

GROSS RECEIPTS INVESTMENT PROGRAM (“GRIP”) AGREEMENT

THIS AGREEMENT made on this ___th day of _____, 2020, between the City of Alamogordo, a New Mexico municipal corporation (“City”), and Gerald Champion Regional Medical Center, a New Mexico corporation, whose address is 2669 Scenic Drive, Alamogordo, New Mexico 88310 (“Developer”).

WHEREAS, pursuant to Ordinance No. 1379, effective on October 12, 2010, and extended by Ordinance No. 1505, effective on December 11, 2015, the City is authorized to enter into “Gross Receipts Investment Program” (“GRIP”) Agreements with qualified applicants for eligible projects, as defined in said Ordinance, in order to provide new job opportunities within the City, promote the economic growth and welfare of the City, and to improve the City through new construction and or the rehabilitation of existing commercial or industrial property; and,

WHEREAS, Developer owns certain real property within the City located at 2669 Scenic Drive, and legally described in Exhibit “A” attached hereto, City of Alamogordo, Otero County, New Mexico; and,

WHEREAS, Developer has made application (attached hereto as Exhibit “B”) for reimbursement of certain gross receipts taxes directly attributable to construction activities associated with the project as described in the application; and,

WHEREAS, in said application, the Developer makes the good faith projection that the total cost of the Project will be approximately \$62,000,000; and

WHEREAS, after having considered the application, the City Commission has concluded that the economic and other benefits of the Project to the City will be substantial, that it is desirable and necessary at this time to authorize the City to enter into the Agreement, and that the City’s provision of the assistance contemplated by the Agreement will foster, promote and enhance the economic growth and welfare of the City, and improve the City through new construction and or the rehabilitation of existing commercial or industrial property; and,

WHEREAS, the Developer agrees that the project costs may go up, and is asking for a cap of any reimbursement to be set at \$1,000,000; and,

WHEREAS, by Resolution 2020-04, the City Commission has authorized the City Manager to execute this GRIP Agreement with the Developer.

NOW THEREFORE the parties hereto do mutually agree as follows:

1. General Terms.

- (a) The Project consists of the construction of a new three floor medical office building, expansions and renovations to the Cancer Center, Emergency Department and Central Sterilization, along with other minor renovations in the hospital located at 2669 Scenic Dr, Alamogordo, NM. Developer, after receipt of the promises and inducements contained herein, agrees to

develop the Project in accordance with plans and specifications approved by the Construction Industries Division of the New Mexico Regulation and Licensing Department. The estimated cost of the improvements is \$62,000,000.00 exclusive of gross receipts tax.

- (b) The parties hereto acknowledge, and the Developer represents and warrants, that: (i) the Project involves the building of a structure, or the expansion of an existing structure, for use by a commercial activity whose services are partially subject to gross receipts tax, said structure to have a value in excess of \$50,000; (ii) the Developer has, or will establish, and maintain a physical presence in the City sufficient to subject the Project to Local Option Gross Receipts Tax; and (iii) the Developer will give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency.
- (c) For purposes of this Agreement, the use of the terms “gross receipts tax” and “gross receipts tax revenue” shall be construed to refer to that net portion of the tax imposed by the State of New Mexico for distribution to the City pursuant to the Gross Receipts and Compensating Tax Act and which are collected by the State of New Mexico and distributed to the City (current rate = 1.225%), and all revenue derived from such taxes, and that portion of the tax imposed by the City pursuant to the Municipal Gross Receipts Tax Act (current rate = 0.5%), and all revenue derived from such taxes. It is expressly understood that if a governmental or legislative body other than the City enacts any law or statute which results or which may result in any material changes or amendments to the foregoing provisions, which changes or amendments prohibit the City from complying with this Agreement or which adversely affect the City’s ability to comply herewith, then the City and the Developer shall reevaluate this Agreement and the incentives provided hereunder and may mutually agree to restructure the Agreement. If a restructured agreement cannot be agreed to by both parties within a reasonable period of time not more than sixty (60) days from the effective date of the law or statute which has materially affected the City’s compliance herewith, then this Agreement shall automatically terminate releasing both parties from their obligations hereunder.
- (d) For purposes of this agreement it is understood by both parties that if sufficient funds are not derived from the Gross Receipts Tax to cover this obligation, that it shall be extinguished. It is further understood by both parties that this is subject to the Governmental budgeting process, and if the City does not have sufficient funds to pay this agreement, it will provide notice to GCRMC in writing, along with official documentation that it is unable to fulfill this contract due to budgeting shortfalls.

2. Municipal Gross Receipts Tax Payment. The City agrees to set aside and thereafter rebate to the Developer the municipal gross receipts tax revenues directly attributable to construction of the Project, capped at \$1,000,000 (one million dollars). It is estimated that approximately \$1,069,500 in gross receipt tax revenues will be abated pursuant to this Agreement (*\$62,000,000 estimated construction costs x 1.7250%*). The City and the Developer hereby acknowledge that the request is to only abate up to \$1,000,000 in gross receipts tax. In fiscal year 2021 (which begins July 1, 2020 or whenever the City's budget is accepted by New Mexico Department of Finance and Administration for purposes of this agreement) payment shall be made to the Developer within ninety (90) days after the City is presented with copies of each invoice associated with the Project. No invoices shall be accepted prior the New Mexico Department of Finance and Administration approving the Fiscal Year 2021 budget submitted by the City. In the event that any invoices that have been submitted to the City are amended, the Developer shall promptly forward a photocopy of such amended invoice to the City, clearly identifying them as an amendment of an amendment previously submitted to the City.

