



Chairperson
Judith A. Wenker

President and CEO
Rudolph A. Johnson, III

The Neighborhood House Association

REQUEST FOR PROPOSAL

for

Modular Relocation & Site Development

Request #2017-003

Issue Date: May 30, 2017

Response Due: June 13, 2017 4:00 PM

Questions: Jerome Gissendanner, Purchasing Agent

Email: jerome@neighborhoodhouse.org

Phone: (858) 715-2642, ext. 183

Request

The Neighborhood House Association (“NHA”) requests your participation in a competitive bidding process for the selection of a contractor for **Modular Relocation & Site Development**. Qualified Contractors interested in providing such services (“Respondents”) must demonstrate the ability to perform the work described in the Project Description set forth in this Request for Proposal (the “Request,” or “RFP”) and have significant, prior experience successfully performing comparable work.

This Request is not an offer or commitment to purchase any goods or services or to award or enter into a contract.

SELECTION SCHEDULE	
<i>RFP Release Date</i>	<i>May 30, 2017</i>
<i>RFP Due Date</i>	<i>June 13, 2017 4:00 PM</i>
<i>Walk Through Date</i>	<i>June 6, 2017 10:00 AM</i>
<i>Last Day for Questions</i>	<i>June 11, 2017 5:00 PM</i>

About Neighborhood House Association

Neighborhood House Association (NHA) is a California nonprofit, public benefit corporation and recognized as a 501(c)(3) tax-exempt organization with its administrative offices located at 5660 Copley Drive, San Diego, CA 92111. NHA operates a multi-purpose human service agency that facilitates leadership in communities and assists individuals and families. NHA operates fifty-five (55) locations throughout San Diego County, delivering services that are designed to improve the quality of life through programs related to child development, feeding seniors and assisting them to live on their own, mental health services, housing and rental assistance, and related social services. Established in 1914 as a Settlement House to serve the growing immigrant population and incorporated in 1923, NHA programs currently include:

• Head Start	• Adult Day Health Care
• Housing Counseling	• Project Enable (Mental Health Services)
• HIV/AIDS Services	• Senior Services Center
• Homework Center	• Black Infant Health
• InnoVisions, Inc. (a social enterprise)	• Nutrition Services
• Project In-Reach (case mgmt. for incarcerated individuals)	

NHA has adopted a corporate policy reaffirming its commitment to equal opportunity contracting. Small, local, disadvantaged, women-owned, and ethnic minority-owned businesses are encouraged to submit responses to this Request. A Respondent qualifies as a small business firm, if it meets the definition of "small business" as established by the Small Business Administration (13 CFR 121.201).

For further information, please refer to the NHA website: www.neighborhoodhouse.org.

A. PROJECT OBJECTIVE AND SUMMARY

The Neighborhood House Association (NHA) has issued a Request for Proposal (RFP) for the relocation of 4 Division of the State Architect (DSA) modular trailers (12 ft. x 60ft.). In addition to the relocation, contractor will be responsible for the site development of a new location at 4110 41st Street, San Diego, CA 92104.

B. PROJECT DESCRIPTION

NHA will be receiving Proposals for companies interested in providing Contractor services for the attached scope of work (Exhibit A-1).

C. REQUESTED SUBMISSION

Submissions must follow the format outlined below and be signed by an officer or principal with the authority to contractually bind the firm.

1. Proposal Cover Page
2. Be contained in a document not to exceed fifteen (15) single sided pages including whatever pictures, charts, graphs, tables, and text the respondent deems appropriate to be part of the review of the firm's qualifications.
3. Submit three (3) copies of the information requested in this Request for Proposal in the sequence and format provided, including experience and references.
4. Table of Contents
5. General Firm Information
 - a. Firm name, address, phone (including contractor and design professional).
 - b. Type of organization and contact person
 - c. Address from which the project will be managed
 - d. Brief history/profile of the firm (contractor and subcontractor(s) if applicable)
6. Experience
 - a. Overall experience
 - b. Previous experience in relocating modular trailers and site development for similar size and scope to Exhibit A-1.
7. Technical Competence
 - a. Provide a construction and project management team or organizational chart showing key members of the relocation and development teams and areas of expertise.
8. References

List three (3) letters of references

9. Supplemental Material

Provide other pertinent information and/or firm brochure material or website that may be of assistance in evaluating the qualifications of the Contractor.

10. W-9 Form

11. ***The Respondent's Bids must be submitted to the address provided below.***

***Neighborhood House Association
Attn: Jerome Gissendanner, Purchasing
Procurement Division – RFP# 2017-003
5660 Copley Drive
San Diego, CA 92111***

12. ***Submittal Deadline.*** Submittals must be received by **4:00 PM (PST)**, Friday, June 13, 2017.

All Bids received after the submittal deadline will be rejected.

D. SELECTION PROCESS

This Request is seeking to identify the Respondent(s) most qualified to provide the Services. NHA, in its sole discretion, will determine the most qualified Respondent(s) to provide the Services, based on the information in the response submittals. The Respondent(s) may be asked to interview with NHA representatives, make an oral presentation and/or respond to questions regarding the submittal response. NHA may elect to negotiate pricing with one or more of the most qualified Respondents. NHA, in its sole discretion, will make its final selection of the Respondent(s) whose experience, expertise, reputation, capabilities and past performance is determined to be best suited for the performance of the Services. NHA's decision is final and is not subject to any form of administrative review, appeal or protest.

E. COMPLIANCE WITH STATE AND FEDERAL LAWS

1. **Copeland Anti-kickback Act**

Contractor, and any subcontractor hired by Contractor to perform on its behalf hereunder, will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by the Department of Labor Regulations (29 C.F.R. Part 3, "Contractors and subcontractors on public building or public work financed in whole or in part by loans or grants from the United States").

2. **Davis-Bacon Act**

Contractor, and any subcontractor hired by Contractor to perform on its behalf hereunder, shall comply with the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7) and as supplemented by Department of Labor Regulations (29 CFR Part 5, "Labor standards provisions applicable to contracts governing federally

financed and assisted construction”), which includes the requirement that the correct scale of wages to be paid be posted by the Contractor in a prominent and easily accessible location at the HHS funded worksite.

Contractors and subcontractors engaged to perform work on these projects must submit weekly copies of payrolls to NHA. Each payroll must be accompanied by a “Statement of Compliance.” Payroll for the payroll period must contain the correct information required and must be complete. Partial Social Security Numbers and omission of home addresses are recommended for security of personal information. Each laborer or mechanic must be paid in full for the weekly wages earned. Each laborer or mechanic must not be paid less than the applicable prevailing wage rates and fringe benefits. This information may be faxed or mailed to NHA Procurement.

An authorized representative of NHA may visit the construction site and may audit compliance of this requirement.

3. Hatch Act

Contractor, and any subcontractor hired by Contractor to perform on its behalf hereunder, will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501 -1508, and 7324 - 7328), which limits the political activity of the employee.

4. Byrd Anti-Lobbying Amendment

Contractors that apply or bid for an award exceeding \$100,000 must fully comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractor shall file the required certification to NHA, attached hereto as Exhibit A-3.

5. Debarment Status

Contractor assures and certifies to NHA that it and any subcontractor hired by Contractor to perform on its behalf hereunder, are not currently suspended, debarred, or otherwise prohibited (i) by the federal government from bidding on, accepting or being awarded federally funded contracts, either as a contractor or subcontractor; or (ii) by the state of California from bidding on, accepting or being awarded public works contracts, either as a contractor or subcontractor. Contractor agrees to inform NHA within forty-eight (48) hours of any change in its debarment status.

6. Federal Nondiscrimination Statement

The U.S. Department of Agriculture prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing

all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or by fax (202) 690-7442 or by email at program.intake@usda.gov. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish).

USDA is an equal opportunity provider and employer.

