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February 13, 2009

David A. Schooler
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VIA E-MAIL AND U.S. MAIL

Jill Clark, Esq.
2005 Aquila Avenue North
Minneapolis, MN 55427

**NOTICE OF REQUEST FOR RULE 11
SANCTIONS AND REIMBURSEMENT
OF ATTORNEY FEES**

**Re: Brown, et al. v. Browne, et al.
Client-Matter No. 39075.1**

Dear Ms. Clark:

Briggs and Morgan, P.A., represents Michael Browne, P.J. Hubbard, Robert Hodson, Anne McCandless, Stacy Sorenson, the Minneapolis Neighborhood Revitalization Project and the Jordan Area Community Council in the above-entitled matter. Plaintiffs' January 28, 2009 Complaint and February 9, 2009 First Amended Complaint both have serious problems which warrant your immediate attention and action. Your attention should be especially piqued because you alone verified the Complaint and the First Amended Complaint.

The facts and motions supplied by Plaintiffs demonstrate that Plaintiffs' Complaint and First Amended Complaint do not state causes of action for any of the following claims:

- (1) equitable relief pursuant to Minn. Stat. § 317A.751 (Count I);
- (2) intentional interference with contract (Count II);
- (3) aiding and abetting the tortuous conduct of another (Count III);
- (4) violation of 42 U.S.C. § 1983 (Count IV); and
- (5) breach of fiduciary duty (Count V).

If each of these counts is not timely revoked, this failure presents grounds for sanctions and award of attorney fees to Defendants pursuant to Minn. Stat. § 549.211. **Please be advised, that pursuant to Minn. Stat. § 549.211's 21-day "safe harbor window, Plaintiff has 21 days, or until March 6, 2009, to withdraw Counts I-V of the Complaint and First Amended Complaint.**

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A. SECTION 549.211(2)

Minn. Stat. § 541.211(2) states that by presenting a pleading, motion or other paper to the Court, an attorney is certifying that: to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses and other legal contentions are warranted by existing law or by a non-frivolous argument for the extensions, modifications or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Plaintiffs and their counsel have ignored this standard.

B. BLATANT AND INCURABLE COMPLAINT DEFICIENCIES

1. DEFECT NO. 1: The factual allegations in the Complaint and First Amended Complaint fail to plead that Plaintiffs have completed the grievance procedure and exhausted remedies in accordance with the Contract Between the City of Minneapolis and Jordan Area Community Council (Ex. 1.) Mr. Robert Miller of the Minneapolis Community Development Agency has confirmed that you and your clients have failed to initiate grievance proceedings as required by the Contract and the City of Minneapolis Community Planning and Economic Development Department Citizen Participation Program Guidelines (Approved by City Council February 24, 2006)(Ex. 2.) in his correspondence dated February 13, 2009. (Ex. 3.). Attorney and plaintiff Benjamin E. Meyers has acknowledged this requirement in his correspondence dated January 17, 2009. (Ex. 4) ("...be advised that I am formally filing a grievance against all of you in accordance with my concerns outlined herein..."(Ex. 4). You have ignored this administrative procedural requirement and pursued this injunction despite the controlling case law announced by the Minnesota Court of Appeals. *see, Dodge v. Cedar-Riverside Project Area Committee*, 443 N.W.2d 844 1989 (Rev. Denied Sept. 27, 1989).(attached). Furthermore, you have clearly done so in bad faith as part of a longstanding pattern predating and including this groundless lawsuit. The Minnesota Court of Appeals has awarded attorney's fees of \$62,703.50 and costs of \$1,847.69 to a party forced to defend a frivolous demand for injunctive relief where the plaintiff was untruthful in the allegations and an "air of bad faith surrounded [the plaintiff's] conduct throughout the action." *Mooney v. Burtness*, WL 218189 (Minn. Ct. App. 1998)(attached).

2. DEFECT NO. 2: Plaintiffs present no facts to support a violation of 42 U.S.C. § 1983, Count VI in the Complaint and First Amended Complaint and the

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factual allegations in paragraphs 28-34. Neither Complaint sets forth the prima facie elements for this claim and simply restates the "rogue takeover" theory that is subject to the grievance process.

3. **DEFECT NO. 3:** Plaintiffs present no facts to support a claim for aiding and abetting the tortuous conduct of another. The allegations of a "rogue takeover" in the Complaint and First Amended Complaint in paragraphs 26-27 are not a recognized tort under any law. These allegations of Board misconduct are subject to the grievance process set forth above.

4. **DEFECT NO. 4:** Plaintiffs present no facts to support a claim for intentional interference with contract. The allegations of a "rogue takeover" in the Complaint and First Amended Complaint in paragraphs 26-27 are not a recognized tort under any law. These allegations are allegations of Board misconduct that is the subject of the grievance process set forth above.

5. **DEFECT NO. 5:** Plaintiffs present no facts to support a claim for breach of fiduciary duty. The allegations contained in paragraphs 35-36 of the Complaint and the First Amended Complaint. These allegations of Board misconduct are subject to the grievance project above.

C. FURTHER EVIDENCE DEMONSTRATING PLAINTIFF'S BAD FAITH

Besides ignoring the Rule 11.01 signing requirement and Minn. Stat. § 549.211(2), Individual Plaintiffs have a long and documented history of instituting non-meritorious strike suits including temporary restraining orders and suing individual defendants for defamation and other pretended claims. Defendants intend to demonstrate, if required, that these lawsuits are a misuse of power and were part of a campaign to bully any opposition to the former leadership of the JACC Board, several of whom are plaintiffs in this lawsuit. The actions in other litigation further establishes bad faith intent in these present claims.

To summarize the important facts, Plaintiffs' Complaint and First Amended Complaint do not contain sufficient facts to support Counts I, II, III, IV and V. Additionally, all Counts of the Complaint and First Amended Complaint are subject to a grievance process that has been ignored. This is but one of a series of actions that Plaintiffs and their counsel have taken that demonstrates that this entire litigation is in bad faith and justifies an award of attorney fees to Defendants. Accordingly, Defendants are serving this Motion pursuant to Rule 11.03 and Minn. Stat. § 549.211 allowing Plaintiff this 21-day safe harbor to withdraw Counts I, II, III, IV and V of this Complaint and First Amended Complaint. **If Plaintiffs fail to comply with Rule 11.03(a)(1), Defendants fully intend to file a Rule 11 motion seeking to hold Jill Clark and her law firm jointly responsible for the violation, seeking monetary sanctions and seeking reasonable expenses and attorney fees incurred in presenting the motion and/or continuing**

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to defend non-meritorious litigation relating to each of the counts of Plaintiffs' Complaint and First Amended Complaint.

Sincerely,

Briggs and Morgan, P.A.

A handwritten signature in black ink, appearing to read "David A. Schooler", with a long horizontal flourish extending to the right.

David A. Schooler

DAS/tmt

EXHIBIT 1

Federal department providing the grant funding is HUD

Federal CFDA number is 14.218

**CONTRACT BETWEEN THE CITY OF MINNEAPOLIS
AND
JORDAN AREA COMMUNITY COUNCIL
FOR GRANT FUNDED SERVICES**

THIS CONTRACT, entered into this 1st day of January, 2007, by and between the City of Minneapolis (herein called the "City") and ~~Harrison Neighborhood Association~~, (herein called the "Contractor").

Jordan Area Community Council

WHEREAS, the City has received certain grant funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended in 1977, Public Law 93-383 as amended, under CFDA #14.218, to provide resident participation; and

WHEREAS, the Contractor has represented itself as competent to provide the services required by that certain grant; and

WHEREAS, the City wishes to engage the Contractor to provide said services under the terms of this Contract (the "Contract");

NOW THEREFORE, it is agreed between the parties hereto that;

I. TIME OF PERFORMANCE

Services of the Contractor shall start on the 1st day of January, 2007, and shall continue until the 31st day of December, 2007, or until terminated by either party as provided for in Part II, General Conditions, attached hereto.

II. COMPENSATION

It is expressly agreed and understood that all compensation including reimbursable expenses, if any, to be paid by the City under this Contract shall not exceed \$20,000.00; in accordance with a project budget approved by the City, and is on file with the City's Contract representative herein.

EXPENSE REIMBURSEMENT

Reimbursable expenses shall be paid upon submission of itemized invoice to the person signing this Contract. The City agrees to pay for reimbursable expenses, if reasonably and necessarily incurred. Any expenses that are anticipated to be over \$100 and any reimbursement for travel outside of the Minneapolis-St. Paul metropolitan area must be approved in advance by the Contract Manager. All travel must be conducted in accordance with the City's Contractor Travel Reimbursement Conditions.

III. NOTICES

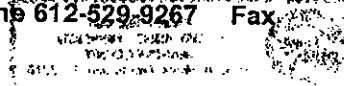
Communication and details concerning this Contract shall be directed to the following Contract representatives:

CONTRACTOR

Jordan Area Community Council
2507 Fremont Avenue North
Minneapolis, MN 55411

ATTN: Jerry Moore

Phone 612-529-9267 Fax



CITY OF MINNEAPOLIS

Lee Sheehy, Department Head
Community Planning and Economic Development
105 5th Avenue South, Room 200
Minneapolis, MN 55401
Judy Duffey, Contract Manager
Phone 612-673-5279 Fax 612-673-5212

IV. SCOPE OF SERVICE

The scope of services to this contract is detailed in Exhibit B, which is attached and made part of this agreement.

V. TERMS AND CONDITIONS

This Contract is subject to and incorporates all the terms and conditions set forth in Part II General Conditions attached hereto, as well as those conditions in Part III, which is (are) also attached hereto.

VI. AMENDMENTS

No amendments may be made to this Contract after signing by the parties, except for extensions of time, increases in compensation or increases or reduction of the services to be performed so long as the limit of \$50,000 is not exceeded. If that amount is to exceed \$50,000, the amendment must be approved by the Mayor and City Council by formal Council action.

VII. INSURANCE

If any insurance is required under this Contract, the Contractor shall maintain that insurance identified in Exhibit A, which is attached and made part of this Contract.

IN WITNESS WHEREOF, the Parties have executed this Contract as of the date first written above.

FOR THE Contractor:

Fed. Identification No.: 41-6043288

By Jerry Moore

Its Interim Executive Director

By _____

Its _____

FOR THE CITY:

By Jeff Schneider
Its CPEA Mgr Special Projects + Research

STATE OF Minnesota
COUNTY OF Hennepin)^{ss}

This instrument was acknowledged before me on 12-28-06
by Jerry Moore as Interim Exec Director and
(Printed Name) (Date) (Title)

_____ as _____
(Printed Name) (Title)

of Jordan Area Comm Council
(Corporation Name, if corporation)

Linda K Huckaby
Notary Public



PART II - GENERAL CONDITIONS

1 City's Rights

The City reserves the right to cancel the Contract without penalty, if circumstances arise which prevent the City from completing the project.

2 Interest of Members of City

The Contractor agrees that no member of the governing body, officer, employee or agent of the City shall have any interest, financial or otherwise, direct or indirect, in the Contract.

3 Equal Opportunity Statement

Contractor agrees to comply with the provisions of all applicable federal, state and City of Minneapolis statutes, ordinances and regulations pertaining to civil rights and nondiscrimination including, without limitation, Minnesota Statutes, Section 181.59 and Chapter 363, and Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.

