



THE CITY OF SAN DIEGO

June 15, 2006

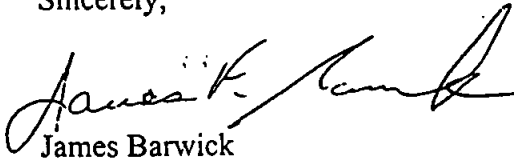
Dear Lessees:

Effective immediately please make a correction to the General Provisions section of your lease outline with the City of San Diego.

Under the NOTICES section there is a paragraph informing lessees where to mail any written notices. This needs to be changed to the following address:

City of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700 (M. S. 51A)
San Diego, CA 92101-9586

Sincerely,



James Barwick
Real Estate Assets Director

KC/cj

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Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

COPY

NORMAL HEIGHTS COMMUNITY DEVELOPMENT CORPORATION

AUG 15 3 13 PM '88
CITY ATTORNEY

THE CITY OF SAN DIEGO

Flat Rate Lease

LEASE OUTLINE

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LEASE OUTLINE

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CITY OF SAN DIEGO

FLAT RATE LEASE

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, herein called "CITY," and NORMAL HEIGHTS COMMUNITY DEVELOPMENT CORPORATION, a nonprofit California corporation, hereinafter called "LESSEE."

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property located at 4649 Hawley Boulevard, San Diego, California, 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."

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE for the purposes of operating and maintaining a community center serving Normal Heights and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose.

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.

1.03 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.

1.04 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.

1.05 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 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.

1.06 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 a community center and related activities in a fiscally responsible manner.

1.07 Hours of Operation. LESSEE shall operate the premises between the hours of 7:30 a.m. and 11 p.m. each day. Any changes in

the schedule are subject to prior written approval by the City Manager or his authorized representative.

- 1.08 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be in accordance with the schedule set forth in Exhibit "B" hereto. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative. Provided, however, LESSEE shall be permitted to rent the premises or any part thereof on a per diem basis without the prior written consent of the City Manager. LESSEE shall furnish a quarterly report to the City Manager on its room rental activities. The report shall contain the name of the user, the room rental charged, the date of use and the disposition of the funds collected.
- 1.09 City Use. The premises shall be available to the 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 I, 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 the 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 1.02, Uses, of this lease.

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

- 2.01 Commencement. The term of this agreement shall be five years commencing on the first day of the calendar month following execution by the City Manager of said City. Provided, however, the term of this agreement may be extended by the City Manager on an annual basis not to exceed a total period of ten (10) years, unless sooner terminated by either party, from the effective date of this Lease Agreement.

At the present time, the City's intention as to the long-term use of the City structure has not been determined. The CITY may demolish the structure and develop the property for park and recreation purposes. Any decision regarding the ultimate use the property will be made with community input. In any event City shall be under no obligation to provide office space to lessee at the lease premises or at any other location within the City.

- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered 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 at will.

If LESSEE fails to refuses to deliver the required deed, the CITY may prepare and record a notice reciting the LESSEE'S failure to execute this lease provision and the notice will be conclusive evidence of the termination of this lease and all LESSEE rights to the premises.

SECTION 3: RENT

- 3.01 Place of Payment. Rent, if any, is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. 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 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. LESSEE assumes all risk of loss and late payment charges if payments are made by mail, or if postmarks are illegible, in which case the payment shall be deemed paid upon actual receipt by the City Treasurer.

- 3.02 Rent. In lieu of rent, LESSEE as and for additional consideration, agrees to provide the following services to the CITY; develop and maintain a community center program, provide maintenance to the premises, provide meeting space for the Normal Heights Community Association, Adams Avenue Business Association, Normal Heights Garden Club and any such additional activities developed by LESSEE and approved by the City Manager.

As additional consideration, LESSEE shall pay CITY all revenue generated from its subleasing of the premises, as defined in Section 4.01. A statement of the source of all revenues generated by the subleasing activities shall accompany each segment.

SECTION 4: ASSIGNMENT

- 4.01 Assignment and Subletting. LESSEE shall not be permitted to assign this lease. Any subleasing of any portion of the lease premises must have prior written approval of the City Manager, and any monies derived from subleasing shall be paid to CITY pursuant to Paragraph 3.02 herein. LESSEE agrees to charge fair market rent for any use by any other party of any portion of the lease premises. Subleasing for the purpose of this paragraph shall mean the use by person or entity other than LESSEE of any portion of the premises on a permanent, continuous basis. Notwithstanding the foregoing, the LESSEE may, without payment of rent to CITY, conduct occasional fund raising events using all or portion of the premises, providing the City Manager's prior written approval is obtained and the proceeds derived from such event(s) are used exclusively to further the purpose of the LESSEE and/or programs offered at the premises. The City Manager's determination as to whether an event qualifies for rental exemption in accordance with this provision shall be final.
- 4.02 Encumbrance. LESSEE may not encumber this lease, its leasehold estate nor its improvements thereon.

4.03 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
- (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 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 Paragraph a.(1) of this section 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 that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default or defaults 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. If the mortgagee or beneficiary shall be required to exercise its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default or defaults may be expeditiously corrected:

- (1) CITY may correct said default or defaults and charge the costs thereof to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.
- (2) CITY may correct said default or defaults and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or defaults or to pay the costs of correction performed by or at the direction of CITY.
- (3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable cost incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such costs.