F. INDEMNIFICATION, INSURANCE, BONDS AND LIEN RELEASES

1. Insurance

Contractor shall, at its sole cost and expense, procure and maintain, throughout the term of this Contract, the insurance set forth herein. All insurance policies shall be issued by an insurance company authorized by law to conduct business in the State of California, subject to Corporation's approval. Prior to commencing performance of this Contract, Contractor shall provide Corporation original insurance certificates evidencing the following, required, coverage within ten (10) calendar days after its receipt of the "Notice of Award":

(1) Commercial General Liability (CGL) policy with coverage(s) as broad and as encompassing as CGL in the occurrence form, and providing coverage against claims for bodily injury or death and property damage occurring in or upon the Center or the Project site, and arising out of Contractor's and its employees', subcontractors', agents' and authorized representatives' performance of this Contract. Such insurance shall be primary and non-contributory with any other coverage, including Corporation's, and shall afford immediate defense and indemnification of Corporation to the limit of not less than one million dollars (\$1,000,000.00). Such insurance shall waive any right of subrogation against Corporation;

(2) Employer's Liability insurance with the following limits:

- Bodily Injury by Accident - \$1,000,000.00 each accident
- Bodily Injury by Disease - \$1,000,000.00 policy limit
- Bodily Injury by Disease - \$1,000,000.00 each employee

(3) Commercial Automobile Liability, or Business Auto coverage with limits not less than one million dollars (\$1,000,000.00) for each occurrence, combines single limit for bodily injury or death and/or property damage, covering owned, non-owned and hired automobiles, including loading and unloading operations;

(4) Workers' Compensation insurance as required by the laws of the State of California.

(5) The above described insurance policies (collectively, the "Policies") must include the following additional insured endorsement language:

"The Neighborhood House Association (NHA), and its members, officers, directors, agents and employees are named as additional insured and are provided the same coverage as the named insured, including the cost of defense against claims for bodily injury or death and property damage occurring in or upon or resulting from the insured's use or occupancy of the Center or the Project site, or arising out of the insured's or its members', officers', directors', employees', agents', or subcontractors' performance or non-performance of this Contract between the insured and NHA, unless

such claim is determined by a court of competent jurisdiction to have arisen from the sole or gross negligence or the willful misconduct of an additional insured. The named insured's coverage is primary and shall not require contribution from the additional insured's insurance coverage."

The Policies shall provide for not less than thirty (30) days prior written notice of cancellation to Corporation as the certificate holder. Contractor and Corporation agree that the specified coverage or limits of insurance in no way limits the liability of Contractor. Contractor shall maintain the required insurance coverage and endorsements throughout the term of this Contract.

2. Bonds

(1) A *bid guarantee* from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a **bid bond**, certified check, or other negotiable instrument accompanying a Proposal/Quote as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A **performance bond** on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A **payment bond** on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

All negotiated contracts (except those for less than the simplified acquisition threshold) awarded by recipients shall include a provision to the effect that the recipient, the HHS awarding agency, the U.S. Comptroller General, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of 45 CFR Part 75 Appendix II, "Contract Provisions for Non-Federal entity Contracts Under Federal Awards," as applicable.

G. CONTRACTING PROCESS

Neither this Request nor the selection of a Respondent will create a binding commitment on NHA. Upon completion of the selection process, NHA will award a contract to the party(ies) whom it elects to provide the Services in this Request. **Disclaimers:** NHA anticipates a single contractor will be selected as a result of this Request; however, NHA reserves the right, in its sole discretion, to award contracts to multiple contractors, to perform apportionments of the Services. NHA further reserves the right, in its sole discretion, to reject any or all response submittals, waive any informalities in this process or the submittal requirements; and/or cancel, in whole or in part, this Request.

EXHIBITS

- A-1 Scope of Work
- A-2 Site Plan
- A-3 Sample Contract
- A-4 Byrd Anti-Lobbying Certification

EXHIBIT A-1

Modular Relocation & Site Development Project

Scope of Work

General conditions

- This is a project that must conform to Davis-Bacon Act and is a "prevailing wage" project
- All work on this project is to meet all San Diego city building and fire codes that are applicable.
- Work site is to be cleared at the end of each day of all trash, debris, tools, equipment that could "walk away"
- All material deliveries are to be coordinated by the contractor and material left on site is at the contractor's responsibility
- Contractor is to maintain a safe work environment and all accidents are to be brought to NHA's attention immediately
- Contractor is to provide evidence of separate payment and performance bonds in the amount of the project
- Work area is to be designated by fencing a perimeter to prevent children, strangers, NHA employees from inadvertently entering the work area

Pre-Construction

- Design services
- Engineering and Drawings for city review
- City permits- **Bids are to include allowance for all permits, inspections and**

connection fees.

- Perimeter fencing, office trailer on site, temporary toilets
- Environmental fencing, barriers, considerations
- Temporary electrical service
- Temporary water service
- Temporary trash service

Site Preparation

- Grading of two lots
- Removal of excess dirt
- Layout foundation for trailers for orientation of trailers on lot with caulk lines
- Evacuate dirt for ground level foundation, remove from site
- Establish slope of site away from trailer
- Provide and install sewer connections per drawings
- Provide and install site drainage system to prevent discharge into storm water system
- Provide underground services for trailers
 - Electrical
 - Sewer
 - Phones
 - Water
 - Recycled water for landscaping

Construction tasks- foundation & utilities

- Rough in concrete forms for ground level foundation and piers as required
- Run utility services through wall of concrete forms, if required
- Rough in sewer lines for trailer service

- Provide and construct concrete foundation for trailers
- Provide and construct ground level concrete foundation for 10' X 12' shed and enclosed trash bin area for two rolling 3-yard bins
- Remove concrete forms for foundation, back-fill and pack to meet city building codes
- Transfer four 12ft. X 60ft. DSA Trailers from: 112485 Highway 67, Pad 4, Lakeside, CA 92040. To: 4110 41st Street, San Diego, CA 92104
- Set trailers onto ground level foundation, secure to foundation and weld trailer frames onto one unit
- Level all trailer sections to be level and true per industry standard

Construction tasks- trailers

- Trailers are to be re-configured from two classrooms to four classrooms, see configurations attached.
- Align interior walls, ceiling grid, floor level, roof structure and roof material at trailer seams. Seal roof and trailers seams to provide water-proof environment.
- Provide and connect electrical service to existing electrical panel
- Provide and install water sprinkler system, if required by San Diego city codes
- Provide and connect local fire alarm system to fire alarm panel. Must meet current San Diego fire codes for pull stations, strobe lights, audial alarm, etc.
- Install any counters, cabinets or furniture that had to be displaced for removal of trailers from previous site
- Provide and run new electrical conduit to service trailer requirements
- Provide and install all sewer connections for toilets, sinks, kitchen appliances and sink
- Provide and install all water connections for toilets, sinks, outside water faucets, kitchen appliances and sink
- Provide and install water connections in shed for outside fountain and misting system under shade structure