4 Non-Discrimination

The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, national origin, affection preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era. Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

The Contractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City, setting forth this nondiscrimination clause. In addition, the Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, creed, religion, ancestry, sex, national origin, affectional preference, disability, age, marital status or status with regard to public assistance or status as disabled veteran or veteran of the Vietnam era, and comply in all other aspects with the requirements the Minneapolis Code of Ordinances, Chapter 139.

5 Transfer of Interest

The Contractor shall not assign any interest in the Contract, and shall not transfer any interest in the same either by assignment or novation without the prior written approval of the City, provided, however, that claims for money due or to income due to the Contractor may be assigned to a bank, trust company or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice to any such assignment or transfer shall be furnished to the City. The Contractor shall not subcontract any services under this Contract without prior approval of the City Department Contract Manager designated herein.

6 Compliance Requirements

All Contractors hired by the City of Minneapolis are required to abide by the regulations of the Americans with Disabilities Act of 1990 (ADA) which prohibits discrimination against individuals with disabilities. The Contractor will not discriminate against any employee or applicant for employment because of their disability and will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, promotion, demotion, transfer, recruitment or recruitment advertising, layoff, discharge, compensation and fringe benefits, classification, referral and training. The ADA also requires Contractors associated with the City of Minneapolis to provide qualified applicants and employees with disabilities with reasonable accommodation that does not impose undue hardship. Contractors also agree to post in a conspicuous place, accessible to employees and applicants, notices of their policy on non-discrimination. The above requirements also apply to the Minnesota Human Rights Act, Minn. Stat. C. 363.

In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract, this Contract may be canceled, terminated, or suspended, in whole or part, and the Contractor may be declared ineligible by the Minneapolis City Council from any further participation in City contracts in addition to other remedies as provided by law.

7 General Compliance

The Contractor agrees to comply with all applicable Federal, State and local laws and regulations governing funds provided under this contract.

- 8 Performance Monitoring
The City will monitor the performance of the Contractor against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this Contract. If action to correct such substandard performance is not taken by the Contractor within a reasonable period of time after being notified by the City, Contract termination procedures will be initiated. All work submitted by Contractor shall be subject to the approval and acceptance by the City Department Contract Manager designated herein. The City Department Contract Manager designated herein shall review each portion of the work when certified as complete and submitted by the Contractor and shall inform the Contractor of any apparent deficiencies, defects, or incomplete work, at any stage of the project.
- 9 Independent Contractor
Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Contractor shall at all times remain an independent Contractor with respect to the services to be performed under this Contract. Any and all employees of Contractor or other persons engaged in the performance of any work or services required by Contractor under this Contract shall be considered employees or sub-contractors of the Contractor only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of Contractor.
- 10 Hold Harmless
The Contractor agrees to defend, indemnify and hold harmless the City, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including attorney's fees, resulting directly or indirectly from an act or omission of the Contractor, its employees, its agents, or employees of subcontractors, in the performance of the services provided by this Contract or by reason of the failure of the Contractor to fully perform, in any respect, any of its obligations under this contract. If a Contractor is a self-insured agency of the State of Minnesota, the terms and conditions of Minnesota Statute 3.732 et seq. shall apply with respect to liability bonding, insurance and liability limits. The provisions of Minnesota Statutes Chapter 466 shall apply to other political subdivisions of the State of Minnesota.
- 11 Accounting Standards
The Contractor agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this contract.
- 12 Retention of Records
The Contractor shall retain all records pertinent to expenditures incurred under this Contract for a period of six years after the resolution of all audit findings. Records for non-expendable property acquired with funds under this Contract shall be retained for six years after final disposition of such property.
- 13 Data Practices
The Contractor agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor must immediately report to the City any requests from third parties for information relating to this Contract. The City agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City, its officers, and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws.
- 14 Inspection of Records
All Contractor records with respect to any matters covered by this Contract shall be made available to the City or its designees at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.
- 15 Living Wage Policy
All Contractor employees will be paid at least a living wage. The definition of a Living Wage is at a minimum 110 percent of the current year federal poverty level for a family of four as provided by the federal Department of Health and Human Services for a Contractor that does not supply employer-paid health insurance and 100 percent for a Contractor that does supply employer-paid health insurance.
- 16 Small Business & Underutilized Business Program

The Contractor shall comply with the Small & Underutilized Business Program, Minneapolis Code of Ordinances Chapter 423, established by the City Council on June 25, 1999. The Contractor shall make and document every reasonable effort to include certified small businesses, including companies owned by women and minority persons, as part of their service team. List of certified businesses can be obtained by contacting the Small & Underutilized Business Program at 612 673-2272 or the CERT web site at (<http://www.iitservicesinc.com>).

17 Applicable Law

The laws of the State of Minnesota shall govern all interpretations of this contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the Contractor.

18 Conflict and Priority

In the event that a conflict is found between provisions in this Contract, the Contractor's Proposal or the City's Request for Proposals, the provisions in the following rank order, shall take precedence: 1) Contract; 2) Proposal; and last 3) Request for Proposals.

19 Ownership of Materials

All finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials resulting from this Contract shall become the property of the City upon final approval of the final report or upon request by the City at any time before then. The City may use, extend, or enlarge any document produced under this Contract without the consent, permission of, or further compensation to the Contractor.

20 Billboard Advertising

Through Ordinance 109.470, City and City-derived funds are prohibited from use to pay for billboard advertising as a part of a City project or undertaking.

21 Conflict Of Interest/Code Of Ethics

Contractor agrees to be bound by the City's Code of Ethics, Minneapolis Code of Ordinances, Chapter 15. Contractor certifies that to the best of its knowledge all City employees and officers participating in this Contract have also complied with that Ordinance. It is agreed by the Parties that any violation of the Code of Ethics constitutes grounds for the City to void this Contract. All questions relative to this section shall be referred to the City and shall be promptly answered.

22 Travel

If travel by the Contractor is allowable and approved for this contract, then Contractor travel expenses must be reimbursed in accordance with the Contractor Travel Reimbursement Conditions, available from the City.

23 Termination

The City may cancel this Contract for any reason without cause upon thirty (30) days written notice, except that if either party fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of this Contract, the other party shall have the right to terminate this Contract, if the default has not been cured after a ten (10) days written notice has been provided. If termination shall be without cause, the City shall pay Contractor all compensation earned to the date of termination. If the termination shall be for breach of this Contract by Contractor, the City shall pay Contractor all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the Contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Contractor under this Contract shall, at the option of the City, become the property of the City, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City as a result of any breach of this Contract by the Contractor. The City may, in such event, withhold payments due to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City is determined. The rights or remedies provided for herein shall not limit the City, in case of any default by the Contractor, from asserting any other right or remedy allowed by law, equity, or by statute.

24 Intellectual Property

The City owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in any Work created, in progress, produced or completed and paid by this contract. Work covered includes inventions, improvements, discoveries, databases, computer programs,

reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, or other media.

All Work under this Contract will be the exclusive property of the City and will be surrendered to the City immediately upon completion, expiration, or cancellation of this contract. The Contractor represents and warrants that the Work does not and will not infringe upon any intellectual property rights of other persons or entities.

Grants: City of Minneapolis Special Conditions for Grant Contracts

(Other than the Audit requirement, these conditions are superseded by Agreement with Grantor if contradictory)

Conduct

Prohibited Activity. The Contractor is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities, sectarian, religious or anti-religious activities, lobbying, political patronage, nepotism, unionization or anti-unionization activities, or maintenance of effort. Program participants may not be placed into or remain working in any position that is affected by a labor dispute.

Religious Organization. The Contractor agrees that funds provided under this Contract will not be utilized for religious activities or to promote religious interests.

Conflict of Interest. The Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this contract. The Contractor further agrees that in the performance of this Contract no person having such an interest shall be employed by the Contractor hereunder. Such individuals or parties shall include but not be limited to: a) members of or delegates to the Congress of the United States of America, resident commissioners or other federal representatives, b) officers, members, employees of the State and members of its governing body, c) officers, members, employees of the City, and members of its governing body.

Materials Produced by Contractor

Grantor Recognition. The Contractor shall insure recognition of the role of the Grantor Agency in providing services through this contract. In addition, the Contractor will include a reference to the support provided herein in all publications made possible with funds made available under this contract.

Progress. The Contractor shall submit reports to the City in the form, content, and frequency as required by the City.

Copyright. If this Contract results in any copyrightable material, the author is free to copyright the work, but the City and/or Grantor Agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

Plain Language Law. The Contractor shall comply with provisions of the Plain Language Law requiring written material produced for applicants and recipients to be understandable to a person who reads at the seventh grade level (Minnesota Statutes, Section 268-0124, 1988).

Employment Restrictions

Notifications. The Contractor's executive management will ensure that a notice of its affirmative commitments in regards to labor infringement, the Occupational Safety and Health Act of 1973, and the Minnesota Right to Know Act, is made available to Contractor's labor unions or worker's representatives.

Infringement. Program participants may not impair existing contracts for services or collective bargaining agreements nor displace currently employed workers, including no reduction in non-overtime, wages or benefits. Participants will not replace laid off employees nor infringe on other employees' promotional opportunities.

OSHA. Where participants are engaged in activities not covered under the Minnesota Occupational Safety and Health Act of 1973, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participant's health or safety.

Right to Know. Participants employed or trained for inherently dangerous occupations shall be assigned to work in accordance with reasonable safety practices. The Contractor will comply with the Minnesota Right to Know Act.

Financial and Administrative

Audit. The Contractor agrees to follow the City's audit policy. This includes a requirement for an annual financial audit for Contractors receiving in excess of \$50,000 annually from City contracts. The Contractor shall submit one copy of each completed audit report and the management letter (if applicable) to the City Finance Department. Any deficiencies noted in such audit reports or audit/monitoring reports issued by the City or their designees must be fully cleared by the Contractor within a reasonable time period after a request has been received from the City. Failure of the Contractor to comply with the provisions of this paragraph will constitute a violation of this Contract and may result in the withholding of future payments. This clause does not apply for individual proprietors.

Budgets. When requested, the Contractor will submit a Contract budget of a form and content prescribed by the City for approval by the City. The City and the Contractor may agree to revise such budget from time to time in accordance with City policies concerning budgets.

Program Income. The Contractor is encouraged to earn interest on cash balances and shall report all income from funds made available under this Contract whether from interest, return of principal, sale of property, or other sources. The Contractor may utilize such income during the Contract period to further activities permitted under this Contract and shall consider such income balances when requesting additional funds. All unspent balances shall be returned to the City at the end of the Contract period.

Close-outs. The Contractor's obligation to the City shall not end until all closeout requirements are completed.

Activities during this close-out period shall include, but are not limited to, making final payments, disposing of program assets (including the return of all unused materials; equipment, unspent cash advances, program income balances, and receivable accounts to the City), determining the custodianship of records and resolving audit findings.

Excess Revenues. Contractor revenues directly earned from this Contract (i.e., user fees, royalties, etc.) that are in excess in compensation under this Contract are to be treated as program income. Such income may be used to underwrite additional services provided that these services are consistent with the purposes of the program that generated them and are in conformance with the conditions stated herein. The Contractor must report such income to the City and maintain records accounting for its use for possible audit. Such income not used during the "time of performance" of this Contract is to be returned to the City.