Should the default or defaults 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 the 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, the 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 the 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. The 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 the 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 the CITY shall at all times, subject to applicable statute of limitations, 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.
- 4.04 Eminent Domain. If all or part of the premises is taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of the 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 the 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 the CITY, the remainder 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 of the condemning authority, whichever occurs first, 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 the 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, the LESSEE shall retain its possessory interest in the fair market value of any improvements placed on the premises in accordance with this lease by LESSEE.
- 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

- 5.01 Indemnity. LESSEE at all times shall relieve, indemnify, protect and save CITY and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:
 - a. Any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises,

- b. Any operation, use or occupation conducted on the premises,
- c. Any act, omission or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
- d. Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

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

- a. 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.
- b. 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 or LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with the Encumbrance section hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- c. Conditions. All insurance policies will name the CITY as an additional insured, protect the CITY against any legal costs in defending claims and will not terminate without sixty (60) days' prior written notice to the CITY. All insurance companies must be satisfactory to the 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.

- d. 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 acquire any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- e. Accident Reports. LESSEE shall report to CITY any accident causing more than One Thousand Dollars (\$1,000) 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.
- f. Failure to Comply. If the 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 or insurers 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 f., if LESSEE fails or refuses to take out or maintain insurance, CITY has the right to declare this lease in default without further notice to LESSEE or CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.03 Waste, Damage or Destruction. LESSEE agrees to give notice to the 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 the 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 the 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 the 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 5.02 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.

- 5.04 Security Deposit. A security deposit shall be paid to the CITY by LESSEE in the sum of One Hundred Dollars (\$100.00) on or before the effective date of this lease. All or any portion of the principal sum shall be available unconditionally to CITY for correcting any default or breach of this lease by LESSEE, LESSEE'S successors or assigns, or for payment of expenses incurred by CITY as a result of LESSEE'S failure to faithfully perform all terms, covenants and conditions of this lease.

LESSEE will maintain the required security deposit throughout the lease term and for 90 days thereafter unless previously released by the CITY. Failure to do so shall be considered and is grounds for immediate termination of this lease.

In the event CITY utilizes all or any portion of the security deposit, LESSEE shall reimburse the deposit within 10 days of notice from CITY to bring the security deposit up to the full specified amount.

The security or any balance thereof will be returned to the LESSEE within 90 days following expiration or termination of this lease, provided LESSEE has faithfully complied with all terms, covenants and conditions hereof.

The security deposit may be increased by CITY proportionate to any increased performance or rental liability of LESSEE upon 60 days' prior written notice from CITY of such required increase.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 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 in the premises. Provided, however, CITY warrants that all electrical, plumbing, lighting, air conditioning, heating, and irrigation are in working condition and that the building meets all health, safety, building and fire code regulations of the City of San Diego.
- 6.02 Entry and Inspection. CITY reserves and shall always have the right 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 for and 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 the 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 the 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.
- 6.03 Maintenance. Except as hereinafter provided LESSEE agrees to assume responsibility and cost for the operation and maintenance of the premises as set forth below. LESSEE will perform all such repairs and replacements as set forth below necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to the CITY and in compliance with all applicable laws. Appropriate codes and standards of CITY, state and federal agencies shall be

observed in all maintenance, repairs and replacements on the premises as set forth below. It is understood that CITY has boarded up the north kitchen area of the premises, and will not make any improvements, alterations or repairs to said area during the term of this lease. LESSEE can make improvements with prior written City Manager approval. Specific areas of maintenance by LESSEE and CITY are as follows:

<u>System/Area</u>	<u>City</u>	<u>Lessee</u>
Painting	Exterior	Interior
Doors/Hardware	Exterior	Interior
Windows/Glass in Doors/Screens	None	All replacement/repair windows, screens, awnings & glass in windows & doors
Security	Repair exterior doors	Board-up when needed Notify City of security problems regarding doors
Floor Covering	Replace when needed	Repair all-tile, carpet, etc.
Displays	None	All installation & operation
Roof	All	None
Fire Safety Equipment	None	All servicing, inspections and repairs
Heating	Replace when needed	All servicing, inspections and repairs
Electrical (Lighting & Power)	Wiring, conduit, breakers light fixtures (as a complete item)	Troubleshoot, replace lamps, switches, wall switch, outlets, fixtures, lenses, & all exterior lighting
Plumbing, Sewer, and Water	Broken pipe, valves within system, clear sewer <u>outside</u> building perimeter	Clean sewer within building perimeter, replace/repair/ maintenance of valves & faucets & trim at service points, i.e., angle stops, flushometers, toilet valves & seats, lavatory faucets, traps, hosebibs, water heater

<u>System/Area</u>	<u>City</u>	<u>Lessee</u>
Pest Control	None	All
Landscaping	None	All
Structural Ceiling Walls	All	Patching

- 6.04 Improvements/Alterations. No improvements, structures or installations shall be constructed within the premises and the premises may not be altered by the 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 the Park and Recreation Board and its sub-committees, and such approval shall not be unreasonably withheld. This provision shall not relieve the LESSEE of any obligation under this lease to maintain the premises in decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. The CITY shall not be obligated by this lease to make, or assume any expense for, any improvements or alterations.
- 6.05 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.
- 6.06 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.
- 6.07 Liens. LESSEE will 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.

6.08 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 the 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 the CITY.

6.09 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 the 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. All and any 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 the CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If the 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 180 days prior to expiration and the

LESSEE shall remove all such improvements, structures and installations as directed by the CITY at LESSEE'S sole cost on or before lease expiration or termination. If the LESSEE fails to remove any improvements, structures and installations as directed, the 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 the 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 rental by LESSEE 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 claim 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.

