

**MEMORANDUM OF UNDERSTANDING BETWEEN TIBURCIO VASQUEZ HEALTH CENTER, INC.  
AND THE CITY OF HAYWARD REGARDING FIREHOUSE CLINIC**

THIS MEMORANDUM OF UNDERSTANDING is entered into between the City of Hayward, a California municipal corporation (“City”) and Tiburcio Vasquez Health Center, Inc. (“TVHC”), on this 1<sup>st</sup> day of November 2015 (the Effective Date).

**RECITALS**

- A. WHEREAS, the City is constructing a new Fire Station No. 7 in South Hayward;
- B. WHEREAS, this new station affords a unique opportunity to partner with TVHC on a project that supports a new health care delivery model developed within Alameda County;
- C. WHEREAS, a significant need exists for such services throughout Alameda County, as more than 200,000 residents are unable to afford health care coverage;
- D. WHEREAS, many uninsured residents utilize emergency rooms throughout Alameda County as their primary health care provider;
- E. WHEREAS, in order to address this issue, the City, in concert with TVHC, has agreed to incorporate a Firehouse Clinic (“Clinic”) into the construction of the new fire station;
- F. WHEREAS, the Clinic would provide a new level of localized care that would be fully integrated into the County’s existing health care delivery system;
- G. WHEREAS, the Clinic will be a full service primary and preventive care clinic that is designed to provide an alternative to community wait clinics that have long wait times or to emergency departments, which represent a high-cost setting for primary care visits;
- H. WHEREAS, TVHC will be fully responsible for operating the Clinic and for covering the annual operating costs; and
- I. WHEREAS, TVHC has been designated by Alameda County Health Care Services Agency (HCSA) as an acceptable health care provider at the Clinic (also known as the Health Portal);

NOW, THEREFORE, the City and TVHC agree as follows:

**1. Agreement**

This Agreement sets forth the obligations of the parties in support of community-based health and wellness services for residents throughout Alameda County. This Agreement may only be amended in writing, signed by both parties.

The City and TVHC agree to work together to foster communication and, where possible, share data and other information, that is not health or other information protected by privacy or other laws, to maximize the effective facilitation of health services for Alameda County residents as well as for data collection purposes.

**2. Term of Agreement**

The term of this agreement shall be from November 1, 2015 to October 31, 2018 (“Initial Period”), unless terminated by either party as set forth herein. The agreement shall be reviewed annually, and each party will provide a status report to their respective governance bodies.

**3. Services**

In general, the services to be provided by TVHC include the following: health and wellness services; health care navigation services; discharge follow-up; and health education.

**4. City Obligations**

The City will provide approximately 2,400 square feet within the new Fire Station No. 7 for TVHC’s use in providing the services outlined in Section 3 above. The Clinic will have a separate door accessible to the parking lot with a separate lock to protect the confidentiality of medical records.

**5. TVHC Obligations**

TVHC shall fully cooperate with the City to effectuate the terms of this agreement and shall: 1) provide the services as outlined in Section 6.C below; 2) provide appropriate, safe, and code-compliant workspace(s) and office equipment for clinical staff; and 3) comply with all Federal, State, and local laws; including but not limited to, all fire laws and regulations such as providing smoke detectors and fire extinguishers. Furthermore, TVHC shall obtain Fire Marshal clearance and licensure through the California Department of Public Health and ensure compliance with state and City fire codes.

**6. TVHC Scope of Work**

- A. Staffing Levels: TVHC will generally be staffed by 10.5 Full Time Equivalents(FTE) at the Clinic, as follows:
- 1 FTE General Practitioner (MD)
  - 1 FTE Mid-Level Practitioner (Nurse Practitioner)
  - 3 FTE Medical Assistants
  - 1.5 FTE RN Care Coordinator/Center Manager
  - 1 FTE Reception Operator
  - 1 FTE Panel Navigator/Panel Manager
  - 1 FTE Eligibility Clerk
  - 1 FTE Health Coach

Generally being staffed by 10.5 FTEs does not mean that 10.5 full-time employees will be at the Clinic each day because employees may be sick or approved to be absent. Staff may be floated from other TVHC locations to cover absences and positions for which employees are being recruited. TVHC retains the right to determine appropriate staffing and coverage for the Clinic. TVHC will, consistent with its typical practice, utilize background checks on Clinic FTE to ensure the safety of patients and staff.

