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Item – 46
December 15, 2009
Economic Development

The Court hereby ordered and approved a motion approving an economic development grant agreement pursuant to Chapter 381 of the Local Government Code, with the MiniMed Distribution Corporation in the amount of $2 million to facilitate capital investment and job creation. (Record-contract to be filed later)

A motion was presented by County Commissioner Tommy Adkisson, duly seconded by County Commissioner Kevin A. Wolff, which motion was voted on as follows: Commissioners Wolff, Adkisson, and Judge Wolff voting "Aye".

Item Number: 46
(for Comm Ct use only)

AGENDA COORDINATION FORM
Bexar County Commissioners Court

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Type of Agenda Item (Choose one): Ceremonial ☐ Special Presentation ☐ Time Certain ☐ Consent ☒ Individual ☐

Sponsoring Office/Department: Economic Development Recipient Agency / Individual Name:

Contact Person: Manuel Leal Phone Number: 335-0688 Court Date Requested: December 15, 2009

Presenter: David Marquez Phone Number: 335-0667 Deadline for Action: December 15, 2009

Audio / Visual Presentation: Y ☐ N ☒ PowerPoint? Y ☐ N ☒ ADA Assistance Required (type): No

Official/Department Head Signature: Melissa Shaw

Small, Minority, Women-owned Business Enterprise (SMWBE): Impact: Y ☐ N ☒

CAPTION:
Approval of an economic development grant agreement pursuant to Chapter 381 of the Local Government Code, with the MiniMed Distribution Corporation in the amount of $2 million to facilitate capital investment and job creation.

ESTIMATED PRESENTATION TIME: N/A

BACKGROUND:
On May 19, 2009 Commissioners Court directed staff to develop an incentive package (not to exceed $2 million) for MiniMed Distribution Corporation to develop a National Diabetes Therapy Management and Education Center. Payments will be made each year from 2010-2014 in the amount of $400,000 if stated permanent full-time, benefitted employment levels are attained. Employment levels must be maintained through 2019. A six year, sliding scale recapture period will begin in 2020.

Commissioners Court also passed a resolution requesting that CPS Board execute a one time modification of the Community Infrastructure and Economic Development (CIED) Fund Policy to authorize a transfer of $1.1 million from Bexar County's CIED Fund to MiniMed Distribution Corporation.

The project will create over 1,300 jobs with an average yearly wage of $31,321 and generate an annual payroll exceeding $45 million at full employment which will be achieved in five years. The Diabetes Therapy Management Center will employ professionals responsible for the ongoing support of over 200,000 current patients in the United States. This Bexar County location will also launch future business strategies focused on improving the lives of patients.

Over ten years, the project will incur a capital investment of $23,226,000. Approximately $5,246,000 will be invested in real property improvements and another $17,980,000 will be invested in personal property.

RECOMMENDED MOTION:
Approval of an economic development grant agreement pursuant to Chapter 381 of the Local Government Code, with the MiniMed Distribution Corporation in the amount of $2 million to facilitate capital investment and job creation.

Item Number: _____
(for Comm Ct use only)

