

DUPLICATE

THE CITY OF SAN DIEGO

SOLEDAD CLUB

Percentage Lease

DOCUMENT NO. RR- 291300

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and SOLEDAD CLUB, a California non-profit corporation, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."
- 1.2 Permitted Use. Said premises are leased to LESSEE for the purposes of operation and maintenance of a facility for the LESSEE to engage in civic, social, educational, cultural, recreational, or philanthropic work or activities for the benefit of the public and the community, including maintenance and rental of public meeting rooms at rental rates authorized by the City Manager to cover normal fixed and operational expenses and for such other related or incidental purposes as may first be approved in writing by the City Manager and for no other purpose.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating

to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of this facility, as delineated under Section 1.2, Permitted Use, hereof and related activities in a fiscally responsible manner.
- 1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 9.4, Schedule of Days and Hours of Operation, hereof. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.
- 1.8 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be in accordance with the schedule set forth in Section 9.3, Schedule of Rates and Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative.
- 1.9 CITY Use. The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.
- 1.10 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.11 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.2, Permitted Use, hereof.

LESSEE shall, at all times during the lease term, maintain a CITY-approved sign identifying the property as City-owned and available for public use consistent with the terms of this lease. The sign shall be installed by LESSEE at a location agreeable to CITY.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be 15 years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3. : RENT

- 3.1 Time and Place of Payment. The rent during the entire term of this agreement is payable to the Office of the City Treasurer annually in arrears,

on or before the last day of the month following the anniversary date of the lease, beginning on the effective date hereof. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Rent Amount. For the first five-year period of this agreement, the minimum rent shall be the sum of Three Thousand (\$3,000) Dollars per year.

If the minimum rent is greater than the percentage rent on a lease year basis, then minimum rent is to be paid. If the percentage of gross revenue exceeds the minimum rent in the lease year, then the percentage amount is due.

- b. Minimum Rent Adjustment. The annual minimum rent shall be adjusted at the end of the fifth and tenth year of this agreement for the second and third five-year periods.

3-1-04
Annual minimum
calculated at
\$2,542.70, as
rent stayed
at \$3,000.
Next adjustment
on 3-1-09.

The annual minimum rent for the second and third five-year periods shall be determined by multiplying the gross receipts from all income generated at the facility, less refunds, of the previous five-year lease period by five percent (5%), adding the resulting numbers and dividing the sum by five.

However, the annual rent shall not be less than the previous five year period for any adjustment period.

- c. Percentage Rents. Percentage rents will be calculated on a lease year basis and will consist of the following percentages of the gross income resulting from the use of the premises:

Percentage

Business Activities

Seven Percent (7%)

Gross income from dues and rental of facility less deposits and bank interest

- 3.3 Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.4 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager. Any or all of the following actions are not permitted activities under this contract and will be considered as contrary to the CITY's best interests:
- a. Assignment or subleasing by LESSEE for a consideration in excess of a reasonable return on the actual value of the LESSEE'S installed improvements and/or services rendered.
 - b. Subleasing of the primary function of the lease or subleasing of a major portion of the leasehold.

Approval of any assignment or sublease shall be conditioned upon Assignee or Sublessee agreeing in writing that they will assume the rights and obligations thereby assigned or subleased and that they will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

Pursuant to the City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.3 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.3a, hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.4 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days'

prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required

in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

SECTION 6. : IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.

- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.
- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the Development Plan described in Section 6.12, Development Plan, hereof and with all applicable laws.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.

6.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

6.7 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.8 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.9 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to

dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.

- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 6.12 General Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk which plan is hereby incorporated by this reference. The general contents and provisions of the Development Plan are described in Section 9.2 hereof. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for completion in the Development Plan of up to one (1) year without further City Council approval.
- 6.13 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, LESSEE shall be

responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.14 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.

SECTION 7. : GENERAL PROVISIONS

7.1 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention Real Estate Assets Manager
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless

otherwise specified, without need for further resolution by the City Council.

- 7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

- b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts.

LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that

might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
 - b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
 - c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE'S compliance shall include but not necessarily be limited to the following:

- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this lease.

7.14 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

7.15 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain lease executed on the 13th day of December 1982, with SOLEDAD CLUB, Document RR-257633, which is

hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

- 7.16 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.
- 7.17 Landscaping. LESSEE shall maintain all landscaping on the premises on a regular schedule and keep said landscaping in a neat and attractive condition during the lease term to the satisfaction of the City Manager.
- 7.18 Noise Abatement. LESSEE agrees to abide by all noise abatement requirements as established by CITY, and in addition, LESSEE shall prohibit any use of amplified music beyond 7:00 p.m. by itself or its permittees, subtenants or sublessee.
- ✓ 7.19 Nonprofit Organizations and Community Groups Use of Facilities. LESSEE shall solicit and offer its meeting rooms to nonprofit organizations and community groups at no charge, and shall submit a report to the City Manager on such activities at the end of each lease year.

SECTION 8. : SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

Date FEB 16 1999

THE CITY OF SAN DIEGO

By 

LESSEE: SOLEDAD CLUB

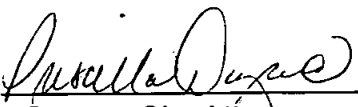
Date 1/25/99

By 
Juliette Tyor, President

By _____

APPROVED as to form and legality this 25th day of February, 1999.

CASEY GWINN, City Attorney

By 
Deputy City Attorney

MFw:csn

1/8/99

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SECTION 9. : EXHIBITS

9.1 Legal Description.

EXHIBIT "A"

The premises are situated in the State of California, County of San Diego and are described as follows:

That portion of the East half of Pueblo Lot 1785 of the Pueblo Lands of San Diego, in the City of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, a copy of which said map was filed in the Office of the County Recorder November 14, 1921 and is known as "Miscellaneous Map No. 36," which lies Southwesterly and Westerly of the Southwesterly and Westerly boundary of Soledad Road (80 feet wide) as located and established on April 28, 1972, commonly known as 5050 Soledad Road, San Diego, California.