- B. Hours of Operation: The Fire House Clinic will be open from 8 AM to 8 PM Monday through Friday. Additional hours or days may be added by TVHC as appropriate.

- C. Medical Services and Population Health Services: TVHC provides a full scope of primary care services including general family medicine; reproductive health; prenatal care; immunizations and boosters; disease testing, prevention, and education; health screenings; and acute and chronic disease management. In addition, TVHC augments these services by providing referrals to specialty and behavioral health care and navigation assistance, such as connecting the patient to the best insurance program available for a specific patient's condition(s).

**7. Clinic Maintenance/Security/Services**

TVHC agrees to provide and pay for the following services used by the Clinic as part of its share of maintaining the Clinic:

- A. Custodial services on a commercially reasonable frequency but, no less than on a weekly basis;
- B. All utilities for the Clinic, including water, electricity, sewer, and telecommunications. Clinic will use separate meters for utilities, when possible to do so;
- C. Annual fire extinguisher inspections and certifications;
- D. Disposal of medical wastes, such as biohazard waste on a commercially reasonable frequency considering the nature of the waste but, under no circumstances shall medical waste be present for a period of time which could endanger the health and safety of Clinic Staff or the surrounding community;
- E. Copier service;
- F. HVAC services;
- G. Waste/recycling services on a commercially reasonable frequency but, no less than on a weekly basis;
- H. Carpet cleaning services on a commercially reasonable frequency but, no less than on a yearly basis;
- I. Document shredding services; and
- J. Security system.

The vendors utilized by TVHC for the above services, as well as the frequency of such services, will be provided to the City. If any changes to the vendors or service schedule occur during the term of this Agreement, they must be communicated to the City in writing in advance of such changes taking effect.

**8. Clinic Ownership/Permits**

It is understood between both the City and TVHC that the space to be utilized for the provision of medical services as noted in Paragraph 6.C above will be leased to TVHC for \$2,200 per month for the initial term of this agreement. Payment pursuant to this lease will be due a month in advance, on the first day of the month. All rights pertaining to the ownership of the building in total reside with the City.

All building permits, including any building permits required for approved tenant improvements, will be paid for by the City.

## **9. Termination**

Notice of Termination and Default Remedies: In the event that TVHC fails to comply with the terms of the Agreement and/or state and federal regulations or otherwise fails to perform its duties and obligations in a reasonable and professional manner, the City must give TVHC written notice of the deficiency in their performance, and the City must give TVHC a reasonable opportunity to cure the deficiency in their performance. If, after a reasonable time TVHC fails to cure the deficiency in their performance, the City may issue a notice of termination of the agreement to TVHC.

Either party, upon 30 days written notice to the other party may terminate this Agreement without cause, but the City may only terminate the Agreement without cause after the Initial Period in Paragraph 2 has concluded.

## **10. Confidentiality and Information Exchange**

### **A. Confidentiality**

The City and TVHC agree that each entity shall comply with applicable federal and state laws relating to the confidentiality of individually identifiable information and shall perform the obligations of this Agreement in accordance with such laws.

TVHC shall maintain its records in accordance with all applicable federal and state laws and regulations. Such records shall be confidential to the extent required by law.

TVHC and its contractors shall maintain records in accordance with all applicable federal and state laws and regulations. Such records shall be confidential to the extent required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules, 45 C.F.R. Parts 160, 162, and 164; California Civil Code Subsection 56 et seq; California Welfare & Institutions Code Subsection 5328 et seq; and other applicable federal and state law or regulations. City and TVHC understand and agree that personal information relating to health services as more fully described in Section 6 of this Agreement that are provided by TVHC, or any of its subcontractors, is subject to the requirements of HIPAA Privacy and Security Rules.

For the purposes of protecting health information only, City and TVHC agree that each is a "Business Associate" of the other, as that term is defined in the federal regulations implementing HIPAA. As such, each party hereby provides satisfactory assurances to the other party that protected health information will be appropriately safeguarded through the execution of this Agreement.

### **B. Information Sharing**

The City and TVHC agree that each entity shall abide by any limits on the use of, or any obligations to protect the confidentiality of, information that one entity obtains from the other, as those limits or obligations are imposed by federal and state law.