Indirect Costs. If indirect costs are charged, the Contractor will develop an indirect cost allocation plan for determining the appropriate City share of administrative costs and shall submit such plan to the City for approval.

Payments. The City will pay to the Contractor funds available under this Contract based upon information submitted by the Contractor and consistent with any approved budget and City policy concerning payments. Payments may be adjusted at the option of the City in accordance with advance fund and program income balances available in Contractor accounts. In addition, the City reserves the right to liquidate funds available under this Contract for costs incurred by the City on behalf of the Contractor. The Contractor understands that payment will not be available for costs claimed by the Contractor on any other Contract for substantially the same service, material, equipment and/or outcome. The Contractor agrees to utilize funds available under this Contract to supplement rather than supplant funds otherwise available.

Compliance. The Contractor shall comply with current City policy concerning the purchase of equipment and shall maintain an inventory record of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this contract.

Non-Discrimination

EEO/AA Statement. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that it is an Equal Opportunity or Affirmative Action Employer.

Holdback. If there is probable cause to believe the Contractor is in non-compliance with the nondiscrimination clauses of this Contract or with any applicable rules or regulations, the City shall withhold up to fifteen percent of said Contract funds until such time as the Contractor is found to be in compliance or is otherwise adjudicated to be in compliance.

Records

Client Data. The Contractor shall maintain client data demonstrating client eligibility. Such data shall include but not be limited to client name, address, income level or other basis for determining eligibility, and a description of the service provided. Such information shall be made available to City monitors for review upon request.

Access to Records. The Contractor shall furnish and require all subcontractors to furnish all information and reports required hereunder and by the rules and regulations of the City, and will permit access to its books, records and accounts for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

Subcontracting

SubContract Provisions. The Contractor will include the provisions in this Contract entitled Non-Discrimination in every subcontract or purchase order pertaining to this Contract specifically or by reference, so that such provisions will be binding upon each subcontractor or vendor.

Approvals. The Contractor shall not enter into any subcontracts with any agency or individual in the performance of this Contract without the written consent of the City prior to the execution of such Contract.

Monitoring. The Contractor will monitor all subcontracted services on a regular basis to assure Contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

Content. The Contractor shall cause all of the provisions of this Contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Contract.

Selection Process. The Contractor shall undertake to insure that all subcontracts let in the performance of this Contract shall be awarded on a fair and open competition basis. Executed copies of all subcontracts along with documentation concerning the selection process shall be forwarded to the City upon request.

Part III - Special Conditions for Federal and State Grant Funds

I. General Compliance:

The Contractor agrees to comply with the requirements of all applicable Federal and State regulations and policies issued pursuant to grant funds in this contract. The Contractor further agrees to utilize funds available under this Contract to supplement rather than supplant funds otherwise available.

II. Administrative Restrictions

A. Fees. The Contractor is prohibited from charging an enrolled individual a fee for referral or program services.

B. Voter Registration. If required by the City Contract Manager, the Contractor shall provide voter registration services for employees and program participants encountered in the performance of this contract. Non-partisan assistance shall be provided, including routinely asking employees and members of the public served if they would like to register to vote, providing them with a registration form, and assisting them in completing the form.

III. General Federal Requirements

A. Section 504. The Contractor agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 791) which prohibits discrimination against the handicapped in any federally assisted program. The City shall provide the Contractor with any guidelines necessary for compliance with that portion of the regulations in force during the term of this contract.

B. Hatch Act. The Contractor agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

C. Regulations. The Contractor agrees to comply with the requirements, as applicable, of:

- Americans with Disabilities Act of 1990.
- Endangered Species Act of 1973
- Executive Order 12291 – Regulations
- Executive Order 12259 - Leadership and Coordination in Federal Housing Programs
- Executive Order 12612 - Federalism
- Federal Fair Labor Standards Act
- OMB Circular A-21 - Cost Principles for Educational Institutions.
- OMB Circular A-87 - Cost Principles for State, Local and Indian Tribal Governments.
- OMB Circular A-102 – Grants and Cooperative Agreements with State and Local Governments
- OMB Circular A-110 – Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (for HUD-funded contracts, see 24 CFR Part 84)
- OMB Circular A-122 - Cost Principles for Nonprofit Organizations.
- OMB Circular A-133 – Audits of States, Local Governments and Non-Profit Organizations (for HUD-funded contracts, see 24 CFR Part 45)
- Title VI of the Civil Rights Act of 1964.
- Title VIII of the Civil Rights Act of 1968.
- USDHEW Oasc-5 - Cost Principles and Procedures for Establishing Indirect Cost and Other Rates for Grants and Contracts with the Dept. Of Health and Human Services.
- USDHEW Oasc-10 - Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.
- 31 CFR Part 205 – Treasury Department Regulations Implementing the Cash Management Improvement Act of 1990.
- 37 CFR Part 401 – Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements.
- 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition.

D. Certification Regarding Lobbying. Before the City releases any of the funds covered by this Contract, the Contractor shall sign the following certification statement:

The undersigned hereby 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 AWARDED OF ANY FEDERAL CONTRACT, THE MAKING OF ANY FEDERAL GRANT, THE MAKING OF ANY FEDERAL LOAN, THE ENTERING INTO OF ANY COOPERATIVE AGREEMENT, AND THE EXTENSION, CONTINUATION, RENEWAL, AMENDMENT, OR MODIFICATION OF ANY FEDERAL CONTRACT, GRANT, LOAN, OR COOPERATIVE AGREEMENT.**

- 2) IF ANY FUNDS OTHER THAN FEDERAL APPROPRIATED FUNDS HAVE BEEN PAID OR WILL BE PAID TO ANY PERSON FOR INFLUENCING OR ATTEMPTING TO INFLUENCE AN OFFICER OR EMPLOYEE OF ANY AGENCY, A MEMBER OF CONGRESS, AN OFFICER OR EMPLOYEE OF CONGRESS, OR AN EMPLOYEE OF A MEMBER OF CONGRESS IN CONNECTION WITH 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 AGREEMENTS) 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.

IN WITNESS WHEREOF, I have set my hand this 27 day of December, 2006

BY: [Signature]

TITLE: Interim Executive Director

FOR: Sandon Area Community Council
(Organization)

E. Certification Regarding Debarment. Before the City releases any of the funds covered by this Contract, the Contractor shall sign the following certification statement:

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

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Orders 12549 and 12689, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VIII of the May 26 1988 Federal Register (pages 19160-19211).

- 1) THE PROSPECTIVE PRIMARY PARTICIPANT CERTIFIES TO THE BEST OF ITS KNOWLEDGE AND BELIEF, THAT IT AND ITS PRINCIPALS:
- 2) ARE NOT PRESENTLY DEBARRED, SUSPENDED, PROPOSED FOR DEBARMENT, DECLARED INELIGIBLE, OR VOLUNTARILY EXCLUDED FROM COVERED TRANSACTIONS BY ANY FEDERAL DEPARTMENT OR AGENCY;
- 3) HAVE NOT WITHIN A THREE-YEAR PERIOD PRECEDING THIS PROPOSAL BEEN CONVICTED OF OR HAD A CIVIL JUDGMENT RENDERED AGAINST THEM FOR COMMISSION OF FRAUD OR A CRIMINAL OFFENSE IN CONNECTION WITH OBTAINING, ATTEMPTING TO OBTAIN, OR PERFORMING A PUBLIC (FEDERAL, STATE, OR LOCAL) TRANSACTION OR CONTRACT UNDER A PUBLIC TRANSACTION; VIOLATION OF FEDERAL OR STATE ANTITRUST STATUTES OR COMMISSION OR EMBEZZLEMENT, THEFT, FORGERY, BRIBERY, FALSIFICATION OR DESTRUCTION OF RECORDS, MAKING FALSE STATEMENTS, OR RECEIVING STOLEN PROPERTY; ARE NOT PRESENTLY INDICTED FOR OR OTHERWISE CRIMINALLY OR CIVILLY CHARGED BY A GOVERNMENT ENTITY (FEDERAL, STATE, OR LOCAL) WITH COMMISSION OF ANY OF THE OFFENSES ENUMERATED IN PARAGRAPH (1)(B) OF THIS CERTIFICATION; AND
- 4) HAVE NOT WITHIN A THREE-YEAR PERIOD PRECEDING THIS APPLICATION/PROPOSAL HAD ONE OR MORE PUBLIC TRANSACTION (FEDERAL, STATE, OR LOCAL) TERMINATED FOR CAUSE OR DEFAULT.

- 5) WHERE THE PROSPECTIVE PRIMARY PARTICIPANT IS UNABLE TO CERTIFY TO ANY OF THE STATEMENTS IN THIS CERTIFICATION, SUCH PROSPECTIVE PARTICIPANT SHALL ATTACH AN EXPLANATION TO THIS PROPOSAL.
- 6) THE UNDERSIGNED SHALL REQUIRE THAT THE LANGUAGE OF THIS CERTIFICATION BE INCLUDED IN ALL SUBCONTRACT AWARDS PURSUANT TO THIS CONTRACT AND AGREES TO REQUIRE ANY SUCH SUBCONTRACTORS TO SIGN A DEBARMENT CERTIFICATION.

JERRY L. MOYNE, Systems Sec. Director

Name and Title of Authorized Representative

Jerry L. Moyne
Signature

F. Equal Employment Opportunity. The Contractor agrees to comply with Executive Order 11246 "Equal Employment Opportunity", as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity" and as supplemented by regulations at 41CFR 60 "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Part III - Special Conditions for Federal and State Grant Funds used for Construction Contracts

A. Labor Standards. The Contractor agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, (regulations and wage rates as found at http://www.hudclips.org/sub_nonhud/html/pdfforms/4010.pdf and <http://www.gpo.gov/davisbacon> are attached) the provisions of the Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276 C) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this contract. The Contractor shall maintain documentation which demonstrates compliance with hour and wage requirements of this part and shall make such documentation available to the City for review upon request.

B. Land Covenants. This Contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR, Part I. In regard to the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United State are beneficiaries of and entitled to enforce such covenants. The Contractor, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

C. Environmental Conditions -

1) *Air and Water* – The Contractor agrees to comply with the following regulations insofar as they apply to the performance of this contract: 1) Clean Air Act, 42 U.S.C., 1857, et seq., 2) Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, et seq., as amended; 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Sections 114 and 308, and all regulations and guidelines issued thereunder, 3) Environmental Protection Agency (EPA) regulations pursuant to 40 CFR, Part 5, as amended, 4) National Environmental Policy Act of 1969, and 5) HUD Environmental Review Procedures (24 CFR, Part 58).
2) *Lead-Based Paint* – The Contractor agrees that any construction or rehabilitation of residential structures with assistance provided under this Contract may be subject to HUD Lead-Based Paint Regulations 24 CFR. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning.

D. Historic Preservation –

The Contractor agrees to comply with the historic preservation requirements set forth in Public Law 89-665 and the Archeological and Historic Preservation Act of 1974, Public Law 93-291, and Executive Order No. 11593, and the procedures set forth in 36 CFR Part 800, insofar as they apply to the performance of this contract.