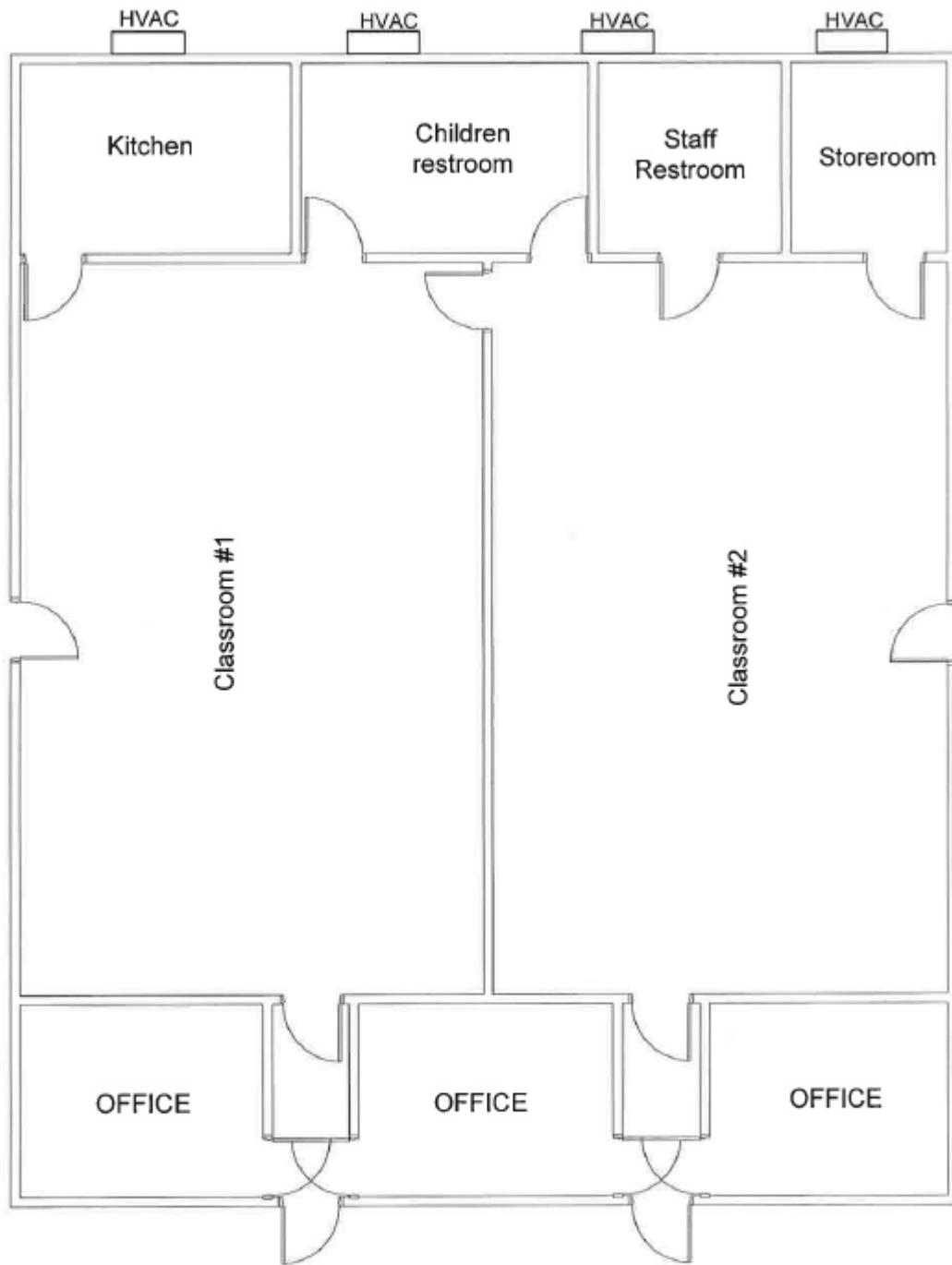
- Provide and connect phone and data service to communication board.
- Ensure new phone lines are run for the offices, kitchen and classrooms
- Install new flooring for classrooms, kitchen, bathrooms, hallways and offices
- Provide and install new gutters and downspouts on unit. Water is to flow into sewer system for trailer

Construction tasks- hardscape

- Provide and install concrete walkway around trailer unit for traffic flow to and from classrooms
- Provide and install concrete curbing as required for site plans to meet ADA, parking, landscaping, and water drainage control, etc.
- Provide and install asphalt surfacing as required for site plans
- Provide and accomplish all required signage, striping, markings for ADA compliance and parking of cars
- Provide, assemble and install one 10' X 12' wooden shed for storage, must have 4' swing door at ground level
- Provide and construct an enclosed trash bin area to contain a 3-yard bin for trash and a 3 yard bin for recyclables. Should have two swinging gates constructed of chain-linked fencing with locking hardware
- Provide and paint exterior of trailer and trim, colors TBD
- Contractor is to perform a final walk through with Neighborhood House representatives for "punch-list" development that is to be completed prior to project completion
- Contractor is to provide signed city permits and "Evidence of Occupancy" by the San Diego city building inspectors
- Contractor is to provide "AS BUILT" drawings at the conclusion of the project.
- **Bid to include an allowance of \$80,000 for playground development.**



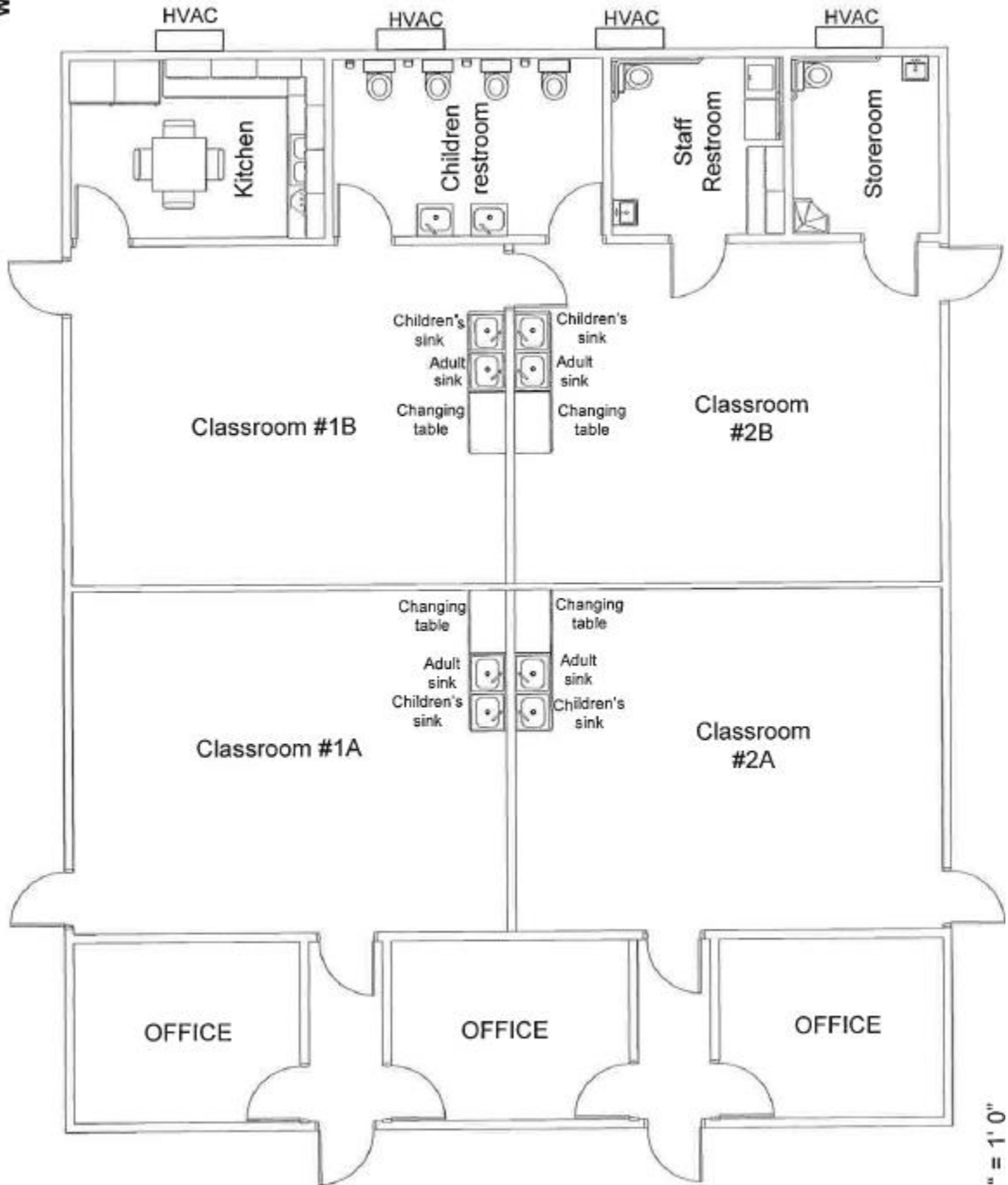
CURRENT CONFIGURATION



Scale: 1/8 " = 1' 0"



PROPOSED CONFIGURATION



Scale: 1/8 " = 1' 0"



EXHIBIT A-3

SAMPLE CONTRACT FOR MODULAR RELOCATION

between

THE NEIGHBORHOOD HOUSE ASSOCIATION

and

Vendor Name

Contract No. 17-00xxxx-CR

This Contract for Construction (the "Contract") is entered into effective Date, by and between The Neighborhood House Association (NHA), a California non-profit public benefit corporation with primary offices located at 5660 Copley Drive, San Diego, California 92111 ("Corporation") and Vendor Name a California corporation (Vendor corporate number), with its primary office located at Vendor Address ("Contractor").