### **C. Ownership and Retention of Records**

TVHC and its contract providers shall retain records created by them under the terms of this Agreement for the time period required by law, but in any case for a period of no less than five (5) years.

Health records shall remain the sole property of TVHC and its contract providers; however, they shall allow access to these records to patients, their families, and/or outside parties in accordance with federal and state law; including, but not limited to, HIPAA.

**D. Training and Orientation**

City and TVHC shall collaborate and provide training and support materials to City and TVHC staff and contractors covering applicable state and federal law pertaining to the confidentiality, privacy, and security of individually identifiable health information including, but not limited to, HIPAA. Such trainings may also include information from the TVHC directed at City personnel so that City personnel will be familiar with the policies and procedures of TVHC and its contract providers related to confidentiality.

**11. Emergency Medical Services and Federally Qualified Health Centers - Integration**

The City will strive to integrate the health care and 9-1-1 systems as often as possible. Staff from the City and TVHC will collaboratively explore the most effective means in which to achieve such an outcome.

**12. Indemnification**

TVHC agrees to indemnify, defend, and to save and hold harmless the City, its officers, agents, volunteers, and employees from any and all liability and judgments of any kind whatsoever, in addition to any and all losses, claims, actions, lawsuits, damages, expenses, liens, demands, fines or penalties, including costs, attorney's fees, settlements, and causes of action of any kind in law or equity (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time and property damage) caused by the negligent acts or omissions of TVHC or its employees, agents, subcontractors, or volunteers arising out of the City's provision of facilities for health services at the Clinic at Fire Station No. 7, or out of the negligent acts or omissions of those persons supervised by TVHC at the Clinic, or otherwise arising out of TVHC's performance of its obligations at the Clinic as specified in this Agreement.

The City agrees to indemnify, to save and hold harmless TVHC, its officers, agents, and employees from any and all liability and judgments of any kind whatsoever, in addition to any and all losses, claims, actions, lawsuits, damages, expenses, liens, demands, fines or penalties, including costs, attorney's fees, settlements, and causes of action of any kind in law or equity (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time and property damage) caused by the negligent acts or omissions of the City or its employees, agents, subcontractors, or volunteers arising out of the City's provision of facilities for health services at the Clinic at Fire Station No. 7, or otherwise arising out of the City's performance of its obligations relating to the Clinic as specified in this Agreement.

The parties' respective obligations as set forth in this section shall apply jointly and severally regardless of whether the indemnified party or any of its officers, officials, employees, volunteers, or agents are actively or passively negligent, but shall not apply to any loss of liability, fines, penalties, forfeitures, costs, or damages caused solely by the active negligence or by the willful misconduct of the indemnified party.

If either party should subcontract all or any portion of the work or activities to be performed under this agreement, that party shall require each subcontractor to indemnify, hold harmless,

and defend the other party, its officers, officials, employees, volunteers, or agents in accordance with the terms of the proceeding paragraphs

### **13. Insurance**

On or before commencement of this agreement, TVHC, at its own cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City the insurance specified in subsections (a) through (d) below with insurers and under forms of insurance satisfactory in all respects to the City. TVHC shall not allow any subcontractor to commence work on any subcontract until all insurance required of the TVHC has also been obtained for the subcontractor. Additional Insured endorsement shall be provided to the City prior to the effective date of this agreement.

(a) **Workers' Compensation.** Statutory Workers' Compensation Insurance and Employer's Liability insurance for any and all persons employed directly or indirectly by TVHC shall be provided with limits not less than one million dollars. In the alternative, TVHC may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the TVHC, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this agreement.

(b) **Commercial General and Automobile Liability.** TVHC, at TVHC 's own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this agreement in an amount not less than one million dollars per occurrence, combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement, including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 and Insurance Services Office Automobile Liability form CA 0001 Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

(i) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects each of the following: liability arising out of activities performed by or on behalf of TVHC, including the insured's general supervision of TVHC; products and completed operations of TVHC; premises owned, occupied or used by TVHC; or automobiles owned, leased, hired, or borrowed by TVHC. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents, or volunteers.

(ii) The insurance shall cover on an occurrence basis, and not on the basis of an accident or claims made.

(iii) The insurance must cover personal injuries as well as bodily injuries. Any exclusion of contractual liability in personal injury provisions of the policy or any endorsement to it must be eliminated.

