



Office of the City Manager

CONSENT CALENDAR

November 28, 2006

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Claudette R. Ford, Public Works Director

Subject: License Agreement: Veterans Memorial Building

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a license agreement and any amendments with the Ecology Center, Berkeley Farmers' Market, for use of the Veterans Memorial Building at 1931 Center Street.

FISCAL IMPACTS OF RECOMMENDATION

A fee is required for this license agreement. Staff recommends a nominal annual fee of \$100 for the Ecology Center, Berkeley Farmers' Market.

In December 2005, Council adopted Resolution Nos. 63,153-N.S. through 63,159-N.S., authorizing the City Manager to execute license agreements and any amendments with each of the seven organizations at the Veterans Memorial Building for nominal fees totaling \$601 in annual license fees, inclusive of all occupant groups.

Granting a license to the Ecology Center, Berkeley Farmers' Market, will provide an additional \$100 in annual license fees, bringing the annual total to \$701 (one organization pays \$1). While the proposed amount for this agreement is minimal, the fee helps defray some administrative costs. The revenue code for the fee is 010-3502-363-10.00.

CURRENT SITUATION AND ITS EFFECTS

License agreements are required between the City and each non-profit group to continue occupancy in the building.

BACKGROUND

The seven groups with current license agreements for the Veterans Memorial Building include: 1) Berkeley Food and Shelter Project; 2) Berkeley Historical Society; 3) Berkeley Place; 4) Building Opportunities for Self-Sufficiency; 5) Disabled American Veterans, Chapter 25; 6) Dorothy Day House; and 7) Options Recovery Services.

The Ecology Center, Berkeley Farmers' Market, provides a valuable service to the citizens of Berkeley by offering an alternative food system. Each Saturday morning the streets are barricaded and the market is held on Center Street between Milvia Street and Martin Luther King Jr. Way. The market vendors sell goods and provide services along Center Street but utilize the building's restroom.

Like the other agreements, this proposed license agreement is written on a month-to-month basis, which gives the City the ability to terminate the agreement with 30 days' notice. The building may be a potential hazard in a seismic event and the City may wish to vacate all licensees, at some future date, should structural renovations or other changes to its use be scheduled. Because the hazard posed by the building could be significant, current indemnification agreements and insurance policies are required which name the City of Berkeley as an additional insured. In addition to indemnification, the City may use the license agreement to organize and compel occupants to participate in other building related matters such as recycling, janitorial, maintenance, and specific security measures.

All of the non-profit groups utilizing the Veterans Memorial Building provide important services to the community and are an invaluable resource to Berkeley. The services are free or low-cost to users, and as such, generate very little regular income. The limited proceeds that are collected are reinvested into service delivery.

RATIONALE FOR RECOMMENDATION

Council must approve all license agreements that regulate terms of use, fee collection, insurance, indemnification, and other standard City contract requirements.

ALTERNATIVE ACTIONS CONSIDERED

City staff had considered assessing a higher license fee amount to reflect the percentage of the actual utilities consumption by each licensee and to encourage energy conservation practices. Staff recognized, however, that charging higher fees was untenable for the non-profits.

CONTACT PERSON

Hallie Llamas, Real Property Administrator, 981-6334
Claudette Ford, Public Works Director, 981-6300

Attachments:
1: Resolution

RESOLUTION NO. -N.S.

LICENSE AGREEMENT: VETERANS MEMORIAL BUILDING

WHEREAS, the Ecology Center, Berkeley Farmers' Market, provides an alternative food system for Berkeley citizens; has been providing services from Center Street for many years; and provides valuable and needed services to the community; and

WHEREAS, the Ecology Center, Berkeley Farmers' Market vendors require a location to wash their hands before handling and serving food to the public; and

WHEREAS, granting a license to the Ecology Center, Berkeley Farmers' Market, will provide an additional \$100 in annual license fees, bringing the annual total to \$701 (one organization pays \$1). While the proposed amount for this agreement is minimal, the fee helps defray some administrative costs. The revenue code for the fee is 010-3502-363-10.00.

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 the Ecology Center, Berkeley Farmers' Market, for use of the Veterans Memorial Building at 1931 Center Street in a form that is substantially similar to that attached as Exhibit A to this resolution.

ATTACHMENT 1- EXHIBIT A

LICENSE AGREEMENT

This AGREEMENT is entered into on _____ by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California (“City”) and THE ECOLOGY CENTER, BERKELEY FARMERS’ MARKET (“Licensee”), a non- profit organization, who agree as follows.

