineated in Exhibit D or to the Clinic Plans as shown in Exhibit A. Any such amendments must be by mutual agreement as indicated by signature from the Director and Douglas B. Endsley, Vice President of Business and Finance from UIW and attaching an initialed Exhibit hereto with the same name as the Exhibit they are replacing but with a consecutive number added to the end of the Exhibit letter for each amendment (e.g. Exhibit A-1, followed by Exhibit A-2).

12.3 It is understood and agreed by the Parties that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the Term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

## **XIII. NO PARTNERSHIP**

13.1 UIW covenants and agrees that they are an independent contractor and not an officer, agent, servant or employee of City; that UIW shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and UIW, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and UIW. City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by UIW under this Agreement and UIW has no authority to bind the City.

13.2 Nothing in this Agreement, whether express or implied, shall be construed to give any third party any legal or equitable right, remedy or claim under or in respect of this Agreement or any standing or authority to enforce the terms and provisions of this Agreement.

## **XIV. NOTICES**

14.1 Any notice or communication required or permitted under this Agreement shall be in writing and deemed duly given if and when delivered personally (with receipt acknowledged), or 3 days after depositing in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service for expedited delivery to be confirmed in writing by courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

**If to City  
or TIRZ:** City of San Antonio  
Tax Increment Financing Unit  
1400 S. Flores  
San Antonio, Texas 78204

**If to UIW:** Douglas B. Endsley  
Vice President of Business and Finance  
University of the Incarnate Word  
4301 Broadway, CPO# 315  
San Antonio, Texas 78209

## **XV. ASSIGNMENT**

15.1 UIW shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising hereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

15.2 The City and/or the Board may assign their rights and obligations under this Agreement to any governmental entity the City creates or designates without UIW's prior consent. If the City and/or the Board assign their rights and obligations under this Agreement then the City and/or the Board shall send UIW written notice of the assignment within 15 days of such assignment.

## **XVI. LEGAL AUTHORITY**

16.1 The signers of this Agreement represent, warrant, and guarantee they have full legal authority to execute this Agreement and to bind their respective Party to all of the terms, and conditions, which shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise provided for herein.

## **XVII. CONFLICT OF INTEREST**

17.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;

- (iii) a business entity in which the officer or employee, or his parent, child or spouse directly or indirectly owns 10% or more of the voting stock or shares of the business entity, or 10% or more of the fair market value of the business entity; or
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

17.2 Pursuant to the subsection above, UIW warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. UIW further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

### **XVIII. SEVERABILITY**

18.1 If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of either Party are incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, it is the intention of the Parties that this Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that such offending provision is reformed to validly and legally meet such thwarted expectations, and that the remainder of this Agreement will not be affected.

### **XIX. LICENSES/CERTIFICATIONS**

19.1 UIW warrants and certifies that UIW and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

### **XX. LAW APPLICABLE & VENUE**

20.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

20.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

### **XXI. NON-DISCRIMINATION**

21.1 UIW shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with public funds. Further no portion of the funds received shall be used in support of, any sectarian or religious activity.

**XXII. CAPTIONS**

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

**XXIII. ENTIRE AGREEMENT**

23.1 This Agreement along with Exhibits A – D, attached and incorporated herein, together constitutes the final and entire agreement between the Parties. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties, unless same be in writing, dated subsequent to the date hereto, and duly executed by the Parties. Should there be any conflict between this Agreement and any Exhibits, this Agreement shall control.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have duly executed this Agreement on this the \_\_\_\_\_ day of \_\_\_\_\_ 2013.

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

**BOARD OF DIRECTORS OF  
TAX INCREMENT REINVESTMENT  
ZONE #11, INNER CITY TIRZ**

\_\_\_\_\_  
Sheryl Sculley  
City Manager

\_\_\_\_\_  
Ivy R. Taylor  
Board Chairwoman

ATTEST:

**ATTEST:**

\_\_\_\_\_  
Leticia Vacek  
City Clerk

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

**UNIVERSITY OF THE INCARNATE WORD**

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

**Approved as to Form:**

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

## **EXHIBIT A**

### **Clinic Plans and Specifications**

The UIW Eastside Eye Care and Health Center is a three story 30,000 square-foot facility and parking lot located at 2547 East Commerce Street San Antonio, TX 78203. The building has 34 full examination rooms, full optical dispensary suite, an Ophthalmic Outpatient Surgery Suite, an Electrodiagnostic Clinic and two state of the art multi-purpose conference centers.

The total capacity of the Eye Care Center is 27,000 patients per year. The 22% anticipated clinic no-show rate, which is very near the health industry average, would dictate 21,000 patients will be served annually although the total capacity is 27,000 patients. The first year of operations will be devoted to marketing the Center. Accounting for no-shows, a 75% booking rate, or 15,750 patients, is expected in the first year of operation.

The Center will reach its target patient load of a minimum of 21,000 patients served annually by the end of the second year. At that point, 10 attending physicians, 35 student clinicians, fellows, residents, and support staff will work in the clinic. Services will be phased in as demand increases until full capacity is reached.



