

Project: SB Veterans' Council
Management Agreement
APN: 033-101-013
Folio: 003261
Agent RC

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT is made by and between the:

COUNTY OF SANTA BARBARA,
a political subdivision of the State of California,
hereinafter referred to as "COUNTY,"

and

VETERANS' COORDINATING
COUNCIL, INC. hereinafter referred
to as "CORPORATION,"

with reference to the following:

WHEREAS, COUNTY owns that certain real property and building located at 112 West Cabrillo Boulevard, Santa Barbara, California, commonly known as the Veterans' Memorial Building of Santa Barbara, California, hereinafter referred to as the "Property"; and

WHEREAS, COUNTY continues to desire to have the public use of a portion of the Property, hereinafter referred to as the "Premises," scheduled by a local veterans organization; and

WHEREAS, CORPORATION utilizes the Premises and has, under an Agreement with COUNTY, effective on or about January 1, 1998, assumed responsibility for management of the Premises and for scheduling use of the Premises by the general public and community non-profit organizations, and by doing so, has generated revenues used for the general maintenance and capital improvement of the Premises and veterans' community service projects; and

WHEREAS, the parties mutually desire to promote the usage of the Premises and, by so doing, call to the public attention the services rendered to this nation by veterans; and

WHEREAS, the Board of Supervisors of COUNTY has authority to contract the management of veterans' buildings to a local veterans groups under Sections 1262 and 1266 of the California Military and Veterans Code and Section 25536 of the California Government Code upon terms and conditions mutually agreed to by the parties; and

WHEREAS, the Board of Supervisors of COUNTY deems that it is in the public interest and that it will serve public purposes for CORPORATION to continue to manage and schedule the uses and maintenance of the Premises.

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and conditions contained herein, the COUNTY and CORPORATION agree as follows:

1. **ADMINISTRATION AND ENFORCEMENT:** The provisions of this Management Agreement (hereinafter "Agreement") shall be administered and enforced for the COUNTY by its General Services Director or designee. Where administrative and enforcement is not the sole discretion of the General Services Department, then such administrative and enforcement shall be performed by the County Board of Supervisors on those certain particular lease provisions set forth in this Agreement.

2. **PROPERTY MANAGED:** CORPORATION shall manage the Premises and schedule and collect fees for the use of the Premises by private persons or entities, subject to certain reservations, conditions and exceptions provided hereinafter, including "Building Policies" (see Attachment A to this Agreement) as well as Santa Barbara County Board of Supervisors Resolution 79-101, and its successor, if any, which are incorporated herein by reference. CORPORATION shall enter into agreements for the use of the Premises with such parties as provided in Paragraph 4, below.

Corporation shall publish and post for the public's information the building facilities (i.e. banquets, business meetings, wedding receptions, etc.) and rental rate schedule to assure equal access to all segments and members of the community on an equitable basis.

3. **USE:** CORPORATION understands and agrees that no exclusive control of any portion of the Property, nor any interest in the title thereto is transferred by reason of this Agreement, and that all areas occupied by, or permission issued by, CORPORATION shall be at all times subject to County, State and Federal laws and ordinances concerning said Property and use thereof.

4. **USE AGREEMENTS:** CORPORATION shall issue use agreements for the Premises in a form approved by the COUNTY, to civic groups, the public, and public agencies, including, but not limited to, COUNTY, and other organizations, as a place of assembly for the use, benefit, and enjoyment of said groups and the general public. Said use permits shall not be unreasonably withheld and shall be issued on a non-discriminatory basis and in accordance with such schedules as may be adopted by the CORPORATION. Any use agreements or leasing arrangement in excess of one year, or extension or renewal of an existing use agreement or leasing agreement which would result in a cumulative use exceeding one year ARE INVALID UNLESS APPROVED in writing by the COUNTY, through the General Services Department, prior to any such agreements or leasing arrangements taking effect.