1. LICENSE

a. Subject to all the terms and conditions herein, City hereby grants Licensee use of that portion of the City’s property at 1931 Center Street in Berkeley, County of Alameda, State of California (“the Property”) shown on Exhibit A, attached hereto and made a part hereof. This License is not a lease; Licensee does not by this License obtain an exclusive right, against the City or the public, to any part of the Property.

b. This License is granted for the purpose of providing restroom access to Licensee’s vendors and staff on all Saturdays in which Licensee’s farmers’ market is in operation.

2. TERM

This License shall take effect once executed by Licensee and approved by the Berkeley City Council (the “effective date”). It shall remain in effect on a month-to-month basis, starting with the effective date, subject to the following:

Either party may terminate this License for any reason within thirty (30) days prior written notice to the other party. Either party may terminate this License for default upon fifteen (15) days’ written notice to the other if the other party has substantially failed to fulfill any of its obligations under this License in a timely manner.

3. LICENSE FEE

a. In consideration for the rights conveyed by this License, Licensee shall pay the City \$ 100.00 per year, which shall be due and payable on upon execution of this agreement, as specified in Exhibit B.

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:

Hallie Llamas, Real Property Manager
Public Works Department
1947 Center Street, 4th Flr.
Berkeley, CA 94704

For purposes of this License, all notices to Licensee shall be addressed to:

Linda Graham, Program Manager _____
Berkeley Farmers’ Markets _____
San Pablo Avenue _____
Berkeley, California 94702 _____

5. GENERAL - OCCUPANCY RULES AND REGULATIONS

a. City may waive any one or more of the occupancy rules or regulations contained in this agreement for the benefit of any particular licensee or licensees, but no waiver by City will be construed as a waiver of those rules and regulations in favor of any other licensee, nor prevent City from enforcing any of those rules and regulations against any or all of the licensees of 1931 Center Street. Any waiver of rules and regulations by City shall be in writing.

b. City reserves the right at any time to change or rescind any one or more of the rules and regulations or to make any additional reasonable rules and regulations that, in City's judgment, may be necessary for:

- i) management, safety, care, and cleanliness of the premises, building and real property;
- ii) preservation of good order; and
- iii) convenience of other occupants and licensees in the premises, building and real property.

6. HEALTH, SAFETY AND ACCESSIBILITY (applicable to licensees described below)

Berkeley Opportunities for Self-Sufficiency (BOSS)/Multi-Agency Service Center (MASC), Berkeley Food Housing Project (BFHP) and Dorothy Day Housing (DDH) shall make all reasonable efforts to comply with the Alameda County-wide Homeless Continuum of Care Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.

7. MAINTENANCE AND ALTERATIONS

a. Licensee shall maintain the Property used pursuant to this License in good order and repair and reasonably free and clean of all debris, trash and rubble. Upon termination of this License, Licensee shall, at its own cost, remove any equipment or materials installed by Licensee and shall surrender the Property to City in the same condition as at the commencement of this License with the exception of reasonable wear and tear. Licensee shall reimburse the City for any expenses incurred by the City for any damage to the Property resulting from this License.

b. Licensee shall not construct or place any facilities on the Property, or install any equipment on the Property, or make any alterations or improvements to the Property, without the City's prior written consent.

c. Licensee shall be responsible for any and all janitorial services required on the premises. The City shall provide janitorial services for the common areas.

d. Licensee shall be responsible for the payment of all utilities, including water, gas, electricity, trash collection/maintenance and other services delivered to the premises. In the case of electricity, gas, water and sewer utilities and building maintenance, these services will be provided by the City and Licensee shall pay the City a fee as provided in Section 3 above. Licensee shall be directly responsible for paying fees for other services.

e. No sign, placard, picture, name, advertisement, or notice visible from the exterior of the premises will be inscribed, painted, affixed, or otherwise displayed by licensee on any part of 1931 Center Street without the prior written consent of the City. Material visible outside the building will not be permitted.

f. Licensee shall assume all responsibility for protecting the premises from theft, robbery, pilferage, vandalism, damage, or waste, including keeping doors locked and other means of entry to the premises closed and turning off all water faucets, water apparatus, and utilities.

g. Licensee shall conduct business in a manner that will not cause damage to the building or property including but not limited to (i.e., not overloading the circuits, inappropriate use of extension cords, exceeding maximum weight on stage and any other floor area, etc.)