Exhibit A - Grant Form Insurance (Please fill in a-d)

The following are the insurance requirements for the Contractor. Contractor shall check one box under each insurance area and sign at the bottom. Please note: no changes or additions can be made to this form other than indicating self-insurance status (if applicable, also attach a letter that outlines self-insurance coverage).

a) 1. Worker's Compensation insurance that meets the statutory obligations.

- Attached is certificate evidencing above insurance coverage in force as of the Contract start date.
- MN Statute Chapter 176 does not apply because Contractor has no employees and will not have any during the life of the Contract.

2. Workers Compensation insurance for non-employees providing services under this Contract (i.e., subcontractors).

- Attached is certificate evidencing Workers Compensation insurance coverage in force as of the Contract start date (either umbrella coverage by Contractor or separate coverage by non-employees).
- Non-employees such as subcontractors will not provide any services under this contract.

b) Commercial General Liability insurance. The policy shall be on an "occurrence" basis, shall include contractual liability coverage and the City shall be named an additional insured.

- Attached is certificate evidencing above insurance coverage in force as of the Contract start date.
- Contractor assumes full responsibility for any and all damages that occur as a result of this Contract.

c) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles.

- Attached is certificate evidencing above insurance coverage in force as of the Contract start date.
- Contractor's personal auto liability insurance coverage addresses the risk. Attached is a letter from insurance agent stating that personal automobile insurance policy covers business usage of all automobile(s) that will be used during the life of this Contract.
- Contractor will not drive any automobiles while performing services under this Contract.

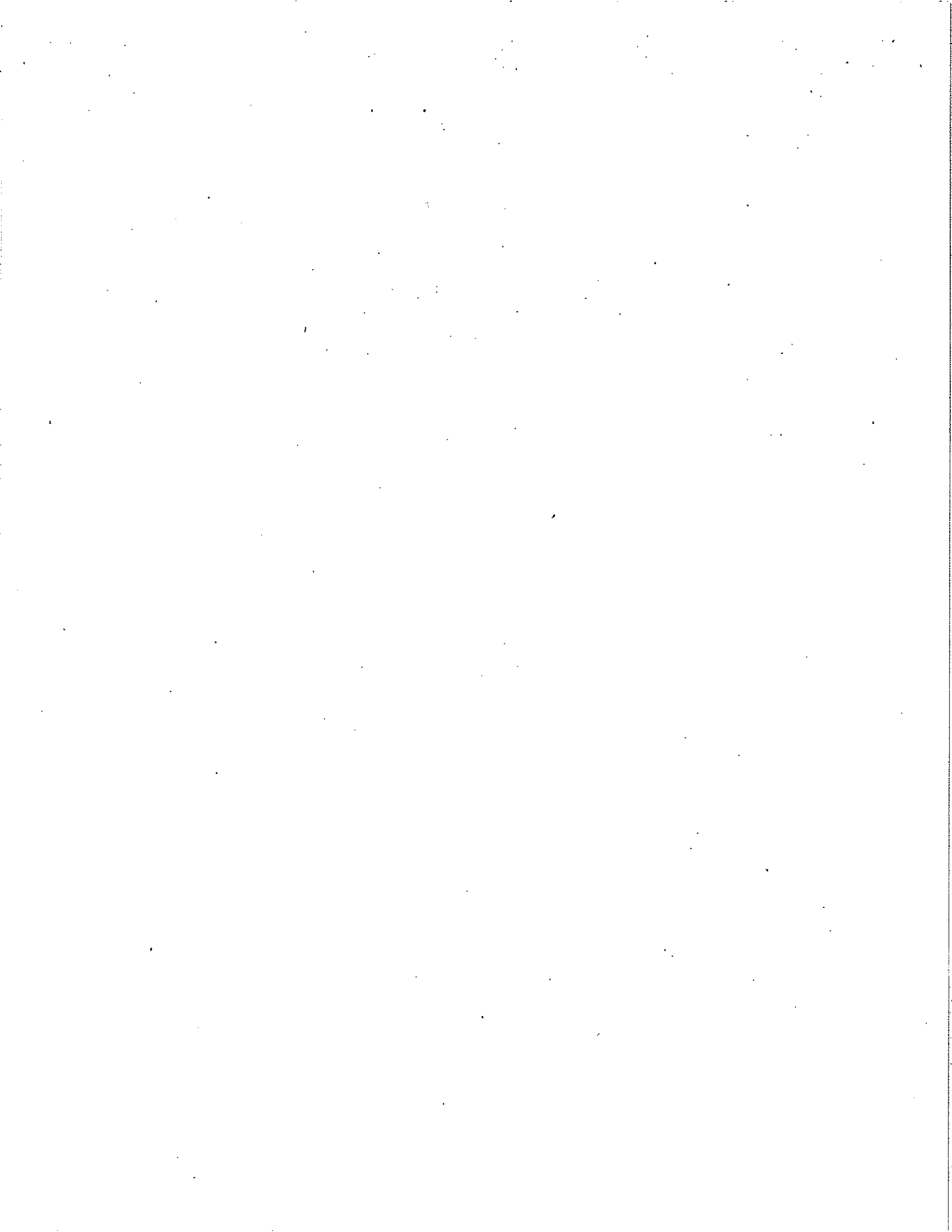
d) Professional Liability Insurance providing coverage for the claims that arise from the errors of Contractor or its consultants, omissions of Contractor or its consultants, failure to render a professional service by Contractor or its consultants, or the negligent rendering of the professional service by Contractor or its consultants. The insurance policy must provide the protection stated for two years after completion of work.

- Attached is certificate evidencing above insurance coverage in force as of the Contract start date.
- Contractors providing service under this Contract who do not carry professional liability insurance agree to assume full responsibility for any and all damages that occur as a result of Contractor's acts, errors or omissions.

Contractor Name (printed) Isabel Area Community Council

Contractor Authorized Signature [Signature] Date 12/27/2006

PLEASE NOTE THERE ARE MULTIPLE CHECKOFF REQUIREMENTS ABOVE (a-d)



Part III-CDBG (Community Development Block Grant Funds), ESG and HOME Special Conditions

I. The following requirements apply to CDBG, ESG and Home:

"Section 3" Clause - Compliance with the provisions of Section 3 regulations set forth in 24 CFR 135, and all applicable rules and orders issued thereunder prior to the execution of this contract, shall be a condition of the federal financial assistance provided under this contract and binding upon the City, the Contractor and any subcontractors. Failure to fulfill these requirements shall subject the City, the Contractor and any subcontractors, their successors and assigns, to those sanctions specified by the agreement through which federal assistance is provided. The Contractor certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The Contractor further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Contract: "The work to be performed under this contract is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project." The Contractor certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

"Section 3" Notifications - The Contractor agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under the "Section 3" clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

"Section 3" Subcontracts - The Contractor will include the "Section 3" clause in every subcontract for work in connection with this contract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Grantor Agency. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

Property Records - The Contractor shall maintain real property inventory records which clearly identify properties purchased and sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24CFR Part 570.505.

Acquisition & Relocation - The Contractor agrees to comply with 24CFR 570.606 relating to the acquisition of all real property utilizing grant funds and for displacement of persons, businesses, nonprofit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds.

II. The following requirements apply only to CDBG funded contracts:

General Requirements - The Contractor agrees to comply with the requirements, as applicable, of:

- Section 3 Of The Housing And Urban Development Act Of 1968.
- Section 109 Of Title I Of The Housing And Community Development Act Of 1974.
- CFR Part 85 - Uniform Administrative Requirements For Grants And Cooperative Agreements To State, Local And Federally Recognized Indian Tribal Governments.

National Objectives - The Contractor agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this contract meet one or more of the CDBG program's national objectives:

1. Benefit low/moderate income persons,
2. Aid in the prevention or elimination of slums or blight,
3. Meet community development needs having a particular urgency - as defined in 24CFR Part 570.208.

Davis Bacon Applicability - 8 or more housing units and \$2,000 or more for non-housing activities. The Contractor agrees that, except with respect to the rehabilitation of residential property designed for residential use for less than eight (8) families, all contractors engaged in contracts of \$2,000 or more for construction, prosecution, completion or repair of any building or work financed in whole or in part with assistance provided under this contract, shall comply with federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29CFR, Subtitle A, Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Contractor of its obligation, if any, to require payment of the higher wage. The Contractor shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph, and, for contracts in excess of \$10,000, 29 CFR 5.a.3.

Reversion of Assets - The agreement shall specify that upon its expiration the Subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of

CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 is either:

- (i.) Used to meet one of the national objectives in 570.208 until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or
- (ii.) Not used in accordance with paragraph (i.) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specific in paragraph (i.) of this section.)

EXHIBIT 2

CITIZEN PARTICIPATION SCOPE OF SERVICES

In accordance with the adopted Citizen Participation Program guidelines of the Community Planning & Economic Development Department of the City of Minneapolis (CPED), the following roles are defined.

A. ROLE OF THE CONTRACTOR. The CONTRACTOR shall be responsible for the following within the boundaries of the Neighborhood as defined by the City of Minneapolis:

1. The CONTRACTOR shall follow the guidelines set forth in the Citizen Participation Program guidelines (Exhibit C to this contract). Specifically, the CONTRACTOR shall have and follow its Articles of Incorporation and By-laws, shall have no barriers to participation and shall be a democratically elected and representative group of a fair cross-section of the residents, property owners, businesses and agencies of the Neighborhood. The CONTRACTOR shall make every effort to ensure that participation in all phases of its activities is inclusive of all members of the neighborhood and represents the diversity of that membership.
2. The CONTRACTOR shall ensure that those residents most affected by a proposed development will be informed of and provided the opportunity to comment on the proposed activity. The CONTRACTOR shall provide information on neighborhood activities to area residents and property and business owners through regular open public meetings, notices, and mailings. The CONTRACTOR shall provide opportunities on a regular basis for residents and property and business owners to participate in the decision-making process by attending meetings and by serving on committees or task forces.

B. ROLE OF CPED. This scope of services shall apply solely to the work of the Housing Policy and Development Division and Economic Policy and Development Divisions of CPED ("the DIVISIONS"). However, the Empowerment Zone and Minneapolis Employment and Training Program Sections of the Economic Policy and Development Division shall be exempt from the requirements of this contract and the 2005 Citizen Participation Program guidelines.

In general, the DIVISIONS shall be responsible for providing for an advisory role for citizens, including project area residents and other affected persons, if any, in the activities of the DIVISIONS which directly impact on, or are carried out in, the neighborhood.

Specifically, the activities for which the DIVISIONS will provide for an advisory role for the CONTRACTOR shall include, but not be limited to, the following:

- a. Real Property Acquisition and Disposition/Land Sales, excepting real property acquisitions for the purposes of blight removal when the purchase/acquisition price of the property is less than \$150,000 for HUD and Hennepin County properties only.
- b. Development proposals
- c. Policies (non-administrative)
- d. Program Guidelines and related programmatic allocations

- e. Development Objectives/Development Criteria
- f. Redevelopment Plans and Modifications
- g. Tax Increment Financing Plans and Amendments
- h. Requests for Proposals (RFPs) for development, and proposals submitted in response to those RFPs
- i. CPED Business Plan

The DIVISIONS will submit all necessary information to the CONTRACTOR in a timely manner (at least forty-five (45) days, unless a shorter period is necessary) prior to any consideration by the City Council in order to give the CONTRACTOR adequate time to consider the information and to make comments.

