



Office of the City Manager

CONSENT CALENDAR
October 16, 2012

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Scott Ferris, Acting Director, Parks, Recreation and Waterfront
Subject: License Agreement: Berkeley Partners for Parks – Santa Fe Right-of-Way
- South Berkeley Bioremediation Garden Project

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a license agreement with Berkeley Partners for Parks beginning in October 2012 for a two to five year term to conduct the South Berkeley Bioremediation Garden Project on the Santa Fe Right-of-Way.

FISCAL IMPACTS OF RECOMMENDATION

In 2012, Berkeley Partners For Parks (BFPF) received a UC Chancellor’s grant of \$40,000 to conduct a pilot project to remediate soils at the Santa Fe Right-of-Way that are contaminated with arsenic. There will be no license fee paid to the City by BFPF and the City will incur no costs for this license agreement. CMS Number VTHNQ.

CURRENT SITUATION AND ITS EFFECTS

The South Berkeley Bioremediation Garden Project on the Santa Fe Right-of-Way is a pilot project that involves a collaboration between UC Berkeley’s Department of Environmental Science, Policy, and Management, and Berkeley Partners For Parks (BFPF), a Berkeley-based community organization dedicated to the health and well-being of Berkeley parks. In 2012, BFPF was awarded a grant from the UC Berkeley Chancellor’s Community Partnership Fund in the amount of \$40,000, to conduct a project to test the technique of remediating contaminated soils at the Santa Fe Right-of-Way (“Premises”) by planting specialized ferns that are hyper-accumulators of arsenic, and to educate the public and the scientific community about such remediation methods. This license will take effect in October 2012 for a two to five year term. As the Licensee, BFPF shall be responsible for all aspects of the site that are modified as the result the Project, including tilled soil and all vegetation, and shall pay for all required improvements and/or alterations to the Premises related to the pilot project.

BACKGROUND

The Santa Fe Right-of-Way is land that was given to the City in 1932 by the Santa Fe Railway Company. Because of industrial railroad activity, certain parts of the property

are known to have elevated levels of arsenic, which is a known hazard to human and environmental health.

Due to the high cost of removing soils in order to remediate contaminated lands, the scientific community has been researching a specific bioremediation method called phytoremediation to clean contaminated soils. Phytoremediation involves the use of plants that absorb specific chemicals in the soil (e.g., arsenic) and concentrate them in the plant leaves above ground, which are then harvested and disposed of appropriately. This method is much less expensive and has minimal impacts on existing soils and ecosystems. Certain plants called hyper-accumulators are able to absorb unusually large amounts of metals in comparison to other plants. In 2001, the fern *Pteris vittata* was reported to be the best hyper-accumulator of arsenic and can tolerate up to 1,500 mg arsenic per kg of soil. The proposed phytoremediation project at the Santa Fe Right-of-Way in South Berkeley will use the *Pteris vittata* fern over a two year period to test whether the soils can be remediated to acceptable standards. The project will use the research and soil handling protocols developed by the U.S. EPA for phytoremediation of contaminated soils.

CONTACT PERSON

Scott Ferris, Acting Director, Parks Recreation & Waterfront, 981-6700

Attachments:

1: Resolution

Exhibit A: License Agreement

RESOLUTION NO. -N.S.

LICENSE AGREEMENT: BERKELEY PARTNERS FOR PARKS TO CONDUCT THE SOUTH BERKELEY BIOREMEDIATION GARDEN PROJECT AT THE SANTA FE RIGHT-OF-WAY

WHEREAS, in 2012, Berkeley Partners For Parks (BPFP) was awarded a grant from the UC Berkeley Chancellor's Community Partnership Fund in the amount of \$40,000, to conduct the South Berkeley Bioremediation Garden Project on the Santa Fe Right-of-Way ("Premises"); and

WHEREAS, this project will test the technique of remediating contaminated soils at the Santa Fe Right-of-Way by planting specialized ferns that are hyper-accumulators of arsenic, and to educate the public and the scientific community about such remediation methods; and