8. SECURITY

a. Pursuant to BMC Section 13.36.065, Licensee shall comply with security rules for City buildings. The City Manager's building security rules are designed to maintain the safety of City employees and patrons, facilitate the City's ability to do government business and provide services, and prevent damage to City facilities. (See Attachment 1.)

b. Access keys to licensee's space shall be provided by Public Works Maintenance only and no keys shall be duplicated without consent of the City of Berkeley Public Works Maintenance Division. Licensee may not change any locks. The City will have access to all space in the building in the event of an emergency.

c. Courtyard: BOSS/MASC, Options Recovery Services and BFHP will share responsibility for responding appropriately when unsafe behavior by clients on the premises threatens the safety of the building or the general public. BFHP staff will perform this role in the courtyard from 5 p.m. to 7 a.m. nightly. BFHP staff will ensure courtyard gate is locked nightly at 7 p.m. BOSS/MASC staff will patrol the courtyard jointly with Options Recovery Services from 8 a.m. to 4 p.m. Staff shall patrol the courtyard jointly on a regular basis and keep a log of activity. Options Recovery Services will patrol the courtyard from 4 p.m. to 5 p.m. daily, except on Sat. and Sun. and Options observed holidays.

Courtyard Schedule:

- 8 a.m. to 4 p.m. – Joint Patrol MASC/Options (on Sat. and Sun., MASC shall lock the gate at 4 p.m.)
- 4 p.m. to 5 p.m. – Options Recovery Services (except on Sat. and Sun. and Options observed holidays)
- 5 p.m. to 7 a.m. – Berkeley Food and Housing Project (gate locked at 7 p.m. and 7 a.m.)

d. Holiday Coverage: When MASC is closed for holidays and when Options Recovery Services is open, Options staff will be responsible for the courtyard, front steps, and parking lot security. When Options is closed on Saturdays, Sundays and holidays, BOSS/MASC is solely responsible.

e. Front Steps: BOSS/MASC and Options staff will ensure security of the front steps jointly daily and keep an activity log. BFHP staff will be responsible for front steps at night from inside the building.

f. Saturday Coverage: The Veterans Building is closed on all Saturday's except for use by the Berkeley Historical Society and The Berkeley Farmers' Market vendors and staff. Berkeley Farmers' Market staff shall assume all responsibility for protecting the premises from theft, robbery, pilferage, vandalism, damage, or waste including keeping doors locked and other means of entry to the premises closed and turning off all water faucets, water apparatus, and utilities. The Licensee's vendors and staff may access the building between the hours of 8 a.m. and 4 p.m. on all Saturdays in which the Licensee's farmers' market is in operation. Berkeley Farmers' Market staff is responsible for locking the building at 4 p.m. Failure to secure and lock the building is cause for termination of this License Agreement.

9. JANITORIAL TO BE PROVIDED BY LICENSEES

a. Bathrooms:

- i. BOSS/MASC will stock basement bathrooms in the morning, and clean them at closing time each day.
- ii. BFHP will stock basement bathrooms in the evening and clean in the mornings.
- iii. BOSS/MASC/BFHP will organize and jointly pay for a deep cleaning service of the men's bathroom on a regular basis at least twelve times per year.
- iv. Options will clean the front hallway and first floor restrooms for both men and women on a daily basis.

b. Courtyard:

- i. BOSS/MASC will clean courtyard in the late afternoon daily.
- ii. BFHP will clean courtyard in the morning daily.

c. Other:

BFHP and BOSS/MASC will share the cost and organize jointly waxing all floors and cleaning all carpeting on an annual basis.

10. USE OF SHARED SPACE

- a. Use of the kitchen will be shared between BOSS/MASC, BFHP, and Dorothy Day House (DDH) and all three agencies will have keys to the kitchen. Hours of use are as follows: Dorothy Day House: Monday through Sunday: 5 a.m. to 11 a.m. and 5:30 p.m. to 8:00 p.m. Any DDH volunteers must be under supervision by a team leader.
- b. A list of authorized personnel from DDH will be submitted to BOSS/MASC and BFHP. DDH team leaders will have access to the kitchen from 11 a.m. until 5:30 p.m. in order to clean and receive deliveries; all DDH personnel will check in with BOSS/MASC and BFHP staff prior to using the kitchen during this period.
 - i. BOSS/MASC: Staff shall use kitchen as needed under the supervision of the Program Manager.
 - ii. BFHP: Staff shall use kitchen as needed under the supervision of the Program Manager.
- c. Use of the conference room on the auditorium level shall be based on the Conference Room Schedule. (See Attachment 4.). The conference room shall be available on a first come first serve basis during all vacant periods.

11. NO SMOKING

- a. Pursuant to Berkeley Municipal Code (BMC) Ch. 12.70, no smoking is allowed in public places. This includes, but is not limited to within 20 feet of any entrance, exit or air intake vent to 1931 Center Street, except while passing on the way to another destination.
- b. No smoking is allowed in the parking lot or courtyard at 1931 Center Street.