The DIVISIONS will make staff available to provide the CONTRACTOR with reasonable technical assistance, as the CONTRACTOR and the DIVISIONS deem necessary, to allow the CONTRACTOR to fully understand and comment on those items before it for review.

C. REPORTING PROCEDURES.

1. The CONTRACTOR will be responsible for submitting a report to CPED at the end of the contract year to account on the expenditure of all funds received through this contract. The CONTRACTOR shall provide such other reports and information as required by CPED to comply with department or HUD requirements.
2. The CONTRACTOR shall report on an annual basis all income from funds made available under this contract whether from interest, return of principal, sale of property, or other sources. The CONTRACTOR may utilize such program income during the contract period to further program activities under the terms of this contract.

D. SPECIAL TERMS AND CONDITIONS.

1. The CONTRACTOR shall receive an advance of funds due under this contract in an amount not to exceed \$4,000. Thereafter, funds shall be requested as needed on a reimbursement basis upon CPED approval of the CONTRACTOR'S accounting of expenditures in accordance with the project budget. The budget, as used herein, refers only to those funds provided by the City.
2. The CONTRACTOR will consult with the designated staff of the DIVISIONS in connection with dissemination of contract-related promotional materials by the CONTRACTOR related to the activities of the DIVISIONS in the Neighborhood.
3. No funds provided under this Agreement shall be used for, and no employees funded under this Agreement during hours of employment under this Agreement will engage in, political activities. Nothing in this Agreement shall be construed to prohibit any other political activity.

CITY OF MINNEAPOLIS
COMMUNITY PLANNING AND ECONOMIC DEVELOPMENT
DEPARTMENT

CITIZEN PARTICIPATION PROGRAM GUIDELINES

Approved by City Council February 24, 2006

I. CITIZEN PARTICIPATION PROGRAM

CPED shall provide administrative funding for those eligible groups that desire to deliver citizen participation services in their neighborhoods.

A. Eligibility

A neighborhood association must meet all of the following criteria to be considered eligible for CPED citizen participation funding:

1. Represent a geographically defined neighborhood (in its entirety) within Minneapolis as identified by the most current Minneapolis Communities and Neighborhoods Map as amended and approved by the City Council.
2. Represent, and provide for the participation of, the interests of all segments of the entire community, including, but not limited to, homeowners, renters, property owners, business owners, immigrants, non-English speakers, low-income residents and communities of color. Groups that primarily represent the interests of one segment of the community or concentrate primarily on one issue are not eligible.
3. Ensure that membership is open to all residents of the geographically-defined neighborhood, with no barriers to participation or membership (such as membership dues, requiring attendance at a certain number of meetings before voting rights are conferred, etc.). (Please note: In the past, this criterion was tempered by some provisions of the State non-profit law. That law, however, has been amended to relax these tempering provisions. CPED, therefore, intends to ensure that neighborhood groups fully comply with this criterion. Groups should review their bylaws for compliance.)
4. Hold regular open meetings and take positive steps to encourage all interested parties in any issue to attend and participate. Also, all written information of the organization (including books, minutes, membership lists, etc.) must be available for review by any member of the organization. A group may deviate from this rule only in case of labor and legal disputes.
5. The group must be incorporated (or identify an appropriate fiscal agent) and have adopted by-laws. The group must also have a grievance procedure by which its members may have their concerns addressed by the organization, and a conflict of interest policy and procedures.
6. The group must have a board of directors elected annually by the membership of the organization. The board must represent a fair cross-section of the community; neighborhood residents must comprise no less than 60% of the organization's board. An elected board must be in

place for a minimum of one year prior to the beginning of the contract year to be considered eligible for funding.

7. The group must have the ability to properly manage and account for grant funds. This includes, but is not limited to, being current on all reporting to CPED on previous grants.

B. Citizen Participation Services

1. The CPED Housing Policy and Development Division and Economic Policy and Development Division* shall follow administrative procedures that allow for an advisory role for neighborhood organizations in those activities which directly impact on, or are carried out in, the neighborhood.

The administrative procedures shall include the provision of 45-day notice to neighborhood groups on the following activities:

- a. Real Property Acquisition and Disposition/Land Sales, excepting real property acquisitions for the purposes of blight removal when the purchase/ acquisition price of the property is less than \$150,000 for HUD and Hennepin County properties only.
- b. Development proposals
- c. Policies (non-administrative)
- d. Program Guidelines and related programmatic allocations
- e. Development Objectives/Development Criteria
- f. Redevelopment Plans and Modifications
- g. Tax Increment Financing Plans and Amendments
- h. Requests for Proposals (RFPs) for development, and proposals submitted in response to those RFPs
- i. CPED Business Plan

* The Empowerment Zone and Minneapolis Employment and Training Program sections of the Economic Policy and Development Division shall continue to follow their own federally-required advisory processes.

2. The citizen participation services provided by a neighborhood group shall include, but shall not be limited to, the following list.
 - a. Ensure that residents, businesses and others within the neighborhood are informed of CPED programs, projects, policies and activities. Assist with marketing of available CPED programs, upon the request of CPED. Information will be provided through written materials prepared by the organization and through the dissemination of information (through newsletters and other available media, for example) provided to the organization by CPED.
 - b. Provide opportunities for affected residents, businesses and others within the neighborhood to comment on proposed CPED programs and projects and to provide those comments to CPED staff and to the City.
 - c. Advise and work with CPED staff and City Council Members on matters pertaining to the neighborhood.

- d. Provide opportunities, on a regular basis, for all residents, and property and business owners to participate in the decision-making process by attending meetings and serving on committees or task forces.
- e. Communicate regularly with CPED to insure the continuation of an efficient and effective relationship.
- f. Submit to CPED an Independent audit done by a professional Certified Public Accountant every two years covering the individual years within that period. (This is required only of groups receiving federal funds of \$300,000 or more in any one year.) If no audit is required, groups must still follow appropriate accounting procedures, including proper check-writing procedures and the provision of proper back-up documentation for all expenses.
- g. Identify and report to CPED any neighborhood residents, businesses, or properties that need, and may be eligible for, CPED programs or projects.

C. Community and Capacity Building

CPED encourages groups to demonstrate efforts that:

- 1. Build a sense of neighborhood identity within their communities.
- 2. Maintain on-going efforts to ensure inclusion of all ethnic and economic groups.
- 3. Identify the issues of significance which confront their residents, moving beyond self-interest to activities that benefit the neighborhood as a whole.
- 4. Encourage and develop new leadership and attract new members.
- 5. Conduct activities that promote the inclusion of all age, ethnic and economic groups in the decision-making processes of the organization, including renters. Explore new methods to stimulate participation.
- 6. Maintain an organizational structure and election process that maximizes opportunities for all residents to become involved.
- 7. Build bridges among neighbors and diverse communities within the neighborhood and work cooperatively on common issues with other neighborhood groups.
- 8. Expand the group's abilities through self-assessment and evaluation.

D. Grievances Against Contracted Neighborhood Groups

Any neighborhood resident, business owner, or property owner may file a grievance against a neighborhood group with CPED if the following conditions are met:

- 1. the grievance is within the jurisdiction of the City's citizen participation contract with the neighborhood group;
- 2. the person filing the grievance is a member of, or eligible for membership in, the organization, or is otherwise directly affected by the actions of the organization; and

3. the person filing the grievance has formally brought the issue to the attention of the neighborhood group in a timely manner and given the organization a chance to respond.

A grievance must be submitted in writing to the Development Finance Division (DFD) of the Finance Department. Upon receipt of the grievance, DFD will undertake an investigation of the complaint and prepare a report of its findings for CPED. A formal response to the grievance will be issued within 45 days of its initial receipt. This response will include the findings of the investigation and a proposed resolution to the grievance.

If the person filing the grievance or the affected neighborhood group is unsatisfied with the department's findings or resolution, they may appeal the matter to the CPED Director. Such an appeal must be received within thirty days of the official response and a Dispute Resolution Meeting will be held within 14 days of the appeal.

If any party is still unsatisfied, a mutually agreed upon third party will be selected to hear the complaint.

E. Funding Activities

1. Eligible budget line items for Citizen Participation funds include: personnel (paid staff members may not be members of the Board of Directors), office space, supplies, neighborhood communications, travel, training or other educational pursuits in connection with citizen participation, and consultant fees that directly relate to citizen participation activities.

Neighborhood planning activities, separate from the NRP process, are also eligible and may include the costs of planning materials such as base maps, aerial photos, assessor and building condition information, resident address mailing labels, and photographic film and processing necessary to support planning activities.

Neighborhood celebrations and events may be considered eligible activities if the event's purpose is to increase neighborhood awareness of the organization and increase membership in the organization. Neighborhood groups wishing to use citizen participation funds for events must present a plan for how this will be accomplished.

Board Member reimbursements are allowable expenses and may be provided at a rate not to exceed \$10 per hour. Allowable reimbursement expenses may include typing of agendas, minutes, and correspondence; bookkeeping; and accounting services. All such reimbursements must be approved by action of the neighborhood association's Board of Directors prior to payment.

Each group is responsible for budgeting an adequate amount to cover obligations in its employment agreement(s) (e.g., FICA, worker's compensation, unemployment, withholding, health insurance, etc.). Bank account maintenance charges such as check printing costs and cost-per-check transactions may also be budgeted.

2. Ineligible budget items include:
 - a. undefined line items such as "miscellaneous" and "special projects;"
 - b. projects unrelated to citizen participation;

- c. donations to other organizations on behalf of the organization;
- d. food or drink for groups or individuals engaged in citizen participation activities;
- e. costs of legal action against the City; and
- f. penalties and interest charges (including returned check charges).

3. Staff are considered to be employees or self-employed persons contracted by the neighborhood organization. Organizations may allocate money for short-term use of consultants only with the prior approval of the staff within the Development Finance Division administering the contracts.
4. Funds may be used for small equipment purchases; however, ownership of all equipment purchased with citizen participation funds rests with the City. Upon termination of a citizen participation contract, all equipment must be turned over to the City.
5. Groups may reallocate funds within their approved line item budgets with the approval of the staff within the Development Finance Division administering the contracts. All requests for budget revisions must be in writing.

F. Special Projects

Funds that are allocated but unspent or uncontracted within the previous or current program year shall be retained by CPED to fund special projects of a neighborhood organization that are above and beyond the scope of the group's citizen participation contract, but still contribute to the organization's citizen participation efforts.

II. NEIGHBORHOOD GROUPS ELIGIBLE FOR FUNDING

Neighborhood groups funded in previous program years, if they continue to meet the Eligibility Criteria in Section I.A. above, are eligible for participation in the program. If there is no neighborhood group currently under contract to represent a geographically-defined neighborhood (as described in Section I.A.1), neighborhood groups may apply to the CPED Director for funding to provide citizen participation services in that neighborhood. A group must provide evidence that it meets all of the eligibility criteria listed in Section I.A. in order to be considered for funding. If such a request is granted during the program year, the CPED Director may choose to fund the neighborhood group through special projects funds as described in Section I.F. above.

III. DETERMINING FUNDING LEVELS

Citizen participation funds shall be used to fund neighborhood groups in target-areas and non-target areas, and to provide opportunities for training for neighborhood volunteers, leaders and staff.