SECTION 7: GENERAL PROVISIONS

7.01 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 Property Director
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. Written notice to LESSEE shall be delivered or mailed to:

4649 Hawley Boulevard
San Diego, CA 92116

Attention ~~Tom Fox~~ *Executive Director*

- 7.02 Compliance with Law. LESSEE will at all times in the construction, maintenance, occupancy and operation of the premises, comply with all applicable laws, statutes, ordinances and regulations of the CITY, County, State and Federal Government, at LESSEE'S sole cost and expense. In addition, LESSEE will 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.
- 7.03 CITY Approval. The approval or consent of the 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.
- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age or physical handicap 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.

- 7.05 Equal Opportunity. LESSEE agrees to abide by the CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by the CITY for its Affirmative Action Program each year.
- 7.06 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.
- 7.07 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 attorney's fees.
- 7.08 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.
- 7.09 Captions. The lease Table of Contents, 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. The LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties in 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 Bylaws. Membership in LESSEE'S organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, bylaws (as they relate to the lease premises), and fees, if any, and changes thereto proposed by LESSEE'S organization shall, before being put into effect, be submitted to and receive the written approval of the City Manager. Bylaws shall be on file in the office of the Property Department prior to CITY execution of this lease.
- 7.12 Warranty. The CITY does not warrant that said premises are suitable for which they are leased as stated herein.
- 7.13 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.

SECTION 8: SIGNATURES

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 8/11/88 ✓

THE CITY OF SAN DIEGO

By [Signature]
ASSISTANT TO THE City Manager

LESSEE: NORMAL HEIGHTS COMMUNITY
DEVELOPMENT CORPORATION,
A Nonprofit California
Corporation

Date 4-21-88

By [Signature]

Date 8/11/88

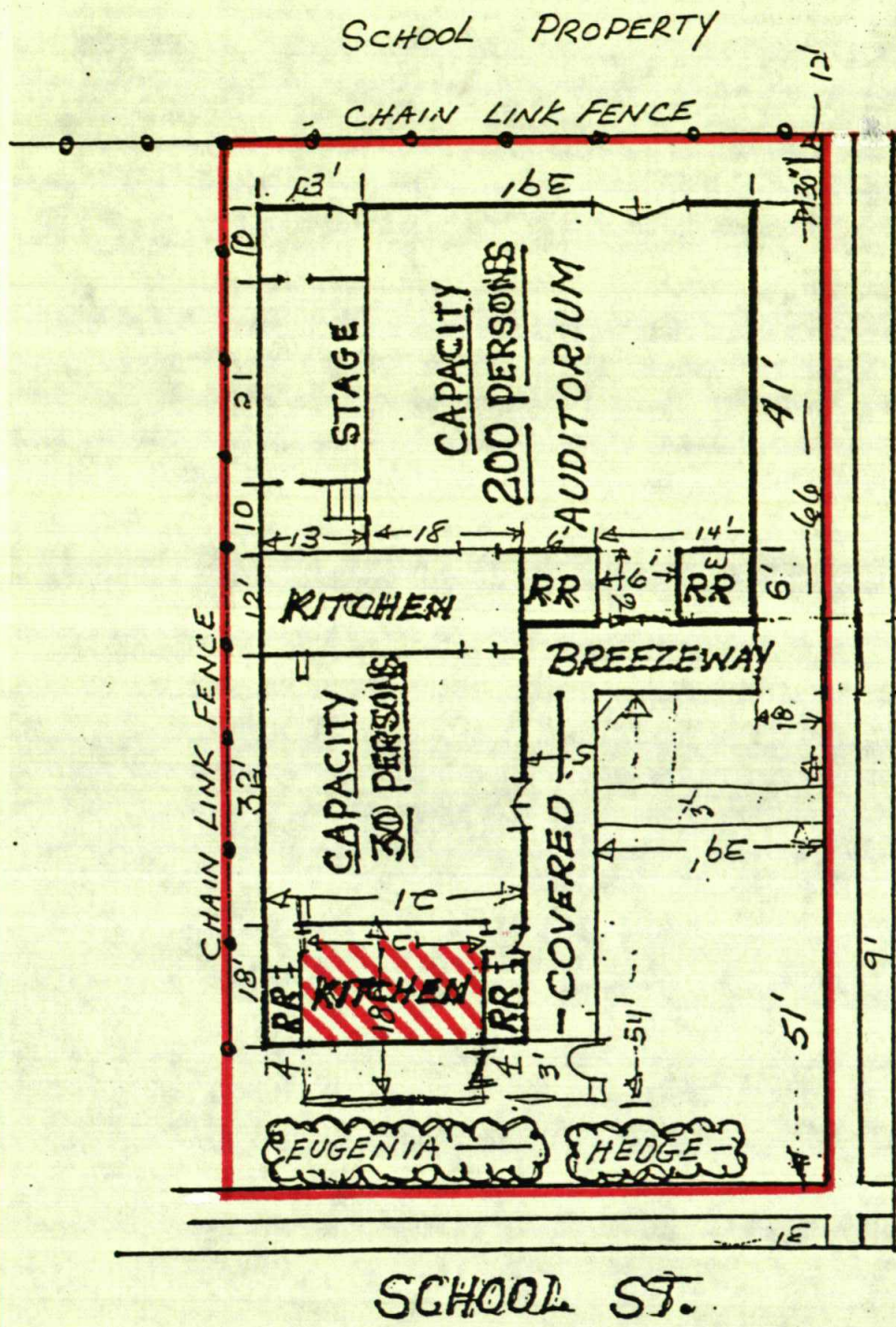
By [Signature]

APPROVED as to form and legality this 16 day of August, 1988.