5. **TERM:** This Agreement contemplates an initial term of five years, more or less, and two potential renewal terms of five years each. The initial term of this Agreement shall be five (5) years more or less, commencing July 1, 2004 and shall expire on June 30, 2009. If the parties agree that CORPORATION has met its responsibilities under this Agreement during the initial term, the CORPORATION may, at its option, renew the Agreement for an additional FIVE year period. If the parties agree that CORPORATION has met its responsibilities under this Agreement during the five year renewal period, CORPORATION may, at its option, request renewal of this Agreement for an additional FIVE year period. The CORPORATION must notify the County, in writing, of its

intent to either exercise such option to request renewal, at least ninety (90) days prior to the expiration of the then current lease term, and such extensions shall be set forth as follows:

Extension Period One, five (5) years July 1, 2009 through June 30, 2014

Extension Period Two, five (5) years July 1, 2014 through June 30, 2019

Nothing in this Paragraph shall be deemed to preclude modification or renewal of this Agreement. CORPORATIONS' right to renew the Agreement for the two potential renewal terms shall take precedence over the COUNTY'S right to enter into a management agreement with a substitute organization during that period.

6. **CONSIDERATION:** The CORPORATION'S consideration for this Agreement shall include, without limitation, its assumption of responsibility for the operation and management of the Premises, including utility payments, the scheduling of social, community, and veterans' events and the performance of janitorial services, facility maintenance services and other obligations as specified by this Agreement, including monthly Capital Improvement contributions per paragraph 7a of this Agreement.

7. **REVENUE AND REPORTING:** All revenue generated by CORPORATION from the issuing of use permits for the Premises, including the forfeiture of deposits, shall be retained by CORPORATION except as provided herein. CORPORATION shall report all revenues (gross receipts) and expenses (maintenance, operational and janitorial services, payroll, taxes, insurance, and any and all other expenditures) by submitting monthly financial statements to the General Services Department, Real Estate Services, with a copy to the Auditor-Controller at the address shown in Section 19, NOTICES, herein, on or before the twenty-fifth (25th) day of the month following the end of each month.

Revenue received is hereby defined to mean the gross income receipts received by the CORPORATION for the use of the Premises and forfeited deposits, if any.

CORPORATION shall keep and maintain good and sufficient daily records of such revenue and expenses according to General Accepted Accounting Principles. Such records shall be available for inspection by officers, employees and agents of the COUNTY at all reasonable times. CORPORATION shall maintain records of each monthly report for the entire term of this Agreement. Any excess of revenues over expenditures shall be retained by the CORPORATION except as noted in paragraph 7 (a) below.

7 a. **CAPITAL IMPROVEMENTS:** During the initial five year term of this Agreement, CORPORATION shall pay to COUNTY the sum of Five Hundred Dollars (\$500) per month to be set aside by the COUNTY in a designated account (interest bearing) in the Capital Improvement fund for future capital improvements to the Veterans' building. Expenditures from said account shall be restricted to those necessary to offset extraordinary costs of maintenance, repair or remodeling of the Property as recommended by the CORPORATION, subject to approval by COUNTY. Monies in this designated account shall under no circumstances be commingled with general COUNTY funds nor shall they be expended for any purpose other than for purposes contemplated under this paragraph. This \$500 monthly payment by CORPORATION to the COUNTY may be renegotiated by the parties to this Agreement at the end of the initial five year term of this Agreement and each time the CORPORATION exercises an option to extend this Agreement beyond its initial term. To ensure the financial integrity of CORPORATION, the \$500 monthly payments to COUNTY under this paragraph shall not be payable by CORPORATION

unless revenues, after deducting payment of all CORPORATION obligations under this Agreement including utilities, are available for such payments. Monthly reports of monies accumulated in this special fund will be provided to CORPORATION at CORPORATION'S request.