FISCAL ASSESSMENT: APPLICABLE Yes ☒ No ☐ Fiscal Note ☐

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1	Is this a revenue or expense?	Revenue ☐	Expense ☒
2	Dollar amount of revenue or expense associated with item?	$2,000,000	
3	Is this a budgeted revenue or expense?	Yes ☒	No ☐
4	Does this item require additional staff?	Yes ☐	No ☒
5	Will this increase your current budget?	Yes ☐	No ☒
6	Impact on future Budget? If Yes, Explain in Comments.	Yes ☒	No ☐
7	Current End-of-Year Expenditure Estimate-for impacted Object Code(s)?	$400,000	
8	If an expense, what is the current Object Code budget amount?	$500,000	
9	If an expense, are sufficient funds currently budgeted in the Object Code?	Yes ☒	No ☐
10	If an expense, are sufficient funds currently budgeted in the Appropriation	Yes ☒	No ☐
11	List impacted offices or departments or note if countywide:	Countywide	
12	Fund number:	001	
13	Org number and Agency Code:	900/9010	
14	Object Code number:	5470	
15	If this is a grant, what is the estimated amount of program income?	N/A	
16	If this is a grant, what is the amount of Grantor funding?	N/A	
17	If this is a grant, what is the required County cash match?	N/A	
18	If this is a grant, what is the required County in-kind/allocation match?	N/A	
19	If this is a grant, was item approved by the Grant Review Committee?	Yes ☐	No ☐
20	Comments: The agreement will pay $400,000 per year from 2010-2014 if stated permanent full-time, benefitted employment levels are reached. Employment must be maintained from through 2019. A six year, sliding scale recapture period will begin in 2020.		
21	Coordinated by: Manuel Leal III	Verified By: Aimee Sample 11/24/09	

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STATE OF TEXAS §
§ **GRANT AGREEMENT**
COUNTY OF BEXAR §

This Grant Agreement (the "Agreement") is hereby made and entered into as of the date of the last signature set forth on the signature page below ("Effective Date"), by and between BEXAR COUNTY, a political subdivision of the State of Texas ("COUNTY"), duly acting herein by and through the Bexar County Commissioners Court (the "Commissioners Court") for and on behalf of COUNTY, and MINIMED DISTRIBUTION CORPORATION, a Delaware corporation authorized to do business in the State of Texas ("MINIMED"). COUNTY and MINIMED may be referred to in this Agreement individually as "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the Texas Legislature has determined through Section 381.004(b)(1), (3) and (4) of the Texas Local Government Code (the "Code") that a public purpose is served by a county stimulating business and commercial activity by developing and administering a program for: state and local economic development, for stimulating, encouraging and developing business location and commercial activity, and promoting and advertising a county in order to attract visitors and businesses, and a county commissioners court may grant public money towards such a program; and

WHEREAS, Medtronic Inc., a global leader in medical technology, was founded in 1949, and serves physicians, clinicians and patients in over 120 countries with more than 38,000 employees worldwide; and

WHEREAS, as a subsidiary of Medtronic Inc., MINIMED, is the world leader in integrated diabetes management systems, insulin pump therapy, continuous glucose monitoring systems and therapy management, and MINIMED has requested a grant from the COUNTY; and

WHEREAS, the COUNTY has determined that making an economic development grant to MINIMED in accordance with this Agreement will further the objectives of the COUNTY and benefit the COUNTY and its residents and serve the broader purpose of stimulating and encouraging business and commercial activity in the COUNTY, retaining and expanding job opportunities and building the property tax base; and

WHEREAS, pursuant to Section 381.004(c)(1) of the Code, the COUNTY may contract with another entity, including a municipality, non-profit organization, or any other person, to administer a program for local economic development; and

WHEREAS, COUNTY, through approval and execution of this Agreement, hereby establishes a community and economic development program, pursuant to Section 381.004(b) and (h) of the Code, through a grant of public money to MINIMED;

NOW, THEREFORE, upon and in consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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ARTICLE I
GENERAL TERMS

1.01 The foregoing recitals are incorporated into the terms of this Agreement and shall be binding on the Parties.

1.02 The signer of this Agreement for MINIMED represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of MINIMED and to bind MINIMED to all terms, performances and provisions herein contained.

1.03 In the event that a dispute arises as to the legal authority of either MINIMED, or the person signing on behalf of MINIMED, to enter into this Agreement, COUNTY shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement. Should COUNTY suspend or permanently terminate this Agreement pursuant to this paragraph, MINIMED shall be liable to COUNTY for any money it has received from COUNTY for performance of any of the provisions hereof.

1.04 In no event shall COUNTY be liable for any expense of MINIMED not eligible or allowable hereunder, and in no event shall employees of MINIMED be deemed to be employees of COUNTY.