Date [Signature]

By [Signature]
City Attorney

JEH:baa(11)61
4-20-88



Just L. meeting

HAWLEY BLVD.
4649 S.D. 92116

ONEIRA CLUB

EXHIBIT A

EXHIBIT "B"

The following charges shall be made for groups or entities using the auditorium. All revenues shall be used to defray utilities, management, community center expenses, and staff, and shall be the property of Lessee.

1. \$100.00 deposit for groups using kitchen;
2. Per attached rate schedule.

Rate Schedule

Normal Heights Community Center

Auditorium

Charges for hall rental shall be at the hourly rate of \$15 per hour with a 2-hour minimum.

The hourly rate shall be reviewed each year and adjusted to recover increased costs for utilities, maintenance, repairs, management and staff.

EXHIBIT C

CITY-OWNED PERSONAL PROPERTY

<u>Quantity</u>	<u>Item</u>
<u>Large Meeting Hall</u>	
41	Chairs, folding, metal, padded
103	Chairs, folding, metal, unpadded
1	Fire extinguisher, Type A, Buffalo, 2½ gallon
1	Walls clock, electric, 12" diameter, General Electric
1	Venetian blinds, 30"x72"
2	Speakers, wall mount, walnut veneer
<u>On Stage - Large Meeting Hall</u>	
1 set	Curtains, stage curtains, old, damaged
1	Flag, staff & Stand
1	Table, wood, two tier, walnut colored, 30" high
<u>Storage Lockers Under Stage</u>	
2	Table dollies
5	Wooden tables, folding, 30"x72"
2	Tables, folding, 6' w/formica tops
6	Tables, metal, folding, 30"x72", with formica tops
1	Ladder, wood folding 10' or 12'
2	Serving tables, aluminum, folding
26	Card tables, folding, 30"x30"
23	Chairs, metal, folding
<u>Storage Room South of Stage</u>	
1	Wall mirror, 30"x48" with frame
1	Venetian blind, 30"x36"

Kitchen - Large Meeting Hall

- 1 Refrigerator, GE, 15 cu.ft., white, 2-door, bottom freezer
 - 1 Range/oven, combo, 6 burner, "Roper", dual oven, white
-

- 1 Fire extinguisher, ABC, dry chemical, Model TCP-5J, last serviced 1983
- 3 Assorted size pots, large aluminum
- Eating utensils, pots and pans.

Small Meeting Hall

- 1 Piano, upright, w/bench, "Regent", old, walnut finish
- 1 Podium, wood
- 1 Table, wood, four turned legs, with scalloped top

Kitchen - Small Meeting Hall

- 1 Side chair, oak
- 1 Step stool, metal, 2 step
- 1 Fire extinguisher, "General", BC

(R-88-2366)

RESOLUTION NUMBER R- 271152

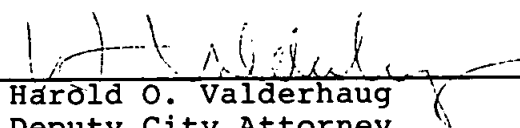
ADOPTED ON JUN 13 1988

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, for valuable consideration, a 5-year lease agreement with NORMAL HEIGHTS COMMUNITY DEVELOPMENT CORPORATION, a nonprofit California corporation, for the operation and maintenance of a community center serving the Normal Heights area at 4649 Hawley Boulevard, under the terms and conditions set forth in that lease renewal on file in the office of the City Clerk as Document No.

RR- 271152

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
05/20/88
Or.Dept:Prop.
Job:218643
R-88-2366
Form=r.none

Passed and adopted by the Council of The City of San Diego on
June 13, 1988 by the following vote:

YEAS: Wolfsheimer, Pratt, Struiksma, Henderson, Filner, O'Connor.

NAYS: None.

NOT PRESENT: Roberts, McColl, McCarty.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

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

(SEAL)

By: ELLEN BOVARD, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 271152, passed
and adopted by the Council of The City of San Diego, California
on JUN 13 1988.

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

(SEAL)

By: Ellen Bovard, Deputy

FILED
In the office of the Secretary of State
of the State of California
APR 1 1982
MARCH FONG EU, Secretary of State
By BILL HOLDEN
Deputy

ARTICLES OF INCORPORATION
OF THE
NORMAL HEIGHTS COMMUNITY DEVELOPMENT CORPORATION

ARTICLE I

The name of this Corporation is Normal Heights Community Development Corporation.

ARTICLE II

This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. The specific purposes of this Corporation are:

1. To effect reinvestment of private and public capital in the Community of Normal Heights.
2. To effect decent, safe and sanitary housing and related facilities that are conducive to the general well being of the Community of Normal Heights.
3. To effect economic development and commercial revitalization and related facilities which increase employment opportunities for residents of the Community of Normal Heights.
4. To effect public improvements and social services which benefit the general well being of the Community of Normal Heights.
5. To encourage citizen involvement in the development and improvement of housing and public facilities and services as well as the revitalization and stimulation of commercial enterprise in the Community of Normal Heights.

The general purpose of this Corporation are:

1. To facilitate the development or rehabilitation of housing as well as encourage increased opportunities for home ownership and owner occupancy in the Community of Normal Heights.

2. To promote cooperation and coordination among community organizations and individuals, local, state, and federal agencies, and private industry and institutions in securing decent housing and community facilities in the Community of Normal Heights.

3. To inform and provide technical assistance to persons and groups of the community regarding the availability of governmental or private programs which relate to improvement of community welfare.

4. To receive and administer funds from public or private sources, by grant or contract, for use in attaining the purpose for which this corporation is organized.

5. To purchase, own, develop, hold, improve, rehabilitate, use, manage, lease (either lessor or lessee), sell, exchange, convey, mortgage hypothecate, or encumber real and personal property, or any interest therein.