9.2 General Development Plan.

As required by Section 6.12 of the lease, the General Development Plan consists of work required to bring the building into ADA compliance.

a. Scope of work required to bring the building into ADA compliance:

1. Re-stripe the upper parking lot to allow for a minimum of two (2) accessible parking spaces (one van accessible), and lower parking lot to allow for minimum of one (1) space as required, and install proper signage at designated spaces.
2. Replace the locking hardware on minimum of nine (9) sets of double doors, including flat bar panic hardware and door knobs.
3. Remove the door closer on minimum of nine (9) sets of operating doors.
4. Remodel existing men and women restrooms: 1) on basement, and 2) on first floor, making them accessible.
5. Replace all door thresholds with transition ramps at exterior door ways.
6. Remove door stops and install door kick plates on thirteen (13) sets of operating doors.
7. Install wheel stops, or other barrier device (fence) to parking lot, to keep vehicles from overhanging into any accessible path of travel.
8. Install proper signage for the building and parking lots, as in #1 above.
9. Install required hand-railing at stairs and stage steps.

Financing for this General Development Plan is made available using CDBG funds. Approximately \$60,000 has been awarded to the Lessee for this purpose.

NOTE: The stage on the first floor has been excluded from this General Development Plan by mutual consent of LESSEE and CITY.

9.3 Schedule of Rates and Charges.

1. Upstairs:

- a) Weddings: \$750.00
\$ 75.00 Security Deposit
- b) Other Activities: \$100.00 for the first three (3) hours
\$ 8.50 for each additional hour
\$ 75.00 Security Deposit

2. Downstairs:

- a) Other Activities: \$ 60.00 for first three (3) hours
\$ 7.50 per hour each additional hour
\$ 50.00 Security Deposit

9.4 Schedule of Days and Hours of Operation.

The club space is available for rental of approved activities including bridge games seven (7) days a week from 8 A.M. to 11 P.M.

LESSEE shall prohibit any use of amplified music beyond 7:00 p.m. by itself or its permittees, subtenants or sublessees.

RECEIVED
99 FEB -4 PM 2:58
CITY CLERK'S OFFICE
SAN DIEGO, CA



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: February 10, 1999 REPORT NO. 99-19

ATTENTION: Honorable Mayor and City Council
Docket of February 16, 1999

SUBJECT: Lease Agreement - Soledad Club

REFERENCE: Manager's Report 98-04 Dated January 7, 1998 - PS&NS
Committee Meeting of January 14, 1998, Item 2

SUMMARY

Issue - Should the City enter into the 15-year lease agreement with the Soledad Club, a nonprofit organization, for the property at 5050 Soledad Road, San Diego, California?

Manager's Recommendation - Authorize the City Manager to execute the lease agreement.

Other Recommendations - None.

Fiscal Impact - A minimum of \$3,000 per year will be deposited into the 100 Fund, Account 75690.

BACKGROUND

The Pacific Beach Women's Club (PBWC) originally built and occupied the facility at 5050 Soledad Road in 1961 under a 15 year lease. In 1977 some former members of PBWC formed the Soledad Club (Club), a nonprofit organization, and executed a 5-

year lease agreement with the City. In 1982 the Club executed a 15-year lease agreement with the City for the property.

In January 1996, this facility was identified by the City's consultant, Heery International, as requiring modifications to meet ADA accessibility. The Club has received \$60,200 in CDBG funds to modify the building to comply with the ADA Accessibility requirements. A new lease is requested as the Club is in the process of performing the modifications.

DISCUSSION

Pursuant to the direction of the PS&NS Committee, the City Manager has negotiated a proposed lease agreement with the Club. The agreement contains the following basic provisions:

1. Term: Fifteen (15) Years. Failure to complete the General Development Plan shall constitute a major default and subject the lease to termination.
2. Use: Operation and maintenance of a facility for civic, social, educational, cultural, recreational, or philanthropic work or activities for the benefit of the public and the community, including rental of public meeting rooms at rental rates authorized by the City Manager.
3. Rent: 7% of gross income from member dues and rental of the facility versus a minimum rent of \$3,000 per year (the greater of 7% of gross or the minimum rent is due). The minimum rent is set at \$3,000 per year for the first five years with adjustments at the beginning of the sixth and eleventh years based upon an average of five percent of the gross receipts for the previous 5-year period. However, the rent will not go below \$3,000 per year.
4. Maintenance: The Club will be responsible for the entire maintenance of the premises including the roof (the last 15 year lease required the City to maintain the roof).
5. Disabled Access Compliance: An agreement has been executed with the Club to complete renovation to satisfy most ADA requirements for barrier removal of the facility. \$60,200 in CDBG funds has been awarded for this purpose.
6. Landscaping: The Club shall maintain all the landscaping on the premises on a regular schedule and keep said landscaping in a neat and attractive condition during the lease term to the satisfaction of the City Manager.

The 6,400 square foot building sits on 2.42 acres across from Kate Sessions Park in Pacific Beach. A staff "Restricted Appraisal Report" concluded a fair market value of

\$540,000 for the property and a market rent of \$3,000 per month if the property were leased as a single family residence. It is important to note that because it is Pueblo Land, a sale of the parcel would require a vote of the public; in addition, a residential rental of the property would require substantial tenant improvements. Over the years, the Soledad Club has kept the facilities in a well maintained condition and has learned to operate the facility to minimize impact and disturbances to adjoining residential neighbors.

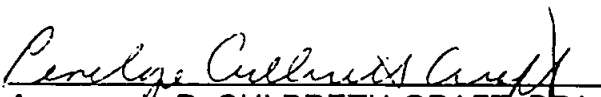
The Club is open seven days a week for a variety of events. There are 248 members of which over 90% are senior citizens. The Club is available to the community at affordable rates for wedding showers, weddings, bridge tournaments, memorial services, lectures, Toastmasters, quilting, Duplicate Bridge and other social gatherings. In addition, the facility is available to the City of San Diego, the County of San Diego, Big Sister, Hadassa and Pacific Beach Town Council for meetings at no charge.