1.05 MINIMED and COUNTY agree that MINIMED is a for-profit business, that MINIMED shall be responsible to all Parties for its respective acts and omissions, and that COUNTY shall in no way be responsible therefore, and that neither has authority to bind the other, or hold out to third Parties that it has the authority to bind the other.

1.06 MINIMED warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any other agreement or understanding for a commission, percentage, brokerage, or contingent fee, and further that no such understanding or agreement exists or has existed, with any employee of MINIMED or COUNTY.

1.07 The Funds (as defined in Section 3.01) provided pursuant to this Agreement will be paid solely from lawfully available funds that have been appropriated by the COUNTY. Under no circumstances will the COUNTY's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the COUNTY has no obligation or liability to pay any Funds unless the COUNTY appropriates Funds to make such payment during the fiscal year in which such Funds are payable.

1.08 MINIMED may use the Funds (as defined in Section 3.01) provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval by COUNTY's Economic Development Department.

1.09 MINIMED is required to publicly acknowledge that the COUNTY is supportive of the objectives as described in this Agreement and has contributed to the cause of realizing such objectives.

1.10 MINIMED acknowledges that this Agreement cannot be assigned without the express written consent of COUNTY.

1.11 MINIMED shall not use the Funds from this Agreement for purposes other than those listed in this Agreement without prior written consent of the COUNTY's Economic Development Department.

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ARTICLE II
TERM & TERMINATION

2.01 Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall be effective as of the Effective Date and shall terminate on December 31, 2025 ("Term").

2.02 MINIMED understands and agrees that this Agreement is subject to mutual termination. Therefore, either Party shall have the option of terminating this Agreement by giving the second Party no less than thirty (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent. If either Party exercises the option of terminating this Agreement any and all unused Funds either allocated and in possession of MINIMED or unallocated and in the possession of COUNTY shall be the sole property of COUNTY and COUNTY shall have the right to:

(a) Reclaim any and all Funds unused but distributed to MINIMED under the terms of this Agreement; or

(b) Retain any and all Funds allocated but not distributed to MINIMED.

2.03 Should MINIMED fail to fulfill its obligations as set forth in Article IV of this Agreement, or, if MINIMED should materially violate any of the other covenants, conditions, representations, or stipulations of this Agreement, then COUNTY shall provide a written notice to MINIMED. If MINIMED fails to cure a violation as set forth in the written notice from COUNTY within sixty (60) days after receipt of the notice ("Cure Period"), then this Agreement shall terminate immediately upon expiration of the Cure Period without further action by the COUNTY. The COUNTY may, in its sole discretion, extend the Cure Period if MINIMED begins to cure a violation within the Cure Period and MINIMED diligently pursues such cure.

(a) Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same nor preclude COUNTY's termination right for successive breach of the same condition.

(b) Notwithstanding the above, MINIMED shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement and COUNTY may withhold Funds otherwise due as damages.

(c) In addition to the above provisions, the COUNTY shall have the right to terminate this Agreement at any time upon a finding by order that: 1) MINIMED's activities, programs or operations are illegal; or 2) MINIMED's business activity,

operations and/or use of its facility (to include the transfer of the rights and responsibilities under this Agreement or the assignment of this Agreement to another entity resulting from a merger, reorganization, or any other form of business combination) as represented in this Agreement have substantially changed during the Term of this Agreement and MINIMED failed to seek the prior written approval of Commissioners Court for such change. Adequate provisions shall be made for MINIMED to be heard by Commissioners Court prior to voting on such an order and the effective date of the termination shall be set out therein.

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2.04 Should this Agreement be terminated by MINIMED for any reason or by the COUNTY for MINIMED's breach or as otherwise set forth in Section 2.03 and the program objectives are not fully completed as stated in this Agreement, MINIMED agrees that it shall refund any and all sums of money paid by COUNTY to MINIMED in accordance with Article V, Section 5.02 of this Agreement.

