

LEASE

LEASE made and effective as of the ____ day of _____, 2005, by and between the City of Milwaukee, a Wisconsin municipal corporation, through its Health Department, (the "City") and Benedict Center, a Wisconsin not-for-profit corporation, (the "Agency").

WITNESSETH:

WHEREAS, the City has provided space in the Johnston Community Health Center, 1230 W. Grant St ("JCHC") (collectively referred to as the "Health Center") for use by the Agency; and

WHEREAS, the Agency has agreed to pay rent and other occupancy fees to the City in consideration for the use of said space; and

WHEREAS, the City and the Agency desire to enter into this Lease providing for the use of said space and the payment rent and other occupancy fees by the Agency;

WHEREAS, the City, per Common Council Resolution No. _____, dated _____, 2005, authorized the proper City officers to enter into this Lease;

NOW, THEREFORE, in consideration of the mutual Agreements and covenants hereinafter set forth, and for other good and valuable consideration the parties hereto agree as follows:

TERM

1. The term of this Lease shall be from _____, 2005 to December 31, 2006. It may be extended only by a written extension executed by both parties.
2. Notwithstanding paragraph 1 above, the City may terminate this Lease in the event that the Centers for Medicare and Medicaid of the United States Department of Health and Human Services terminates the participation of the City of Milwaukee in the Municipal Health Services Program and services are no longer provided at said location. In that event the City may exercise its election to terminate this Lease by providing notice to the Agency at least sixty (60) days prior to the date of the proposed termination.
3. The City reserves the right to terminate this Lease, during its term, upon sixty (60) days written notice, if the Health Centers are closed or a determination is made that operating the Health Centers is no longer feasible.

RESPONSIBILITIES OF THE AGENCY

4. The Agency shall be responsible for clean-up, proper disposal and all reporting related to chemical or hazardous material spills or release which occur as a result of the Agency's occupancy and operation.
5. The Agency shall provide the City with evidence that the Agency:
 - (a) maintains in the Agency's offices a copy of written protocols and procedures to be followed in the event of a chemical or hazardous material spill or release;
 - (b) maintains adequate amount of supplies (i.e., sorbant materials, overpack drums, neutralizers, etc.) And personal protective equipment (clothing, respirators, boots, gloves) on site for use in the event of a hazardous material spill or release;
 - (c) provides training to appropriate employees at the "Hazardous Material Technician" level which is at a minimum a 24-hour course;

(d) maintains an inventory of chemical products used at the work place to which employees may be exposed -- either as a result of normal work or due to an accident;

(e) maintains a file Material Safety Data Sheets (MSDS's) for all products in use at the work site;

(f) ensures that all chemical products are labeled as to identify and with an "adequate hazard warning";

(g) trains employees with respect to the provisions of the hazard communication standard (CFR 1910.1200); and

(h) maintains a copy of the Agency's written hazard communication program on the premises.

RESPONSIBILITIES OF THE CITY

6. The City shall provide and maintain a facility for provision of services required of the Agency under the terms of this Lease. The Agency shall occupy a set of rooms in the lower level of JCHC, identified, depicted and marked as "the Agency" in Exhibit A, attached hereto. This space shall include the following:

(a) JCHC: 1,156 square feet of exclusive space in the lower level. The City shall also provide heat, electricity, water, mechanical and structural maintenance for the JCHC space referenced above. The City agrees to open such facilities during evening and Saturday hours as mutually agreed upon by the parties to service client needs. The City shall not, in any event be responsible for any loss or damage to the Agency's equipment, fixtures, or personal property located within the Health Centers.

RENT

7. The Agency shall make quarterly payment of rent to the Commissioner of Health, City of Milwaukee, 841 N. Broadway, 3rd Floor, Milwaukee, WI 53202, in the amount of

One Thousand Eight Hundred Seventy-Eight and 50/100 Dollars (\$1,878.50) (JCHC) during each calendar year 2005 through 2006. Payments shall be made within thirty (30) days of the first date of each calendar quarter.

SERVICE REIMBURSEMENTS DUE TO CITY

8. Security Guard

The Agency shall reimburse to the City on a quarterly basis, during the term of this Lease or any renewal or extension thereof, a prorated share of cost of security guard services when such services are provided at the Health Centers.

9. Telephone

The Agency shall reimburse to the City on a quarterly basis, during the term of this Lease or any renewal or extension thereof, the cost of the Agency's telephone calls and services.

10. Custodial and Housekeeping

The Agency shall be responsible for its own custodial and housekeeping services at the Health Centers during the term of this Lease or any renewal or extension thereof.

11. Receptionist Services

The Agency shall reimburse to the City on a quarterly basis, during the term of this Lease or any renewal or extension thereof, a prorated share of cost of receptionist services when such services are provided at the Health Centers.