6. To borrow money and to issue bonds, notes or other evidence of indebtedness to further the stated purposes of the Corporation, and to secure the same by mortgage, pledge, or other lien on the property of the Corporation.

7. To make loans or grants and to guarantee the undertakings, indebtedness, contracts, or performance of other persons, associations, or corporations.

8. To enter into, perform and carry out contracts, partnerships, and joint ventures for any lawful purpose with any person, association, corporation, or government agency.

9. To carry on any of the aforementioned activities, either directly, as an agent for, or with other persons, associations, corporations, or governmental agencies.

10. To do all such other acts permissible under the laws of California and the United States Constitution as are necessary, expedient, or appropriate to accomplish the purposes of this Corporation, provided, however, that this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise its powers that are not in furtherance of the primary purposes of this Corporation.

ARTICLE III

The name and address in the State of California of this Corporation's initial agent for service of process is E. Stephen Temko, 233 "A" Street, Suite 204, San Diego, California.

ARTICLE IV

A. This Corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

B. Notwithstanding any other provisions of these articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a Corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

C. No substantial part of the activities of this Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

ARTICLE V

The property of this Corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this Corporation shall ever enure to the benefit of any director, officer or member thereof or to the benefit of any private person. Upon the dissolution or winding up of the corporation, its assets remaining after payment, or provision of payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

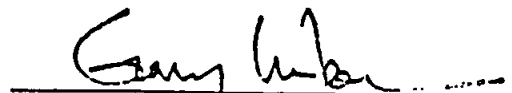
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DATED: 2-18-82



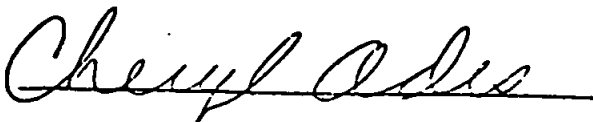
E. STEPHEN TEMKO

DATED: 2-18-82



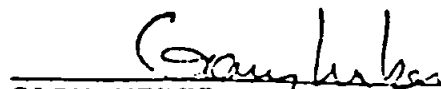
GARY WEBER

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.





E. STEPHEN TEMKO



GARY WEBER



**I, March Fong Eu, Secretary of State
of the State of California, hereby certify:
That on the 1st day of April, 1982,**

NORMAL HEIGHTS COMMUNITY DEVELOPMENT CORPORATION

**became incorporated under the laws of
this State by filing its Articles of
Incorporation in this office.**

**In Witness Whereof, I
execute this certificate
and affix the Great Seal
of the State of California
this 21st day of December, 1987**

March Fong Eu
Secretary of State



PROPOSED
CDBG
CONTRACT

SEPT. 14

A G R E E M E N T

THIS AGREEMENT is made by THE CITY OF SAN DIEGO, a municipal corporation, herein called "City," and NORMAL HEIGHTS COMMUNITY DEVELOPMENT CORPORATION (a non-profit corporation), the operating agency, herein called "Agency."

R E C I T A L S

- A. City has entered into a grant agreement with the Department of Housing and Urban Development (HUD) to carry out the Community Development Block Grant (CDBG) program in the City of San Diego.
- B. City has recognized the need for neighborhood development activities and revitalization of the commercial areas in the Normal Heights community.
- C. Agency wishes to complement the revitalization program by addressing development on a neighborhood basis.
- D. Agency is willing and able to conduct activities as contained herein to promote development of the Normal Heights neighborhood.

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

I. AGENCY RESPONSIBILITIES

The Agency agrees to promote economic development, revitalization and redevelopment efforts for the residents of the Normal Heights community. Details of the program are contained in Attachment A - Scope of Services.

II. CITY RESPONSIBILITIES

City shall monitor the Agency's activities through the City Manager's designee in Economic Development, hereafter referred to as the Contract Administrator, and said designee shall have administrative responsibility for Agency programs as provided in this agreement.

III. TIME OF PERFORMANCE

Performance of services as described in the attached Scope of Services shall commence on September 1, 1992 and terminate on October 31, 1993. Contract may be extended by City Council action for an additional 10 months ending on August 31, 1993.

IV. OPERATING MANUAL

In addition to the requirements contained in this agreement, the operations of the project are governed by the Economic Development's "Operating Manual for Community/Economic Development Programs," (1992 update) hereinafter referred

to as the Operating Manual. The Operating Manual (Attachment C) is hereby incorporated into this agreement and is binding upon each party.

V. INDEPENDENT AGENCY

Agency is and shall be an independent contractor and not an agent of the City hereunder. Any provision in this agreement that may appear to give the City the right to direct Agency as to the details of doing the work, or to exercise a measure of control over the work, means that Agency follow the wishes of City as to the results of the work only.

VI. PERSONNEL AND SUBCONTRACTS

Agency will undertake project activities with its own staff unless authorized to do otherwise by a written agreement between Agency and subcontractor(s). The Agency shall not execute or amend any such subcontract nor shall disbursements be made prior to written approval of the Contract Administrator. The process for selecting subcontractors must comply with the requirements of the CDBG program. Agency shall furnish Contract Administrator with copies of all subcontracts entered into by Agency in relation to this project.

VII. COMPENSATION AND BUDGET

Total compensation available for the program to be implemented pursuant to this agreement shall not exceed \$7,333, for the two-month period September 1-October 31, 1992. Attachment B to this agreement contains details on project budgets for the program. Funds for this program must be accounted for

separately and may not be commingled. Agency is responsible for planning expenditures and activities to ensure that each project is completed within the budgeted amount.