ARTICLE III
ECONOMIC DEVELOPMENT GRANTS

3.01 Pursuant to the terms and conditions of this Agreement, the COUNTY shall contribute to MINIMED a sum not to exceed the amount of **TWO MILLION DOLLARS ($2,000,000.00)** to be paid in five equal installments and on the dates as described in Article IV below (the "Funds").

3.02 MINIMED shall utilize the Funds for the funding or partial funding of MINIMED's facility.

ARTICLE IV
GRANT DISBURSEMENT

4.01 As consideration for the Funds received from the COUNTY pursuant to this Agreement, MINIMED shall:

(a) create, fill, and maintain at least 150 Employment Positions on or before January 15, 2010;

(b) create, fill, and maintain at least 550 cumulative Employment Positions on or before January 15, 2011;

(c) create, fill, and maintain at least 950 cumulative Employment Positions on or before January 15, 2012;

(d) create, fill, and maintain at least 1,100 cumulative Employment Positions on or before January 15, 2013; and

(e) create and fill a minimum of 1,300 Employment Positions on or before January 1, 2014 and maintain the same throughout the Term of this Agreement.

4.02 The COUNTY shall disburse the Funds to MINIMED in three separate payments, each payment subject to MINIMED creating and maintaining the applicable number of permanent employment positions at the facility to be located within Bexar County (hereinafter "Employment Positions") within the time periods as set forth below. To be counted as an Employment Position for purposes of this Agreement, each Employment Position must be filled by a permanent (non-temporary) full-time employee eligible for employee benefits and working at least forty (40) hours per week.

4.03 Subject to MINIMED meeting its employment commitment, the Funds shall be disbursed by the COUNTY in accordance with the Prompt Payment Act, Texas Government Code Chapter 2251, as follows:

(a) Payment 1: $400,000 on or after January 15, 2010 if MINIMED creates, fills and maintains not less than 150 Employment Positions.

(b) Payment 2: $400,000 on or after January 15, 2011 if MINIMED creates, fills and maintains not less than 550 cumulative Employment Positions.

(c) Payment 3: $400,000 on or after January 15, 2012 if MINIMED creates, fills and maintains not less than 950 cumulative Employment Positions.

(d) Payment 4: $400,000 on or after January 15, 2013 if MINIMED creates, fills and maintains not less than 1,100 cumulative Employment Positions.

(e) Payment 5: $400,000 on or after January 15, 2014 if MINIMED creates, fills and maintains not less than 1,300 cumulative Employment Positions.

ARTICLE V
RECAPTURE OF GRANT FUNDS

5.01 The COUNTY shall have the right to recapture all Funds paid to MINIMED pursuant to this Agreement (upon delivery of notice and expiration of the Cure Period as set forth in Article II, Section 2.03) if MINIMED: a) fails to create, fill and maintain the Employment Positions as described in Article IV, Section 4.02 above; or b) fails to create and fill a minimum of 1,300 Employment Positions on or before January 1, 2014 and maintain the same until the expiration of the Term of this Agreement, (either a or b above an "Event of Recapture").

5.02 Upon the occurrence of an Event of Recapture, MINIMED shall repay all Funds disbursed to MINIMED pursuant to this Agreement in accordance with the schedule below ("Recapture Schedule") within ninety (90) calendar days from the date the Cure Period has expired, plus interest at the prime lending rate from the date of termination until all Funds are fully repaid. The Funds subject to recapture by the COUNTY shall be calculated by multiplying the total Funds received by the percentage applicable to the calendar year in which the written notice of termination is sent as detailed in the following Recapture Schedule:

RECAPTURE SCHEDULE	
Year in which Notice Resulting in Termination is Sent:	**Total Funds Previously Received Shall be Multiplied by:**
On or before December 31, 2019 (the "Initial Period")	100%
Year 1 following the Initial Period	100%
Year 2 following the Initial Period	80%
Year 3 following the Initial Period	60%
Year 4 following the Initial Period	40%
Year 5 following the Initial Period	20%
Year 6 following the Initial Period	10%

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5.03 The COUNTY shall have the right to take any action to which it may be entitled, at law or in equity, against MINIMED, in addition to termination and/or recapture as described herein, in order to recapture Funds the COUNTY is entitled to receive pursuant to this Article V.