WHEREAS, this project involves a collaboration between UC Berkeley's Department of Environmental Science, Policy, and Management, and Berkeley Partners For Parks (BPFP), a Berkeley-based community organization dedicated to the health and well-being of Berkeley parks; and

WHEREAS, this License will take effect in October 2012 for a two to five year term. As the Licensee, BPFP shall be responsible for all aspects of the site that are modified as the result the Project, including tilled soil and all vegetation, and shall pay for all required improvements and/or alterations to the Premises related to the pilot project; and

WHEREAS, there will be no license fee paid to the City by BPFP and the City will incur no costs for this license agreement. CMS Number VTHNQ.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a license agreement and any amendments with Berkeley Partners for Parks to conduct the South Berkeley Bioremediation Garden Project on the Santa Fe Right-of-Way.

Exhibits

A: License Agreement

LICENSE AGREEMENT

This AGREEMENT is entered into by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California (“City”) and BERKELEY PARTNERS FOR PARKS, a California non-profit corporation, which has a mailing address of P.O. Box 13673 Berkeley, CA, 94712 (“Licensee”).

1. LICENSE

A. City hereby grants a license to Licensee, subject to all the terms and conditions herein, for the use of the City’s property located on the eastern part of the lot formerly known as the Santa Fe Right-of-Way situated between Derby and Ward Streets, Berkeley, California, (the “Premises”), as more particularly described in and shown on the map attached hereto as Exhibit A and made a part hereof.

B. Licensee is a non-profit corporation whose principal activities are supporting and developing parks, community gardens and open space throughout the City of Berkeley through encouraging citizen involvement and support. Licensee has the right to use the Premises upon the terms and conditions listed herein and in Exhibit B, attached hereto and made a part hereof.

C. Licensee in partnership with UC Berkeley’s Department of Environmental Science, Policy, and Management (“University Partner”) is a recipient of a grant from the UC Berkeley Chancellor’s Community Partnership Fund (“CCPF”), attached hereto as Exhibit C and made a part hereof,

D. This License is granted for the purpose allowing Licensee’s University Partner to use the Premises to conduct the South Berkeley Bioremediation Garden (“Project”), as further described in Exhibits B and C attached hereto and made a part hereof. If Licensee fails to use the Premises for such purposes, or to provide the services described herein, or uses the Premises for unauthorized purposes, City may, in its sole discretion, immediately terminate this License. Licensee is solely responsible for ensuring that its University Partner complies with all the terms and conditions of this License.

E. Licensee acknowledges that this License grants it the privilege to occupy and use the Premises for the purposes stated herein, but does not convey an estate in land or a leasehold interest in the Premises and does not create a Lessor/Lessee relationship.

2. TERM

This License shall take effect on September 24, 2012 or once duly approved by the Berkeley City Council, whichever is later, and is for a two (2) year TERM through September 31, 2014, subject to the following:

A. If, after the term of this License expires, Licensee continues in possession and the City does not object, all provisions of the License shall continue in effect, except that: (1) the new agreement shall be on a month to month basis and shall be terminable by either party with at least thirty (30) days prior written notice. In no event shall this license continue in effect beyond February 28, 2015.

B. Either party may terminate this License for any reason with ninety (90) days prior written notice to the other party.

C. The City has the right to terminate this License with ten (10) days prior written notice to Licensee upon Licensee's failure to comply with any of the terms and conditions herein set forth or if, in the City Manager's exercise of reasonable discretion, revocation is necessary in the interest of public health or safety.

3. FEE

There is no fee being charged for this License.

4. NOTICES

A written notice shall be deemed served upon mailing said notice to the other party and depositing the same with the U.S. Post Office, first class mail, with postage paid. For purposes of this License, all notices to the City shall be addressed to:

City of Berkeley
Real Property Administrator
1947 Center Street, 4th Floor, Suite 400
Berkeley, CA 94704

with a copy sent to:

Parks Supervisor
Parks Recreation and Waterfront Department
Parks Division
1325 Bancroft Way
Berkeley, CA 94702

For purposes of this License, all notices to Licensee shall be addressed to the address below. Licensee shall promptly notify City of any change of address within two weeks of any such change.