8. **ANNUAL REPORT:** On January 31 of each year during the entire term of this Agreement, the CORPORATION shall provide the COUNTY with an annual report describing the CORPORATION'S current officers, continuing status as a non-profit organization, and general operation of the Premises. CORPORATION'S Bylaws are incorporated herein as Attachment "B."

9. **AUDIT:** The COUNTY reserves the right to audit the CORPORATION'S books and records of account at any time during normal business hours, upon reasonable notice, to assure that the CORPORATION'S obligations under this Agreement are being faithfully adhered to. CORPORATION shall maintain the books and records of account on the Premises at all times and secured from theft or tampering..

10. **MAINTENANCE RESPONSIBILITIES:** CORPORATION and COUNTY agree that maintenance and repair services performed at or to the Premises and Property shall be performed or scheduled by CORPORATION. It is further agreed that said maintenance and repair shall be paid for exclusively from revenue collected by CORPORATION. In the event costs for maintenance and repair exceeds the revenues available in CORPORATION'S account, then COUNTY may, by a majority vote of the Board of Supervisors, agree to pay said excess or any portion thereof. Nothing herein shall be construed to obligate COUNTY to pay the costs associated with any such maintenance or repair.

CORPORATION shall ensure that all maintenance and repair work is performed in a competent and workmanlike manner. The COUNTY reserves the right to inspect the Premises from time to time to ensure the quality of maintenance and repairs.

11. **JANITORIAL RESPONSIBILITIES:** Janitorial services performed at or to the Premises and Property shall be performed and scheduled by CORPORATION. Janitorial service shall be paid for exclusively from revenue collected by CORPORATION. In the event costs for janitorial services exceed the revenues available in CORPORATION'S account, then COUNTY may, by a majority vote of the Board of Supervisors, agree to pay said excess or any portion thereof. Nothing herein shall be construed to obligate COUNTY to pay the costs associated with any such janitorial service. The COUNTY reserves the right to inspect the Premises from time to time to ensure the adequacy of janitorial work.

12. **UTILITIES:** CORPORATION shall make all arrangements for and pay for utilities and services furnished to or used by it on the Premises, including but not limited to, water, electrical, sewer, trash collection and natural gas, and for any required connection charges for said utilities. CORPORATION shall pay on demand by any public utility or service company the total cost of said utilities or service. All accounts for such utilities shall name CORPORATION as the responsible party.

CORPORATION shall pay for any and all new utilities or services used and/or installed on the Premises. Installation costs shall include not only the costs of installing utilities or services on the Premises, but also the cost of bringing such utilities or services to the Premises. If CORPORATION is constructing or remodeling improvements and additional utility or services are

required as a result of CORPORATION'S changes or increased utility or service requirements, including without limitation electrical wiring, plumbing, conduits or mains, CORPORATION shall pay on demand from any public utility or service company the total costs of said utility and/or service. CORPORATION shall hold COUNTY harmless from any costs described in this section except that in the event that costs for utilities and services exceeds the revenues available in CORPORATION'S account, then COUNTY may, by a majority vote of the Board of Supervisors, agree to pay said excess or any portion thereof. Except as noted in paragraph 12 a, below, nothing herein shall be construed to obligate COUNTY to pay the costs associated with any such utilities or services.

12 a. PAYMENT OF UTILITY COSTS DURING INITIAL TERM OF AGREEMENT: During the initial six (6) months of this five year Agreement, CORPORATION will not be responsible for payment of utility bills in the absence of available revenues to do so. In the event that available revenues are insufficient to pay utility bills after payment of all other obligations of the CORPORATION under this Agreement, exclusive of the contribution for Capital Improvements (see paragraph 7a), the COUNTY agrees to pay such bills within thirty (30) days of written notice by CORPORATION of the insufficiency of available revenues.

13. INDEMNIFICATION: The CORPORATION agrees to hold the COUNTY, its agents, employees, and contractors free and harmless from any and all claims, liability, damages, costs, including attorneys fees, losses and expense in any manner resulting from, arising out of, or connected with the use or occupancy of the aforementioned Premises and Property.