(iv) The insurance must cover complete contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement.

(v) Any explosion, collapse, and underground property damage exclusion must be deleted.

(vi) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.

(vii) The policy must contain a cross liability or severability of interests clause.

(viii) Any failure of TVHC to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

(ix) Broad form property damage liability must be afforded. A deductible that does not exceed \$25,000 may be provided.

(x) Insurance is to be placed with California- admitted insurers with a Best's rating of no less than B:XI.

(xi) Notice of cancellation or non-renewal must be received by City at least thirty days prior to such change.

(c) **Professional Liability.** TVHC, at TVHC 's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals, including physicians and other medical staff, performing work pursuant to this agreement in an amount not less than one million dollars covering the licensed professionals' errors and omissions, as follows:

(i) Any deductible shall not exceed \$100,000 per claim.

(ii) Notice of cancellation or non-renewal must be received by the City at least thirty days prior to such change.

(iii) If the professional liability coverages are written on an occurrence form, the policy must contain a cross liability or severability of interest clause.

(iv) The following provisions shall apply if the professional liability coverages are written on a claims made form:

1. The retroactive date of the policy must be shown and must be before the date of the agreement.

2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the agreement or the work.

3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this agreement, TVHC must

provide extended reporting coverage for a minimum of five years after completion of the agreement or the work.

4. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.

(d) **Property And Fire Insurance**, which shall provide to protect: Real Property, against the risk of direct loss, commonly known as Special Form and Fire Legal Liability, to protect against liability for portions of premises utilized; Business Personal Property, to protect on a Broad Form, named peril basis, for all furniture, equipment, and supplies of your agency. If any City personal property is leased, rented, or borrowed, it shall also be insured the same as real property.

(e) **Deductibles and Self-Insured Retentions**. During the period covered by this agreement, upon express written authorization of City's City Attorney, TVHC may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels upon a requirement that TVHC procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

(f) **Notice of Reduction in Coverage**. In the event that any coverage required under subsections (a), (b), (c) or (e) of this section of the agreement is reduced, limited, or materially affected in any other manner, TVHC shall provide written notice to City at TVHC's earliest possible opportunity and in no case later than five days after TVHC is notified of the change in coverage.

(g) In addition to any other remedies City may have if TVHC fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

(i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;

(ii) Order TVHC to stop work under this agreement or withhold any payment which becomes due to TVHC hereunder, or both stop work and withhold any payment, until TVHC demonstrates compliance with the requirements hereof;

(iii) Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for TVHC's failure to maintain insurance or secure appropriate endorsements.

#### **14. Provider Provisions**

TVHC may, from time to time, use contract employees as agents to provide services. These agents are not employees, and TVHC executes annual contractual agreements with contract providers which may be terminated in compliance with each contract's requirements.

TVHC or its contract providers shall provide and maintain records of annual evidence of a current TB Test (PPD) for each employee/volunteer of TVHC.



TVHC, through its contract providers, shall provide current evidence of California Department of Justice (CDOJ), FBI, or Activity Supervisor Clearance Certificate (ASCC) security clearances for all volunteers/employees that have contact with children. TVHC or its contract providers will not permit its employees/volunteers to come into contact with children until CDOJ clearance is ascertained and TVHC will certify in writing to City that none of its employees who may come into contact with children have been convicted of any felony.

TVHC and/or TVHC, through its contract providers, shall follow the Child Abuse and Neglect Reporting Act (“CANRA”) guidelines as Mandated Reporters to report suspicions of possible child abuse to the appropriate reporting agency as stated in California Penal Code Sections 11164-11174. TVHC shall require, as part of its contractual language with its subcontractors, that its contractors follow the CANRA guidelines as Mandated Reporters to report suspicions of possible child abuse to the appropriate reporting agency as stated in California Penal Code Sections 11164-11174.

**15. Dispute Resolution**

The City and TVHC shall meet and confer and attempt to negotiate an informal settlement to any disputes related to parties’ performance under this Agreement. If additional assistance is needed to resolve a dispute arising under this Agreement, both parties shall submit such disputes to non-binding mediation in Alameda County with an agreed mediator or a mediator selected from a list provided by JAMS by each party alternatively striking one name until one name remains, who will be the mediator. Each party reserves its rights and remedies under law, except that the parties hereby agree that mediation may proceed notwithstanding the pursuit of other legal remedies. The parties will share the cost of any mediation equally.