ARTICLE VI
REPRESENTATIONS, WARRANTIES AND COVENANTS

6.01 MINIMED represents, warrants, assures and guarantees that it possesses the legal authority to enter into this Agreement and to perform the responsibilities herein required.

6.02 MINIMED warrants and represents that it is a Delaware corporation duly formed in the State of Delaware and validly existing and in good standing under the laws of the State of Delaware and has all power and authority to conduct its business as presently conducted. Additionally, MINIMED warrants and represents that: it is registered to do business in the State of Texas, is authorized to transact such business, and is in good standing under the laws thereof, including the payment of all applicable taxes, fees, and/or fines and shall remain so throughout the Term of this Agreement.

6.03 MINIMED further represents and warrants that:

(a) All information, data or reports heretofore or hereafter provided to COUNTY shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to COUNTY;

(b) None of the provisions contained herein contravene or in any way conflict with the authority under which MINIMED is doing business or with the provisions of any existing indenture or agreement of MINIMED;

(c) MINIMED has the legal authority to enter into this Agreement and accept payments hereunder, and has taken all necessary measures to authorize such

execution of contract and acceptance of payments pursuant to the terms and conditions hereof; and

(d) None of the assets of MINIMED located physically at MINIMED's facility in Bexar County, Texas are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by MINIMED to COUNTY.

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ARTICLE VII
MONITORING & AUDITING

7.01 The COUNTY's Economic Development Department is assigned monitoring responsibility for this Agreement. MINIMED will provide COUNTY's staff, including internal auditors and other persons as designated by COUNTY, such as independent public accountants and representatives of the federal government, access during regular business hours, as deemed necessary by COUNTY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of MINIMED's books, records and files necessary to ensure MINIMED's compliance with, and fulfillment of, all representations, terms, and/or conditions contained in this Agreement.

7.02 All such records shall continue to be available for inspection and audit for a period of three (3) years after the termination date hereof. However, if during the course of this three-year period, an audit or investigation of the MINIMED begins then MINIMED is required to maintain said records until such time as the audit or investigation is completely finished.

7.03 MINIMED agrees that during the Term of this Agreement, any duly authorized representative of COUNTY's Economic Development Department shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this Agreement.

7.04 The submission of falsified information or the failure to timely submit all information by MINIMED as requested by COUNTY is grounds for termination of this Agreement.

ARTICLE VIII
FISCAL MANAGEMENT

8.01 MINIMED shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action and to prevent frauds and program abuse. Subject to Section 8.06 herein, COUNTY may review MINIMED's system of internal administrative and accounting controls, as reasonably necessary to ensure financial responsibility.

8.02 MINIMED shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement and COUNTY may withhold Funds otherwise due as damages.

8.03 Should any expense or charge that has been paid with Funds from this Agreement be subsequently disapproved or disallowed as a result of any site review or audit, MINIMED will promptly refund such amount to COUNTY. MINIMED further authorizes COUNTY, if COUNTY so elects, to deduct such amount or charge as a claim against future payments. The COUNTY's Economic Development Department has the express authority to deduct such claims from subsequent reimbursements.

8.04 Audit Conditions and Requirements:

(a) The COUNTY, a political entity, unlike a business for profit, is more interested in knowing if entities have accomplished or achieved the objectives as stipulated in their contracts and/or agreements, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that the COUNTY is made aware of progress made under this Agreement. Following 30 days after a written request by the COUNTY, MINIMED shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total Agreement that has been performed.