12. ENVIRONMENTAL

- a. Licensee shall follow all environmental rules and regulations as they apply to City agencies. Specifically, licensee shall minimize waste and recycle and compost, as per Recycling and Composting Guidelines for City Buildings. Guidelines for creating a recycling program are attached as Attachment 2. Licensee must participate in a recycling service provided by the City or provide an acceptable alternative with the approval of the City's Recycling Supervisor. To that end, Licensee shall:

Assign someone to be in charge of its recycling program, and to communicate needs and questions to the City's Solid Waste Management Division.

- i. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles and cans).
- ii. Place collection containers for paper at desk sides and copy rooms, and break rooms. (See Attachment 2 for details.)
- iii. Provide a location for custodians to pick up flattened empty cardboard boxes. A central paper container is acceptable.
- iv. Educate employees and new employees about recycling procedures.
- v. Cooperate with the custodial service to make recyclables available for collection.
- vi. Recycle batteries and office equipment (contact the City's Solid Waste Management Division for information about vendors).
- vii. Cafeterias and commercial kitchens may participate in the City's organics recycling program, with the approval of the City's Solid Waste Supervisor. City provides containers and training.
- viii. Licensee shall recycle construction waste from tenant improvements.
- ix. Licensee shall conserve energy as specified in the City Manager's January 11, 2001 memorandum as shown in Attachment 3.

13. ACCESS TO PROPERTY; TAXES, ASSESSMENTS, AND OTHER CHARGES

a. City, including its agents and employees, reserves the right to enter the Property and make any improvements thereon at reasonable times, provided such entry does not cause unreasonable interference with Licensee's activities.

b. Licensee shall pay all personal property taxes levied on account of personal property owned by Licensee on the Property, and pay any in-lieu, possessory interest, or use taxes imposed by reason of Licensee's use or occupancy of the Property.

14. ASSIGNMENT AND SUBLICENSING PROHIBITED

This License is personal to Licensee. Notwithstanding references to assignees and/or sublicensees elsewhere in this License, if any, Licensee may not assign or sublicense this License in whole or in part without the prior written consent of the City, and any attempt to assign or sublicense this License shall terminate it.

15. INDEMNIFICATION

a. Licensee shall indemnify, defend and hold City, its officers, agents, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in, on, or about the Property; 2) all claims of liability arising out of or in any way connected with Licensee's operations under this License, or any act or omission by Licensee, its officers, partners, directors, employees, agents, contractors, subcontractors or invitees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990. Except, however, that City shall hold Licensee harmless from all claims of liability for damage resulting from the negligent or wrongful acts or omissions of City or its authorized representatives.

b. Neither Licensee nor its assignees, heirs, guardians, and legal representatives shall make a claim against or sue City or its employees, agents or contractors for injury or damage resulting from the negligence, whether active or passive, or other acts, however caused, by any employee, agent, or contractor of the City as a result of Licensee's presence on the Property. Licensee hereby acknowledges that the Property specifically and 1931 Center Street generally requires certain structural or code upgrades and accepts the condition of the premises "as is."

c. LICENSEE ACKNOWLEDGES THAT 1931 CENTER STREET HAS BEEN DEEMED TO BE UNSAFE AND SUBJECT TO SEVERE DAMAGE DURING ANY MAJOR EARTHQUAKE. LICENSEE OCCUPIES THE BUILDING AT ITS OWN RISK. LICENSEE HEREBY RELEASES AND DISCHARGES THE CITY OF BERKELEY AND ITS EMPLOYEES, AGENTS, CONTRACTORS FROM ALL ACTIONS, CLAIMS OR DEMANDS THAT LICENSEE, ITS HEIRS, GUARDIANS, AND LEGAL REPRESENTATIVES NOW HAVE OR MAY HAVE IN THE FUTURE FOR INJURY OR DAMAGE RESULTING FROM AN EARTHQUAKE.

16. INSURANCE

a. Licensee at its cost shall maintain commercial general liability and property damage insurance with a single combined liability limit of \$1,000,000 and property damage limits of not less than \$100,000 per occurrence insuring against all liability of Licensee and its authorized representatives arising out of and in connection with Licensee's use or occupancy of the Property. All such insurance shall insure performance by Licensee of the preceding indemnity provisions. All insurance shall name the City, 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 a

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 Property, 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. Licensee shall forward all insurance documents to Hallie Llamas, Real Property Manager, 1947 Center Street, 4th Flr., Berkeley, California, 94704.

17. CONFORMITY WITH LAW

a. Licensee shall observe and comply with all applicable laws. Licensee shall release, 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 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 by telephone. 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 sub licensee, if any; 3) name and address of Licensee's liability insurance carrier; and 4) a detailed description of the accident, including whether any of 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 Emergency and Toxics Management office.

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

18. INDEPENDENT CAPACITY

For purposes of this License, and for the duration of this License, Licensee, including its agents and employees, shall be, and is, 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.

