

ORDINANCE NO. 7,015–N.S.

LEASE AGREEMENT: MCGEE AVENUE BAPTIST CHURCH FOR REAL PROPERTY LOCATED AT 1645 OREGON STREET FOR THE BLACK INFANT HEALTH PROGRAM

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Council finds as follows:

- a. In December 1999, the Department of Health and Human Services, Public Health Division released its annual Health Status Report that documented the existence of a serious disparity in health between the African-American and Caucasian residents of Berkeley.
- b. Since 2001, the City of Berkeley has received funding from the Maternal Child Health Branch of the California Department of Health Services to operate a Black Infant Health Program.
- c. Low birth weight disparities still exist, thus there is a continuing need within the community for the Program.
- d. The program requires the City lease appropriate space in the community.

Section 2. The City Manager is hereby authorized to enter into a one-year lease agreement, and any amendments, for the period of March 1, 2008 to February 28, 2009 with an option to extend for an additional two-year period with the McGee Avenue Baptist Church for real property located at 1645 Oregon Street. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two consecutive days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King, Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on January 15, 2008, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

* * * * *

At a regular meeting of the Council of the City of Berkeley held on January 29, 2008, this Ordinance was adopted by the following vote:

Ayes: Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

Tom Bates, Mayor

ATTEST: _____
Pamyla Means, MMC, City Clerk

Date signed: _____

EXHIBIT A

LEASE AGREEMENT

This lease is made between the McGee Avenue Baptist Church of Berkeley, California, a religious nonprofit corporation, ("Lessor"), and the City of Berkeley, a Charter City organized and existing under the laws of the State of California ("Lessee").

Recitals

This lease is made with reference to the following facts and objectives:

A. Lessor is the owner of real property at 1645 Oregon Street, Berkeley, California, ("Premises") as further described in Exhibit A, attached to and made a part of this lease. Lessor is willing to lease the Premises to Lessee pursuant to the provisions stated in this lease.

B. Lessor is willing to make available to Lessee through a revocable license additional space within the Lessor's main building at 1640 Stuart Street ("Main Building"), consisting of approximately 1000 square feet of space on the first floor including a dining hall and kitchen area as further described in Exhibit B ("Additional Space"), at the times and pursuant to the provisions stated in this lease. The Additional Space is part of the Main Building but is not part of the Premises.

C. Lessee is willing to make available to Lessor through a revocable license approximately 500 square feet of space in the main living room, dining room and entryway of the Premises as marked in Exhibit A ("Living Room"), at the times and pursuant to the provisions stated in this lease. Use of the term "Premises" throughout this lease includes the Living Room.

D. Lessee wishes to lease the Premises and license the Additional Space for use as office space for the City of Berkeley Black Infant Health ("BIH") Program.

E. Lessee has examined the Premises and the Additional Space and is fully informed of the condition thereof.

Agreement

Now therefore, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Description of Premises to be Leased. Lessor leases to Lessee and Lessee leases from Lessor the Premises described above and in Exhibit A hereto.

2. Term. The term of this lease shall be twelve months, commencing March 1, 2008, and terminating on February 28, 2009.

3. Rent. The total rent for the twelve-month term shall be twelve thousand three hundred dollars (\$12,300.00), payable at one thousand twenty-five dollars (\$1,025.00) monthly for each of the twelve months, in advance on the first day of each month for that month's rental, during the term of this lease. All rental payments shall be made to Lessor at 1640 Stuart Street, Berkeley, California 94703.

4. Use of Premises. Lessee shall use and occupy the Premises for office space and health education and support workshops for clients. The Premises shall be used by Lessee for no other purpose. Lessor represents that the Premises may lawfully be used for such purpose.

5. Revocable Licenses for Use of Additional Space and Living Room.

a. Lessor hereby grants to Lessee, and Lessee accepts from Lessor, a revocable, non-possessory and non-exclusive right to use the Additional Space, but does not convey

an estate in land or leasehold interest in the Additional Space. Lessor has the right to revoke Lessee's license to use the Additional Space on 10 days written notice, and such revocation shall be at Lessor's sole discretion. Lessee shall be allowed to use the Additional Space for evening classes on Wednesdays and at other times as mutually agreed upon by Lessor and Lessee. Lessee shall coordinate use of the Additional Space to ensure that Lessee's use does not interfere with Lessor's primary use of and ownership rights in the Additional Space. Lessor shall charge Lessee no fee for the use of the Additional Space.

b. Lessee hereby grants to Lessor, and Lessor accepts from Lessee, a revocable, non-possessory and non-exclusive right to use the Living Room in the Premises, but does not convey an estate in land or leasehold interest in the Living Room. Lessee has the right to revoke Lessor's license to use the Living Room on 10 days written notice, and such revocation shall be at Lessee's sole discretion. Lessor shall be allowed to use the space on Sundays between the hours of 8 a.m. and 5 p.m. and at other times as mutually agreed upon by Lessor and Lessee. Lessor shall coordinate use of the Living Room to ensure that Lessor's use does not interfere with Lessee's primary use of and possessory rights in the Premises. Lessee shall charge Lessor no fee for the use of the Living Room.