(b) It is imperative any auditor performing an audit of MINIMED read the entire Agreement, including all attachments, between the COUNTY and MINIMED, since the budget and financial compliance of the Agreement is only a portion of the total contractual obligation.

(c) All COUNTY-funded contracts and agreements, including this Agreement, are subject to periodic audits at any reasonable hour of the day by COUNTY auditors. This includes the auditing of both MINIMED and subcontractors related to this Agreement.

(d) MINIMED shall furnish the COUNTY's Economic Development Department, and any other COUNTY Departments designated by the COUNTY'S Economic Development Department, audited financial statements for a twelve month period as of December 31, 2010. The financial statements are to be prepared by an independent CPA and the financial statements are to be received by the COUNTY within sixty (60) days following the end of each fiscal year of December 31. In addition to the audited financial statements, a copy of any internal controls review, audit exceptions, and management letter should be submitted. The audited financial statements must include a schedule of receipts and disbursements by budgeting cost category and a certification from MINIMED stating whether or not the terms and conditions of the contract were met. If the COUNTY determines, in its sole discretion, that MINIMED is in violation of the above requirements, the COUNTY shall have the right to select auditors of its choosing to conduct the required audit and to have the MINIMED pay for such audit. In addition, in the event MINIMED expends federal or state funds exceeding the single audit threshold amount in effect during the period of this contract, any resulting audit shall be conducted in accordance with the Single Audit Act Amendments of 1996

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and the U.S. Office of Management and Budget Circular A-133 (June 1997 revision), and/or the State of Texas Single Audit Circular.

8.05 MINIMED understands and agrees to abide by and adhere to applicable federal, state and COUNTY provisions regarding financial accounting.

8.06 Any audits contemplated by this Grant Agreement shall be governed as set forth in this subsection 8.06. Upon no less than two (2) weeks prior written notice, MINIMED shall grant access to relevant paper and electronic records, books, documents, accounting procedures, practices or any other items for the sole purpose of verifying MINIMED's performance under this Agreement. In no event shall such access include any access to any personal and/or medical data of any employees or customers of MINIMED. In addition, MINIMED shall not be required to disclose to COUNTY's Economic Development Department any information that MINIMED is required by law to keep confidential or information unnecessary to a determination pursuant to Article VII, Section 7.01 above.

8.07 If MINIMED believes information required to be disclosed to the COUNTY pursuant to the above Article VIII, Section 8.06 is confidential or proprietary in nature, whether by law or policy, MINIMED agrees that it shall clearly mark and designate such information prior to providing the same to the COUNTY. To the extent possible, upon a request for the COUNTY to disclose such information under the Texas Open Records Act (Tex. Government Code Ann. § 552.001 et seq.) or equivalent or successor statute (the "Act"), the COUNTY shall attempt to notify MINIMED of such request. MINIMED shall then assume all responsibility for preparing appropriate responses and/or filings to the Texas Attorney General and/or to any other person or entity relating to such request, including any appeals involved therein, in order to prevent a disclosure of such information. To the extent this provision is in conflict with the Act, the same shall be of no force and effect. The Parties expressly agree that the COUNTY shall not be liable for any disclosure by the COUNTY and/or a failure of the COUNTY to notify MINIMED pursuant to this provision.

ARTICLE IX
INDEMNIFICATION

9.01 TO THE EXTENT PERMITTED BY LAW, MINIMED covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the COUNTY and the elected officials, employees, officers, directors, and representatives of the COUNTY, individually or collectively, (the COUNTY Indemnitees") from any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death, property damage, or a failure by MINIMED, and/or TITLE HOLDER or TITLEHOLDER'S PREDECESSORS IN TITLE to comply with any local, state or federal ENVIRONMENTAL LAW OR REGULATION (collectively "Damages"), made upon the COUNTY that may be suffered or incurred by the COUNTY Indemnitees directly or indirectly arising out of, resulting from, or related to MINIMED's activities under this Agreement,