John Steere, President
Berkeley Partners for Parks
P.O. Box 13673
Berkeley, CA 94712

5. SECURITY DEPOSIT

City and Licensee acknowledge that there shall be no security deposit.

6. MAINTENANCE AND ALTERATIONS

A. Licensee shall, to the City's satisfaction, maintain the Premises, and any improvements thereto, in good order and repair and reasonably free and clear of all debris, trash and rubble.

B. Licensee shall complete the following improvements listed below and will obtain all necessary approvals and permits, and perform all environmental review required by local, City, State and Federal agencies:

1. Fencing shall be installed in one of two ways:
 - a. around the entire perimeter of the project area, measuring approximately 200 sq. meters. This fencing shall be in addition to the fencing currently installed around the perimeter of the lot or
 - b. additional fencing shall be added to the entire lot in those places where there is currently no fencing.

2. Two (2) temporary "hoop houses" built with rebar, pvc pipe and shade cloth to house in which the plants will be grown. No concrete, cement or other similar material shall be used to create a permanent structure.

3. One (1) temporary shed, not to exceed 120 square feet, in which to house all tools and equipment to be used for the project. This shed shall be locked at all times unless project participants are actively working on the Premises. Licensee agrees to submit plans for the shed to City for approval.

4. Two (2) pop-up tents to be used for shade and to house drying plant matter at harvest. When not in use, the tents shall be stored in the temporary shed.

C. Licensee acknowledges that City shall only be responsible for the initial condition of those aspects of the property such as fencing, soil, utilities, gates, and locks that were in-place prior to the start of this License agreement.

D. Licensee agrees that it is responsible for all aspects of the site that are modified as the result the Project, including tilled soil and all vegetation, including plants used during the Project, at the site.

D. The Licensee shall pay for all required improvements and/or alterations to the Premises. Upon termination of this License, all improvements to the Premises shall remain on and with the Premises, except that, if requested by City, Licensee shall, at its own expense, remove any alterations, equipment, materials or improvements installed or placed upon the Premises by Licensee. If Licensee fails to remove any alterations, equipment, materials or improvements pursuant to City's request, City may arrange to have them removed and may recover such costs from Licensee.

7. ACCESS AND ENTRY TO THE PROPERTY BY OTHERS

The City, its agents, employees, and representatives, have the right to enter the Premises at any time, provided such entry does not cause unreasonable interference with Licensee's activities.

8. ACCESS TO AND USE OF THE PREMISES

A. Licensee acknowledges that the Project to be conducted by University of California personnel on its behalf involves the handling, storage, and disposal of soil and plant matter that are potentially hazardous and/or toxic to human life and the environment and agrees to special access requirements:

1. Access to the Premises shall be limited to Project participants (defined only as University Partner affiliated personnel engaged in conducting the experiments and the grant's administrators who have complied with Licensee's Safety Plan Protocols, also known as the Project Description and Site Safety Plan, as approved by University of California Berkeley's Office of Environmental Health & Safety ("EH&S") and the City of Berkeley's Toxics Division. Compliance with the Safety plan shall include review of

- a. the site safety plan;
- b. the arsenic material safety data sheet (MSDS);

- c. the lab's written Chemical Hygiene Plan;
- d. the safety sheet for arsenic;

and shall document that they understand the hazards of working with contaminated soils by signing the training documentation sheets.

2. Licensee shall keep on site a binder detailing the Standard Operating Procedures (SOP) for working with contaminated soils and plant materials along with health information on exposure to heavy metals such as arsenic and lead.

3. Licensee shall provide N95 rated dust masks for use when tasks, including but not limited to rototilling and soil sieving, which are likely to generate airborne dust.