Prior to issuing permission to use the Premises, the CORPORATION shall have all organizations and/or individual persons sponsoring an event sign a user agreement which includes indemnification holding the COUNTY, its agents, employees, and contractors free and harmless from any and all claims, liability, damages, costs, including attorneys fees, losses and expense in any manner resulting from, arising out of, or connected with the use or occupancy of the Premises and Property and shall name the COUNTY as an additional insured. Said agreement shall be in a form approved by COUNTY.

14. INSURANCE: CORPORATION shall procure the following required insurance coverages. Certificate(s) of Insurance shall be furnished to the COUNTY prior to this Agreement taking effect. Such insurance coverages, in the minimum limits as specified below, shall be maintained during the term of this Agreement. COUNTY shall have the right to review from time to time the minimum limits as established below. In event of a change in the minimum limits, COUNTY shall inform CORPORATION of such change by giving written notice to CORPORATION no less than sixty (60) days prior to expiration date of any existing insurance policy or policies. Failure to comply with the insurance requirements shall place CORPORATION in default. Upon request by COUNTY, CORPORATION shall provide certified copies of any insurance policies to COUNTY within ten (10) working days.

A) Workers' Compensation insurance with an insurance company acceptable to COUNTY. Statutory Workers' Compensation and Employer's Liability Insurance with limits of at least \$500,000 shall cover CORPORATION employees while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, major change in coverage, or expiration shall be effective or occur until at least thirty (30) days after receipt of such notice by COUNTY.

B) Comprehensive General Liability Insurance with an insurance company acceptable to COUNTY. The general liability insurance shall include personal injury liability coverage, shall afford coverage for all Premises and operation of the CORPORATION. The limit of liability of said policy for General Liability insurance shall be at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per occurrence combined single limit bodily injury and property damage. Personal Injury coverage shall be in the amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) per person and aggregate. Said policy or policies shall contain a provision that such insurance as is afforded by this policy shall be primary and contributory to the full limits stated in the declarations, and if COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only. Said policy or policies, that provide that COUNTY shall be given thirty (30) days written notice prior to the cancellation or expiration of the of the policy or reduction in coverage.

15. **POSSESSORY INTEREST:** The use or occupancy of the Premises by CORPORATION may constitute a property interest which may be subject to possessory interest taxes and CORPORATION will be liable for the payment of such taxes if levied on the property interest after the date of execution of this Agreement by COUNTY.

16. **NONDISCRIMINATION:** CORPORATION shall comply with all applicable COUNTY laws, rules and regulations regarding nondiscrimination as such are found in the Santa Barbara Code and as such may from time to time be amended. These provisions are incorporated herein as if they were fully set forth.

Noncompliance with provisions of this section shall constitute a material breach of this Agreement. COUNTY shall notify CORPORATION in writing of a breach of this Section 16, **NONDISCRIMINATION**, and CORPORATION shall have thirty (30) days upon receipt of written notification to cure such breach. In the event CORPORATION does not cure a breach after the 30-day cure period, COUNTY, in addition to any other remedies provided by law, shall have the right to terminate this Agreement and the interest hereby created without liability therefore.

17. **TERMINATION:** Unless renewed as provided in paragraph 5, this Agreement shall terminate and all rights of CORPORATION shall cease and CORPORATION shall quietly and peacefully deliver to COUNTY all of CORPORATION'S right to use and to schedule use of the Premises upon expiration of the term or earlier termination as provided herein. Nothing in this paragraph shall be deemed to preclude or limit any existing rights of any veterans' organization under Section 1262 and 1266 of the California Military and Veterans' Code.