19. CITY NON-DISCRIMINATION ORDINANCE

Licensee hereby agrees to comply with the provisions of Berkeley Municipal Code ("BMC") 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 non-discrimination provision. In addition, Licensee shall fill out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

20. 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 and shall ensure 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 of Licensee's activities must be in accordance with these laws, ordinances, codes, and regulations, and Licensee shall be solely responsible for complying therewith.

21. OPPRESSIVE STATES

a. In accordance with Resolution No. 59,853-N.S., Licensee certifies that it has no contractual relations with, and agrees during the term of this License to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, the following entities:

- i) The governing regime in any Oppressive State.
- ii) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- iii) 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 its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this License, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

c. Licensee's failure to comply with this section shall constitute a default of this License and City may terminate this License pursuant to Section 2. In the event that the 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 of termination.

22. LIVING WAGE ORDINANCE

a. Licensee agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. 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 City

mandated minimum compensation during the term of this License, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

b. Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to Berkeley's Living Wage Ordinance (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 Property. These records shall include the total number of hours worked, the number of hours spent providing service on the Property, 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 Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered grounds for termination of this License in accordance with section 2 of this 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 sublicense agreements in which Licensee enters with regard to the Property. Sub licensees shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the Property.

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 Section, in addition to any rights and remedies provided by law or equity.

Licensee's failure to comply with this Section shall be considered grounds for termination of this License in accordance with section 2 of this License.

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 any 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 of forfeiture for Licensee's breach.

23. 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 generates \$350,000 or more in annual gross receipts, Licensee will be required to provide all eligible employees with City mandated equal benefits during the term of this License, 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. Failure to do so shall be considered grounds for termination of this License in accordance with section 2 of this License.

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 or equity.

Licensee's failure to comply with this Section shall constitute grounds for termination of this License in accordance with section 2 of this 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.

24. CONFLICT OF INTEREST PROHIBITED

a. In accordance with Government Code section 1090, Berkeley City Charter section 36, and the 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 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 member 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.

25. NUCLEAR FREE BERKELEY

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

26. 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.

27. PESTICIDES; EFFECT ON SUCCESSORS AND ASSIGNS; RISK OF LOSS

a. 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.

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

c. Licensee bears all risk of loss under this License.

28. AUDIT

The City Auditor's Office, or its designee, may conduct at any time an audit of Licensee's financial and compliance records maintained in connection with the operations and services performed under this License, and with the payments made under this License. In the event of such audit, Licensee agrees to make all such financial and compliance records available to the Auditor's Office, or its designee. City agrees to provide Licensee an opportunity to discuss and respond to any findings before a final audit report is filed.

29. SETOFF AGAINST DEBTS

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

30. GOVERNING LAW; AMENDMENTS

- a. The laws of the State of California shall govern this License.
- b. The term of this License shall not be altered or otherwise modified except by a written amendment to this License executed by City and Licensee.

31. CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

Licensee 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 due. Licensee certifies under penalty of perjury that the taxpayer identification number written below is correct.

32. SEVERABILITY; WAIVER

- a. 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.
- b. 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.

33. 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 on the first paragraph of this License.

CITY OF BERKELEY

By _____
CITY MANAGER

Registered by:

Approved as to form:

CITY AUDITOR

CITY ATTORNEY

Attest:

CITY CLERK

LICENSEE, Berkeley Farmers' Markets

By: _____
Its: _____

Tax Identification No. _____
Berkeley Business License No. _____
Incorporated: Yes ___ No ___
Certified Woman Business Enterprise: Yes ___ No ___
Certified Minority Business Enterprise: Yes ___ No ___
If yes, state ethnicity: _____
Certified Disadvantaged Business Enterprise: Yes ___ No ___