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including any negligent acts or omissions of MINIMED, any agent, officer, director, representative or employee of MINIMED while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the COUNTY under Texas Law and without waiving any defenses of the Parties under Texas Law. MINIMED shall have no obligation to indemnify and hold harmless the COUNTY Indemnitees to the extent that such Damages arise from: (i) the negligence or willful misconduct of the COUNTY Indemnitees; or (ii) the breach by the COUNTY Indemnitees of its warranties, covenants or other agreements contained herein. The provisions of this indemnity are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. MINIMED shall promptly advise the COUNTY in writing of any claim or demand against the COUNTY or MINIMED known to MINIMED related to or arising out of MINIMED's activities under this Agreement and shall see to the investigation and defense of such claim or demand at MINIMED's cost. The COUNTY shall have the right, at its option and at MINIMED's expense, to participate in such defense without relieving MINIMED of any of its obligations under this Article IX.

Notwithstanding any other provision of this Agreement to the contrary, this indemnity shall survive the termination of this Agreement.

ARTICLE X
NON-DISCRIMINATION

10.01 In the performance of this Agreement, MINIMED warrants that it will not discriminate against any employee or subcontractor on account of race, color, sex, religious creed, age, national origin, or handicap. Furthermore, MINIMED agrees not to discriminate against any client on account of race, color, religious creed, ancestry, age, national origin, mental and physical disability, veteran status, or sexual orientation. With respect to nondiscrimination and equal opportunity, all notices, advertisements and solicitation placed by MINIMED will be in accordance with federal law, rules, or regulations.

10.02 In the event of MINIMED's failure or refusal to comply with this nondiscrimination clause, this Agreement may at the COUNTY'S sole discretion, be canceled, terminated or suspended in whole or in part if MINIMED fails to remedy this non-compliance within the Cure Period.

ARTICLE XI
MINORITY AND SMALL BUSINESS

11.01 In all subcontracts MINIMED will endeavor to include the utilization of minority and small business suppliers, and shall provide an annual report throughout the Term of this Agreement indicating MINIMED's performance in utilizing such suppliers.

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ARTICLE XII
LEGAL/LITIGATION EXPENSES

12.01 Under no circumstances will the Funds received under this Agreement or any other funds received from COUNTY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the COUNTY or any other government entity. MINIMED must obtain the written approval of the COUNTY Attorney's Office before any Funds received under this Agreement may be used in any adversarial proceeding against any other governmental entity or any other public entity.

12.02 During the Term of this Agreement, if MINIMED files and/or pursues an adversarial proceeding against the COUNTY then, at the COUNTY's option, this Agreement and all access to the funding provided for hereunder may terminate.

12.03 Excepting Article XXIII herein below, each Party shall bear its own costs, including, but not limited to, attorneys' fees, for any action at law or in equity brought to enforce or interpret the provisions of this Agreement. Notwithstanding the foregoing, nothing contained in this Section shall impact or otherwise affect the indemnity provisions contained in Article IX above.

12.04 MINIMED, at COUNTY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the COUNTY remains unresolved.

12.05 For purpose of this Article, "adversarial proceedings" shall include any cause of action filed by MINIMED in any state or federal court, as well as any state or federal administrative hearing.

ARTICLE XIII
CHANGES AND AMENDMENTS

13.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both COUNTY and MINIMED.

13.02 It is understood and agreed by the Parties hereto 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 such rule, regulation or law.

13.03 MINIMED agrees to notify COUNTY in writing of any proposed change in physical location for work to be performed pursuant to the terms of this Agreement. Such notice shall be provided by MINIMED to COUNTY at least thirty (30) calendar days in advance of the proposed change.