Annually, the Club makes donations to local charities such as Battered Women, San Diego Rescue Mission, Children in Need, Meals on Wheels, C.C.S.A. and Pacific Beach Library.

Council Policy 700-12 establishes criteria that City property be leased to non-profit organizations at market rent. A discount is allowed when there is a direct offset to City expenditures, or when the operation of the facility provides a service that would otherwise be an obligation of the City. Staff recommends approving the lease based upon the public benefit derived from services to the community, the Club's track record with adjoining residential neighbors and continued maintenance of the facilities including the agreed upon ADA upgrades.

ALTERNATIVE

Do not approve the lease and solicit for a private lessee.


Approved: P. CULBRETH-GRAFT, DPA
Assistant City Manager

Respectfully submitted,


WILLIAM T. GRIFFITH
Acting Director
Real Estate Assets Department

GRIFFITH/MFW

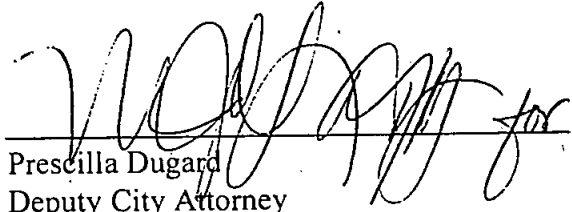
RESOLUTION NUMBER R- 291300

ADOPTED ON FEB 16 1999

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is authorized to execute, for and on behalf of The City of San Diego, a lease agreement with Soledad Club, a California nonprofit corporation, for the property at 5050 Soledad Road, at an initial annual rent of \$3,000 per year, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 291300.

APPROVED: CASEY GWINN, City Attorney

By


Prescilla Dugard
Deputy City Attorney

PD:cdk

01/26/99

Or.Dept:REA

R-99-580

Form=leaser.frm

Passed and adopted by the Council of San Diego on

FEB 16 1999

by the following vote:

YEAS: Mathis, Wear, Kehoe, Stevens, Warden, Stallings, McCarty,
Vargas, Mayor Golding.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: MARY A. CEPEDA, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and
correct copy of RESOLUTION NO. R- 291300,
passed and adopted by the Council of The City of San Diego,
California on FEB 16 1999.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Mary A. Cepeda, Deputy

CITY OF SAN DIEGO
REQUEST FOR
CITY MANAGER ACTION

253

TO: CITY MANAGER	FROM: (ORIGINATING DEPT.) COMMUNITY AND ECONOMIC DEVELOPMENT	DATE March 17, 1998
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SUBJECT:
Fiscal Year 1998 CDBG Allocation

ACTION REQUESTED:
Execute an Agreement with Soledad Club to provide renovation to satisfy ADA requirements for barrier removal of the facility located at 5050 Soledad Road; and authorize the City Auditor and Comptroller to expend \$60,200 in CDBG Funds for this project.

SUPPORTING INFORMATION:
On April 29, 1997, the City Council awarded CDBG funds to various community agencies to provide barrier removal at City owned facilities. This action also authorized the City Manager to negotiate and execute Agreements with Agencies at the funding levels set by the City Council. The Soledad Club was allocated \$60,200 from Council Districts 1, 2, and 6 for Fiscal Year 1998 to provide this renovation. The project meets the HUD Presumed Benefit category requirements section 570.208(2)(i)(A).

ENVIRONMENTAL IMPACT: This activity is categorically excluded from CEQA pursuant to State Guidelines Section 15301 and from NEPA pursuant to 24CFR part 58, sec.5834(a)(12).

FISCAL IMPACT: Funds are available from CDBG.

CITY MANAGER ACTION

CITY ATTORNEY
MAY 21 9 33 AM '98

PLEASE ROUTE TO APPROPRIATE AUTHORITY - REF: A.R. 25.60 OR 25.70

ACCOUNTING INFORMATION:			ROUTING AND APPROVAL		
FUND	BUDGETED	UNBUDGETED	APPROVING AGENCY	APPROVAL SIGNATURE	DATE
	18533		PROGRAM MANAGER	<i>[Signature]</i>	3/23/98
DEPARTMENT	4145		DEPARTMENT DIRECTOR	<i>[Signature]</i>	
ORGANIZATION	4513		DSD/LAND DEVELOPMENT REVIEW		
OBJECT ACCT.			EOCP		
JOB ORDER NO.	112716		CIP	<i>[Signature]</i>	4/28/98
C.I.P. NO.			ASSISTANT CITY MANAGER		
FACILITY			AUDITOR	<i>[Signature]</i>	4/28/98
AMOUNT	\$60,200		ORIGINATING DEPARTMENT	<i>[Signature]</i>	3/23/98
ESTIMATED COST: \$60,200			CITY MANAGER	<i>[Signature]</i>	5-27-98
AUDITORS CERTIFICATE NUMBER AC 9801191			CITY ATTORNEY	<i>[Signature]</i>	5/28/98
FOR INFORMATION, CONTACT:			CITY CLERK		
NAME Patricia Sieglan-Perry					
MAIL STATION 51F	TELEPHONE NO. 236-5979				

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 9801191
 ORIGINATING DEPT. NO.: 042

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount _____ Fund _____

Purpose _____

Date _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND.OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed \$ 60,200.00

Vendor Soledad Club

Purpose Authorizing the expenditure of funds for the agreement with agency to provide renovation to satisfy ADA requirements for barrier removal of the facility located at 5050 Soledad Road.