EXHIBIT A
Berkeley Farmers' Market

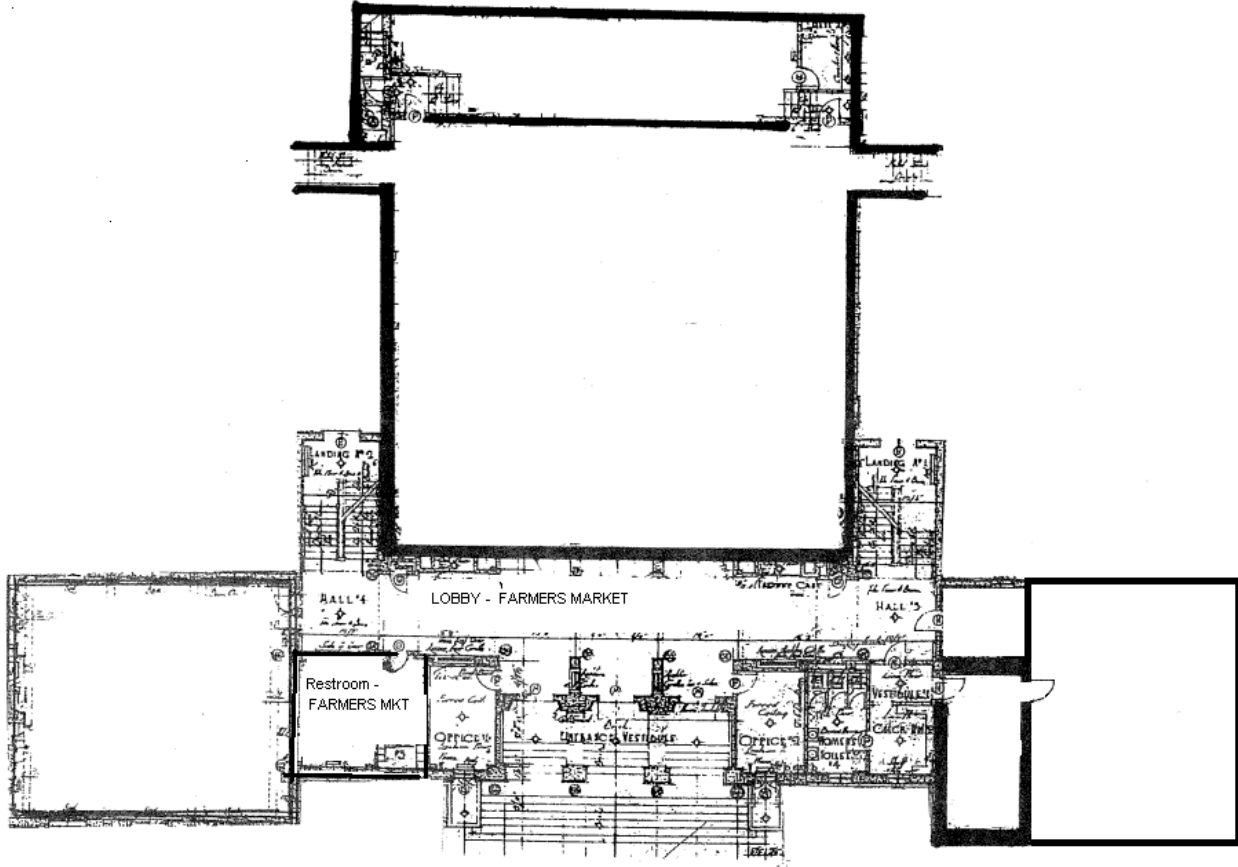


EXHIBIT B

PAYMENT

- 1) Payments shall be due and payable upon execution of the agreement and the check made payable to the "City of Berkeley." Payments shall be paid at Finance Department Customer Service Center at 1947 Center Street, 1st Floor, Berkeley, CA 94704
- 2) Failure to make full payments on time is grounds for termination of this License by the City.
- 3) The license fee shall be \$100.00 per year.

Attachment 1

SECURITY RULES FOR CITY BUILDINGS

Interior Rules/Signage

1. No member of the public may enter an interior area of a City building once a City employee advises that the area is closed to the public.
2. No member of the public may enter an interior area of a City building that is signed in any manner that suggests that the public should not enter, unless given permission to enter by a City employee. Such signs include, but are not limited to: "Reception Area – Please Check In," "Private," and "Employees Only"
3. A member of the public may remain in the lobby, hallways, waiting areas, or similar public areas inside a City building only as long as necessary to conduct City-related business or contact an employee. Members of the public may not wait in a City building for a City employee indefinitely, and may be asked to return at another time when the employee is expected to be in the office. When signage is not practical: use verbal warnings.
4. Bathrooms in City buildings shall not be used for bathing or washing clothes, unless the bathroom is equipped for such uses and the person is authorized to use the bathroom for such purposes. Acceptable Signage, But Only If The Problem Is Recurring: "No Bathing Allowed" or "No Bathing Or Washing Laundry Allowed"
5. In City buildings, no member of the public may:
 - a. Yell, threaten, or use profanity or rude, insulting language against City staff, e.g., calling the City staff member a "bastard" or an "idiot" in an attempt to intimidate the staff member into doing something that the staff member cannot do;
 - b. Disturb or annoy anyone with loud or unreasonable noise;
 - c. Insist that City staff provide a service, explanation or document that City staff has made clear cannot be provided at that time;
 - d. Insist on meeting with a City staff member or supervisor after being told that the person is either not available or will not meet with the person;
 - e. Conduct oneself in a manner that obstructs or intimidates City staff or patrons;
 - f. Block City entrances, ramps, or exits;
 - g. Enter a City building with animals other than service animals authorized by law;
 - h. Ride bikes, skates, scooters, Segways, skateboards, and other devices designed to enhance mobility but not intended for indoor use;
 - i. Smoke, eat, or drink, except where expressly permitted;
 - j. Lie on the floor or sleep; or
 - k. Exude extremely offensive odors

Exterior Rules/Signage

1. No member of the public may remain on the exterior steps or exterior grounds¹ of City buildings, unless the person is there to conduct City-related business or contact an employee.