Training

Citizen participation funds may be allocated to provide for training opportunities for the volunteers, leaders and staff of neighborhood groups. If sufficient funds are not available to provide training, the CPED Director may allocate funds for this purpose from special projects funds as described in Section I.F. above.

Target-area Neighborhoods

Target-area neighborhood groups (as defined by the attached map of CDBG-eligible areas as contained within the approved HUD Consolidated Plan) will be allocated CDBG funds, less those funds set aside for training, according to the following formula:

- (a) 50% of the funds will be allocated on a per capita basis to each target-area neighborhood (as determined by the most recent neighborhood Census data that is available); and
- (b) 25% of the funds will be allocated to each target-area neighborhood based on the number of sub-standard housing units (as determined by the most recent data available from the City Assessor) in that neighborhood; and
- (c) 25% of the funds will be allocated to each target-area neighborhood based on the number of households in that neighborhood (as determined by the most recent neighborhood Census data that is available) that earn less than 80% of the Metropolitan Median Income (MMI).

Non-target Area Neighborhoods

Non-target area neighborhood groups (as defined by the attached map of CDBG-eligible areas as contained within the approved HUD Consolidated Plan) will be allocated General Funds, less those funds set aside for training, on the basis of \$2,000 per non-target area neighborhood group. Any funds remaining after the base allocation will be allocated on a per capita basis to each non-target area neighborhood. Neighborhood population figures will be based on the most recent neighborhood Census data that is available. Non-target area neighborhood groups that did not enter into a citizen participation contract in the previous program year must complete and return all necessary paperwork, including documentation that they meet the eligibility criteria in Section I.A., by June 1 of the new program year. Funds allocated to those neighborhood groups that are not eligible or do not complete the paperwork by that date will be available for special projects as defined in Section I.F.

Additional Considerations

There shall be a \$20,000 maximum allocation to any neighborhood group. Subject to budget availability, there will be a \$2,000 minimum allocation to each neighborhood group. If there are not sufficient funds allocated to the program to maintain a \$2,000 minimum allocation per neighborhood group, the CPED Director is authorized to reduce the minimum allocation in order to stay within the overall allocation to the program.

One-time Funding for 2006

For 2006 only, the Mayor and City Council have allocated additional funds, on a one-time basis, for the Citizen Participation Program. These funds will be allocated in the following ways:

1. One-time "transition assistance" will be provided to the 11 formerly target-area neighborhood groups (Bancroft, Beltrami, Cedar-Riverside, Folwell, Lowry Hill East, Marcy-Holmes, Seward, Sheridan, Webber-Camden, Whittier and Windom Park) to enable those groups to adjust more easily to their new status as non-target area neighborhoods; this assistance is set at one-half of the difference between their 2005 target-area allocation and their 2006 non-target area allocation.
2. One-time "transition assistance" will be provided to all target-area neighborhood groups that receive less funding in 2006 than in 2005 due to the new funding formula; this assistance is set at one-half of the difference between their 2005 and 2006 allocations.
3. One-time "transition assistance" will be provided to any non-target area neighborhood group whose 2006 allocation decreases by more than \$1,000 compared to its 2005 allocation due to the new funding formula; this assistance is set at one-half of the difference between their 2005 and 2006 allocations.
4. Any remaining funds shall be allocated to support efforts to increase neighborhood group outreach to new arrivals and non-English speaking communities.

IV. CONTRACTS

After the City Council adopts the budget in December of each year, the Development Finance Division will prepare for the CPED Director's approval [as authorized by the CPED ordinance 415.40(c)(6)], based on the funding level allocation methodology described in Section IV, the recommended allocations to neighborhood groups. Upon CPED Director approval, neighborhood groups approved for funding will enter into a contractual relationship with the City beginning January 1 and ending December 31 of the program year. City standard form contracts will be used and the scope of services will delineate neighborhood organization and CPED responsibilities consistent with the approved program guidelines.

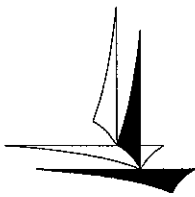
V. MONITORING OF GROUPS

CPED and DFD will receive Community Organization Report Forms from neighborhood groups on a regular basis and approve the release of funds within the terms and conditions defined by the contract; and

VI. ADMINISTRATION

Administration of the program will be the responsibility of the Development Finance Division of the City's Finance Department.

EXHIBIT 3



Minneapolis
City of Lakes

Finance Department

Patrick P. Born
City Finance Officer

350 South 5th Street - Room 325M
Minneapolis MN 55415-1315

Office 612-673-3375
Fax 612-673-2042
TTY 612-673-2157

February 13, 2009

David Schooler
Briggs and Morgan
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

Dear Mr. Schooler:

This letter is in follow-up to our conversation this morning. In that conversation you asked whether there exist administrative remedies to address the issues raised as a result of actions taken at the January 14, 2009, meeting of the board of directors of the Jordan Area Community Council (JACC).

The City of Minneapolis has entered into annual contracts with JACC for the provision of citizen participation services. The basis for these contracts is the City's Citizen Participation Program guidelines. These guidelines are attached and also are an attachment to the annual citizen participation contract.

The Citizen Participation Program guidelines state that for organizations to be eligible for funding they must have adopted bylaws and follow those bylaws. The guidelines also require that each organization must have a grievance procedure by which its members may have their concerns addressed by the organization. If members are not satisfied with the response of the neighborhood organization, the grievance may be filed with the City. The Citizen Participation Program guidelines contain a grievance procedure through which such complaints are to be investigated by the City. This grievance procedure can be found on page three of the enclosed guidelines.

In its review of grievances filed against neighborhood organizations, the City must first determine if there has been a violation of the terms and conditions of its citizen participation contract with the organization. This includes violations of the bylaws for that organization. If a violation is found to exist, the City may require as a condition of continued City funding that corrective actions be taken (such as the institution of new policies or procedures, requiring that a new election be held, or whatever the City deems necessary to

correct the violation). If the violation is serious enough, or in the case of repeated violations, or if the prescribed remedies are not followed, then the City can terminate its relationship with the neighborhood organization.

Therefore, in answer to your question, there does exist an administrative process for the review of grievances against neighborhood organizations. In the past two years, nineteen such grievances have been filed against JACC and investigated by the City. No grievances, however, have been filed with the City against JACC as a result of any actions taken at the JACC board meeting of January 14, 2009.

I hope that this answers your question.

Sincerely,

Robert Cooper
Senior NRP/Citizen Participation Specialist
bob.cooper@ci.minneapolis.mn.us
612-673-5239

Enclosure

EXHIBIT 4

COnly the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS
 UNPUBLISHED AND MAY NOT BE CITED EX-
 CEPT AS PROVIDED BY MINN. ST. SEC.
 480A.08(3).

Court of Appeals of Minnesota.
 Michael MOONEY, individually and on behalf of all
 similarly situated shareholders of Burtness Growth
 Incorporated, Appellant,

v.

Richard K. BURTNESSE, et al., Respondents, and
 Shamrock Development, Inc., intervenor, Respon-
 dent.

No. C0-97-1724.

May 5, 1998.

Scott County District Court, File No. 96-5823.

Richard A. Beens, Paul H. Yoo, Jon M. Hopeman,
Felhaber, Larson, Fenlon & Vogt, P.A., 601 Second
 Ave. S., Suite 4200, Minneapolis, MN 55402-4302
 (for appellant)

Phillip R. Krass, Timothy F. Moynihan, Krass Mon-
 roe, P.A., 1100 Southpoint Office Center, 1650 West
 82nd St., Bloomington, MN 55431-1447 (for respon-
 dent Burtness)

James M. Neilson, Felix A. Mannella, Randall J.
Fuller, Babcock, Locher, Neilson & Mannella, 118
 East Main St., Anoka, MN 55303 (for respondent
 Shamrock Development)

Considered and decided by TOUSSAINT, Chief
 Judge, FOLEY, Judge, and MULALLY, Judge.^{FN*}

^{FN**} Retired judge of the district court,
 serving as judge of the Minnesota Court of
 Appeals by appointment pursuant to Minn.
Const. Art. VI, § 10.

AFFIRMED

FOLEY, Judge.^{FN*}

^{FN*} Retired judge of the Minnesota Court
 of Appeals, serving by appointment pursuant
 to Minn. Const. art. VI, § 10.

*1 Appellant Michael Mooney challenges the trial
 court's award of attorney fees and costs against him
 and in favor of respondent Richard K. Burtness. By
 notice of review, Burtness appeals the court's denial
 of his request for damages. Also by notice of review,
 respondent Shamrock Development appeals the
 court's denial of its request for attorney fees and
 costs. We affirm.

FACTS

In 1994, respondent Richard K. Burtness, through
 one of his business entities, purchased a 55-acre par-
 cel of real property known as "the Wilds North." The
 \$1,330,000 purchase price was financed by a
 \$1,800,000 loan, secured by a mortgage on the prop-
 erty. Burtness then formed Burtness Growth Incorpo-
 rated (BGI) to develop the property. The property
 was conveyed to BGI, subject to the mortgage, and
 Burtness began soliciting investors for BGI. By Au-
 gust 1995, he had sold 33,750 of his 100,000 BGI
 shares to ten investors, including 4,500 shares to ap-
 pellant Michael Mooney.

In early 1996, Burtness began discussing the sale of
 his remaining BGI shares with both Mooney and re-
 spondent Shamrock Development, Inc. (Shamrock).
 Shortly after Burtness informed Mooney that he was
 selling his BGI shares to Shamrock, Mooney brought
 suit against Burtness and BGI, alleging fraud, breach
 of fiduciary duties, and conversion of corporate as-
 sets. At the same time, Mooney obtained an ex parte
 temporary restraining order (TRO) (and later a tem-
 porary injunction) preventing Burtness from selling
 his BGI shares or the Wilds North. The court ordered
 Mooney to deposit a \$200,000 bond. Under
Minn.Stat. § 302A.751, Mooney later sought a court
 buy-out order directing Burtness and all other BGI
 shareholders to sell their shares to him.

The mortgagee foreclosed on its mortgage and pur-
 chased the Wilds North on May 6, 1996 (with a re-
 demption period to expire one year later). Also on

May 6, Shamrock purchased a judgment against Burtness (from an unrelated matter). Shamrock then obtained a writ of execution and levied against Burtness's BGI shares. On the day set for the execution sale, the court cancelled the sale. Shamrock, which unsuccessfully attempted to have the injunction dissolved by the trial court and by this court, then intervened in this suit.

Following a court trial, the court dismissed Mooney's claims, denied his buy-out request, and lifted the TRO. Mooney moved for amended findings or a new trial, which the court denied. There was no appeal from this order. Respondents Burtness, BGI, and Shamrock moved for damages and attorney fees and costs. The trial court denied all but Burtness's request for attorney fees and costs, and the parties now bring this appeal.

DECISION

"On review, this court will not reverse a trial court's award or denial of attorney fees absent an abuse of discretion." *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987). "Requisite to an award of statutory sanctions is that counsel [or a party] proceeded in bad faith." *Uselman v. Uselman*, 464 N.W.2d 130, 140 (Minn. 1990); Minn. Stat. § 549.21, subd. 2 (1996). The existence of bad faith is an issue of fact best determined by the trial court. *Uselman*, 464 N.W.2d at 140.