**EXHIBIT B**

**Public Use Health Service Report**

<b>Quarterly Public Use Health Services Report – TIRZ No. 11</b>	
<b>University of the Incarnate Word East Side Eye and Health Care Institute</b>	<b>Fiscal Year:</b> _____  <b>Reporting Period:</b> _____
<b>Periods Covered</b>	
<b>Total Patients Served</b>	
<b>Low-Moderate Income Clients Served</b>	
<b>% of Low-Moderate Income Patients</b>	
<b>Patients living within Zone*</b>	
<b>% of Patients living within Zone</b>	

\*The Zone includes the following Zip Codes: 78234, 78219, 78215, 78208, 78202, 78205, 78220, 78204, 78203, and 78210 and the following Census Tracts: Census Tract 1921; Census Tract 1201; Census Tract 1110; Census Tract 1305; Census Tract 1303; Census Tract 1302; Census Tract 1306; Census Tract 1307; Census Tract 1308; Census Tract 1309; Census Tract 1310; Census Tract 1304.01; Census Tract 1401; Census Tract 1101; Census Tract 1919; Census Tract 1109; Census Tract 1103; Census Tract 1402; and Census Tract 1501.

## EXHIBIT C

### Public Use Fee Schedule

	<b>Quarterly Report Date</b>	<b>Anticipated Payment Amount</b>	<b>Payment By or Before</b>
1	October 15, 2013	\$0	
2	January 15, 2014	\$103,974.62	March 1, 2014
3	April 15, 2014	\$103,974.62	May 30, 2014
4	July 15, 2014	\$103,974.62	August 29, 2014
5	October 15, 2014	\$103,974.62	November 29, 2014
6	January 15, 2015	\$103,974.62	March 1, 2015
7	April 15, 2015	\$103,974.62	May 30, 2015
8	July 15, 2015	\$103,974.62	August 29, 2015
9	October 15, 2015	\$103,974.66	November 29, 2015
	<b>Total</b>	<b>\$831,797.00</b>	

Parties understand that per 3.3 of the Agreement if UIW complies with all requirements of the Agreement and TIRZ funds are available the City will have 45 days after receiving the Public Use Health Service Report from UIW to process the public use payment.

## EXHIBIT D

### Services Offered and Fees During Public Use Agreement

#### Optometry Services Offered

The calculated clinic capacity for optometric patients is 27,000 annually, though, 21,000 patients are expected to be served as described in Exhibit A of this document.. Services to be offered will include but not be limited to: clinical training for interns by conducting routine and specialized primary optometric care. The UIW Eye and Health Care Center will provide an environment and access to patients for the following services: Glasses and Contact Lenses, Primary Adult and Pediatric Optometry, Ocular Disease Diagnosis and Treatment, Low Vision, and Vision Therapy. The UIW Eye and Health Care Center will operate satellite clinics in Bexar County where UIW optometry interns, who will be supervised by licensed optometry faculty, will provide direct patient primary optometric care. The UIW Eye and Health Care Center will be equipped with the latest technology and will provide the highest quality optometric care for all patients. All UIW Eye and Health Care Center faculty undergo a rigorous selection process including state licensure and the University of the Incarnate Word Rosenberg School of Optometry's credentialing and privileging processes. All faculty are required to have the highest certification available through the Texas State Board Of Optometry

#### How Professional Fees Will Be Calculated

Professional fees will be calculated using the regular standard fees as a baseline. Regular fees are determined on an ongoing basis based on a competitive market analysis of other clinics offering similar services. Because of UIW's commitment to access for low-income patients, the Eye and Health Care Institute will offer a sliding scale rate for patients who qualify on both professional services and products in the optical center that will be located inside the Institute. Below is a description of the UIW's low-income patient access plan. Attached to this document are: 1) the income thresholds for the sliding scale; 2) the current sliding scale fee schedule; and 3) a description of how eye glasses and contact lens costs will be calculated.

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#### Low Income Persons Health Access Plan

The UIW EYE & HEALTH CARE INSTITUTE accepts Medicare, Medicaid, and most private insurance. The low income discount fee schedule applies to individuals presenting for services who do not have medical or vision coverage.

The UIW EYE & HEALTH CARE INSTITUTE discount for low-income individuals is provided in accordance with 2010 Medicare guidelines for Low (80%), Very Low (50%), and Extremely Low (20%) income guidelines and is approved by Medicare. The aforementioned percentages are calculated based on the median income for Bexar County, Texas.

The current discount will apply as follows:

1. Low income (80% of median); these individuals will be charged 80% of the Cash Out-of-Pocket price.
2. Very Low income (50% of median); these individuals and households that fall within will be charged 50% of the Cash Out-of-Pocket price.
3. Extremely Low income (20% of median) will be charged 20% of the Cash Out-of-Pocket price.

#### Additional Services To Be Provided At The Institute

Other health care services that will be offered by UIW faculty and students at the Institute include those that fall within the scope of nursing, pharmacy, nutrition, and physical therapy. Additionally, the physicians from the Frank Bryant Center will offer medical care in a dedicated medical care module on the third floor of the building. Also to be offered will be financial literacy by the head of local chapter of the retired financial planner's association and literacy services by staff from the City of San Antonio Department of Human Services that will also have a dedicated module on the third floor.