VIII. METHOD OF PAYMENT

City shall make a cash advance of Five Thousand Seventy-Six Dollars (\$5,076) to provide needed working capital. All subsequent expenditures and payments shall be reimbursed by City monthly after Agency has submitted financial reports as detailed in Section V, Paragraph E of the Operating Manual and the required program reports (see Attachment A, Scope of Services).

City shall reimburse such expenditures in a timely manner. The final payment to Agency shall be withheld until all expenditures and the cash advance have been accounted for and Agency's final report is received by City.

City shall contract with an independent accounting firm to monitor each monthly reimbursement request.

Agency shall establish a separate checking account for the above described funds and shall make expenditures only for costs related to services required in this Agreement. Agency shall not commingle funds from any other project or source with the funds for these projects to be funded under this Agreement.

IX. ADDITIONAL FUNDING SOURCES

If Agency has received any additional funding from a source or sources other than City, a complete and separate accounting of such funding shall be maintained and made available to the City Auditor upon request. It is expressly understood by Agency that any cost incurred in connection with Project which is properly chargeable to and actually claimed for compensation under a funding source other than City shall not be allowed as a chargeable cost under this Agreement.

X. AUDITS

Agency is required to have an annual audit of all Agency funds conducted in accordance with Federal Office of Management and Budget (OMB) Circulars A-110, A-128, and A-133. Audit can be for period ending August 31, 1993, or can be on a calendar year schedule. The audit is due to the City within three months after the period ending date.

XI. UNIFORM ADMINISTRATIVE REQUIREMENTS

Agency shall comply with applicable uniform administrative requirements as described in 24 CFR Part 570.502.

XII. COMPLIANCE WITH APPLICABLE LAWS

Agency agrees to comply fully with all applicable Federal, State, and local laws, ordinances, regulations, and permits, including but not limited to Federal CDBG financial and contractual procedures, and OMB Circular Nos. A-87, A-122, and A-110 with Attachments A, B, C, F, H, N, and O, as set forth in 24 CFR Part 570.502(b). Said Federal documents are on file in the Community Services Program Office, 1200 Third Avenue, Suite 924, San Diego, 92101, and are incorporated herein by reference.

XIII. INELIGIBILITY OF AGENCY OR SUBCONTRACTORS

Agency shall not use CDBG funds directly or indirectly in its operations, or to employ, award contracts to, or otherwise engage the services of, or fund any Subcontractor during any period of debarment, suspension, or placement in ineligibility status of the Agency or such Subcontractor under the provisions of 24 CFR Part 24.

XIV. SUSPENSION OF PAYMENTS

Other provisions of this Agreement notwithstanding, City may elect to suspend one or more payments to Agency, or terminate this Agreement in accordance with 24 CFR Part 85.43 as a result of any of the following circumstances. In such case, Agency hereby agrees not to expend any funds related to or connected

with any area of controversy or conflict which shall have resulted in the suspension of payment or termination of funding.

- a. Noncompliance. Agency shall have failed to comply with any of the terms or conditions of this Agreement.
- b. Misrepresentation. Agency, with or without knowledge, shall have made substantial and material misrepresentations in regard to information furnished to City.
- c. Unauthorized Actions. Agency shall have taken any action relative to Project which required approval by City or the Community Services Program, without having obtained such approval.
- d. Litigation. Agency shall have become subject to pending litigation with respect to the performance of its duties and obligations hereunder, including any court action or proceeding involving the Federal Bankruptcy Act, which litigation may jeopardize or adversely affect the understanding of any carrying out of Project.
- e. Reports. Agency shall have failed to submit any report and supporting document to City as required by this Agreement and the Operating Manual, or shall have failed to submit any other report as may be required by City, or shall have failed to submit any report and supporting documentation on the date prescribed by City.
- f. Termination of Grant Funds. HUD shall have suspended or terminated a portion or all of the CDBG funds allocated to City.

- g. Federal Directives. Agency shall have been unable or unwilling to comply with any additional terms or conditions relative to Project that may be required by newly enacted Federal laws, or changes in Federal rules, regulations, or other directives.

XV. AGENCY RECORDS

Agency shall maintain detailed administrative and fiscal records of all CDBG-funded project activities as required by the Operating Manual during the term of this Agreement. Agency shall also allow authorized City employees or authorized agents of City, or authorized representatives of the U.S. Government or their agents, to inspect its premises, books, accounting documents, payrolls, and all Agency records for the purpose of auditing, monitoring, or evaluating Agency. Agency shall store records and documents for a period of three years after submission of the final expenditure report for the contract period, or three years after submission of the final expenditure report upon earlier termination of this Agreement, or until all audit findings have been resolved, whichever is longer. During this period, City and U.S. Government representatives or their authorized agents shall have access to all Agency records and documents at any time. In no case shall the Agency dispose of Agency records without first informing the City of its intent to do so.

XVI. ORAL REPRESENTATIONS

This Agreement and the exhibits and references incorporated herein fully express all understandings of the parties concerning the matters covered herein. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change or amendment to this Agreement which has been duly approved and executed in accordance with the procedures described herein.

XVII. CHANGES OR AMENDMENTS TO AGREEMENT

Should circumstances require that any of the terms or conditions of this Agreement be changed or amended, such change or amendment shall be accomplished only in the following manner:

- a. A nonsubstantive change which does not affect the total compensation specified herein shall be approved in writing by the Economic Development Division and Agency's authorized representative.
- b. A substantive change to any of the terms or conditions of this Agreement, or a change which increases the total compensation specified herein, shall be accomplished by a written amendment to this Agreement which shall be approved by the City Council and signed by the authorized representatives of City and Agency.

XVIII. HOLD HARMLESS

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, and 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.