RECITALS

WHEREAS, Corporation is contracted through various governmental agencies, including the United States Department of Agriculture (USDA), Federal Department of Health & Human Services ("HHS") and the California Department of Education (CDE) to provide food, beverage and nutrition services to seniors and children residing in communities located throughout San Diego County;

WHEREAS, Corporation desires to procure the services of a qualified construction firm to complete the work referenced in the document entitled "Scope of Work", which is attached hereto as **EXHIBIT "A"** and incorporated herein by this reference;

WHEREAS, Contractor has experience in the construction required for such improvements, has submitted its proposal to complete the "Work", defined below, and was awarded the Contract by Corporation.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein, which by this reference shall include the foregoing Recitals, the parties agree as follows:

SECTION 1. SCOPE OF WORK. Contractor agrees to provide all necessary procurement, excavation, demolition, layout, installation of appurtenances and accessories required to complete all tasks referenced in the document attached hereto as **EXHIBIT "A"** (hereinafter the "Project" or "Scope of Work"), which is incorporated herein by this reference. In the event of any conflict between the terms and conditions of this Contract and any documents incorporated into it by reference, this Contract shall prevail.

The Project shall be completed in accordance with the specifications, terms and conditions set forth in this Contract, as follows:

1.1 Project Design/Build Drawings. Contractor's Work shall include, but not be limited to the following standards:

1.1.1 Contractor shall design, construct, and deliver the best possible Project in accordance with the time, monetary and quality parameters set forth in this Contract and, to the extent applicable, comply with each of the following:

- (a) Construct the Project on time and within the "MCC", referenced in Section 4.1 below, working closely with Corporation's Project Manager, referenced in Section 5.2 below, throughout the Project;
- (b) Perform all construction on the Project utilizing contractors appropriately licensed by the California Contractors State License Board;
- (c) To the extent applicable, take all reasonable steps during the course of construction of the Project so as not to interfere with the existing operations at the Project location;
- (d) Take all necessary precautions not to interfere with pedestrian and vehicular access or Project site safety; and, to the extent applicable, install safety fencing as required to keep pedestrians and Contractor's staff out of Contractor's work area(s);
- (e) Control dust, odors and noise in accordance with the provisions of the Standard Specifications for Public Works Construction and this Contract;
- (f) Provide security to protect visitors and employees from danger at or in the Project site; &
- (g) Use reasonable care to avoid damaging existing structures and equipment adjacent to the Project site and replace or repair any damaged property.

1.1.2 Permit(s) may be required to load/unload products from the street and will be the responsibility of the Contractor, including its installer(s), to schedule, pay, obtain and keep valid for the time of installation, until Corporation's acceptance of the Project.

1.1.3 Work scope shall include all required permits, drawings for approval, inspections required by city, county or state departments or required approvals of agencies.

1.1.4 Contractor shall provide administration, supervision and coordination of all services.

1.1.5 Contractor shall review construction documents with governmental authorities having jurisdiction over the Project, if required.

1.1.6 Contractor shall notify the Corporation, in writing and within five (5) days, whenever Contractor reasonably believes that the cost of the Project is likely to exceed

the MCC and include in said notice:

- (a) An itemized cost breakdown estimate; and
- (b) A list of recommended revisions which Contractor believes would bring Project within the MCC.

Contractor agrees to assist Corporation in reviewing the itemized cost breakdown and recommend revisions so that Corporation can revise the scope of the Project so that the MCC is not exceeded.

1.1.7 Contractor shall clean up and remove all construction related debris at the end of each day (shift). Contractor shall provide a thorough sweeping (and to the extent applicable, a wash down) of the entire Project construction site at the end of each workweek.

1.1.8 Contractor shall provide hoisting for construction materials and debris if necessary.

1.1.9 Contractor shall provide protection from rain leaks throughout the work site during the construction process.

1.1.10 Contractor is to obtain all required city permits for all work to be accomplished at the Center.

1.1.11 Contractor is to comply with prevailing wages in the area.

1.1.12 Contractor shall dispose of all demolished or removed material according to city, state and federal regulations.

1.1.13 Contractor shall notify the Corporation, in writing and within five (5) days, in the event Contractor, or any of its subcontractors or personnel performing the Work, files or records any liens, including but not limited to mechanic liens, against the Center.

1.2 Contractor Submittals. Contractor agrees to provide and deliver to Corporation the following items, if applicable to the Project:

1.2.1 Product Data: Contractor shall submit within twenty (20) business days after receipt of "Notice of Award" complete sets of the material and equipment submittals, including:

- (a) Project material and equipment information disclosing manufacturer and manufacturer's representative's name(s), business address(es), phone number and address for warranty work or questions.
- (b) Plan view drawings and/or three-dimensional (3D) renderings which shall include, if applicable, all model numbers, descriptive labels (including component names) and notations of compliance with the above guidelines.
- (c) Detailed component list with model numbers and catalog descriptions.

(d) Written material specifications for all components to be furnished by Contractor.

(e) Copy of manufacturer's warranty, in certificate format, if any.

1.2.2 Corporation's Notice to Proceed shall be the Contractor's authorization to order the required material and equipment. There will be no deviation from the approved submittals without written authorization from the Corporation's Project Manager.

1.3 Project Products. Contractor agrees the Project shall comply with the following:

1.3.1 Products: The Scope of Work is based upon equipment and measurements from the Contractor and or their representative(s). All dimensions, surrounding obstructions, etc. shall be the responsibility of the Contractor and its representative(s) to take into consideration during completion of the Project, including the designing and setting of materials and equipment.

1.3.2 Modifications: Any expense of modification, adjustment or revision required to ensure compliance of furnished equipment to specified equipment and landscape design shall be the sole expense and responsibility of the Contractor.

SECTION 2. MATERIALS.

2.1 Contractor must have all materials available prior to beginning the Work. DELIVERY INSTRUCTIONS MUST BE COORDINATED WITH CORPORATION'S PROJECT MANAGER PRIOR TO ANY ON-SITE DELIVERIES TO THE CENTER. All on-site storage/delivery sites must be approved by the Corporation in writing. Where a specific manufacturer, trade name or material is specified or indicated, it is to establish a standard of quality and shall not be construed as limiting competition. If the Contractor desires to use a manufacturer, trade name or material other than specified, it shall request approval of such substitution in writing to the Corporation's Project Manager, not later than five (5) days prior to delivery of such materials. Items found acceptable will be approved by a duly authorized addendum issued by the Corporation. The Corporation reserves the right to reject or accept substituted materials submitted at its sole discretion.

SECTION 3. TIME OF PERFORMANCE.

3.1 Work Schedule. Prior to commencing the Work, Contractor shall prepare, for Corporation's approval, a schedule for the completion of the Work ("Work Schedule") which shall have incorporated all major milestones for the work to be performed, commencement of work, sequence of work, days scheduled to be on the Project site, Substantial Completion and Final Completion. Contractor shall identify and incorporate in the Work Schedule, all operational impacts involving interruptions of building systems or interference with events occurring in the building or vicinity.

3.2 Commencement/Completion. ***TIME IS OF THE ESSENCE*** with respect to all provisions of this Contract that specify a time for performance. The parties acknowledge and agree that any unreasonable delay in the completion of the Project shall constitute a material breach of this Contract. Contractor shall commence performance of the Work within twenty-four (24) hours of the Corporation's issuance of a written Notice to Proceed, or Letter of Intent. Contractor shall complete the Work no later than **end date.**

3.3 Work Hours Available for Construction. Contractor shall perform the Work Monday through Saturday, within the hours of 8:00 am to 6:00 pm, unless otherwise approved by the Corporation's Project Manager in writing.

SECTION 4. COMPENSATION AND PAYMENT.