Date April 28, 1998 By: Casale O'Hanlon

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	18533	4145	4513	4279	000001				\$60,200.00
TOTAL AMOUNT										\$60,200.00

FUND.OVERRIDE ☐

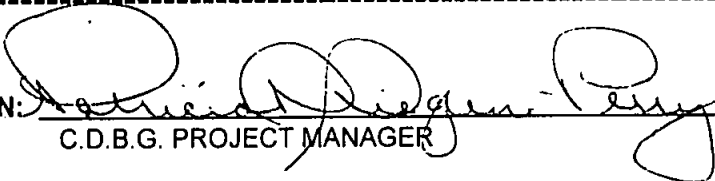
C.D.B.G. PROJECT BUDGET

PROJECT: Soledad Club

TIME PERIOD: FISCAL YEAR 1999

WORK ORDER NO.: 112716

ACTIVITY	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER	TOTAL
<u>City of San Diego Administration Costs</u>					
Engineering & Development	\$ - 0 -	\$ - 0 -	\$	\$	\$ - 0 -
Other					
Subtotal	\$ - 0 -	\$ - 0 -	\$	\$	\$ - 0 -
<u>Non-Personnel Expense</u>					
Property Acquisition	\$	\$	\$	\$	\$
Const./Site Improvements	30,000	30,200			60,200
Demolition					
Rehabilitation					
Loans & Grants					
Relocation					
Equipment					
Social Services					
Consultant Services					
Supplies					
Subtotal	\$ 30,000	\$ 30,200	\$	\$	\$ 60,200
GRAND TOTAL	\$ 30,000	\$ 30,200	\$	\$	\$ 60,200

AUTHORIZATION: 

C.D.B.G. PROJECT MANAGER

DATE

4/14/98

AGREEMENT

THIS AGREEMENT is made by THE CITY OF SAN DIEGO, a municipal corporation, herein called "City", and Soledad Club herein called "Agency".

RECITALS

A. City has entered into a Grant Agreement with the Department of Housing and Urban Development to carry out the twenty-third Community Development Block Grant Program within the City of San Diego.

B. City desires to engage Agency in rendering certain of its services in connection therewith, and more particularly to assist City in the design and construction of facility modifications for compliance with the Americans with Disabilities Act at 5050 Soledad Road, San Diego California, herein called "Project".

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties as herein expressed, City and Agency agree as follows:

SECTION 1. General Purpose:

A. Agency is entering into a contract with the City to provide necessary services to accomplish the design and renovation of the existing facility, to include those modifications, changes and revisions required to satisfy ADA requirements for barrier removal in accordance with the attached scope of work.

SECTION 2. Definitions:

As used in this Agreement:

A. "Agency" means the Soledad Club.

B. "Architect" means the person or firm employed by the Agency, who will be responsible for the portion of the Project as set forth in Section 4, herein.

C. "City" means the Council of the City of San Diego acting through its chief administrative officer, the City Manager.

D. "CDBG" means Community Development Block Grant.

E. "Contractor" means any entity, other than an Agency (except as noted in the Labor Standards Provision) that furnishes to City or to Agency, services or supplies (other than standard commercial supplies, office space or printing services).

F. "Facility" means the building occupied by the Agency, located at 5050 Soledad Road in the City of San Diego.

G. "HUD" means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.

H. "Program" means the San Diego Community Development Program as embodied in the City's 1998 Program Year CDBG Application.

I. "Project" means the design and renovation for barrier removal of the facility located at 5050 Soledad Road within the City of San Diego, occupied and operated by the Agency on behalf of the San Diego Community Development Block Grant Program (CDBG).

J. "Project Manager" means the City of San Diego's Disability Services Coordinator charged with overall responsibility for the Project.

K. "Site" means the site on which the building occupied by the Agency is located at 5050 Soledad Road, in the City of San Diego.

SECTION 3. Project Eligibility:

A. Agency's project meets the National Objective requirement for HUD funding eligibility utilizing the Presumed Benefit category. Data in the form of ethnic and age

breakdown shall be voluntarily collected and maintained in agency files. These records shall be collected voluntarily and maintained commencing from the awarding of the grant and shall conclude one year after the completion of the project.

B. The Agency shall submit a summary of information and project status to the CDBG Program Administrator in the last quarter of each fiscal year.

SECTION 4. Scope of Services and Tentative Schedule:

A. The design and construction budget for the Project shall not exceed sixty thousand, two hundred dollars (\$60,200) including a ten percent (10%) contingency reserve and fifteen percent (15%) administration costs.

1. Design Phase:

- a. Agency will provide design services, pro bono, for the CDBG barrier removal project at 5050 Soledad Road.
- b. Project Manager will approve the design at 10%, 50% and 90% completion.
- c. Agency shall prepare an estimate of final cost of construction of the project based on working drawings and specifications and submit to Project Manager.
- d. Agency will obtain all necessary permits for Project. All necessary permit fees will be paid by the Agency and reimbursed from Project funds.

2. Bidding Phase:

- a. Agency shall submit to the Project Manager, for approval, construction documents and final cost estimates. Project Manager will specify base scope of work and bid alternatives for Project to be defined in

construction documents.

b. The City will prepare final Contract Documents which will include Federal Labor Standards Provisions, Federal Non-Discrimination Provisions, Federal Wage Rates, City Equal Opportunity Program Requirements, General Provisions and other documents as may be required. Final Contract Documents will be returned to the Agency for printing and bid preparation. Printing costs will be paid by Agency and reimbursed from Project funds.

c. Project Manager will approve any advertisement copy prepared by Agency.

d. Agency will conduct the award process by obtaining at least five written bids, review and evaluate the bids received, and award the contract to the lowest responsible bidder.

3. Construction Phase:

a. The Construction Phase will commence with the award of the contract and will terminate when final payment is made by City to the Agency and the Project is complete and operable.

b. Agency shall provide technical advice for the Project and any other related work to the Project Manager.

c. Agency shall make site visitations as may be necessary to determine if the work is proceeding in accordance with the contract documents.