6. Care and Maintenance of Premises. Lessee acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at its own expense and at all times, maintain the Premises in good and safe condition, including carpet and any other system or equipment upon the Premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs required, excepting the roof, exterior walls, structural foundations and elements, plumbing and heating installations, and plate glass and electrical wiring, which shall be maintained by Lessor. Notwithstanding anything in this lease to the contrary, Lessor shall be responsible for any and all repairs to or maintenance of (i) the Living Room to the extent necessitated by or through Lessor or its officers, agents, contractors, invitees, volunteers or employees, and (ii) the Main Building.

7. Alterations. Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the Premises.

8. Ordinances and Statutes. Lessor and Lessee shall comply with all statutes, ordinance and requirements of all municipal, state and federal authorities now in force ("Laws"), or which may hereafter be in force, pertaining to the Premises and the Additional Space, occasioned by or affecting the use or occupancy thereof by Lessee under this lease; provided, however, that Lessee shall not be required to bring, or otherwise bear costs or expenses associated with bringing, the Premises or the Additional Space into compliance with any Laws. Lessor represents that the Premises and the Additional Space are in compliance with applicable Laws.

9. Assignment and Subletting. Lessee shall not assign this lease or sublet any portion of the Premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this lease.

10. Utilities. Applications and connections for necessary utility services on the Premises shall be made in the name of Lessor only, and Lessee shall be liable for 100% (one hundred percent) of utility charges for the Premises as they become due, including

those for sewer, water, gas and electricity. Lessee shall be liable for telephone services and network connections.

11. Entry and Inspection. Lessee shall permit Lessor or Lessor's agents to enter upon the Premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the Premises any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the Premises thereafter. Neither Lessor nor any of its officers, agents, contractors, invitees, volunteers or employees with access to the Premises or Additional Space may be persons required to register pursuant to paragraph (1) of subdivision (a) of Section 290.4 of the Penal Code (Megan's Law).

12. Quiet Enjoyment. Lessor agrees that so long as Lessee is not in default hereunder, Lessee shall have the quiet enjoyment of the Premises in accordance with the terms of this lease without let or hindrance on the part of Lessor, and Lessor will warrant and defend Lessee in the peaceful and quiet enjoyment of the Premises against the claims of all persons claiming by, through or under Lessor.

13. Possession. If Lessor is unable to deliver possession of the Premises at the commencement thereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 15 days of the commencement of the term hereto.

14. Indemnification.

a. As to the Premises (and as to the Additional Space to the extent the license therefor is or was in effect at applicable times) Lessee shall indemnify, defend and hold Lessor, its officers, agents, employees, and volunteers harmless from: (1) all claims of liability for any injury or death to any person in connection with Lessee's or its authorized representatives' use or occupancy of the Premises or Additional Space; (2) all claims of liability arising out of the Lessee's failure to perform any provision of this lease, including any act or omission by Lessee, its officers, agents, contractors, invitees, volunteers or employees; and (3) all damages, liability, fines, penalties, and any other consequences arising from Lessee's noncompliance or violation of any applicable laws, ordinances, codes, or regulations as required under this lease. This indemnification shall not apply to the extent the foregoing are caused by Lessor's sole, active negligence or willful misconduct.

b. Lessor shall indemnify, defend and hold Lessee, its officers, agents, employees, and volunteers harmless from: (1) all claims of liability for any injury or death to any person or damage or destruction of any property in connection with Lessor's activities or that of its authorized representatives in, on, or about Main Building or the Premises; (2) all claims of liability arising out of Lessor's failure to perform any provision of this lease, including any act or omission by Lessor, its officers, agents, contractors, invitees, volunteers or employees; and (3) all damages, liability, fines, penalties, and any other consequences arising from Lessor's noncompliance or violation of any applicable laws, ordinances, codes, or regulations as required under this lease. This indemnification shall not apply to the extent the foregoing are caused by Lessee's sole, active negligence or willful misconduct.

15. Insurance.

a. During the term of this lease, Lessee, at its expense, shall maintain public liability insurance (or an insurance equivalent including but not limited that offered to a municipality through and by a joint powers authority, a self insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar collective) insuring against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the Premises (and the Additional Space to the extent the license therefor is in effect) on an occurrence basis similar in type and coverage limits to that carried by Lessee on its other leased properties. Such insurance does not provide coverage for property damage, and Lessee shall not be liable to Lessor for any loss or damage to the Premises or the Additional Space except as specified in Section 6 of this lease. All such insurance shall insure performance by Lessee of the preceding indemnity provisions. All insurance shall name the Lessor as additional insured and shall provide primary coverage with respect to the Lessor. Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The Certificate shall provide for a thirty-day written notice to Lessor in the event of cancellation or material change of coverage.