Acceptable Signage: "No Sitting On Steps – BMC 13.36.065" and/or "Building Steps And Grounds For City Business Only – BMC 13.36.065."² (See following text of BMC 13.36)

¹ "Exterior grounds" means the area between the outer building façade and the property line. Exterior grounds can include an off-street parking lot. However, a public sidewalk is not part of the exterior grounds. (BMC § 13.36.065(B).) Also, if the City only leases a portion of a building, this rule still applies to the entire "exterior grounds." (BMC § 13.36.065(B).)

Chapter 13.36 DISORDERLY CONDUCT*

Section 13.36.065 Violating building security rules for City buildings.

- A. Purpose. The purpose of this section is to enable the City Manager to establish building security rules for buildings that the City of Berkeley owns or leases for City government business or services. The City Manager's building security rules will be designed to maintain the safety of City employees and patrons, facilitate the City's ability to do government business and provide services, and prevent damage to City facilities. The City Manager's building security rules may apply to all City buildings, as defined in this section, or only to specific City buildings, depending on the security needs at each site.
- B. Definitions. "City building" as used in this section means any building that the City of Berkeley owns or leases for the purpose of conducting City government business or providing City services. If only a part of the interior of a building is leased by the City for City government business or services, then "City building" shall apply to only that part of the interior of the building. In addition, if only a part of the interior of a building is leased by the City for City government business or services, then "City building" shall also include the entire exterior curtilage of the building, unless the building owner or occupant authorizes the conduct prohibited by this section on the exterior curtilage.

"Curtilage" as used in this section means the exterior grounds of a building. "Curtilage" shall include the steps and grounds that lie between the outer facade of the building and either (1) the public sidewalk, (2) a formally dedicated public park, or (3) the adjacent private property. Curtilage does not include the public sidewalk or a formally dedicated public park, but rather, ends there.

- C. Prohibited Conduct. No person shall violate the City Manager's building security rules governing any City building. The City Manager's building security rules shall promote safety for City employees and patrons, facilitate the City's ability to provide services, and/or help prevent damage to City facilities. The City Manager's building security rules shall include, but need not be limited to, prohibiting persons from:
- (1) Entering designated areas that are not open to the general public inside of City buildings without permission from a City employee or agent, and
 - (2) Remaining inside of or on the curtilage of a City building without a purpose related to conducting business, accessing services, or contacting an occupant on the premises.
- D. Citation. No person shall be arrested or cited under this section unless the person engages in conduct prohibited by this section after having been notified by a City official that he or she is in violation of the prohibition in this section.
- E. Penalty. Notwithstanding the provisions of Section 13.36.100, violation of this section shall be either an infraction or a misdemeanor, in the discretion of the prosecutor, and upon conviction shall be punishable as set forth in Chapter 1.20 of this code. (Ord. 6486-NS § 1, 1999)

2 Due to technical legal problems, do **not** use the words "no loitering" in any sign. Rather, use the recommended language.

Attachment 2

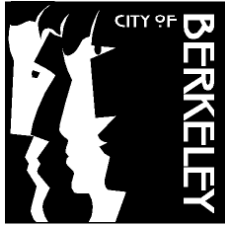
SETTING UP A RECYCLING PROGRAM

A. Recycling and Composting Guidelines

1. All occupants in City-owned facilities must participate in recycling services provided by the City or provide an acceptable alternative for approval of City's Recycling Supervisor.
 - a. Assign someone to be in charge of your recycling program, and communicate needs and questions to the City's Solid Waste Management Division.
 - b. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles and cans).
 - c. Place collection containers at convenient locations for licensee and employees including at desk sides and copy rooms, and containers for bottles/cans. See Section B below.
 - d.
 - e. Educate employees about recycling procedures.
 - f. Cooperate fully to make recyclables available for collection.
 - g. Recycle batteries and office equipment (contact City's Solid Waste Management Division for information about vendors).
2. Cafeterias and commercial kitchens may participate in the City's organics recycling program, with approval of refuse supervisor. The City will provide containers and training.
3. Licensee shall recycle construction waste from any licensee improvements.
4. The City shall provide the following services at standard rates:
 - a. Curbside collection service (cart) or on site for bins.
 - b. Containers for desk side, copy room and storage.
 - c. Assistance designing your recycling program.
 - d. Training and instructive posters.
5. Standard Rates:
 - a. There is no charge for recycling services for bottles/cans, papers and cardboard.
 - b. Organics collection is charged at 80% of equivalent refuse service.