12. Payments

All payments for service reimbursement due under paragraphs 8 through 12 of this Lease shall be made within thirty (30) days of the first date of each calendar quarter.

MISCELLANEOUS

13. Equipment

Any equipment required by the Agency shall be acquired by the Agency at its own expense. The Agency shall be solely responsible for the repair and maintenance of all such equipment.

14. Signage and/or Other Advertising

The Agency shall not install or maintain any signs or other forms of advertisement either within or outside the Health Centers prior without written approval of the City of Milwaukee Health Department. The installation of any such sign or other form of advertisement in the absence of such prior written approval shall be considered an event of default under this Lease.

INDEMNIFICATION

15. The Agency agrees to so conduct its activities at the Health Centers so as not to endanger any person; and to indemnify and save harmless City against any and all claims for injury to persons or property (including, but not necessarily limited to, claims of employees, agents, invitees or guests of the Agency) arising out of the activities conducted by the Agency, its agents, invitees or guests during or subsequent to the period covered by this Lease; provided, however that the Agency shall not be responsible to the City or third parties for acts or omissions solely attributable to the negligence of the City's agents or employees. City shall not be responsible for any damage or injury that may happen to the Agency or to the Agency's agents, servants, employees or property from any cause whatever prior to, during or subsequent to the period covered by this Lease.

16. The Agency shall indemnify and hold the City harmless from any and all losses, costs, damages, and expenses (including reasonable attorneys' fees) suffered by the City attributable to the acts or negligent omissions of the Agency and arising out of the performance of services under this Lease.

17. The Agency further covenants and agrees that in case the City shall be made a party to any litigation arising out of this Lease, then the Agency shall and will pay all costs and expenses, including reasonable attorney's fees and court costs, incurred by or imposed upon the City by virtue of such litigation. The City shall tender the defense of any claim or action at law or inequity to the Agency or its insurer and, upon such tender, it shall be the duty of the Agency and its insurer to defend such claim or action without cost or expense to the City.

INSURANCE

18. The Agency agrees to carry liability insurance on the demised premises within the scope of this Lease by an insurance company licensed in the State of Wisconsin, with minimum limits of \$1,000,000 each occurrence and \$2,000,000 aggregate for general liability and minimum limits of \$500,000 each claim and \$1,000,000 aggregate for professional liability. All policies of insurance (except only professional liability insurance policies) shall name the City as an additional named insured for any liability arising out of an act or omission of the Agency or arising from the agencies business or other operations.

19. The Agency shall furnish the City a Certificate of Insurance as evidence of coverage in compliance with paragraph 19 of this lease and shall, upon demand by the City, furnish to the City a complete copy of any or all policies of insurance procured in compliance with this paragraph (including all amendments, extensions, endorsements

or modifications thereof) The Certificate shall provide that the insurer will furnish the City with a thirty (30) day written notice of cancellation, non-renewal or material change by the insurer. Failure of the Agency to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation under this Lease. The City shall have the right to review and approve or disapprove the coverage required under this section.

20. In lieu of the insurance required by this paragraph the Agency may provide alternative insurance coverage only when such alternative coverage is specifically approved by the City, in advance and in writing.

DISCLAIMER OF RELATIONSHIPS

21. The Agency and the City are independent entities contracting with each other for the purpose of carrying out the provisions of this Lease. Nothing contained in this Lease, nor any act of the parties hereto, shall be deemed or construed by any of the parties or by any third person to create any relationship of third party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship of similar or like effect.

DESTRUCTION OF THE HEALTH CENTERS

22. In the event that the Health Center (JCHC), or a substantial portion thereof, shall be destroyed or so badly damaged by fire or some other cause so as to render it unfit for use and occupancy by the Agency, and cannot be restored for practical use and with reasonable diligence within sixty (60) working days from said destruction or damage, then this Lease may be terminated by either party upon written notice to the other as provided herein. Additionally, if the Health Center is destroyed or so badly damaged by fire or some other cause so as to render them unfit for use and occupancy by the Agency, and if the City chooses not to restore the affected Health Center, the City may

terminate this Lease upon written notice to the Agency as provided herein. In the event of termination under these circumstances, the Agency shall pay rent for the affected Health Center up to the time of such termination, at the rate specified in this Lease. All payments and charges payable by the Agency under this Lease, other than rent shall be prorated as of the date of said termination and the Agency hereby waives any claim for damages or compensation should this Lease be so terminated.

23. If the affected Health Center (JCHC) is so badly damaged by fire or some other causes so as to be unfit for use and occupancy by the Agency for a period of time, and this Lease is not terminated pursuant to the provisions of paragraph 22, the Agency's duty to pay rent shall abate during the period of time during which the affected Health Center are unfit for use and occupancy.