3. No General Obligation/Special Fund. It is an overriding consideration and determination of the City that existing sources of its gross receipts tax revenues shall not be used, impaired or otherwise affected by this Agreement. The amount due pursuant to this Agreement shall not be a general obligation of the City. The City shall not have an obligation to pay any amounts to Developer except an amount equal to the City's share of the tax imposed by the State of New Mexico for distribution to the City pursuant to the Gross Receipts and Compensating Tax Act (current rate = 1.225%), and that portion of the tax imposed by the City pursuant to the Municipal Gross Receipts Tax Act (current rate = 0.5%). This remains subject to the availability of funds as described in Section 1 (d).

4. Term. The term of this Agreement shall be forty eight (48) months from the date the City's Fiscal Year 2021 is accepted by the Department of Finance and Administration. Upon receipt of the maximum rebate amount by Developer in accordance with this Agreement, the City's obligation to rebate gross receipts tax revenue to Developer shall terminate, but all other provisions of this Agreement shall remain in full force and effect through the end of the forty eight (48) month term. Upon expiration of the term of this Agreement, the parties' obligations hereunder shall terminate, whether or not the maximum amount of gross receipts tax revenue rebate has been reached.

Payments shall be made according to the payment schedule as follows, and are subject to receipts demonstrative of at least that amount of GRT paid:

1. First payment of \$250,000 due by August 1, 2020
2. Second payment of \$250,000 due by August 1, 2021
3. Third payment of \$250,000 due by August 1, 2022
4. Final payment of \$250,000 due by August 1, 2023

5. Escrow. The parties agree that in the event of any legal challenge to this Agreement, the City shall place any and all funds to which the Developer would have a claim under the terms of this Agreement in an interest bearing account, capable of separate identification, during the pendency of the legal challenge. Upon any final decision upholding the enforceability of this Agreement, all amounts in such account, including principal and accrued interest, shall be paid forthwith to the Developer. If this Agreement is determined to be invalid or unenforceable, all amounts in such account, including principal and accrued interest, shall be

deposited by the City into its general fund and the Developer shall have no further claim thereto. The parties covenant that neither will initiate any legal challenge to the validity or enforceability of this Agreement, and the parties will cooperate in defending the validity or enforceability of this Agreement against any challenge by any third party.

6. Approval and Modification. This Agreement shall take effect only upon approval by the Alamogordo City Commission at a regular or special City Commission meeting. No modification of this Agreement shall be valid or binding unless the same is in writing and approved by the City Commission at a regular or special meeting.

7. Assignment. This Agreement shall be binding upon and inure to the benefit of the Developer and the City. The City's commitment to make the payments hereunder are made for the benefit of the Developer, and shall be enforceable by the Developer or any affiliate of the Developer or other party who is a successor-in-title to Developer's interest in the Project and has assumed in writing the duties and obligations of the Developer, provided that nothing shall require the Developer to assign the benefits of this Agreement to any successor-in-title to Developer's interest in the Project and the City agrees that the Developer may transfer title to the Project while retaining the benefits of this Agreement. The Developer shall also have the right to assign this Agreement, and the City's obligation to make payment of the gross receipts tax revenues, to a third party independent of a transfer of title to the Project, including, but not limited to, any assignment, pledge or encumbrance of the Developer's rights under this Agreement in favor of any lender or other person providing financing for construction and development of the Project. The term "affiliate" shall mean an entity or individual which directly or indirectly controls, is controlled by, or is under common control with any identified person and, as to natural persons, shall also include the immediate family of such persons. Except as authorized in this Paragraph, this Agreement is personal to the Developer. This Agreement shall not run with the land.

8. Controlling Law and Venue. This Agreement shall be construed pursuant to the laws of the State of New Mexico. Exclusive jurisdiction for the resolution of any dispute relating to this Agreement is hereby vested in the Otero County District Court or the United States District Court of New Mexico.

9. Contingency; No Debt. The City's financial obligations under this Agreement are specifically contingent upon annual appropriation of funds sufficient to perform such obligation. This Agreement shall never constitute a debt or obligation of the City within any statutory or constitutional provision. Each year, the City shall include in the budget presented to the City Council a proposed appropriation for the rebate of the gross receipts tax revenues to which Developer is entitled under this Agreement, if any. The decision of the City Council not to appropriate funds in any given year shall not affect, impair or invalidate any of the remaining provisions of this Agreement in future years, and the failure of the City in any year to appropriate the gross receipts tax revenues otherwise due Developer shall cause the term of this Agreement to be extended by one year. Without contradiction of the preceding sentence, the City does hereby state that it is the present intent and expectation of the parties that the City will make all of the payments contemplated by this Agreement.

10. No Joint Venture. Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in this Agreement, and the City shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

11. No Third-Party Beneficiaries. Except as may be expressly provided herein, there are no intended third-party beneficiaries to this Agreement.

12. Force Majeure. The time of performance of any duty or obligation of Developer or the City hereunder shall be extended for the period during which performance was delayed or impeded by reason of riots, insurrections, war, fire, casualty, earthquake, acts of God, or other reasons of a like nature not the fault of the party performing such duty or obligation.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Brian Cesar, Interim City Manager

Gerald Champion Regional Medical Center

By: _____
Jim Eckert

ATTEST:

APPROVED AS TO FORM:

Rachel Hughs, City Clerk

Petria Bengoechea, City Attorney