b. During the term of this Lease, Lessor, at its expense, shall maintain public liability insurance including bodily injury and property damage insuring Lessor with minimum coverage as follows: single combined liability limit of \$1,000,000 insuring against all liability of Lessor and its authorized representatives arising out of and in connection with Lessor's use or occupancy of the Main Building (and use of the Living Room to the extent the license therefor is in effect). All such insurance shall insure performance by Lessor of the preceding indemnity provisions. All insurance shall name the Lessee, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the Lessee. Lessor shall provide Lessee with a Certificate of Insurance showing Lessee as additional insured. The Certificate shall provide for a thirty-day written notice to Lessee in the event of cancellation or material change of coverage. In addition, Lessor shall maintain a policy or policies of insurance in the name of Lessor, with loss payable to Lessor and to any lenders having a lien on the Main Building and the Premises or any part thereof, covering loss or damage to the Main Building and the Premises in an amount not less than the full replacement cost thereof, as the same may exist from time to time, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, flood and earthquake if required by a lender having a lien on the Main Building and the Premises or any part thereof, special extended perils ("all risk", as such term is used in the insurance industry), plate glass insurance if Lessor so elects, and such other insurance as Lessor deems advisable.

c. To the maximum extent permitted by insurance policies which may be obtained by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, mutually waive any and all rights of subrogation which might otherwise exist.

d. If the insurance referred to above is written on a Claims Made Form, then following termination of this lease, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this lease.

16. Eminent Domain. If the Premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the Premises, shall be taken by eminent domain, this lease shall terminate on the earlier of the date when occupancy

rights are granted to the condemnor or the title vests in the condemnor pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

17. Destruction of Premises. In the event of a partial destruction of the Premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the Premises. If such repairs cannot be made within said sixty (60) days, Lessor, at its option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised Premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Lessor or Lessee may elect to terminate this lease whether the demised Premises be injured or not. A total destruction of the building in which the Premises may be situated shall terminate this lease.

18. Lessor's Remedies on Default. If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 30 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 30 days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate and Lessee shall then quit and surrender the Premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

19. Security Deposit. Lessee has previously deposited with Lessor the sum of six hundred dollars (\$600.00) as security for the performance of Lessee's obligations under this lease, including without limitation the surrender of possession of the Premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.

20. Waiver. No failure of either party to enforce any term hereof shall be deemed to be a waiver.

21. Notices. Any notice which either party may or is required to give shall be given by mailing the same, postage prepaid, to Lessee, attention Leroy Blea, 1947 Center Street, Second Floor, Berkeley, California 94704, or to Lessor, attention Representative of Board, 1640 Stuart Street, Berkeley, California 94703, or at such other places as may be

designated by the parties from time to time. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

22. Heirs, Assigns, Successors. This lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

23. Option to Renew. Provided that Lessee is not in default in the performance of this lease, Lessee shall have the option to extend the lease for an additional term of twenty four (24) months commencing at the expiration of the initial lease term. All of the terms and conditions of the lease shall apply during the renewal term except that Lessor may increase rent up to \$50 per month for the first twelve (12) months of the renewal period for a maximum monthly rent not to exceed one thousand seventy-five dollars (\$1,075.00), and except that Lessor may increase rent up to \$50 per month for the second twelve (12) months of the renewal period for a maximum monthly rent not to exceed one thousand one hundred and twenty-five dollars (\$1,125.00). The option to extend the lease shall be exercised by written notice given to the Lessor not less than 30 days prior to the expiration of the initial lease term. If notice is not given in the manner provided herein within the time specified, this option shall expire. The Lessor shall notify the Lessee of any rent increase within 15 days of Lessee's exercise of the lease option.

24. Subordination/Non-disturbance. This lease is and shall be subordinated to all existing and future liens and encumbrances against the property. However, no such subordination shall be effective unless and until Lessee has received a non-disturbance agreement from the holder of the lien or encumbrance in a recordable, commercially reasonable form. Such non-disturbance agreement shall contain provisions to the effect that so long as Lessee is not in default in the performance of any obligations to be performed by Lessee hereunder, the holder of the lien or encumbrance shall not terminate this lease or the interest of Lessee in the Premises through foreclosure, and shall not disturb the possession and use of the Premises by Lessee.

25. Holding Over. If Lessee remains in possession of the Premises with Lessor's consent after the expiration of the term of this lease without having exercised any option to renew this lease, or after the termination of any such option period, such possession by Lessee shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either party. All provisions of this lease, except those pertaining to term, shall apply to the month-to-month tenancy.

26. California Law. This lease shall be governed by and construed in accordance with the laws of the State of California.

27. Severability. If any term or provision of this lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this lease shall not be affected thereby, and each term and provision of this lease shall be valid and enforceable to the fullest extent permitted by law.

28. Entire Agreement. The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The Recitals set forth above are incorporated by reference into this lease. The following Exhibits have been made a part of this lease before the parties' execution hereof: Exhibit A—Premises and Living Room Description and Exhibit B—Additional Space Description.

Signed this _____ day of _____, 2008.

LESSEE
City of Berkeley

By: _____
Phil Kamlarz, City Manager

LESSOR
McGee Avenue Baptist Church

By: _____
Board of Trustees Representative

Approved as to Form:

City Attorney

Registered By:

City Auditor

Attest:

City Clerk

EXHIBIT A

Premises and Living Room Description

EXHIBIT B

Additional Space Description