Agency shall make such regular reports as may be required by applicable public agencies (including required HUD documentation), inform the Project

Manager of the progress of Project development by preparation of reports as required, check and approve schedules and submittal of documents as required by contract documents, prepare change and clarification memoranda and change orders for the Project Manager's approval.

d. Agency shall assemble all written guarantees and warranties, instruction books, diagrams and charts in accordance with the contract documents to provide a project maintenance manual.

4. Payment:

a. Agency shall examine Contractor's request for progress payments and make recommendations with respect to said payments. Funds will be released on approval of invoices by both the Agency's ADA Building Coordinator and Project Manager.

b. Agency will be reimbursed from Project grant funds in the total amount of the construction contract, administration, and any approved contingencies, not to exceed, in any event, sixty thousand, two hundred dollars (\$60,200). Any costs to Project above the grant fund amount, or work performed not approved by Project Manager, will be the sole responsibility of the Agency.

B. Agency may request budget adjustments between categories in Section 4., A., not to exceed ten percent (10%) of total amount of each category, to achieve the goals of the Project. These requests shall be justified and submitted to the Project Manager in writing. Upon approval by the City, those changes will be effective in the areas so indicated without further modifications to applicable sections of

Agency's agreement with the City. The ten percent (10%) modification of budget category amounts is cumulative and may not be extended without a formal written amendment to this Agreement.

SECTION 5. Time of Performance:

The services of Agency, as set forth herein, shall commence as soon as practicable and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement. Upon award of contract, Agency shall provide Project Manager with a schedule of completion.

SECTION 6. Rights of Entry:

Agency shall allow City to enter Project area at any time during the course of this Agreement.

SECTION 7. Rights of Inspection:

Agency agrees to permit HUD and City to inspect all books and records and site activities, and to perform or require audits which the City or HUD may reasonably desire concerning any aspect of the Project.

SECTION 8. Indemnification and Hold Harmless Agreement:

Agency agrees to defend, indemnify, protect and hold City and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Agency's employees, agents or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of Agency, its agents, officers or employees, in performing the work or services herein, and all expenses of investigating and defending against same; provided, however, that Agency's duty to indemnify and

hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

SECTION 9. Insurance:

Agency shall obtain and maintain in full force throughout the term of this Agreement a professional liability insurance policy (error and omission insurance), in the sum of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), a certificate of which shall be furnished to City prior to the commencement of work on the Project. The certificate shall provide that the insurance company shall not terminate, cancel, or limit said policy in any manner without at least thirty (30) days prior written notice thereof to the City.

SECTION 10. Compliance with Federal Regulations:

Agency agrees that, in contracting for improvements to be provided by this agreement, it will comply with all applicable Federal Regulations including:

1. OMB Circular No. A-122, "Cost principals for nonprofit organizations."
2. OMB Circular No. A-110, Attachments A, B, C, F, H, N, and O, as applicable and excepted.
3. Flood Disaster Protection Act of 1973 (P.L. 93-234)
4. Clean Air Act, as amended, 42 U.S.C. 7401 et seq.
5. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
6. Regulations of Environmental Protection Agency, 40 CFR Part 15, as amended.
7. Federal Rehabilitation Act of 1973, as amended Americans With Disabilities Act (Public Law 101-336).

SECTION 11. Political Affairs or Activities:

Agency shall not use Project funds, personnel, or materials to advocate or support any particular position on any matter that is being proposed by a vote of the people, or is being considered for enactment by any legislative body of the City or County of San Diego, State of California, or the Federal Government. Neither will the Agency use Project funds, personnel, or materials to influence an officer or employee of any legislative body or an elected official or an employee of any governmental agency in the awarding of any contract, loan, cooperative agreement, or the extension, continuation, renewal, amendment or modification of any contract, grant, loan, or cooperative agreement. The Agency will disclose any funding from other sources that has been paid or will be paid to any person for influencing or attempting to influence an elected official or a public agency, by completing, signing and submitting Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions. The Agency will also require this certification language be included in the award documents for all sub-awards, including sub-contracts, sub-grants, loans, and cooperative agreements, and that sub-recipients shall certify and disclose accordingly.

SECTION 12. Severability of Provisions:

If any of the provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

SECTION 13. Existing Lease Provisions:

This Agreement is and shall be subject to the terms and conditions of the lease agreements between City of San Diego and Soledad Club dated December 1982, copies

of which lease agreements are on file in the Office of the City Clerk as Document No. R-257633.

SECTION 14. Reversion of Assets and Use of Property:

- A. Agency agrees that, upon completion of the project any and all remaining funds shall transfer to the City.
- B. Agency further agrees that should the Agency's property that was improved in whole or in part with CDBG Funds be disposed of, it will be disposed of in a manner which results in the City being reimbursed for its contribution to the improvements.

SECTION 15. Disabled Access:

Agency must comply with the Federal Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act (Public Law 101-336), and any other applicable Federal and/or State laws and regulations enacted and instruct the Architect to comply with this Act in the design of the building renovation.

SECTION 16. Drug-free Work Place:

The Agency shall certify to the City that it will provide a drug-free work place by doing all of the following:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.
2. Establishing a drug-free awareness program to inform employees about all of the following: 1) the dangers of drug abuse in the work place; 2) the

organization's policy of maintaining a drug-free work place; 3) any available drug counseling, rehabilitation, and employee assistance programs; and 4) the penalties that may be imposed upon employees for drug abuse violations.

3. Posting the drug-free policy in a prominent place.
 4. Including language in each subcontract which indicates the subcontractor's agreement to abide by provisions of the drug-free work place program.
- Contractors and subcontractors shall be individually responsible for their own drug-free work place programs.

SECTION 17. Termination:

City reserves the right to withhold funds and to terminate this Agreement upon thirty (30) days' notice to Agency if Agency violates any of the terms of this Agreement.

SECTION 18. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities:

This Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended, and any applicable rules and orders of HUD issued prior to the HUD authorization of the Funding Approval.