DEFAULT

24. The occurrence of one or more of the following events shall be considered events of default under terms of this Lease:

- a) The Agency shall abandon the Property for a period of thirty (30) days or be delinquent in any payments of rent, service reimbursement or of any other payments due to the City under this Lease required to be made by the Agency hereunder and such delinquency shall continue for ten (10) days after notice thereof in writing to the Agency; or
- b. The Agency shall fail to obtain or maintain insurance coverage as mandated by paragraphs 18 through 20 of this Lease.
- c. The Agency shall fail or refuse to fully observe any of its other covenants, obligations or undertakings contained in this Lease; or
- d. The Agency shall make any assignment, transfer, sublease, conveyance or other disposition of its interest in this Lease without express written consent of The City.

Upon occurrence of any one or more of such events of default, it shall be lawful for the City, at its election, to declare this Lease ended, and to recover full possession of the space at JCHC, either with or without process of law to re-enter and to expel, and remove the Agency and all agents, employees and representatives of the Agency engaged in operation of JCHC or occupying JCHC, using such force as may be necessary to accomplish these objectives.

25. If default shall be made in any covenants, obligations, conditions or undertakings herein contained, to be observed and performed by the Agency other than the payment of rent, service reimbursement fees or any other payments due under this Lease which cannot with due diligence be cured within a period of thirty (30) days, and if notice thereof in writing shall be given to the Agency, and if the Agency prior to the expiration of said thirty (30) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and thereafter does so cure such default, then City shall not have the right to declare the term of this Lease as ended; provided, however, that the curing of such default in such manner shall not be construed to limit or restrict the right of City to declare this Lease ended and terminated, and to enforce all of City's rights and remedies hereunder for any other default not so cured.

Notice

26. In the event any notice is required to be delivered hereunder, it shall be given in writing, and shall be delivered personally or shall be deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, in which latter event it shall be deemed given (3) days after the date mailed. If it is to be sent to the City, then it shall be addressed as follows:

City

City of Milwaukee Health Department
Bevan K. Baker, CHE
Commissioner of Health
841 N. Broadway, 3rd Floor
Milwaukee, WI 53202

Agency

Ms. Kit Murphy McNally
Executive Director
Benedict Center
229 E. Wisconsin Ave., Suite 1250
Milwaukee, WI 53202

Compliance with Laws and Orders

27. The parties agree to comply with all statutes, regulations, rules, directives, ordinances, guidelines, or orders which may be issued by any City, State, Federal or other public agencies having jurisdiction.

Non-Discrimination

28. The Agency hereby agrees that in its use of the Health Centers and in its activities undertaken pursuant hereto it shall not discriminate, or permit discrimination on any basis prohibited by any law regulation or ordinance. The Agency further agrees to cause this provision to be inserted into all subcontracts, if any; excepting only subcontracts for standard commercial supplies or raw materials.

Conflict of Interest

29. Interest in Contract. No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Lease pertains, shall have any personal interest, direct or indirect, in this Lease. No members of the governing body of the locality and not other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Lease, shall have any personal interest, direct or indirect, in this Lease.

Governing Law

30. This Lease shall be governed by the laws of the State of Wisconsin. If any term or provision of this Lease or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Lease Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

Time of the Essence

31. It is expressly understood and agreed to by the parties hereto that time is of the essence of each term and provision of this Lease.

Waiver

32. The waiver by the City of any covenant or condition of this Lease shall not be construed as a waiver of a subsequent breach of the same covenant or condition or of any other covenant or condition.

Amendments

33. This Lease may be supplemented or amended only by written instrument executed by both parties.

Successors; Assigns

34. This Lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. The Agency's interest under this Lease or any portion thereof, can be assigned only upon the advance written consent of the City.

Authority of City

35. Any matters not herein expressly provided for shall be handled and disposed of in the discretion of the City. Any discretion herein granted to the City may be exercised through the Commissioner of Health or his designees.

Approval by Common Council.

36. It is expressly understood by the parties hereto, that this Lease and any amendments, extensions, modifications thereof shall be subject to and conditioned upon the approval of the Common Council of the City of Milwaukee.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized representatives as of the day and date first above written.

In Presence of: CITY OF MILWAUKEE

By _____
Tom Barrett, Mayor Date

City Clerk Date

COUNTERSIGNED:

W. Martin Morics, Comptroller Date

AGENCY

(Witness) By _____
Kit Murphy McNally, Executive Director Date
Benedict Center

(Witness) By _____
Date

Approved as to form and execution this
_____ day of _____, 2003

Assistant City Attorney

List of Exhibits

EXHIBIT A

JCHC areas and square footage