I. Award of Attorney Fees and Costs to Burtness

*2 The trial court determined that Burtness was entitled to recover \$62,703.50 in attorney fees and \$1,847.69 in costs, to be paid by Mooney from the injunction bond. The court based its award on Minn.Stat. § 549.21, subd. 2 (1996) and Minn.Stat. § 302A.751, subd. 4 (1996). Minn.Stat. § 549.21, subd. 2, provides:

Upon motion of a party * * * the court in its discretion may award to that party costs, disbursements, reasonable attorney fees and witness fees if the party or attorney against whom costs, disbursements, reasonable attorney and witness fees are charged acted in bad faith; asserted a claim or defense that is frivolous and that is costly to the other party; asserted an unfounded position solely to delay the ordinary course of the proceedings or to

harass; or committed a fraud upon the court.

Minn. Stat. § 302A.751, subd. 4 states:

If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

A. Award of Attorney Fees and Costs

The trial court stated that "an air of bad faith surrounded Mooney's conduct throughout this action." Mooney professed that his goal in bringing this lawsuit was to protect his investment in BGI, but the court found that "Mooney's actual purpose was to force Burtness to sell his shares to Mooney." This is consistent with Mooney's request for a court buy-out order directing all BGI shareholders to sell their shares to him. This is also consistent with Mooney's decision not to appeal the trial court's denial of his request for amended findings or a new trial because "the dissipation of BGI's assets has made such an appeal moot." Mooney, however, brought suit against Burtness for breach of fiduciary duties and for converting BGI's assets. If the trial court erred in finding against Mooney, he would be entitled to damages against Burtness. That damage claim is not made moot by the dissipation of BGI's assets. Only Mooney's desire to obtain a majority holding in the Wilds North was made moot by the mortgagee's foreclosure on the property.

Another purpose professed by Mooney for bringing the lawsuit and for seeking injunctive relief was to prevent Burtness from receiving a "windfall" from the sale of his BGI shares to Shamrock. Mooney testified at trial, however, that he had made an offer on the BGI stock. Further, the record includes an unsigned purchase agreement (prepared by Mooney's attorneys) stating that Mooney Development Corporation desires to purchase all of Burtness's BGI stock.

Also, the trial court found:

Mooney's failure to investigate his claims before bringing them into court rises to the level of perpetration of a fraud upon the court, and it certainly indicates bad faith.

Here, the court is referring to Mooney's allegation in his complaint and his repeated statements at the injunction hearing that Burtness had done nothing to develop the Wilds North property. The record shows, however, that before bringing suit neither Mooney nor his attorneys inspected the City of Prior Lake's files that document Burtness's efforts to bring the property within city sewer and water service and to prepare for rezoning.

*3 The court also referred to Mooney's allegation at the TRO hearing that a sale of Burtness's BGI stock to Shamrock would jeopardize the rights of BGI shareholders. Before bringing his motion for a TRO, however, Mooney had not inquired into Shamrock's property development experience or its intentions for the property. In fact, Shamrock had extensive development experience and its proposed plan for the property was very similar to the BGI proposal.

The trial court found that Mooney had "acted in contradiction to his own assertions, also indicating bad faith." For example, Mooney had asserted that the TRO was necessary to maintain the status quo pending the outcome of the litigation. After bringing the suit, however, Mooney attempted to buy the shares of the other minority shareholders, obviously seeking to change the status quo. Also, although Mooney asserted that the financial projections provided by Burtness omitted key details, Mooney used the same projections in his attempts to secure investors to assist him in buying out Burtness's shares.

Finally, the trial court found that Mooney was not truthful in his allegation that he had not received a copy of a confidential BGI memorandum before his purchase of the BGI shares. This court defers to the fact-finder's assessment of witness credibility. General v. General, 409 N.W.2d 511, 513 (Minn. App. 1987).

In response, Mooney argues that, because his action survived a motion for directed verdict, his claims are not frivolous as a matter of law. He relies on Uselman v. Uselman, 464 N.W.2d 130, 143-44 (Minn. 1990), which holds that sanctions are not appropriate if imposed without notice and a party has withstood pretrial motions for summary judgment or dismissal.

The trial court here, however, distinguished its decision from Uselman by stating that "Mooney and his counsel had every reason to surmise that sanctions were a possibility." The trial court also justified its denial of respondents' motion for a directed verdict by stating that

it seemed more efficient to hear the remaining testimony. This allowed the court to support its decision with more extensive findings and conclusions than would have resulted had the court granted a directed verdict * * *. It was obvious that this court did not deny the directed verdict motions because of the strength of Mooney's case.

Cf. Norwest Bank Midland v. Shinnick, 402 N.W.2d 818, 826 (Minn. App. 1987) (upholding attorney fees awarded by trial court after respondent's motion for directed verdict had been denied, when motion came during trial and court wanted to let jury decide case because it had already "come this far").

Also, the trial court, unlike in Uselman, did not base its determination that Mooney's conduct merited the imposition of sanctions on the frivolity of his lawsuit. The trial court predicated its sanctions on Mooney's "consistent bad faith, his commission of fraud upon the court, and the harassing and vexatious nature of his claims." Further, under Minn.Stat. § 302A.751, the court may award attorney fees if it finds that a party acted arbitrarily or vexatiously. Pedro v. Pedro, 489 N.W.2d 798, 804 (Minn. App. 1992), *review denied* (Minn. Oct. 20, 1992).

*4 The trial court's findings support its award of attorney fees and are not clearly erroneous. See Minn. R. Civ. P. 52.01 (trial court findings "shall not be set aside unless clearly erroneous"). The trial court did not abuse its discretion in awarding attorney fees and costs in favor of Burtness and against Mooney.

B. Award of Damages against Injunction Bond

The trial court awarded Burtness's attorney fees and costs against Mooney's injunction bond. Mooney argues that only attorney fees and costs flowing from the injunction can be awarded against an injunction bond. See Electro-Craft Corp. v. Controlled Motion, Inc., 370 N.W.2d 465, 466 (Minn. App. 1985) (to recover on injunction bond, party must establish that damages were proximately caused by wrongfully

issued restraining order), *review denied* (Minn. Sept. 19, 1985).

The trial court found that Mooney's "ultimate purpose in this litigation was to prevent Burtness from selling his BGI shares to [Shamrock], so that Mooney could acquire the shares himself." This is confirmed by Mooney's August 8, 1996, buy-out motion, whereby Mooney sought the court's order directing all BGI shareholders to sell their shares to Mooney. Mooney was seeking the same result from both the main action and the TRO/injunction: a buy-out of the BGI shares. *Cf. Pelkey v. National Surety Co.*, 143 Minn. 176, 178, 173 N.W. 435, 436 (1919) (where sole purpose of action is to obtain injunction, attorney fees incurred in defending main action are damages within terms of injunction bond). The trial court did not abuse its discretion in awarding Burtness's attorney fees from Mooney's injunction bond.

II. Denial of Request for Damages

Respondent Burtness claims that he was damaged by Mooney's TRO because it prevented him from selling his stock to Shamrock. The trial court denied Burtness's request for damages on the ground that it was not convinced that Burtness had reached an enforceable agreement to sell the stock before the imposition of the TRO. On appeal, Burtness points to no such agreement for the sale of the BGI stock made before the imposition of the TRO. Without evidence of a contract, the trial court had no basis on which it could award damages under the bond. *See Arons v. Allstate Ins. Co.*, 363 N.W.2d 832, 833 (Minn. App. 1985) (finder of fact may not base damage award on "speculation or conjecture").

Burtness's proffered reason why he should receive damages is that the court, in its order granting the TRO, found that Burtness would have received \$600,000 in consideration for selling his BGI stock to Shamrock. This is a misstatement of the court's finding, which was "[t]hat the Shamrock Development, Inc. proposed agreement would yield defendant Burtness an approximately \$600,000.00 profit." (Emphasis added.) The trial court did not abuse its discretion in denying damages.

*5 Respondent Burtness also requests attorney fees and costs on appeal. Because there is case law that says sanctions should not be levied against a party

whose claims survive a summary judgment or pre-trial motion for dismissal, *Uselman*, 464 N.W.2d at 144, and because the court awarded attorney fees to be paid from the injunction bond, this appeal is not frivolous. Accordingly, Burtness's request for attorney fees on appeal is denied.

III. Shamrock's Request for Attorney Fees

Shamrock argues that it is entitled to attorney fees and costs necessitated by the wrongfully issued temporary injunction. The trial court determined that Shamrock was not entitled to damages, attorney fees, or costs because it was not "a party restrained or enjoined" by Mooney's injunction. *See Minn. R. Civ. P. 65.03* (TRO or injunction may be granted only upon giving of security for payment of costs and damages incurred by party who is wrongfully enjoined or restrained).

At the time the TRO was issued, Shamrock was not a party to this lawsuit, there was no enforceable agreement between Shamrock and Burtness regarding the sale of Burtness's BGI shares, and Shamrock was not a creditor of Burtness or BGI. Shamrock became involved, after the TRO was issued, when it purchased a judgment against Burtness and then chose to levy against Burtness's BGI shares, rather than against other assets of Burtness not protected by the restraining order. The attorney fees and costs claimed by Shamrock arose, not as a result of the TRO or injunction, but from Shamrock's attempts to acquire the BGI shares by circumventing the TRO.

The injunction bond was intended to protect Burtness and BGI from any losses they might sustain if the injunction was wrongfully issued. It was not intended to protect Shamrock, which subsequently and voluntarily entered this lawsuit to further its own interests. Shamrock provides no convincing argument as to why it is entitled to its attorney fees and costs. The trial court did not abuse its discretion in denying Shamrock's request for attorney fees and costs.

Affirmed.

Minn.App., 1998.
Mooney v. Burtness
Not Reported in N.W.2d, 1998 WL 218189
(Minn.App.)

Not Reported in N.W.2d
Not Reported in N.W.2d, 1998 WL 218189 (Minn.App.)
(Cite as: 1998 WL 218189 (Minn.App.))

Page 5

END OF DOCUMENT


443 N.W.2d 844

Court of Appeals of Minnesota.
 Peter DODGE, et al., Appellants,
 v.
 CEDAR-RIVERSIDE PROJECT AREA COMMITTEE, Respondent.
 No. C0-89-365.
 Aug. 8, 1989.
 Review Denied Sept. 27, 1989.

Residents of area for which nonprofit neighborhood organization was funded by city council brought action alleging their rights were infringed by illegal election of corporate directors and seeking new election, and then sought temporary injunction to restrain further action by nonprofit corporation. The District Court, Hennepin County, LaJune Thomas Lange, J., denied the requested injunction, and residents appealed. The Court of Appeals, Nierengarten, J., held that: (1) area residents were not themselves members of corporation, and thus had no standing to bring suit on behalf of or against corporation; (2) temporary injunction was properly denied as residents were unlikely to succeed on merits of case; (3) residents had failed to exhaust administrative remedies, where employee for city community development agency to which neighborhood organization reported stated by letter that if complaint of by-law violation had been reported and confirmed, new election would most likely have been required; and (4) temporary injunction was properly denied based on failure to exhaust administrative remedies prior to seeking injunction.