17a. **EARLY TERMINATION:** Notwithstanding any other provisions hereof, within the first six (6) months of this Agreement, either party may terminate this Agreement without cause, and without incurring liability therefore. Such early termination shall be effective thirty (30) days after delivery of written notice to the other party within the said six (6) month period. In the event of early termination CORPORATION shall pay to CCUNTY all revenues in its possession received from operation of the Premises and CORPORATION shall then have no further financial obligation after the termination date.

18. **BREACH:** In the event CORPORATION violates any of the provisions of this Agreement and does not terminate or remedy such violation(s) within ten (10) days after written

notice of such violation, then, in addition to any other rights COUNTY may have by law and/or as provided herein, at its option, COUNTY may terminate this Agreement and all rights of CORPORATION hereunder.

19. **NOTICES:** Notice may be given by either party hereto, in writing, deposited in the United States mail, first class postage prepaid, addressed as follows:

<p>COUNTY: County of Santa Barbara General Services Department Facilities Services Division 1100 Anacapa Street, Courthouse Annex Santa Barbara, CA 93101-6065</p>	<p>Copy to: Auditor/Controller 105 E. Anapamu Street- Rm 303 Santa Barbara, CA 93102</p>
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CORPORATION: Veterans' Coordinating Council, INC.
112 W. Cabrillo Ave
Santa Barbara, CA 93101

20. **WAIVER:** The waiver by the COUNTY of a breach of any term of this Agreement shall not be construed to be a waiver of any future breach of the same or any other requirement contained in this Agreement.

21. **ADDITIONAL FACILITIES/IMPROVEMENTS:** No additional facilities or improvements shall be constructed or installed on the Premises without COUNTY approval.

22. **ASSIGNMENT, JOINT VENTURE, OR BANKRUPTCY:** COUNTY'S intent in entering into this Agreement is to obtain the services of the CORPORATION and not of any other person or entity in the operation, management and improvement of the Premises such that CORPORATION'S services, as herein specified, from a portion of the consideration for this Agreement. The parties therefore agree that as to the operation, management, and improvement of the Premises, this Agreement shall operate as a personal services contract and the CORPORATION shall not assign or joint venture the use of the Premises or any part thereof; it shall not assign this Agreement nor transfer, assign or in any manner convey any of the rights, obligations or privileges herein granted except as provided herein. Neither the Agreement nor the rights herein granted shall be assignable or transferable by any process or proceeding, including insolvency, bankruptcy, and receivership proceedings. Any attempt to assign, joint venture or transfer by any other process, shall be void and without legal effect, and shall constitute cause for immediate termination hereof without liability on the part of the COUNTY.

23. **ABANDONMENT:** In the event of abandonment or non-use of the Premises by the CORPORATION at any time, existing and extending over a continuous period of one (1) month, the Premises shall revert to the full control of the COUNTY and the CORPORATION agrees to surrender Premises and this Agreement shall be of no further force and effect. If CORPORATION shall abandon, vacate, or surrender the Premises, or upon termination of this Agreement, any personal property left on the Premises thirty (30) days thereafter shall be deemed abandoned, at the option of the COUNTY, and COUNTY shall assume full title and ownership thereof.

24. **SECTION HEADINGS:** The headings of the several sections, and any table of contents appended hereto, shall be solely for the convenience of reference and shall not affect the meaning, construction or effect hereof.

25. **DOCUMENTS:** Each party agrees to, in a timely manner, execute and deliver any instrument or to perform any act reasonably necessary to carry out the provisions of this Agreement.

26. **CERTIFICATION OF SIGNATORY:** Signatory for CORPORATION represents and certifies that he/she has the authority to bind CORPORATION and that no additional signatures are required to carry out the duties contemplated herein.

27. **CONTRACT APPROVAL:** This Agreement is subject to the approval of the County Board of Supervisors and if not approved shall be of no effect. Execution of this Agreement by the Santa Barbara County Board of Supervisors shall evidence said approval.