**16. General Terms and Conditions**

**A. Independent Contractor:**

Nothing in this Agreement shall be construed to render the City in any way or for any purpose a partner, joint venturer, or associate in any relationship with TVHC other than that of Lessor and Lessee, nor shall this Agreement be construed to authorize either to act as agent for the other. Further, no relationship of employer and employee is created by this Agreement; it is understood and agreed that TVHC staff, or individuals hired or contracted with by TVHC, are not agents or employees of the City in any capacity whatsoever, and the City shall not be liable for any acts or omissions by TVHC staff nor for any obligations or liabilities incurred by TVHC. It is also understood and agreed that no City staff, or individuals hired or contracted with the City, are agents or employees of TVHC in any capacity whatsoever, and TVHC shall not be liable for any acts or omissions by City staff or for any obligations or liabilities incurred by the City.

No party’s staff, or individuals hired or contracted with by a party, shall have any claim under this Agreement or otherwise for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, retirement benefits, social security, disability, workers’ compensation, unemployment insurance benefits, civil service protection, or employee benefits of any kind from the other party.

**B. Conformity with Law and Safety**

In performing services under this Agreement, each party shall observe and comply with all applicable laws, ordinances, codes, and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Each party shall indemnify and hold the other harmless from any and all liability, fines, penalties, and consequences caused by the party's failures to comply with such laws, ordinances, codes, and regulations.

**C. Notices**

All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes by one of the following methods:

**Personal Delivery:** When personally delivered to the recipient, notices are effective on delivery.

**Certified Mail:** When mailed certified mail, return receipt requested, notice is effective on the date the receipt is signed by the recipient, if delivery is confirmed by a return receipt.

**Overnight Delivery:** When delivered by overnight delivery, with charges prepaid or charged to a sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

**Email or Facsimile Transmission:** When sent by email or facsimile to the recipient's last email or facsimile number known to the party giving notice, notice is effective on receipt, provided that: a) a duplicate copy of the notice is promptly given by certified mail or by overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by email or facsimile shall be deemed received on the next business day if it is received after 5:00 PM (recipient's time) or on a non-business day.

All communications and notices required by or given pursuant to this Agreement shall be provided as follows:

To the City:

City Manager  
 City of Hayward  
 777 B Street  
 Hayward, CA 94541-5007  
 Fax: 510-583-3601  
 Email: fran.david@hayward-ca.gov

With Copy to:

Hayward Fire Department  
777 "B" Street, 4th Floor  
Hayward, CA 94541-5007  
Attention: Chief Contreras

To TVHC:

CEO  
Tiburcio Vasquez Health Center  
22331 Mission Blvd  
Hayward, CA 94541  
Fax: 510-690-0703  
Email: [dvliet@tvhc.org](mailto:dvliet@tvhc.org) and [msalgado@tvhc.org](mailto:msalgado@tvhc.org)

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or email or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

**D. Choice of Law and Venue**

This Agreement shall be governed by the laws of the State of California. Any action arising from this Agreement shall be brought, after exhausting alternative dispute resolution methods set forth in Section 15 above, in a Court of competent jurisdiction in Alameda County, California.

**E. Waiver**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

**F. Entire Agreement**

This Agreement, including any and all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between the City and TVHC relating to the subject matter of this Agreement. As used herein, the Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. The Agreement may not be modified except by a written document signed by both parties.

**G. Headings**

Headings herein are for convenience of reference only and shall in no way affect the

interpretation of the Agreement.

**H. Modification of Agreement**

This Agreement may be supplemented, amended, or modified only by a written mutual agreement signed by both of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.

**I. Survival**

The obligations of this Agreement that by their nature would continue beyond the termination or expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 12), and Ownership and Retention of Records (Paragraph 10.C), shall survive termination or expiration.

**J. Severability**

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

**K. Sublease and Assignment**

TVHC may not sublease or assign any duty or right under this agreement without the express written consent of the City Manager.

**L. Drug Free Workplace**

TVHC recognizes that Fire Station No. 7 is a drug free workplace. TVHC will take all reasonable measures to ensure that the Clinic remains free of illicit drugs. This proscription does not apply to medications maintained for the treatment of patients in the clinic.