Affirmed.

West Headnotes

[1]  [KeyCite Citing References for this Headnote](#)

↔ [30 Appeal and Error](#)

↔ [30XVI Review](#)

↔ [30XVI\(H\) Discretion of Lower Court](#)

↔ [30k950 Provisional Remedies](#)

↔ [30k954 Injunction](#)

↔ [30k954\(1\) k. In General. Most Cited Cases](#)

↔ [212 Injunction](#)  [KeyCite Citing References for this Headnote](#)

↔ [212IV Preliminary and Interlocutory Injunctions](#)

↔ [212IV\(A\) Grounds and Proceedings to Procure](#)

↔ [212IV\(A\)1 In General](#)

↔ [212k135 k. Discretion of Court. Most Cited Cases](#)

Trial court's ruling on motion for temporary injunction is largely exercise of judicial discretion, and court's decision will not be reversed unless there has been clear abuse of that discretion.

[2]  [KeyCite Citing References for this Headnote](#)

↔ [30 Appeal and Error](#)

↔ [30XVI Review](#)

↔ [30XVI\(I\) Questions of Fact, Verdicts, and Findings](#)

↔ [30XVI\(I\)6 Questions of Fact on Motions or Other Interlocutory or Special Proceedings](#)

↔ [30k1024.2 k. Provisional Remedies. Most Cited Cases](#)

Whether decision of trial court on motion for temporary injunction should be sustained on appeal is determined by review of *Dahlberg* factors considered by trial court in granting or denying temporary injunction.

[3] KeyCite Citing References for this Headnote

- ↳ 101 Corporations
 - ↳ 101IX Members and Stockholders
 - ↳ 101IX(C) Suing or Defending on Behalf of Corporation
 - ↳ 101k206.5 Persons Entitled to Sue or Defend
 - ↳ 101k207 k. In General. Most Cited Cases

- ↳ 101 Corporations KeyCite Citing References for this Headnote
 - ↳ 101XI Corporate Powers and Liabilities
 - ↳ 101XI(F) Civil Actions
 - ↳ 101k506 k. Parties. Most Cited Cases

Residents of area for which nonprofit neighborhood organization was funded by city council under citizen participation ordinance were not members of nonprofit corporation and therefore had no standing to bring suit on behalf of or against corporation, so as to provide court with jurisdiction to intervene in electoral process of corporation through action brought by residents.

[4] KeyCite Citing References for this Headnote

- ↳ 212 Injunction
 - ↳ 212IV Preliminary and Interlocutory Injunctions
 - ↳ 212IV(A) Grounds and Proceedings to Procure
 - ↳ 212IV(A)4 Proceedings
 - ↳ 212k142 k. Parties on Application. Most Cited Cases

Temporary injunction to restrain further action by nonprofit corporation following allegedly illegal election of delegates to board of directors was properly denied, where plaintiff residents of area for which nonprofit neighborhood organization was funded by city council were not members of corporation, so had no standing to bring suit, and it was therefore unlikely that residents would succeed on merits of case.

[5] KeyCite Citing References for this Headnote

- ↳ 15A Administrative Law and Procedure
 - ↳ 15AIII Judicial Remedies Prior to or Pending Administrative Proceedings
 - ↳ 15Ak229 k. Exhaustion of Administrative Remedies. Most Cited Cases
- ↳ 41 Associations KeyCite Citing References for this Headnote
 - ↳ 41k20 Actions by or Against Associations
 - ↳ 41k20(1) k. In General. Most Cited Cases

Residents of area that brought action alleging their rights were infringed by illegal election of corporate directors for nonprofit neighborhood organization funded by city council and seeking new election failed to exhaust their administrative remedies, where employee of city community development agency to which organization reported stated in letter that if complaint that organization violated its by-laws were reported and confirmed, new election would most likely have been required.

[6] KeyCite Citing References for this Headnote

- ↳ 212 Injunction
 - ↳ 212III Actions for Injunctions

212k108 k. Conditions Precedent. Most Cited Cases

Temporary injunction restraining further action by nonprofit corporation following allegedly illegal election of delegates to board of directors was properly denied based on failure to exhaust administrative remedies prior to seeking injunction, where employee of city community development agency to which nonprofit neighborhood organization reported stated by letter that if complaint of by-law violation had been reported and confirmed, new election would most likely have been required.

***845** *Syllabus by the Court*

1. Where appellants have no standing to sue because they are not members of the corporation, the denial of appellants' motion for a temporary injunction to restrain further action by the corporation until a new election is held is not an abuse of the trial court's discretion.

2. Where Community Development Agency asserts it would have required a new election if appellants' complaint that the Project Area Committee violated its bylaws had been reported and confirmed, appellants cannot be said to have exhausted their administrative remedies.

Robert Dildine, Minneapolis, for appellants.

William F. Messinger, Elizabeth M. Pierce, Minneapolis, for respondent.

Heard, considered and decided by NIERENGARTEN, P.J., and LANSING and SCHUMACHER, JJ.

***846** OPINION

NIERENGARTEN, Judge.

Appellants sought a temporary injunction to restrain further action by respondent nonprofit corporation following an allegedly illegal election of delegates to the board of directors. The motion was denied and this appeal ensued.

FACTS

Respondent, Cedar Riverside Project Area Committee (PAC), is a nonprofit neighborhood organization, funded by the Minneapolis City Council under its Citizen Participation ordinance. According to the PAC Constitution, amended in 1987:

ARTICLE VI-Membership

Membership in the Project Area Committee shall include no more than 43 regular delegates, divided into two general categories.

Section 1. The first category shall consist of those delegates who represent and are themselves residents within the boundaries of the Cedar Riverside Urban Renewal area (hereinafter referred to as Resident delegates). This group shall comprise a minimum of 25/43 of the total PAC membership.

Section 2. The second category shall consist of those delegates representing area interest groups which have an ongoing interest, financial or otherwise, in the future of the Cedar Riverside area.

Section 3. All delegates must be selected by their respective constituencies at least once every year as specified in the by-laws.

The bylaws in effect at the time of the 1988 election of delegates said:

Section 1. The PAC shall have two categories of members.

A. *Residents* of the Cedar Riverside Urban Renewal Area. Twenty-five members to be elected from 5 geographical districts as identified in appendix A.

B. *Areawide Interest Groups* (A current list shall be kept.)

* * * * *

Section 2. Duties and Privileges. Each delegate, as a result of his or her selection, shall have the duties and privileges listed below:

A. Entitled to one vote on each matter submitted to a vote by the membership of the PAC, except as stipulated in Article IX of the Constitution or elsewhere in these by-laws.

B. Eligible to serve as any officer or on any committee established by the Constitution or these by-laws.

C. Responsible for attending all duly called meetings of the PAC and communicating the concerns, issues, and business of the PAC to their respective constituents.

D. Responsible for reporting accurately and promptly all concerns and interests of their respective constituents to the PAC at a regular meeting.

Appellants, Peter Dodge, Ronald Washington and David Markle (Dodge) allege they are members of the PAC corporation, and contend that their rights were infringed by the illegal election of corporate directors held in April 1988. Dodge demands a new election, claiming he received inadequate notice of the election and that PAC failed to meet the election quorum requirements established in Chapter 317 of the Minnesota Statutes, the nonprofit corporation statute. Dodge moved for a temporary injunction to restrain any actions of the newly elected board which required a vote of its delegates, and to restrain PAC "from engaging in certain ultra vires acts." The trial court denied the motion, finding Dodge was unlikely to prevail on the merits of the case, and, further, that Dodge failed to exhaust his administrative remedies. Dodge appeals.

ISSUE

Did the trial court abuse its discretion in denying Dodge's motion for a temporary injunction?

ANALYSIS

1. *Standard of review*

[1] [2] A trial court's ruling on a motion for a temporary injunction is largely an ***847** exercise of judicial discretion, and the court's decision will not be reversed unless there has been a clear abuse of that discretion. *Eakman v. Brutger*, 285 N.W.2d 95, 97 (Minn.1979). Whether the decision of the trial court should be sustained on appeal is determined by review of the *Dahlberg* factors considered by the trial court in granting or denying a temporary injunction. See *Dahlberg Brothers, Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965).

2. *Merits of the case*

Dodge contends this is a corporate law dispute which requires the court's equitable resolution of a question of law, and does not involve the filing of an administrative complaint with the City of Minneapolis. **Dodge** claims the question of law to be resolved is whether the residents of the **Cedar-Riverside** area are members of the nonprofit corporation.

[3] While a trial court does have equity jurisdiction over the affairs of a corporation where illegality is proved, *Brennan v. Minneapolis Society for the Blind, Inc.*, 282 N.W.2d 515, 524 (Minn.1979), it is clear from the PAC

constitution that the residents themselves are not members, and therefore have no standing to bring a suit on behalf of or against the corporation. The constitution calls for an election of delegates to the PAC. Article VI states that membership in the PAC includes "no more than 43 regular *delegates*, divided into two general categories." (Emphasis added.) The delegates are also not the officers of the committee; under Article VII, the officers are separately elected by the PAC delegates at the annual meeting.

[4] As Dodge has no standing to bring suit, the trial court has no jurisdiction to intervene in the electoral process of the PAC corporation. Lacking standing, it is unlikely Dodge will succeed on the merits of his claim that the 1988 election of directors violated the provisions of Minn.Stat. Ch. 317 and the PAC bylaws.

The court did not err in its determination that Dodge would be unlikely to succeed on the merits of the case, and in its denial of the motion for a temporary injunction.

3. Exhaustion of remedies

[5] [6] The court also based its denial of the motion for injunctive relief on its finding that Dodge failed to exhaust his administrative remedies. Dodge complains there are no channels through which he can air his grievances about the April 1988 election. PAC's evidence indicates, however, that Dodge had an adequate remedy at law. PAC submitted a letter from Bob Cooper of the Citizen Participation Department of the Minneapolis Community Development Agency (MCDA), the agency to which the PAC reports, which stated:

The MCDA Citizen Participation Department did not receive any complaints regarding the Cedar-Riverside PAC's most recent election. If we were to have received a complaint we would have investigated it and taken any action that might be deemed appropriate.

If a neighborhood group were to violate its by-laws by not giving proper notice for an election, or any other violation, the MCDA would most likely require that a new election be held. This was the case with the Seward Neighborhood Group several years ago.

(Emphasis added.)

Since, on appeal, this court must "view the facts alleged in the pleadings and affidavits in the light most favorable to the party who prevailed below," *OT Industries, Inc. v. OT-Tehdas Oy Santasalo-Sohlberg AB*, 346 N.W.2d 162, 165 (Minn.Ct.App.1984), we find no error in the court's determination that Dodge failed to exhaust his administrative remedies.

DECISION

The trial court did not abuse its discretion by denying Dodge's motion for a temporary injunction when it found Dodge would be unlikely to prevail upon the merits*848 of his case at trial. Dodge is not a member of the nonprofit corporation and has no rights, as a member of that body, to challenge the April 1988 election. The court also did not err by basing its denial of the motion on Dodge's failure to exhaust his administrative remedies before seeking an injunction.

The decision of the trial court is affirmed. Pursuant to Minn.Stat. § 549.21, subd. 2 (1988), we award PAC attorney fees in the amount of \$450.00 on this appeal.

Affirmed.

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