28. **EXECUTION IN COUNTERPARTS:** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

29. **FACSIMILE SIGNATURES:** In the event that the parties hereto utilize facsimile transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of transmission of the facsimile, except that funds shall not be released upon a facsimile signature nor shall facsimile signed documents be accepted for recordation by the Clerk Recorder of the County.

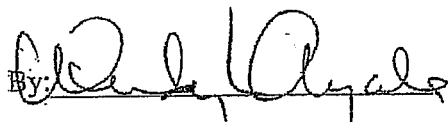
30. **ENTIRE CONTRACT:** The parties hereto have set forth the whole of their agreement. The performance of this Agreement constitutes the entire consideration for the Premises and shall relieve COUNTY of all further obligation or claims on this account. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by both parties.

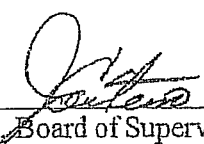
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Agent RC

IN WITNESS WHEREOF, COUNTY and CORPORATION have signed this Management Agreement by the respective authorized officers as set forth below to be effective on the date executed by COUNTY.

"COUNTY"
COUNTY OF SANTA BARBARA

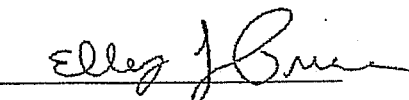
ATTEST:
MICHAEL F. BROWN
CLERK OF THE BOARD

By: 


By: 
Chair, Board of Supervisors

Date: 7-13-04

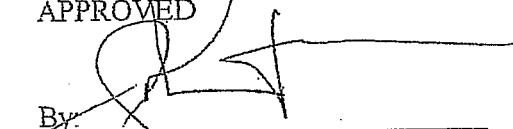
"CORPORATION"
VETERANS COORDINATING
COUNCIL, INC.

By: 

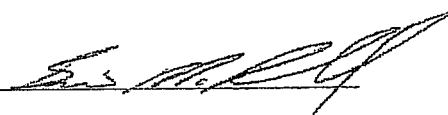
APPROVED AS TO FORM:
STEPHEN S. STARK
COUNTY COUNSEL

By: 
Deputy

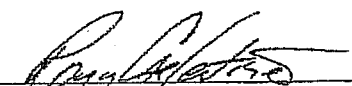
APPROVED

By: 
John A. Forner, MBA, ARM
Risk Program Administrator

APPROVED AS TO FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: 

APPROVED

By: 
Ronn Carlentine, SR/WA
Real Property Manager

ATTACHMENT A

to

MANAGEMENT AGREEMENT by and between
COUNTY OF SANTA BARBARA and
VETERANS' COORDINATING COUNCIL, INC.

VETERANS' BUILDING OPERATING POLICIES:

1. No smoking in the building or use of controlled substances on the premises shall be allowed.
2. CORPORATION shall ensure that the kitchen continues to comply with all health and safety standards sufficient to retain its County Health permit.
3. Adequate event security shall be provided or contracted for by the CORPORATION.
4. CORPORATION shall ensure that the serving and consumption of alcoholic beverages shall be in accord with the regulations of the Alcohol Beverage Control Board.
5. Liability insurance naming the County as additional insured in the amount of \$ 1,000,000 shall be provided for all events.
6. No permanent facilities, improvements or structures shall be constructed or installed on the premises without the express written consent of the General Services Director. If facilities, improvements or structures are constructed or installed in violation of this provision, the COUNTY may require removal at CORPORATION'S expense after written notice to CORPORATION.
7. Nothing contained in this agreement shall be deemed to permit the storage, use or possession of dangerous, hazardous, toxic or explosive materials on the Premises. CORPORATION shall indemnify, defend and hold harmless the COUNTY and its agents and officers, from liability arising from such storage, use or possession.
8. CORPORATION shall be responsible for managing and addressing complaints from neighboring properties arising out of permitted usage of the Premises. CORPORATION shall indemnify, defend and hold harmless the COUNTY and its agents and officers from any liability arising out of activities permitted to occur on the premises by CORPORATION.