Agency agrees to comply with:

1. Executive Order 11246, as amended by Executive Order 12086 and the Regulations issued pursuant thereto (24 CFR, Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federally assisted construction contracts.

2. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 170 L.) which requires that to the greatest extent feasible opportunities for training and employment be given to low and moderate income persons residing within the unit of local government or the metropolitan area in which the project is located and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area as the project.
3. Section 110 of the Housing and Community Development Act of 1974 as amended (42 U.S.C., 5301 et seq.) requires that all laborers and mechanics employed by contractors and subcontractors on construction work finalized in whole or in part with assistance received under the Housing and Community Development Act of 1974 as amended shall be paid wages at rates not less than those prevailing on similar construction as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C., 276a - 2766-5). By reason of the foregoing requirement, the contract Work Hours and Safety Standards Act (40 U.S.C., 327, et seq.) also applies. Agency agrees to abide by these provisions in any construction contract that it may enter into as a result of this agreement.
4. Section 109 of the Housing and Community Development Act of 1974, as amended, which requires that no person in the United States, shall on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any

program or activity funded in whole or in part with community development funds.

SECTION 19. Non-Discrimination Under Title VII of the Civil Rights Act of 1964:

This agreement is subject to the provisions of the Civil Rights Act of 1964 (42 U.S.C., 2000d et seq.) which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The City, in undertaking its obligation in carrying out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

SECTION 20. Compliance with City's Equal Opportunity Contracting Program (EOCP):

The Agency acknowledges and agrees that it is aware of, and will comply with, the City's Council Ordinance No. 18173, Section 22.2701, EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, which is attached hereto and incorporated herein as an attachment. The Agency and all its subcontractors are individually responsible to abide by its contents.

Agency and each of its subconsultants will comply with Title VII of the Civil Rights Act of 1964, as amended, Executive Orders 11246, 11375, and 12086, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted. Agency will not discriminate against any employee or applicant for employment on any basis prohibited by law. Agency agrees to require and monitor any and all contractors, subcontractors,

SEC. 22.2701

Purpose & Intent

The overall objective of the City's Equal Employment Opportunity ("EEO") Program is to ensure that contractors doing business with or receiving funds from the City will not engage in unlawful discriminatory employment practices prohibited by State or Federal law. Such employment practices include, but are not limited to, the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.

(Editor's note: Supplement_654, Supplement_657)

(Added 1-23-95 by O-18154 N.S.)

(Amended 5-01-95

May 01, 1995 by O-18173 N.S.)

--DOCUMENT-END--

INSTRUCTIONS

For each statute, Executive Order or regulation listed below (referred to collectively as the "statutes") an initial determination must be made to ascertain whether the project requires formal consultation, permits or agreements, or have an effect on the resources protected by the statute. Grantees record this finding by determining whether status "A" or "B" applies, as follows:

Status "A" applies when compliance with the Federal Laws and authorities specified in Section 58.5 is independently determined by the agency (or federally-responsible grantee) and when no formal consultation, permit or agreement is required. In these situations, enter the letter "A" in the status column and the source of the determination.

Status "B" applies when the project requires formal consultation steps, a permit or agreement, or when it may have an effect on the resources protected by the statute. Part B indicates that additional steps or formal procedures must be completed prior to submitting a Request for Release of Funds (RROF) to HUD or to the State. Evidence of completion and implementation of the required procedures must be retained in the project Environmental Review Record (ERR).

Historic Properties (includes archaeology): A) The grantee and the SHPO agree that there are no historic properties within the Area of Potential Affect (APE), OR the recipient and the SHPO agree that the undertaking will have No Effect on historic properties within the APE; B) The project will have an Effect on historic properties. Complete procedures, per 36 CFR 800.5, et seq.

Floodplain Management: A) The project does not involve property acquisition, management, construction or improvement within a 100 year floodplain (Zones A or V) identified by FEMA maps, OR does not involve a "critical action" (e.g., emergency facility for mobility impaired persons, etc.) within a 500 year floodplain (Zone B). If these maps have not been published, the same finding is necessary and is to be based on data from the City/County or local Flood Control Agency; B) Complete and implement the Water Resources Council 8-step Process.

Wetlands Protection: A) The project does not involve new construction within or adjacent to a wetland. The delineation of wetlands is based upon consultation with U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, or the California Department of Fish & Game; B) Complete the Water Resources Council 8-step procedure. (Projects may be approved if there is no Practicable alternative outside the wetland area. However, such activity requires a permit from the U.S. Army Corps of Engineers under provisions of the Clean Water Act.)

Coastal Zone Management: A) The project does not involve placement, erection or removal of materials, nor increase the intensity of the use in the Coastal Zone; B) Secure concurrence from the Coastal Commission or decision-maker determination of consistency with the Local Coastal Plan.

Sole Source Aquifers (Safe Drinking Water Act): A) The project is not located within an area designated by the U.S. Environmental Protection Agency (EPA) as being supported by a sole source aquifer, OR the project need not be referred to EPA for evaluation according to the HUD-EPA (Region IX) Sole Source Aquifer Memorandum of Understanding of 1990; B) Consult with the Aquifers Division of EPA for the implementation of project mitigation measures to avoid contaminating the aquifer; maintain the documentation in the ERR.

Endangered Species: A) The project will not affect any federally listed or proposed Threatened and Endangered species (including plants, animals, fish, or invertebrates), nor any designated or proposed critical habitat. This finding is to be based on contact made with the U.S. Fish & Wildlife Service, or with the California Department of Fish & Game; B) Initiate and complete consultation with the U.S. Fish & Wildlife Service, in accordance with procedural regulations contained in 50 CFR Part 402.

Wild & Scenic Rivers: A) The project is not located within a mile of listed Wild & Scenic River, OR the project will not have an effect on the natural, free flowing or scenic qualities of a river in the National Wild & Scenic Rivers system; B) Consult with the U.S. Department of Interior, National Park Service for resolution and mitigation assistance.