4.1 Maximum Contract Cost. The maximum compensation payable to Contractor pursuant to this Contract shall not exceed **XXXX Dollars (\$xxxx.xx)** ("Maximum Contract Cost" or "MCC"). The MCC includes all fees and costs, including those for inspection, labor, materials, goods and equipment used to perform the Work.

4.2 Contractor Guarantee. Contractor guarantees that it can perform the Work and complete the Work within the MCC and understands that the Corporation shall have no obligation or liability to compensate Contractor for any additional cost above the MCC that may be required to complete the Work as required by this Contract, except as provided herein.

4.3 Change Orders. In the event the Corporation determines to change the Scope of Work to either add or subtract work to be performed by Contractor (or the materials to be provided for the Work), Contractor shall prepare a Change Order setting forth in detail the changes to the Scope of Work, the cost associated with the changes, and the amount by which the MCC will decrease or increase. Corporation shall have the right to approve or disapprove the Change Order.

4.4 Method of Payment.

4.4.1 Initial Deliverables. Within ten (10) business days following full execution of this Contract, Contractor shall submit to Corporation's Project Manager, documentation evidencing Contractor's compliance with the insurance obligations referenced herein.

4.4.2 Contractor and Corporation acknowledge and agree that Corporation shall not be obligated to furnish any payment(s) to Contractor until the Project is satisfactorily completed by Contractor; at which time, Corporation agrees to pay Contractor an amount not to exceed ninety percent (90%) of the MCC, following receipt, and subsequent approval, of Contractor's invoice(s). The remaining ten percent (10%) of the MCC (the "Retention") shall not become due and payable to Contractor until the prerequisites for final payment, referenced in Section 4.6 below, are satisfied by Contractor and Corporation, respectively. Corporation agrees that its final inspection of the Project shall not be unreasonably withheld. **Contractor shall submit its invoice(s) for Payment using a format acceptable to the Corporation that includes each the following:**

- (a) Detailed statement of the Work covered by the billing and percentage of work completed to date;
- (b) Detailed statement of the amount being billed, less a deduction of the Retention;
- (c) **The Purchase Order Number(s) (referenced in the Notice to Proceed Letter authorizing Contractor to begin the Project);** the amount of the original MCC; all change orders separately identified by number and amount; the total amount billed to date (including the current billing); and the percentage of the MCC billed to date (including the current billing);

Contractor shall submit duplicate invoices to:

**The Neighborhood House Association
Attn: Director, Facilities and Support Services
5660 Copley Drive, San Diego, California 92111**

In the event of a disputed invoice, the Parties agree to work in good faith to resolve any discrepancies.

(d) Weekly copies of payrolls for Contractor, and any subcontractors performing Work on Contractors' behalf hereunder. Each weekly payroll submission must be accompanied by a "Statement of Compliance." All payroll submissions shall be complete and contain the correct information required, which includes specifying the classification(s) for each employee working on the Project and their labor classification, as defined by the Secretary of Labor. Partial Social Security Numbers and omission of home addresses are recommended for security of personal information. Each laborer or mechanic must be paid in full for the weekly wages earned. Each laborer or mechanic must not be paid less than the applicable prevailing wage rates and fringe benefits. This information may be faxed or mailed to NHA's Project Manager.

4.5 Disallowed Costs and Withheld Payments. Corporation shall have the right to disallow any costs that are improperly or incorrectly billed, or exceed the payment schedule. Corporation shall have the right to withhold payments owed Contractor, such amounts as in its judgment may be necessary to cover:

4.5.1 Valid claims for payment for labor or materials furnished by third parties for the Work;

4.5.2 Correction of defective work which Contractor has failed to correct; and/or

4.5.3 Costs associated with completing the Work when it reasonably appears that the unexpended funds for the Work are insufficient to cover the cost of completion.

When the cause for withholding the funds has been addressed to the Corporation's satisfaction, the withheld funds shall be paid to Contractor.

4.6 Pre-requisites to Final Payment. Corporation shall pay Contractor the Retention when Contractor has achieved Final Completion of the Work and:

4.6.1 The Corporation has inspected and accepted the Work, as described in Section 5.7 below;

4.6.2 Contractor has submitted to Corporation all required written guarantees, including but not limited to documentation evidencing to the Corporation that all of Contractor's subcontractors and agents utilized in connection with the Project have been fully paid, and accordingly, that any recorded mechanics liens filed against the Center, or such other real property connected with the Corporation, have validly been recorded as released;

4.6.3 Contractor has prepared and submitted to Corporation a statement executed

under penalty of perjury, stating that: (a) Contractor has fully paid all persons performing labor or other Work on the Project, including all firms supplying the materials, and all subcontractors providing labor and/or materials for the Work; and (b) that there are no unpaid bills for either labor or materials, except specific disputed items or claims (which must be set forth in the statement). Contractor's obligation under this provision shall survive the termination or expiration of this Contract;

4.6.4 Notice of Completion of Work has been filed.

SECTION 5. GENERAL PERFORMANCE OBLIGATIONS OF CONTRACTOR.

5.1 General Standards; Site Examination. All Work shall be performed as described in this Contract and in accordance with industry standards for the type of Work being performed. Contractor has satisfied itself as to the nature and location of the Work, the kind and type of equipment, facilities and materials needed to perform the Work, and all other matters, which may in any way, affect the Work. Contractor agrees that the MCC is based on its examination of the site and that it will make no claim for additional compensation if the conditions encountered differ from those anticipated by such examination.

5.2 Project Managers. The parties' respective designated representatives shall be the day-to-day contact persons during Contractor's performance of the Work. Contractor's Project Manager shall be the below signed employee of Contractor, or such other person Contractor designates in writing. Corporation's Project Manager shall be its **Director, Facilities and Support Services**. During the term of this Contract, Contractor agrees to consult with Corporation's Project Manager regarding the format of any final report(s) and deliverables and the adequacy of the Work performed by Contractor. All submittals required of Contractor shall be delivered to Corporation's Project Manager; however, Corporation's Project Manager (or its designee), may not (i) award, renew or terminate this Contract; (ii) agree to, or sign any modifications to the Contract; or (iii) obligate NHA for payment outside the scope of the Contract.

5.3 Injury to Persons; Damage to the Center or Corporation's Equipment. Contractor shall be solely liable for any death or bodily injury, or any damage to the Center, including the contents therein, or Corporation's Equipment, caused by Contractor, its agents and employees, in connection with performing the Work. Contractor shall, at its own expense, promptly cause any damage to be repaired and/or replace anything irreparably damaged.

5.4 Shutdown of Building Systems. Contractor shall identify any requirements for shutdown of building systems, including but not limited to the life safety system, within the Progress Schedule. Said shutdown of building systems must also be specifically approved by Corporation twenty-four (24) hours prior to such shutdowns.

5.5 Regulations. Before commencing the Work, Contractor shall procure all necessary building permits and comply with all the laws, ordinances, codes and regulations now or hereafter in effect promulgated by any Federal, State, or local governmental agency relating to the performance of Work herein. Contractor agrees to indemnify the Corporation from liability or penalty that might be imposed by reason of an asserted violation of such laws, ordinances, codes and regulations. Upon completion of the Work, Contractor shall submit to the Corporation original Certificates of Inspection and Acceptance.

Contractor shall obtain any required building permits. Contractor agrees to comply with all other laws, ordinances, codes and regulations now or hereafter in effect promulgated by any Federal,

California or local governmental agency relating to the performance of work herein.

5.6 Safety. Contractor agrees to protect its Work (in progress and completed) and be responsible under all circumstances for its condition until the Corporation's acceptance of the entire Project and to reasonably protect the Corporation's facility, property, employees and the public from damage or injury. Contractor shall abide by all standards of the Occupational Safety & Health Administration (OSHA) which are applicable to the Work being performed as well as all safety rules issued by the Corporation from time to time.

5.7 Inspection and Acceptance. The Corporation shall have access to and the right to inspect all material, equipment and work during the course of performance of the Work. Contractor shall replace, without charge, any material or correct any workmanship found by the Corporation not to conform to the requirements of this Contract unless the Corporation consents to accept such material or workmanship with an appropriate reduction in the price.