4. Rototilling shall not be performed on windy days to limit exposure to neighborhood residents.

5. Licensee shall keep the site locked and/or secured at all times, including periods during which personnel are actively working on the site.

6. Licensee shall provide all tools, supplies, and equipment necessary for this project. All tools, supplies, or equipment must be kept in a locked container or area to which public access is restricted.

7. Licensee agrees that the City shall have no responsibility for the safety or security of any tools, supplies, or equipment and that should any tools, supplies, or equipment be stolen, damaged or destroyed the City has no obligation to replace them.

B. Licensee shall keep any public and/or common areas in or adjacent to the Premises free and clear of any obstructions, barricades or barriers placed or created by Licensee or resulting from Licensee's operations or use of the Premises.

C. City at all times shall have the right and privilege of making such changes in and to the Premises and adjacent areas which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle City to unreasonably effect changes that would materially and adversely affect access to or visibility of the Premises, except temporarily during periods of construction. City shall have the right to establish, promulgate and enforce such reasonable rules and regulations concerning the Premises and adjacent areas as it may deem necessary or advisable for the proper, safe and efficient management, operation, maintenance and use thereof, and Licensee shall comply with the same.

D. City at all times shall have the sole and exclusive management and control of the Premises, including without limitation, the right to lease, license or permit the use of space within the Premises, to the extent that such use is compatible with and will not interfere with Licensee's use of the Premises.

E. Nothing contained herein shall be deemed to create any liability to City for any personal injury, or any damage to any property of Licensee's or its members, employees or others, unless solely caused by the gross negligence or willful misconduct of City, its agents, servants or employees. Licensee is solely responsible for the security of the Premises, and for the safety of those using the Premises. Licensee acknowledges that if City provides security guards or police patrols for the Premises or any portion thereof, City does not represent, guarantee or assume responsibility that Licensee or any person or entity will be secure from losses or injury caused by the acts of third parties and does not assume responsibility for any such acts. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of Licensee or any other person or entity.

F. City reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Premises in locations that will not unreasonably interfere with Licensee's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Licensee shall be given reasonable notice before commencement of any work on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, or to the Building, or other facilities located upon the Premises, including but not limited to pavement, curbs and sidewalks, the same shall be repaired by City at its expense, if not so repaired by the party installing and maintaining the line. City shall hold harmless and indemnify Licensee from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Licensee or its sub-licensees.

9. TAXES, ASSESSMENTS, AND OTHER CHARGES

Licensee shall pay all applicable personal property taxes lawfully levied on account of personal property owned by Licensee on the Premises, and pay any in-lieu, possessory interest, or use taxes lawfully imposed by reason of Licensee's use or occupancy of the Premises. Licensee shall obtain and pay for all local, state and federal permits and licenses necessary for the operation of its business.

10. UTILITIES AND SERVICE FEES

Licensee acknowledges that there are no utility services connected to the Premises. Licensee shall make all arrangements for and pay for all utilities and services furnished to or used on the Premises, including without limitation, water, electricity, and garbage service with prior approval of the City. Nothing herein is to be construed as authorization for Licensee to install any utilities and services on the Premises.

11. ASSIGNMENT AND SUBLICENSING PROHIBITED

This License is personal to Licensee. Licensee may not assign or sublicense this License in whole or in part, and any attempt to assign or sublicense this License shall terminate it.

12. INDEMNIFICATION

Licensee, for itself and its successors and assigns, agrees to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including without limitation actions for personal injury or death or property damage arising out of or caused by Licensee's use of the Premises, operations under this License, or the performance of this License by Licensee or its officers, employees, partners, directors, agents, invitees, or guests.

13. INSURANCE

A. Licensee at its cost shall maintain public liability and property damage insurance with a single combined liability limit of \$1,000,000 and property damage limits of not less than \$200,000 insuring against all liability of Licensee and its authorized representatives arising out of and in connection with Licensee's use or occupancy of the premises. All such insurance shall insure performance by Licensee of the preceding indemnity provisions. All insurance shall name the City of Berkeley, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

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

C. Licensee at its cost shall maintain on all its personal property, Licensee's improvements, and alterations, in on, or about the premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by

Licensee for the replacement of personal property or the restoration of Licensee's improvements or alterations.