**M. Nondiscriminatory Employment Practices**

In the performance of this agreement, TVHC agrees to comply with the requirements of Hayward Municipal Code, Chapter 2, Article 7, Nondiscriminatory Employment Practices by City Contractors.

TVHC assures that it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

i. TVHC shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

- ii. TVHC shall, if requested to so do by the City, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
  - iii. If requested to do so by the City, Recipient shall provide the City with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
  - iv. TVHC shall recruit vigorously and encourage minority - and women-owned businesses to bid its contracts.
  - v. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
  - vi. The Recipient shall include the provisions set forth in paragraphs i through v (above) in each of its subcontracts.
- N. No Third-Party Rights**  
The parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement. Nor do the parties intend to create any duty, covenant, obligation, or undertaking in any third party by entering into this Agreement.
- O. Right of Entry**  
Upon the occurrence of any of the events of default by TVHC as defined herein, the City, in addition to any other legal rights or remedies it may have, shall have the immediate right of re-entry and may remove or cause to be removed all persons and property remaining on the Clinic; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, TVHC. Should the City elect to re-enter as provided herein, or should it take possession pursuant to legal proceedings or any notice provided for by law, it may either terminate this agreement, or re-lease the Clinic and Improvements thereon or any part thereof for such term or terms (which may extend beyond the term of this Agreement) and such rental or re-rental and upon such other terms and conditions as the City in its sole discretion may deem advisable, with the right to make alterations and repairs to premises and Improvements.
- P. Section 9.04 Liens**  
TVHC shall keep the Clinic and all Improvements thereon free from any and all liens arising out of any work performed, materials furnished, or obligation incurred, and; to pay to the City, upon demand, the cost of discharging any liens with interest at the prevailing statutory rate from the date of such discharge, together with reasonable attorneys' fees in connection with the settlement, trial, or appeal of any such lien matter.

**Q. Cooperation with Satisfaction of Grant Assurances**

TVHC shall cooperate in furnishing any information or documentation, subject to disclosure restrictions on health information as set forth in Section 10 above, to the City necessary to satisfy any applicable grant assurances.

TVHC shall comply with all applicable requirements contained in the Capital Award Agreement dated as of July 1, 2014, between the County of Alameda and the City of Hayward attached hereto as Exhibit 1.

**R. Hazardous substances**

TVHC warrants and represents that from and after the Effective Date, no Hazardous Substances, other than commercially reasonable amounts of substances used in routine clinical work and cleaning, will be present in or on the Premises or will otherwise be used or permitted to be used in, on or about the Premises. "Hazardous Substance" will be interpreted broadly and include chemicals, gases, radiation, x-rays, and other matter potentially harmful to human health. As a material inducement to the City to enter into this Agreement, TVHC covenants and agrees that TVHC shall save the City harmless from, and shall indemnify and defend (with counsel acceptable to City) the City against any and all loss, cost, damage, or expense, including reasonable attorneys' fees, resulting from or arising out of TVHC's breach of any of the warranties and representations set forth in this Section.

**S. Alterations and repairs**

During the term of this agreement, TVHC shall have the right to make interior, structural and non-structural alterations and additions to the Premises and Improvements, provided, however, that TVHC obtains prior written permission from the City of Hayward.

**[Signatures on Next Page]**

IN WITNESS WHEREOF, this Memorandum of Understanding is executed on the Effective Date.

CITY OF HAYWARD, A MUNICIPAL CORPORATION:

By: \_\_\_\_\_  
Garrett Contreras, Fire Chief Date

By: \_\_\_\_\_  
Frances David, City Manager Date

Approved as to form:

By: \_\_\_\_\_  
Michael S. Lawson, City Attorney Date  
Joseph Brick, Assistant City Attorney

Attest: \_\_\_\_\_  
Miriam Lens, City Clerk Date

TRABUCIO VASQUEZ HEALTH CENTER, INC.:

By: \_\_\_\_\_  
David B. Vliet, CEO

APPROVED AS TO FORM BY TIBURCIO VASQUEZ HEALTH CENTER GENERAL COUNSEL:

By: \_\_\_\_\_  
Deanna Mouser  
Mouser Law Firm, A Prof. Corp .

Attachments:

Ex. 1 Capital Award Agreement dated as of July 1, 2014, between the County of Alameda and the City of Hayward.