5.8 Warranty/Guarantee. For materials provided by Contractor, Contractor shall ensure that the equipment manufacturer(s) it selects warranty material and workmanship against defects, from the date of manufacturer's final invoice, for the period of time as follows:

5.8.1 LIMITED ONE (1) YEAR WARRANTY on all products furnished by Contractor for the Project against structural failure caused by defective materials or defective workmanship.

5.8.2 Repaired or replacement parts are only warranted for the balance of the original limited warranty.

5.8.3 Contractor shall guarantee installation workmanship for a period of one (1) year from the date of Substantial Completion of the Project. The Contractor shall be responsible for coordinating manufacturer material warranty items with the manufacturer/distributor and for the installation of replacement material(s) at no additional cost to Corporation.

5.8.4 If requested by Corporation's Project Manager, Contractor shall provide Corporation's Project Manager with a copy of Contractor's installation warranty on company letterhead and dated.

5.9 Title to the Work. The title to all Work accepted at the Center and all materials, for which Corporation has paid Contractor, shall be in Corporation. Title and risk of loss of all other materials, equipment and tools delivered to the site shall be and remain in Contractor.

5.10 Electrical Power and Water. To the extent applicable, Corporation agrees to use its best effort to provide Contractor with convenient access to electrical power and cold water required to perform the Work. The electrical outlets and water sources used by Contractor shall be those designated or approved by the Corporation.

5.11 Site Supervision. Contractor shall ensure that a superintendent is present and supervising Contractor's employees at all times while Work is being performed.

5.12 Apprentices. Apprentices of any crafts or trade may be employed and when required by California Labor Code, Article 3, Section 1777.5, provided they are properly indentured to the Contractor in full compliance with provisions of the stated Labor Code. The prime contractor

shall bear the responsibility of compliance with Labor Code Section 1777.5 and for all apprenticeship occupations and agrees to comply with that section.

5.13 Prevailing Wage Requirement. Contractor shall comply and require all subcontractors to comply with the prevailing wage law of the State of California set forth in California Labor Code.

5.14 Hours of Work. It is Contractor's responsibility to be fully aware of and comply with State law pertaining to legal days worked as provided in California Labor Code, Article 3, §§ 1810, et seq. Hours and days may be adjusted as schedule of events allows and with adequate advance approval to the Corporation. The projected windows for work are: 8:00 AM until 6:00 PM, unless otherwise notified by Corporation's Project Manager.

5.15 Employee Identification. Contractor shall issue identification badges and/or uniforms that shall be worn by Contractor's employees when present in or around the Center. Contractor's employees shall maintain identification that, at a minimum, displays the employee's picture, name and Contractor's name. When performing the Work, all employees of Contractor shall wear uniforms that bear the company name and/or logo.

5.16 Center Access. Access to the Center and its surrounding premises shall be permitted only as directed by the Corporation's Project Manager. Contractor and its employees shall not have access to, nor shall they enter, certain areas of the Center designated as restricted.

5.17 Equal Employment Opportunity. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. In the event Contractor has fifteen (15) or more employees, Contractor agrees to be bound by the City of San Diego Equal Employment Opportunity Ordinance (Municipal Code Chapter II, Article 2, Division 27), setting forth the City of San Diego Equal Employment Opportunity ("EEO") Program, which is applicable to this Contract and administered by the Corporation. Contractor shall comply with all state and federal Wage and Hour laws and all California and Federal laws and regulations governing employment and conditions of employment. Contractor shall comply with the California Workers' Compensation Act as applicable to its employees.

5.18 Drug Free Workplace Policy. Contractor shall advise all of its employees of the Corporation's DRUG FREE WORKPLACE POLICY, which states:

"The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited at The Neighborhood House Association, including its Head Start Centers and other work sites."

Contractor's employees must agree to the terms of this policy as a condition of employment and be advised that violations of this policy shall result in appropriate disciplinary action, up to and including termination, and that an employee convicted of a violation of a criminal drug statute, occurring in the workplace, is required to notify his/her supervisor of the conviction, in writing, not later than five (5) calendar days after such conviction.

5.19 Additional Assurances. Attached hereto as **EXHIBIT "B"** and incorporated herein by this reference are the Assurances governing contracts between Corporation and Contractor for professional services rendered to Corporation. The parties to this Contract agree to abide by all of the terms and conditions set forth in the Assurances.

SECTION 6. INDEMNIFICATION & INSURANCE.

6.1 Indemnification. Contractor shall indemnify, hold harmless and defend Corporation, its directors, officers, employees, agents, representatives and affiliates (including, without limitation, the administrators of Corporation's employee benefit plans) from and against any and all liabilities, obligations, damages, costs, losses, and expenses (including reasonable attorneys' fees), and all claims, demands, actions or judgments of every nature whatsoever in favor of any person or entity on account of personal injury or death, or damages to or loss of property or profits resulting in whole or in part from any act, omission, negligence, fault or violation of law or ordinance associated with (i) Contractor's performance or nonperformance of services under this Contract or the Work performed by Contractor, its employees, agents, subcontractors or any other person entering the premises under the expressed or implied direction of Contractor; (ii) Contractor's hiring, employment and/or management practices; (iii) any breach or default by Contractor of any of its representations, warranties or covenants set forth in this Contract and (iv) any transactions arising out of or related to this Contract. Such indemnification by Contractor shall apply unless such damage or injury results from the sole negligence, gross negligence or willful misconduct of Corporation and its officers, directors, agents and employees.

Contractor's indemnification shall also cover its representations made in Section 5.5 above. The effect and application of this indemnification provision shall survive the termination or expiration of this Contract.

6.2 Insurance Provided by Contractor. Contractor shall, at its sole cost and expense, procure and maintain, throughout the term of this Contract, the insurance set forth herein. All insurance policies shall be issued by an insurance company authorized by law to conduct business in the State of California, subject to Corporation's approval. Prior to commencing performance of this Contract, Contractor shall provide Corporation original insurance certificates evidencing the following, required, coverage within ten (10) calendar days after its receipt of the "Notice of Award":

- (1) Commercial General Liability (CGL) policy with coverage(s) as broad and as encompassing as CGL in the occurrence form, and providing coverage against claims for bodily injury or death and property damage occurring in or upon the Center or the Project site, and arising out of Contractor's and its employees', subcontractors', agents' and authorized representatives' performance of this Contract. Such insurance shall be primary and non-contributory with any other coverage, including Corporation's, and shall afford immediate defense and indemnification of Corporation to the limit of not less than one million dollars (\$1,000,000.00). Such insurance shall waive any right of subrogation against Corporation;
- (2) Employer's Liability insurance with the following limits:
 - Bodily Injury by Accident - \$1,000,000.00 each accident
 - Bodily Injury by Disease - \$1,000,000.00 policy limit
 - Bodily Injury by Disease - \$1,000,000.00 each employee
- (3) Commercial Automobile Liability, or Business Auto coverage with limits not less than one million dollars (\$1,000,000.00) for each occurrence, combines single limit for bodily injury or death and/or property damage, covering owned, non-owned and hired automobiles, including loading and unloading operations;

- (4) Workers' Compensation insurance as required by the laws of the State of California.

The above described insurance policies (collectively, the "Policies") must include the following additional insured endorsement language:

"The Neighborhood House Association (NHA), and its members, officers, directors, agents and employees are named as additional insured and are provided the same coverage as the named insured, including the cost of defense against claims for bodily injury or death and property damage occurring in or upon or resulting from the insured's use or occupancy of the Center or the Project site, or arising out of the insured's or its members', officers', directors', employees', agents', or subcontractors' performance or non-performance of this Contract between the insured and NHA, unless such claim is determined by a court of competent jurisdiction to have arisen from the sole or gross negligence or the willful misconduct of an additional insured. The named insured's coverage is primary and shall not require contribution from the additional insured's insurance coverage."

The Policies shall provide for not less than thirty (30) days prior written notice of cancellation to Corporation as the certificate holder. Contractor and Corporation agree that the specified coverage or limits of insurance in no way limits the liability of Contractor. Contractor shall maintain the required insurance coverage and endorsements throughout the term of this Contract.