XIX. DELAY

Agency shall not be liable for delay resulting from causes beyond its reasonable control. In the event of such delay, the date of performances will be postponed by such length of time as may be reasonably necessary to compensate for the delay.

XX. OWNERSHIP OF DOCUMENTS

The original of all reports and documents generated by this agreement shall become the property of City when Agency has been compensated as set forth herein.

XXI. FEDERAL LAWS AND REGULATIONS

The provisions of this agreement are subject to the provisions and regulations promulgated by the Secretary of Housing and Urban Development or their delegate in effect on the effective date of this agreement. Subsequent changes to such act and regulations shall become effective for the administration of the agreement upon notification of such changes to City and subsequent notice to Agency. All Federal regulations in effect as of July 1, 1992, which relate to the use of Community Development Block Grant (CDBG) funds, shall govern this agreement.

XXII. EQUAL OPPORTUNITY PROGRAM REQUIREMENTS

Agency hereby agrees to comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal and State laws and regulations hereafter enacted, as well as those requirements addressed by the City of San Diego's Equal Opportunity and Minority and Women Business Enterprise Contracting Programs, recorded with the City Clerk as Document RR-262633. Upon request by City, Agency also agrees to submit a current Workforce Analysis Form and/or an Equal Opportunity Plan which addresses the affirmative actions that will be taken by Agency to achieve the City's goals for the employment of minorities, women, and the disabled. Agency understands that failure to comply with the above cited laws and regulations and/or falsely submitting information required under same laws

and regulations may result in termination of this Agreement and debarment from awards of future City contracts for a period of not less than one or more than two years.

XXIII. HUD SECTION 3 CLAUSE

The following "Section 3 Clause" is included herein pursuant to the requirements of Title 24, Part 135 (24 CFR Part 135) of the Code of Federal Regulations, and is binding upon the parties to this Agreement. Agency shall document its good faith efforts to comply with the terms and conditions of the Section 3 Clause, and furnish such documentation to City upon request.

- a. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701(u). Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project area, and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by, persons residing in the area of the Project.
- b. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and applicable rules and orders of the Department issued

thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

- c. Agency will send to each labor organization or representative of workers with which they have a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or worker's representative of their commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. Agency will include this Section 3 clause in every subcontract for work in connection with the Project, and will, at the direction of the applicant for or recipient of Federal financial assistance take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulation set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the Project, binding upon the applicant or recipient, its

contractors and subcontractors, its successors, and assignees to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

XXIV. FIDELITY BONDING AND PUBLIC LIABILITY INSURANCE

Prior to any disbursement for any purpose other than obtaining fidelity bonds, Agency agrees that its chief fiscal officer or its insurer shall forward to City an assurance that all persons handling funds received or disbursements or loans made hereunder are covered by a fidelity bond in an amount not less than one-half (1/2) of the total allocation. If the bond is canceled or reduced, Agency shall immediately notify City. In that event, City shall make no further disbursements until it is assured adequate coverage has been obtained.

Agency agrees to obtain and keep in force during the term of this agreement a policy of comprehensive public liability insurance insuring the Agency and naming the City as an additional insured against any liability for accident, injury, or death arising out of the use, operation, maintenance or administration of Project and for any and all claims of liability arising out of ownership, use development, construction, occupancy, maintenance, or administration of the premises housing Agency and all areas appurtenant thereto. Such insurance shall be in an amount not less than One Million Dollars (\$1,000,000) for any injury to, or death of, any person or persons in

any one accident or occurrence. Agency shall produce evidence of required insurance to City prior to requesting reimbursement for the first month's operational expenses.

XXV. PROJECT REVENUES

All monies that accrue to Agency from CDBG funds that are deposited in an interest bearing account shall revert to the City within thirty (30) days of termination of this Agreement.

All revenues that accrue to Agency as a result of the CDBG sponsored project, including revenue from advertising, shall be deposited in a separate bank account. All funds deposited, including interest earned, shall be considered program income. Documentation of all transactions taking place in this account shall be included in Agency's monthly reports submitted to City. With prior written approval of the Contract Administrator, funds in this account may be used to improve and extend services being rendered by Agency. If such approval is not granted, these funds shall revert to City within thirty (30) days after the end of the period of performance specified herein or termination of this Agreement, as required by 24 CFR Part 507.503(b).

XXVI. CONFLICT OF INTEREST

Agency shall establish and make known to its employees appropriate safeguards to prohibit employees from using their positions for a purpose that is, or gives the appearance of being, motivated by desire for private gain for

themselves or others, particularly those with whom they have family, business, or other relationships. Project personnel shall not accept gratuities or any other favors from subcontractors or potential subcontractors. In the procurement of supplies, equipment, construction, and services by Agency, the conflict of interest provisions in Attachment O of OMB Circular No. A-110 and 24 CFR Part 570.611 shall apply.

XXVII. AGENCY EMPLOYMENT OF CITY PERSONNEL

This Agreement shall be unilaterally and immediately terminated by City if Agency employs an individual who within twelve months immediately preceding such employment did, in the individual's capacity as a City officer, board member or employee, participate in, negotiate with, or otherwise have an influence on the recommendations made to the City Council in connection with the selection of Agency.

XXVIII. SUBSTANCE ABUSE EDUCATION AND REFERRAL

Substance abuse is a major concern in our community. In order to address these concerns, Agency shall provide substance abuse education and/or referral for staff and clients as necessary. Agency is also encouraged to support the omnibus drug legislation passed by Congress on November 18, 1988 by adopting and enforcing a policy to maintain a drug-free work place.