Air Quality: A) The project Conforms with the EPA-approved State Implementation Plan (SIP), per contact with the State Air Quality Management District or Board; B) negotiate suitable mitigation measures with the Air Pollution Control District.

Farmland Protection: A) The project site does not include prime or unique farmland, OR other farmland of statewide or local importance as identified by the U.S. Department of Agriculture, Soil Conservation Service (SCS), OR the project site includes prime farmland, but is located in an area committed to urban uses; B) Request evaluation of land type from SCS using form AD 1006, and consider the resultant rating in the project decision, as well as potential mitigation measures (including measures to protect adverse effect on adjacent farmlands).

Noise Abatement & Control: A) The project does not involve development of noise sensitive uses, OR the ambient noise level is 65 CNEL or less, based upon the HUD Noise Assessment Guidelines (NAG) for calculating noise levels; B) Apply the noise standard to the project approval decision and consider the application of noise attenuation measures (NAG page 39-40).

Explosive or Flammable Operations: A) The project is located at an Acceptable Separation Distance (ASD) from any above-ground explosive or flammable fuels or chemicals containers according to "Siting of HUD-Assisted Projects Near Hazardous Facilities" (Appendix F, pp. 51-52), OR the project will expose neither people nor buildings to such hazards; B) mitigate the hazard (per CFR 51.0205) with the construction of a barrier of adequate size and strength to protect the project from the explosive or flammable hazard.

Toxic Chemicals & Radioactive Materials: A) The project does not involve new development for habitation; OR the new habitation is not located within one mile of an NPL ("Superfund") site, within 2,000 feet of a CERCLIS site, nor adjacent to any other known or suspected sites contaminated with toxic chemicals or radioactive materials, unless a Federal, State, or local authoritative source determines it does not pose a health hazard; B) Grantees are advised not to use funds for activities supporting new developments for habitation when a project site is affected by toxic chemicals or radioactive materials. Documentation includes contact with appropriate Federal, State, or local oversight agencies.

Airport Clear Zones and Accident Potential Zones: A) The project is not within an FAA-designated civilian airport Runway Clear Zone (RCZ), or within a military airfield Clear Zone (CZ) or Accident Potential Zone (APZ), based upon information from airport or military airfield administrator identifying the boundaries of such zones, OR the project involves only minor rehabilitation; B) For the sale or purchase of existing property in a RCZ or CZ, notify buyer of this fact and obtain buyer's signature acknowledging receipt of this information. It is HUD policy not to provide any development assistance, subsidy or insurance in RCZs or CZs unless the project will not be frequently used or occupied by people and the airport operator provides written assurances that there are not plans to purchase the project site.

Case # 96-7272Name: Soledad Club

HISTORIC AND ARCHITECTURAL ASSESSMENT FORM

Part A: To be completed by the Inspector assigned to the case.

Notes: (1) to be applied to each structure on property,
(2) exterior and interior of structure are to be considered.

1. Property Address: 5050 Soledad Road, San Diego
2. Type of Structure: One-story structure
3. Proposed rehabilitation involves only interior work, with no externally visible evidence of the work.

(X) Yes(X) No

4. Age of buildings 26 years. If less than 50 years old, stop here.
HP review is complete.

If building is at least 50 years old, Part B must be completed.

Prepared by: *Anne Lowry*Date: 5/20/98Supervisor: *John Kovac*Date: 5/20/98

Part B: To be completed if structure is 50(+) years of age.

1. Gather information as applicable, from local government, public and private organizations, and other parties likely to have knowledge regarding type of construction, architectural style, and historic significance. Take pictures of building (polaroid acceptable).
2. Submit above information (from #3 and #4) to the SHPO, and request consultation to determine if the building is eligible for listing in the NR. Based on this consultation, agreement was reached that:

- Data submitted to SHPO _____
- Date SHPO responded _____
(If no response, proposed rehabilitation activities can proceed after 30 days.)

Prepared by: _____ Date: _____
(Signature) Anne Lowry, Associate Planner, Environmental Analysis Section

Supervisor: _____ Date: _____
(Signature) John Kovac, Senior Planner, Environmental Analysis Section

¹ Submit completed form to HUD with each application.

FLOODPLAIN IDENTIFICATION

Case # 96-7272

Name: Soledad Club

This certifies that the property located 5050 Soledad Road, San
Diego, California is ___/is not X (City/County)

within a designated 100-year floodplain as shown on Flood Insurance Rate Map

126 or Flood Hazard Boundary Map # _____ approved by the Federal Emergency

Management Agency on August 15, 1983. Flood insurance will ___/will not X

be required.

Prepared by: Anne Lowry Date: 5/25/98
(Signature) Anne Lowry, Associate Planner, Environmental Analysis Section

Supervisor: John M. Kovac Date: 5/20/98
(Signature) John Kovac, Senior Planner, Environmental Analysis Section

Flood insurance obtained from:

Agent _____

Policy No. _____ Date Effective: _____

²Submit completed form to HUD with each application.

STATUTORY WORKSHEET

Use this worksheet for projects which are Categorically Excluded, per section 58.35, except for minor housing rehabilitation projects that meet the criteria of Sections 58.35(a)(3)(1). For such rehabilitation projects, the use of the Rehabilitation Environmental Review and Appendix A forms is recommended.

... STATUTES ...

EXECUTIVE ORDERS

... REGULATIONS ...

PROJECT NAME and DESCRIPTION: Soledad Club (LDR No. 96-7272). The project proposes the expenditure of \$60,200 from federal Community Development Block Grant Program (CDBG) funding for the renovation of the facility located at 5050 Soledad Road, to comply with ADA requirements. The renovation activities would include enlarging three restrooms, enlarging doors, installing new floors, painting and finishing, adding U shaped door hardware and lever type plumbing throughout, installing Slimline Panic Hardware, door closures and door kick plates on all exterior doors, installing approved ADA signage including Braille, and modifying thresholds where required, lowering controls for the telephones, providing new stair railings and modifying existing railings both inside and out, (and) restriping parking lot as required.