SECTION 7. CONTRACTOR'S DEFAULT; CORPORATION'S RIGHT TO SUSPEND WORK AND RIGHT TO TERMINATE FOR CAUSE.

7.1 Default by Contractor. Contractor shall be in default if it:

- 7.1.1 provides defective materials or workmanship or fails to perform the Work in accordance with the terms of this Contract;
- 7.1.2 fails to perform the Work in compliance with the provisions of this Contract;
- 7.1.3 disregards or violates any applicable laws or regulations; &
- 7.1.4 declares bankruptcy, becomes insolvent, assigns its assets for the benefit of its creditors, or is unable to pay debts as they become due.

7.2 Notice of Default; Cure of Default; Right to Suspend Work. The Corporation shall give Contractor a written Notice of Default specifying the nature of the default and providing a commercially reasonable time for Contractor to cure the default. If Corporation determines, in its sole discretion, that the nature of the default justifies it, the Corporation shall have the right to direct Contractor to suspend further progress on the Project and performance of the Work until the default is corrected and cured.

7.3 Termination for Cause; Corporation's Right to Complete Work at Contractor's Expense. In the event Contractor fails to cure the default within the time allowed in the Notice of Default, the Corporation shall have the right to terminate this Contract and Contractor's performance hereunder by issuing a written Notice of Termination, specifying the effective date of termination. Upon receipt of the Notice of Termination, Contractor shall:

- 7.3.1 Stop work immediately or as specified in the notice;
- 7.3.2 place no further contracts for materials, Work or equipment required for the Work; and
- 7.3.3 terminate any subcontracts for work to be performed on, or Work provided to, the Work.

Within five (5) business days of the termination date, Contractor shall submit to the Corporation all documents relating to the Work, all documents required by this Contract to be given to Corporation upon completion of the Work, and a final billing statement for Work provided through the termination date. The Corporation shall have the right to take immediate possession of the completed Work and the Work in progress, and have the unfinished Work completed by whatever method or means the Corporation may select. Contractor shall be liable for the cost to correct any defective work and complete the Work, to the extent the cost exceeds the remaining unpaid balance of the MCC. Corporation shall have the right to withhold any payments due to Contractor at the time the Contract is terminated and apply such sums to the completion cost.

7.4 Corporation's Rights Preserved. The termination of this Contract and Contractor's performance, pursuant to Sections 7.1 – 7.4, shall not affect any rights or remedies Corporation may have against Contractor, then existing or which may thereafter accrue. Corporation's retention of payments due Contractor shall not release Contractor from such liability.

SECTION 8. TERMINATION FOR FUNDING. Contractor understands and accepts that Corporation is a non-profit community based organization that is operated primarily on public funding, which funding may be terminated at any time. Therefore, Corporation may terminate this Contract without cause due to a lack of continued funding for the Work. In the event Corporation determines to terminate the Contract pursuant to this Section, it shall give Contractor written Notice of Termination not less than ten (10) days prior to the effective date of termination. Upon receipt of such notice, Contractor shall place no further orders for material, labor or equipment for the Work, and shall cease all progress related to the Project and terminate all subcontracts on or before the effective date of termination.

Within five (5) business days of the effective date of termination, Contractor shall submit to the Corporation a final billing for all Work provided through the date of termination. Corporation shall be liable only for the value of the Work performed and actual costs incurred by Contractor through the termination date. Corporation shall not be liable to Contractor for lost profit or lost opportunity cost(s).

SECTION 9. CORPORATION'S DEFAULT; TERMINATION BY CONTRACTOR. In the event Corporation fails to perform its obligations hereunder, Contractor may provide Corporation a written notice specifying the nature of the default and providing Corporation a commercially reasonable time to cure the default. If Corporation fails to cure the default within the time allowed in the notice, Contractor shall have the right to terminate this Contract by giving Corporation a written notice of termination specifying the effective date of termination and ceasing its performance of the Work required by this Contract.

Within five (5) business days of effective date of termination, Contractor shall submit to Corporation a final billing for all Work provided through the date of termination. Corporation shall be liable only for the value of the Work performed and actual costs incurred by Contractor

through the termination date. Corporation shall not be liable to Contractor for lost profit or lost opportunity costs.

SECTION 10. OWNERSHIP OF DOCUMENTS; DESIGN AND/OR CONSTRUCTION DOCUMENTS. Any and all materials and documents, including without limitation all drawings, specifications, computations, technical data, design and construction documents, plans, investigations and reports, as well as all information and data retained on electronic or magnetic media, prepared by or for Contractor or obtained by Contractor in connection with the performance of the Work, shall be the Corporation's property. The originals of all such materials and documents shall be delivered to Corporation upon its request. Contractor shall have the right, at its own expense, to make duplicate copies of such materials and documents for its own files, or other purposes as authorized in writing by Corporation.

Corporation acknowledges that design and construction documents are instruments of professional service. Nonetheless, design and construction documents prepared pursuant to this Contract shall become Corporation's property upon completion of the Work and payment in all sums owed to Contractor. Corporation agrees, to the fullest extent permitted by law, to indemnify and hold Contractor harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising out of any unauthorized reuse or modification of the design and/or construction documents by Corporation or any person or entity acquiring such documents from or through Corporation with Contractor's written consent.

SECTION 11. GENERAL PROVISIONS.

11.1 Independent Contractor Status; No Agency Relationship. Contractor is and shall remain, for all intents and purposes, an independent contractor of Corporation. Contractor shall be solely responsible for (i) all hiring/firing decisions; (ii) supervising its workers and working conditions; (iii) all taxes and applicable withholdings; (iv) wages and hours; and (v) other similar statutory obligations with respect to amounts paid by Corporation to Contractor. Contractor is not an employee, partner or a joint venture participant of Corporation, and Contractor has no right or authority to take any action or to enter into any contract or agreement on behalf of Corporation or otherwise bind Corporation in any manner, or incur any liability or make any representation on behalf of Corporation.

11.2 Force Majeure. The obligation of any party to perform any acts herein shall be suspended during the period such performance is prevented by acts of God; war; riot; invasion; fire; accident; strike or walkout; government interference, regulation, appropriation, or rationing; or by inability to secure goods because of the foregoing conditions. The obligation to perform shall resume immediately upon cessation of the force majeure condition(s).

11.3 Notices. Any notice required by this Contract must be in writing and shall be deemed to have been sufficiently communicated when (i) personally delivered; or (ii) on the second (2nd) business day after mailing by overnight delivery, postage prepaid:

to Corporation addressed:

Director, Facilities & Support Services
The Neighborhood House Association
5660 Copley Drive
San Diego, California 92111

with copies to:

Legal Department
The Neighborhood House Association
5660 Copley Drive
San Diego, California 92111

or to Contractor addressed:

Vendor Name

Vendor Address

11.4 Confidential Information. All information furnished or disclosed to Contractor by Corporation in connection with this Contract which is identified as confidential is received in confidence, shall remain the property of Corporation and shall not be disclosed to any third-party without Corporation's prior written consent. Contractor shall not use any such information for any purpose other than to perform this Contract.

If requested, Contractor shall execute a Non-Disclosure Agreement prepared by Corporation before receipt of any such confidential information. Contractor will return all such confidential information to Corporation upon completion by Contractor of its obligations hereunder, or upon demand. The obligations of this Section shall survive the expiration or termination of this Contract.

11.5 Subordination. This Contract and the obligations of Corporation herein shall be subordinate to any ground and premises leases, and to obligations (including deeds of trusts, mortgages, bonds, and all instruments supplemental thereto), and all renewals, modifications, consolidations, replacements and extensions thereof, created or given by Corporation with respect to the Center. Contractor hereby covenants and agrees that it will at any time required by Corporation, during the term hereof and any extension or renewal, give and execute all further assurances as may be reasonably required to evidence and effectuate this subordination provision, to the holder or holders of any such leases or obligations.

11.6 Binding on Successors and Assigns. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective successors and assigns, subject to the limitations on assignment and subcontracting set forth below.