ARTICLE XIV
SEVERABILITY OF PROVISIONS

14.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the COUNTY Code, COUNTY resolution, COUNTY order, City Charter, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not effect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

ARTICLE XV
NON-WAIVER OF PERFORMANCE

15.01 No waiver by COUNTY or MINIMED of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of COUNTY or MINIMED to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

15.02 No act or omission of COUNTY or MINIMED shall in any manner impair or prejudice any right, power, privilege, or remedy available to COUNTY or MINIMED hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

15.03 No representative or agent of COUNTY or MINIMED may waive the effect of the provisions of this Article.

ARTICLE XVI
ENTIRE AGREEMENT

16.01 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless the same be in writing, dated subsequent to the date hereof, and duly executed by the Parties.

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ARTICLE XVII
NOTICE

17.01 All notices provided to be given under this Agreement shall be in writing, and shall either be personally served against a written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid, and addressed to the proper Party at the address which appears below, or at such other address as the Parties hereto may hereafter designate in accordance herewith. All notices given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to COUNTY:
County Judge
Bexar County Commissioners Court
Bexar County Courthouse
100 Dolorosa, Suite 120A
San Antonio, Texas 78205
Attn: 381 Grant Agreement

With a copy to:
Bexar County Auditor
212 Stumberg, Suite100
San Antonio, Texas 78204

and
Executive Director
Economic Development Department
100 Dolorosa, Suite 120A
San Antonio, Texas 78205-3036

and
Chief, Civil Section
Bexar County District Attorney's Office
300 Dolorosa, Fourth Floor
San Antonio, Texas 78205-3036

If to MINIMED:
President
MiniMed Distribution Corp.
18000 Devonshire Street
Northridge, California 91325

17.02 Notice of changes of address by either Party must be made in writing and delivered (or mailed, registered or certified mail, postage prepaid) to the other Party's last known address within five (5) business days of such change.

ARTICLE XVIII
PARTIES BOUND

18.01 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

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ARTICLE XIX
GENDER

19.01 Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

ARTICLE XX
RELATIONSHIP OF PARTIES

20.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

ARTICLE XXI
TEXAS LAW TO APPLY

21.01 This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law principles that would require the application of the laws of any other state. Venue for any action (including any action brought under Federal Law in Federal Court) brought hereunder will be exclusively in Bexar County, Texas.

ARTICLE XXII
CAPTIONS

22.01 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

ARTICLE XXIII
CERTIFICATION

23.01 MINIMED by execution of this Agreement, certifies, warrants, and represents that it is in full compliance with chapter 2264 of the Texas Government Code (the "Code") and that a violation, as set forth in section 2264.051 of the Code, shall constitute a breach of this Agreement and this Agreement shall terminate without necessity of the thirty (30) day notice requirement contained in Article II herein above. The COUNTY shall provide written notice to MINIMED of such a breach and within one hundred twenty (120) days after notice is sent, MINIMED shall repay all amounts received pursuant to this Agreement with interest to be calculated at the maximum legal rate as established under Texas law. The COUNTY, in its sole discretion, may extend the period for repayment set forth herein. In addition, MINIMED agrees to pay all costs and expenses, including attorney's fees, incurred by the COUNTY in enforcing this provision.

EXECUTED IN TRIPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON THIS THE 15, DAY OF December, 2009.

COUNTY OF BEXAR:

NELSON W. WOLFF
County Judge

DATE: 12/15/09

MINIMED DISTRIBUTION CORP:

CHRIS O'CONNELL
President

DATE: 10/19/09

ATTEST:

GERARD RICKHOFF
County Clerk

APPROVED AS TO LEGAL FORM:

SUSAN D. REED
Bexar County Criminal District Attorney

By: _____
LARRY ROBERSON
Assistant Criminal District Attorney
Civil Section

APPROVED AS TO FINANCIAL CONTENT:

_____
TOMMY J. TOMPKINS
Bexar County Auditor

Hank Reyes
_____
for DAVID SMITH AS
Budget Officer
Executive Director, Planning & Resource Management Department

APPROVED:

_____
DAVID MARQUEZ
Executive Director, Economic Development Department

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