D. If Licensee employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the City; provide for a waiver of any right of subrogation against City to the extent permitted by law; and be approved as to form and sufficiency by the City's Risk Manager.

E. Special form property insurance for the full replacement cost of damage to the Building, including, without limitation, alterations, Licensee's work, trade fixtures, furnishings, equipment, goods and inventory, and, during any term of construction of Licensee's work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious mischief and cost of demolition and increased cost of construction by reason of changes in applicable ordinances/laws and shall not contain a co-insurance clause.

F. Licensee shall forward all insurance documents to:

City of Berkeley
Real Property Administrator
1947 Center Street, 4th Floor, Suite 400
Berkeley, CA 94704

14. RISK OF LOSS

Licensee bears all risk of loss under this License.

15. CONFORMITY WITH LAW

A. Licensee shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the activities of Licensee hereunder, including the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health, and all applicable federal, state, municipal and local regulations relating to health, safety, noise, environmental protection, waste disposal, hazardous materials, water and air quality. All activities conducted by Licensee on the Premises must be in accordance with these laws, ordinances, codes and regulations. Licensee shall defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation by Licensee, or

its officers, employees, partners, directors, agents, invitees, or guests, of any laws, ordinances, codes or regulations.

B. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this License, Licensee shall immediately notify the City's Risk Manager. If any accident occurs in connection with this License, Licensee shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Licensee's liability insurance carrier; and 3) a detailed description of the accident, including whether any City's equipment, tools or materials were involved.

C. If a release of hazardous materials or hazardous waste occurs in connection with the performance of this License, Licensee shall immediately notify the Berkeley Police Department and the City's Toxics Management office, in addition to any other entities as required by law.

D. Licensee shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

16. INDEPENDENT CAPACITY

For purposes of this License, and for the duration of this License, Licensee, including its agents and employees shall be, and are, an independent contractor and not an agent or employee of the City. Licensee has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Licensee in the performance of this License. Licensee shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security, withholding, and all other regulations governing such matters, and shall be solely responsible for its own acts and those of its agents and employees.

17. CITY NON-DISCRIMINATION ORDINANCE

Licensee hereby agrees to comply with the provisions of the Berkeley Municipal Code (B.M.C.) Chapter 13.26 as amended from time to time. In the performance of this License, Licensee agrees as follows:

A. Licensee shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

B. Licensee shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this nondiscrimination provision. In addition, Licensee shall fill out in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

18. CITY NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

A. If Licensee provides any aid, service or benefit to others on the City's behalf, Licensee shall, in the provision of such aid, service or benefit, observe and comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Licensee shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination against individuals with disabilities or ensuring that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.

B. If Licensee is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Licensee shall observe and comply with all applicable provisions of the Act and any amendments thereto, and all applicable federal, state, municipal and local laws, ordinances, codes and regulations prohibiting discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered by the Licensee. All Licensee's activities must be in accordance with these laws, ordinances, codes and regulations and Licensee shall be solely responsible for complying therewith.

19. CONFLICT OF INTEREST PROHIBITED

A. In accordance with Government Code section 1090, Berkeley City Charter section 36, and B.M.C. Chapter 3.64, neither Licensee nor any employee, officer, director, partner or member of Licensee, or immediate family member of any of the preceding, shall have served with the City as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this License.

B. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 et seq., no person who is a director, officer, partner, trustee, employee or consultant of the Licensee, or immediate family of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Licensee.

C. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

20. RECYCLED PAPER FOR WRITTEN REPORTS

If Licensee is required by this License to prepare a written report or study, Licensee shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent (10%) more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this License, recycled paper is paper that contains at least fifty percent (50%) recycled product. If recycled paper is not available, Licensee shall use white paper. Written reports or studies prepared under this License shall be printed on both sides of the page whenever practical.