B. Recycling happens in four phases:

1. Convenient separation where it's first generated:
 - a. Container next to each desk to hold office paper and trash.
 - b. Container by each copy machine. This container should be at least 13 gallons and can double as the central container for the office.
 - c. Container for bottles/cans in the break room.
2. Move small amounts to a central collection container:
 - a. Employees usually empty their desk side containers into a larger central container. Often this doubles as the copy-room container.
 - b. Employees put their bottles/cans into a container in the break room.
3. Licensee is responsible to transfer the paper to the licensee's storage location, and setting storage containers by the curbside by 7:00 a.m. on collection day and bringing them back to the storage area as soon as possible after they are emptied.
4. The City will pick up recycling materials on the regular collection day.



Office of the City Manager

January 11, 2001

TO: All Staff

FROM: Weldon Rucker, Acting City Manager

RE: MUNICIPAL ELECTRIC LOAD CURTAILMENT

As you are aware, California's electric system is in a fragile condition. In order to prevent rolling blackouts, the City shall curtail municipal electric loads as described below. Since this problem is likely to persist, these procedures shall remain in effect until further notice.

The California Independent System Operator (ISO) issues alerts when power supply margins are too low. A Stage II emergency seeks voluntary load curtailment. A Stage III Emergency orders utilities to institute rolling black outs.

At all times, regardless of the ISO Emergency status, the procedures below shall be followed.

- 1) Site Safety Coordinators shall:
 - a) ensure that non-essential equipment including copiers, printers, computers, lights, space heaters, air conditioners, fans and air compressors are turned off at the end of the day;
 - b) ensure that Energy Saver features are enabled on all office equipment (copiers, printers, PCs, faxes);
 - c) minimize use of incandescent lighting (call the Energy Office to replace incandescent desk lamps with fluorescents); and,
 - d) be familiar with Stage II procedures.
- 2) No new incandescent (including halogen and quartz) floor or desk lamps may be purchased.
- 3) Information Systems shall set Energy Star features on all new installs and service calls.
- 4) Public Works Facilities Management shall review and correct settings on all setback thermostats (Operating hours: heat = 68 degrees; cooling = 74 degrees. Non-operating hours: heat = 55 degrees; cooling 90 = degrees).
- 5) Parks and Waterfront and Health and Human Services shall prepare a plan to notify ball field users of closures.

During Stage II Emergencies, the procedures below shall be followed:

- 1) Public Works and the Communications Center shall notify each other and Information Systems of the Stage II notice.
- 2) Information Systems shall send an email to Everyone (that includes excerpts from this document).
- 3) Site Safety Coordinators shall:
 - a) Disconnect electric vehicles from chargers;
 - b) Ensure all procedures above are implemented;
 - c) Turn off all non-essential air compressors;
 - d) Turn off all space heaters, window box air conditioners and fans;
 - e) Turn off all unused office equipment;
 - f) Turn off all unnecessary overhead lighting; use fluorescent task lighting and daylight; and,
 - g) Reset thermostats to 78 degrees for cooling and to turn off ventilation equipment when heating/cooling element is not on.
- 4) Health and Human Services and Parks and Waterfront shall notify ball field users of the emergency and shall turn off ball field lighting.
- 5) Parks and Waterfront shall turn off ball court lighting.

CONFERENCE ROOM SCHEDULE

	Monday	Tuesday	Wednesday	Thursday	Friday
8:30 - 10:00	Options: Women's Phase III program	Berkeley Place	Options: Women's Phase III program	Options: Aftercare	Options: Women's Phase III program
10:00 - 11:30	Options: Men's Phase I Program	Options: Men's Phase I Program	Options: Men's Phase I Program	Options: Men's Phase I Program	Options: Men's Phase I Program
11:30 - 1:00	Options: Acupuncture program	Options: Men's Case Conference	Vacant	Options: Women's Case Conference	Vacant
1:00 - 4:00	Options: Men's Phase I Program	Options: Men's Phase I Program	Options: Men's Phase I Program	Options: Men's Phase I Program	Options: Men's Phase I Program
4:00 - 5:00	Options: Evening Case Conference	Vacant	Vacant	Vacant	Vacant
5:00 - 6:30	Options: Phase II Evening Program	Options: Phase II Evening Program	Options: Phase II Evening Program	Options: Phase II Evening Program	Options: Phase II Evening Program
6:30 - 8:00	Vacant	Vacant	Vacant	Vacant	Vacant
8:00 - 9:30	Vacant	Veterans	Vacant	Vacant	Vacant