11.7 Assignment and Subcontracting. Contractor shall not assign or transfer any interest in this Contract, whether by assignment or novation, without the prior written consent of Corporation; and any purported assignment by Contractor, without prior written consent, shall be null and void and constitute a material breach.

Claims for money due or to become due to Contractor from Corporation under this Contract may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be promptly furnished to Corporation.

No performance required of Contractor herein may be subcontracted without Corporation's prior written approval, unless such subcontracting was included in Contractor's proposal.

11.8 Modifications and Amendments. No amendment or modification of this Contract shall be valid or binding unless made in writing and signed on behalf of each party by a duly authorized representative.

11.9 Singular, Plural, and Gender. As used herein, the singular shall include the plural and the masculine shall include the feminine or neuter.

11.10 Headings. All section and paragraph headings are for reference and convenience only and do not alter, amend, explain, interpret or otherwise affect the terms and conditions of this Contract.

11.11 Applicable Law. This Contract is made and entered into in the State of California and its

interpretation and enforcement and the construction of its terms shall be governed by California law.

11.12 Attorneys' Fees. If legal action, including arbitration or action for declaratory relief, is brought by either party to interpret or enforce any provisions of this Contract, the prevailing party shall be entitled to an award of reasonable attorneys' fees and other costs incurred, the award of which may be determined in the same action or a separate action brought for that purpose.

11.13 Entire Agreement. This Contract represents the sole and entire agreement between Corporation and Contractor, and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto, relating to the subject matter of this Contract.

11.14 Partial Invalidity. If any term or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

11.15 Signatory Authority. If Contractor is a corporation, partnership, trust or other entity, the individual or individuals signing this Contract on behalf of Contractor represents to Corporation that he or she has full authority to do so, has received all required consents, and that his or her signature (together with the signature or signatures of any other individual signing below on behalf of such corporation, partnership, trust or other entity) is (are) the only signatures required to bind Contractor.

11.16 Survival. The provisions set forth in Sections 1.1.13, 1.2, 4.5 – 4.6, 5.3, 5.8, 5.19, 6.1 – 6.2, 11.1, 11.4 of 11.18 this Contract shall survive the termination or expiration of this Agreement.

11.17 Compliance with Laws and Debarment Status. Contractor and each of its employees, contractors, agents, representatives and other personnel hired or retained by Contractor in connection with the performance of Contractor's obligations under this Contract shall be fully informed of all federal, state and local laws, rules and regulations that affect or are applicable to the performance of Contractor's obligations under this Contract, and shall at all times observe and comply with all such laws, rules and regulations, regardless of whether all or any of such laws, rules and regulations are referenced in this Contract. Contractor further assures and certifies to NHA that it and any subcontractor hired by Contractor to perform on its behalf hereunder, are not currently suspended, debarred, or otherwise prohibited (i) by the federal government from bidding on, accepting or being awarded federally funded contracts, either as a contractor or subcontractor; or (ii) by the state of California from bidding on, accepting or being awarded public works contracts, either as a contractor or subcontractor. Contractor agrees to inform NHA within forty-eight (48) hours of any change in its debarment status.

11.18 No Waiver of Breach or Default. Corporation's failure to strictly and/or promptly enforce any of its rights, including but not limited to declaring a default, requiring cure of default, and/or terminating this Contract, shall not operate as a waiver of the default or breach of Corporation's rights, or to defeat or affect in any way the rights of either party, with respect to any such continuing or subsequent default or breach. No waiver shall be inferred from or implied by anything done or omitted by either party, except an express written waiver. All rights and remedies of either party with respect to default and breach shall be cumulative and not alternative. Corporation expressly reserves the right to enforce any and all rights it has herein

at any such time as the party, in its sole discretion, deems appropriate.

IN WITNESS WHEREOF, the parties hereto have duly executed duplicate originals of this Contract on the date set forth on the first page hereof, including **Exhibit "A"** – *Scope of Work*; and **Exhibit "B"** – *Assurances for Construction*.

Vendor Name (License #XXXXX)

The Neighborhood House Association

By _____
Name:
Title:

By _____
Name: Rudolph A. Johnson, III
Title: President and CEO

Approved as to form and legality:

Dwight D. Smith
General Manager/General Counsel
The Neighborhood House Association

EXHIBIT A SAMPLE
“Scope of Work”

[ATTACHED SEPARATELY]

EXHIBIT B
ASSURANCES FOR CONSTRUCTION

The Contractor hereby assures and certifies that Contractor will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 75 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, and E.O. 12372 as they relate to the application, acceptance and use of federal funds for this federally assisted project. Additionally, Contractor assures and certifies to Corporation that:

1. It possesses legal authority to enter into this Contract; that a resolution, motion, or similar action has been duly adopted or passes as an official act of the applicant's governing body, authorizing the execution of the Contract, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Contractor to act in connection with the Contract and to provide such additional information as may be required.
2. It, and any subcontractor hired by Contractor to perform on its behalf hereunder, will comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor."
3. It, and any subcontractor hired by Contractor to perform on its behalf hereunder, shall fully comply with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other Federal and State law and regulations hereinafter enacted.
4. It, and any subcontractor hired by Contractor to perform on its behalf hereunder, will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by the Department of Labor Regulations (29 C.F.R. Part 3, "Contractors and subcontractors on public building or public work financed in whole or in part by loans or grants from the United States").
5. It, and any subcontractor hired by Contractor to perform on its behalf hereunder, shall comply with the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7) and as supplemented by Department of Labor Regulations (29 CFR Part 5, "Labor standards provisions applicable to contracts governing federally financed and assisted construction"), which includes the requirement that the correct scale of wages to be paid be posted by the Contractor in a prominent and easily accessible location at the HHS funded worksite.. The Davis-Bacon Act applies to all construction and renovation work done over \$2,000. The term construction, prosecution, completion, or repair means all types of work done on a particular building or work at the site thereof, including, without limitation, altering, modeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site of the contractor or subcontractor.
6. It, and any subcontractor hired by Contractor to perform on its behalf hereunder, will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501 -1508, and 7324 - 7328), which limits the political activity of the employee.
7. Contracts in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts involving the employment of mechanics or laborers shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). This includes all laborers and mechanics employed by contractors and subcontractors working upon the site of the work. Contractors shall pay prevailing wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor. Wages must include fringe benefits. Laborers and mechanics must be paid weekly.
8. It, and any subcontractor hired by Contractor to perform on its behalf hereunder, will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Regarding all negotiated contracts excluding those for less than \$2,500, NHA, the Federal Awarding Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
9. It, and any subcontractor hired by Contractor to perform on its behalf hereunder, will fully comply with all Federal statutes relating to the prohibition against forced child labor and severe forms of trafficking in persons. These include but are not limited to the Trafficking Victims Protection Act of 2000 (22 U.S.C. §§ 7104, et seq.) which authorizes the termination of grants, contracts and/or cooperative agreements, without penalty to the Federal awarding agency/department, if Contractor or any of its subcontractors (i) engages in severe forms of trafficking in persons; (ii) has procured a commercial sex act during the effective period of the contract; and/or (iii) uses forced labor in its performance of this Contract.

10. It, and any subcontractor hired by Contractor to perform on its behalf hereunder, will fully comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) which prohibits discrimination on the bases of race, color or national origin; Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act; and any other Federal and State law and regulations hereinafter enacted which may apply to the application.
11. It, and any subcontractor hired to perform on its behalf hereunder, will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.
12. It, and any subcontractor hired by Contractor to perform on its behalf hereunder, will fully comply with the standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).
13. It, and any subcontractor hired by Contractor to perform on its behalf hereunder, will fully comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Exhibit A-4

**CERTIFICATION REGARDING LOBBYING
FOR CONTRACTS, GRANTS, LOANS
AND COOPERATIVE AGREEMENTS**

The following certification and disclosure regarding payments to influence certain federal transactions are made per the provisions contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, 45 CFR Part 75, Appendix II.

The undersigned certifies to the best of his or 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 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 this 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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreement) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails 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.

I hereby agree to the above certifications and assurances.

Signature of Certifying

Date

Title

Applicant Organization