21. AUDIT

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Licensee's financial, performance and compliance records maintained in connection with the operations and services performed under this License. In the event of such audit, Licensee agrees to provide the City Auditor with reasonable access to Licensee's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Licensee an opportunity to discuss and respond to any findings before a final audit report is filed.

22. SETOFF AGAINST DEBTS

Licensee agrees that City may deduct from any payments due to Licensee under this License any monies that Licensee owes City under any ordinance, agreement or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

23. GOVERNING LAW

The laws of the State of California shall govern this License. The parties agree that in any dispute venue shall be in Alameda County, California.

24. AMENDMENTS

The terms of this License shall not be altered or otherwise modified except by a written amendment to this License executed by City and Licensee.

25. CITY BUSINESS LICENSE, PAYMENT TAXES, TAX I.D. NUMBER

License has obtained a City business license as required by B.M.C. Chapter 9.04 and its license number is written below; or, Licensee is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Licensee shall pay all state and federal income taxes and any other taxes lawfully assessed and due. Licensee certifies under penalty of perjury that the taxpayer identification number written below is correct.

26. SEVERABILITY

If any part of this License or the application thereof is declared invalid for any reason, such invalidity shall not affect the other terms of this License which can be given effect without the invalid provision or application, and to this end the provisions of this License are declared to be severable.

27. WAIVER

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this License or a waiver of any other default of Licensee.

28. BERKELEY LIVING WAGE ORDINANCE

A. Licensee agrees to comply with B.M.C. Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). If Licensee employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Licensee will be required to provide all eligible employees with the City of Berkeley mandated minimum compensation during the term of this License, as defined in B.M.C. Chapter 13.27, as well as comply with the terms as enumerated herein.

B. Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to the LWO. If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the Premises, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the License. The records described in this Paragraph shall be made available upon

the City's request. The failure to produce these records upon demand shall be considered a default of the License.

C. If Licensee is subject to the LWO, Licensee shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all sublicenses in which Licensee enters with regard to the subject Property. Sublicensees shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the Premises.

D. If Licensee fails to comply with the requirements of the LWO and this License, the City shall have the rights and remedies described in this Paragraph, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Paragraph shall constitute default of the License, upon which City may terminate this License.

E. In addition, at City's sole discretion, Licensee may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Licensee's failure to pay all of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Licensee's breach.

29. BERKELEY EQUAL BENEFITS ORDINANCE

A. Licensee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Licensee is currently subject to the Berkeley Equal Benefits Ordinance, Licensee will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

B. If Licensee is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Licensee agrees to supply the City with any records the City deems necessary to determine compliance with this provision.

C. If Licensee fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law and equity. Licensee's failure to comply with this Paragraph shall constitute default of the License.

In addition, at City's sole discretion, Licensee may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Licensee's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Licensee's breach.

30. NUCLEAR FREE BERKELEY

Licensee agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

31. OPPRESSIVE STATES

A. In accordance with Resolution No. 59,583-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this License to forgo contractual relations to provide personal services to, the following entities:

B. The governing regime in any Oppressive State.

C. Any business or corporation organized under the authority of the governing regime of any Oppressive State.

D. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this License) for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

E. For purposes of this License, the Tibet Autonomous Region and the provinces of Abo, Kham, and V-Tsang shall be deemed Oppressive States.

Licensee's failure to comply with this paragraph shall constitute a default of this License and City may terminate this License. In the event that City terminates this License due to a default under this provision, City may deem Licensee a non-responsible bidder for five (5) years from the date this License is terminated.

32. SURRENDER OF PROPERTY, REMOVAL OF PERSONAL PROPERTY

At the termination of this License, Licensee shall:

- A. give up and surrender the Premises, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted;
- B. remove all tools, supplies, equipment, and vegetation associated with the Project; and
- C. remove all property which is not a fixture of or permanent attachment to the Premises and which is owned and was installed by Licensee during the term of this License or improvements to the licensed property unless otherwise directed in writing by City.