XXIX. DRUG-FREE WORKPLACE/CITY AGENCY

- a. The issue of substance abuse, the misuse of both legal and illegal drugs, has been identified as a major problem. It is well documented that substance abuse in the workplace can negatively impact employee performance, worker safety and the safety of the general public.
- b. "Drug-free workplace" means a site for the performance of work done in connection with a contract let by City of San Diego, at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance.

"Employee" means the employee of an agency directly engaged in the performance of work pursuant to a contract.

"Controlled substance" means a controlled substance in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. Sec. 812).

"Subcontractor" means the department, division, or other unit of a person or organization responsible to the Agency for the performance of a portion of the work under the contract.

c. City Agency Requirements. Every person or organization awarded a contract or grant by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace by doing all of the following:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the person's organization's workplace 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:
 - (a) The dangers of drug abuse in the workplace.
 - (b) The person's or organization's policy of maintaining a drug-free workplace.
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs.
 - (d) The penalties that may be imposed upon employees for drug abuse violations.
- (3) Posting the statement in a prominent place at Agency office.

d. Agency shall include in each subcontract agreement language which indicates the subcontractor's agreement to abide by the provisions of a drug-free workplace. Agency and subcontractors shall be individually responsible for their own drug-free workplace programs.

XXX. 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 subawards, including subcontracts, subgrants, loans, and cooperative agreements, and that subrecipients shall certify and disclose accordingly.

XXXI. COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM

Agency shall comply with the City's Equal Opportunity and Minority and Women business Enterprise Contracting Programs, approved by the City Council and filed with the City Clerk as Document RR-262633, for all work to be

performed in connection with procurement practices, operating, and management services portions of this Agreement.

Agency and each of its subcontractors shall submit a Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and State laws and regulations hereinafter enacted.

Agency shall submit quarterly Equal Opportunity summaries of workforce representation statistics and contracting activities in the format specified by the City. The statistical report shall be accompanied by a narrative report which details the status of the program's progress and shall be submitted to the City Manager through the Equal Opportunity Contracting Program Manager no later than thirty (30) working days after the close of each quarter.

Agency 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 Agreement for a period of not less than one (1) year.

XXXII. COMMUNITY PARTICIPATION PLAN

It is the City's intent that CDBG funded Community Development Corporations reach out to, involve and benefit from the diversity within their communities.

To further this goal, a specific outreach program is to be defined as part of the Scope of Services. The program should outline the actions that the Agency will take in an effort to assure that the Agency's staff, policy board and work program reflect the diversity of the community it services.

XXXIII. COUNCIL POLICY 700-2

Agency agrees to comply with the requirements of Council Policy 700-2, Community Development Block Grant (CDBG).

IN WITNESS WHEREOF, this agreement is executed by The City of San Diego acting by and through its City Manager, pursuant to Resolution No. _____, authorizing such execution, and by Agency.

Dated this _____ day of _____, 1992.

THE CITY OF SAN DIEGO

By _____
Economic Development Director

NORMAL HEIGHTS COMMUNITY DEVELOPMENT CORP.

By _____
President

I HEREBY APPROVE the form and legality of the foregoing agreement this _____ day of _____, 1992.

JOHN W. WITT, City Attorney

By _____
Deputy

SCOPE OF SERVICES

1. Provide ongoing oversight of operations of the Normal Heights Community Center, including day to day operations, scheduling, fiscal management and general maintenance.
2. Provide NHCDC project management and general oversight of the NHCDC master plan project, including city agency, contractor and consultant liaison work between NHCDC Board of Directors, government agencies and Normal Heights community groups.
3. Provide administrative support to the City of San Diego by preparing reports as required by the City of San Diego CDBG Operating Manual (1992).
4. Provide assistance to other community groups (i.e. Adams Avenue Recreation Council, Normal Heights Planning Committee, Adams Avenue Business Association and the Normal Heights Community Association) for the purpose of promoting their activities as well as combining efforts to benefit the overall community by providing:
 - A. Technical assistance on an as needed basis,
 - B. Staff and volunteer membership work space, and
 - C. Board and membership meeting space.
5. Work with the Federal Home Loan Bank to reorganize and implement the Low Income Home Buyers Program.
6. Prepare an employee handbook which includes discussion of policies and procedures regarding substance abuse, equal opportunity and conflict of interest.
7. Provide NHCDC management and general oversight of the citizen participation plan (Attachment).

Normal Heights Community Development Corporation

Budget Sept 1992 to August 1993

Attachment B

PROGRAM BUDGET

Personnel Expenses

Salaries and Wages	\$19,008.00
Employee Benefits (FICA & unemployment ins.)	7,603.00
Subtotal, Personnel	26,611.00

Non-Personnel Expenses

Office Supplies	600.00
Postage	600.00
Photocopy	300.00
Equipment Maint. & Service Contract	500.00
Consultant Services	8,888.00
Telephone	900.00
Insurance	5,000.00
Special Department Expense	600.00
Subtotal, Non-personnel	17,388.00
Total Program Budget	\$43,999.00

July 8, 1992

CERTIFICATION REGARDING LOBBYING
(Pursuant to 24 C.F.R. 87.110)

The undersigned certifies, to the best of his/her knowledge and belief, that:

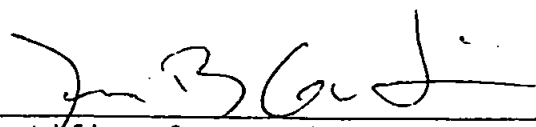
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the transaction was made or entered into. The undersigned acknowledges that submission of this certification is a prerequisite for making or entering into the transaction, that it is imposed by 31 U.S.C. § 1352 (1989), and that failure to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

So certified under penalty of perjury.



Certifier for Recipient

Reference: _____