The activities of this project are **CATEGORICALLY EXCLUDED**, per Section 58.35(a)(12). Cite the applicable subsection of 58.35(a) in the space above and complete this worksheet. (see instruction on the reverse side), then sign and date this form, and retain in the ERR.

Write "A" in the status column when the project, by its nature, cannot affect the resources under consideration. Write "B" when compliance triggers formal consultation procedures with oversight agencies. Source documentation must be creditable, traceable and supportive of the finding made.

Compliance Factors: Statutes, Executive Orders, & Regulations (24 CFR 58.5)		
AREA OF REGULATORY COMPLIANCE	A/B	STATUS
Historic Preservation	A	Structure is 26 years of age; no recorded historic or prehistoric resources would be affected by the project.
Floodplain Management	A	Site is not located within a 100-year floodplain per FIRM Map 126, dated 8-15-83.
Wetland Protection	A	No wetland resources exist on the project site.
Coastal Zone	A	Site is eligible for a CDP exemption.
Sole Source Aquifers	A	No underground aquifers exist within this vicinity.
Endangered Species	A	No known endangered species of flora/fauna exist on the site.
Wild & Scenic Rivers	A	No scenic rivers exist within the project area.
Air Quality	A	No substantial air emissions would occur.
Farmland Protection	A	No farmland exists within the project area.
HUD Environmental Standards		
Noise Abatement & Control (24 CFR 51B)	A	Project would not increase ambient noise levels.
Explosive & Flammable Operation (24 CFR 51C)	A	No explosive materials would be utilized in this project.
Toxic Chemicals/Radioactive Materials (HUD Notice 79-33)	A	No hazardous substances have been associated with the site per the HMMD Environmental Assessment Listing, dated 7/5/96.
Airport Clear Zones & Accident Potential Zones (24 CFR 51D)	A	No structures would be located within the RCZ or APZ of Lindbergh Field or any military CZ.

Check the box that applies to this project:

- (X) The project converts to Exempt, per section 58.34(a)(12), because it will not result in a violation of any statutes or authorities, nor requires a permit or license (all the statutes listed below have the letter "A" marked in the column). Funds may be drawn down for this (now) EXEMPT activity.
- () This project cannot convert to Exempt. One or more statutes require consultation or mitigation. Complete consultation/mitigation requirements, disseminate and/or publish NOI/RRFOF and complete draw upon procedures, per Section 58.70 and 58.71 (SUBPART H).
- () This project or activity may have a significant environmental impact and thus requires the preparation of an Environmental Assessment. Complete the Environmental Assessment and applicable public notification per Sec. 58.43, Sec. 58.45 and Subpart H.

PREPARER SIGNATURE:
PREPARER NAME:

Anne Lowry
ANNE LOWRY, ASSOCIATE PLANNER, ENVIRONMENTAL ANALYSIS SECTION

DATE: May 20, 1998

IN WITNESS WHEREOF, this Agreement is executed by THE CITY OF
SAN DIEGO, acting through its City Manager, authorizing such execution, and by
AGENCY.

DATED THIS 26th day of March, 1998

THE CITY OF SAN DIEGO

By: [Signature]
Jeff Washington
Community Program Administrator

SOLEDAD CLUB

By: [Signature]

I HEREBY APPROVE the form and legality of the foregoing
Agreement this 28th day of May, 19 .

CASEY GWINN, City Attorney

By: [Signature]
Deputy City Attorney

independent contractors and employees for compliance with equal opportunity and on-discrimination requirements and to hold City harmless from any and all liability, claims, damages, or injuries to any person in connection with any acts or omissions rising therefrom. Agency will provide the City of San Diego with all information regarding contractors employed by the Agency as a result of this contract.

Agency will provide the City with a copy of its Equal Opportunity Program and Equal Employment Opportunity (EEO) Policy upon request.

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 9801191
ORIGINATING DEPT. NO.: 042

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount _____ Fund _____

Purpose _____

Date _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed \$ 60,200.00

Vendor Soledad Club

Purpose Authorizing the expenditure of funds for the agreement with agency to provide renovation to satisfy ADA requirements for barrier removal of the facility located at 5050 Soledad Road.

Date April 28, 1998 By: Casale O'Hanlon

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	18533	4145	4513	4279	000001				\$60,200.00

TOTAL AMOUNT \$60,200.00

FUND OVERRIDE ☐

The City of San Diego
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Purpose _____

Date _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE ☐

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Not to Exceed \$ 60,200.00

Vendor Soledad Club

Purpose Authorizing the expenditure of funds for the agreement with agency to provide renovation to satisfy ADA requirements for barrier removal of the facility located at 5050 Soledad Road.

Date April 28, 1998 By: Carole O'Hanlon

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	18533	4145	4513	4279	000001				\$60,200.00
TOTAL AMOUNT										\$60,200.00

FUND OVERRIDE ☐

Soledad Club House

Scope of Work shall include the following:

Re-stripe the upper parking lot to allow for minimum of two (2) accessible parking spaces (one van accessible), and lower parking lot to allow for minimum of one (1) as required, and install proper signage at designated spaces.

Replace the locking hardware on minimum of nine (9) sets of double doors, including flat bar panic hardware and door knobs.

Remove the door closer on minimum of nine (9) sets of operating doors.

Remodel existing men and women rest rooms on basement (1) and first floor (2), making them accessible.

Replace all door thresholds with transition ramps at exterior door ways.

Remove door stops and install door kick plates on thirteen (13) sets of operating doors.

Install wheel stops, or other barrier device (fence) to parking lot, to keep vehicles from overhanging into any accessible path of travel.

Install proper signage for the building and parking lots.

Install required hand-railing at stairs and stage steps.