33. EFFECT ON SUCCESSORS AND ASSIGNS

This License shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

34. PESTICIDES

All use of pesticides on the Premises shall be in compliance with the City of Berkeley's Pesticide Use Policy as it exists at the time of such use.

35. SIGNS

Licensee shall install signage describing the project, the hazards and warnings associated with the project, and contact information regarding the project either for general information or for emergency purposes. No other signs are permitted without prior written consent of the City. All signs on the Premises shall conform to the provisions of B.M.C. Chapter 20.04 and any other City design guidelines for signs.

36. REVIEW OF AGREEMENT BY COUNSEL; FAMILIARITY WITH CONTENTS AND EFFECT

Licensee and City each represent that in entering into this Agreement, it has relied upon the legal advice of its attorneys, if it so chooses. Licensee further represents that the terms of this Agreement have been completely read by it, and that these terms are fully understood and voluntarily accepted by it, and if applicable, its attorneys.

37. ENTIRE AGREEMENT

A. The terms and conditions of this License, all exhibits attached and any documents expressly incorporated by reference represent the entire agreement between the parties with respect to the subject matter of this License. This License shall supersede any and all prior agreements, oral or written, regarding the subject matter between City and Licensee. No other agreement, statement, or promise relating to the subject matter of this License shall be valid or binding except by a written amendment to this License.

B. If any conflicts arise between the terms and conditions of this License and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this License shall control.

IN WITNESS WHEREOF, City and Licensee have executed this License as of the date written below.

Approved as to form:

CITY OF BERKELEY

City Attorney Date

By _____
City Manager Date

Registered by: _____

Attest: _____

City Auditor Date

City Clerk Date

LICENSEE

By: _____

Its: _____

Dated: _____

LICENSEE INFORMATION

Tax Identification No.

Berkeley Business License

Incorporated: Yes ___ No ___

Approved as to form: Yes ___ No ___

Certified Woman Business Enterprise: Yes ___ No ___

Certified Minority Business Enterprise: Yes ___ No ___

Certified Disadvantaged Business Enterprise: Yes ___ No ___

EXHIBIT A
DESCRIPTION OF PROPERTY

EXHIBIT B

SCOPE

Licensee shall do the following: Licensee shall only use the Property described on Exhibit A for the South Berkeley Bioremediation Garden and Public Education Project to be conducted on the Premises by Licensee's University Partner as follows:

1. Licensee shall submit a separate agreement describing the relationship for the Project, including responsibility for liability, safety, security and training between Licensee and the University Partner;
2. All activities, including preliminary testing, must comply with the Licensee's Project Description and Site Safety Plan, as approved by UC Berkeley's Department of Environmental Health & Safety and the City of Berkeley's Toxics Division. Licensee may make changes during the term of this license subject to prior City Approval.
3. Licensee agrees to obtain all necessary approvals and permits, and perform all environmental review required by local, City, State and Federal agencies in connection with this Project.
4. The site shall be locked and secured at all times, including periods during which personnel may be actively working at the site. Licensee shall notify City and UC Berkeley's Department of Environmental Health & Safety of unauthorized access, vandalism, damage or theft as soon as possible after discovery.
5. Licensee shall provide all tools, supplies and equipment necessary for the Project.
6. Licensee shall provide a quarterly report to the City describing all activities conducted at the site. At the conclusion of the Project, Licensee shall provide a final report detailing the result of the Project to the Berkeley City Council.
7. Licensee shall remove all tools, supplies, equipment and vegetation associated with the Project upon termination of the license agreement.
8. Licensee shall perform abatement of the following within the study area: graffiti, weeds, pests.
 - A. **City shall do the following:**
 - a. Perform maintenance at the Santa Fe ROW, including mowing, weeding, storage, etc. at all areas within the Santa Fe ROW, but not within the project study area.