



Office of the City Manager

CONSENT CALENDAR
September 11, 2007

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: William Rogers, Acting Director, Parks Recreation & Waterfront

Subject: License Agreement: Cal Sailing Club

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a license agreement and any amendments with the Cal Sailing Club to use City property at the Berkeley Marina through June 30, 2009 with an annual license fee of \$5,544.

FISCAL IMPACTS OF RECOMMENDATION

Revenue to the Marina Fund will continue at \$5,544 per year and will be deposited in the Marina Fund, Budget Code 825-5903-363-80-00. The license agreement also requires that the Club pay 60% of the boat hoist maintenance fee per year (not to exceed \$1,200). The license agreement does not require the Club to pay for parking or utilities at the property (electricity and water), the cost of which is covered by the City. The license applies only to the Club's use of Parcel A, as depicted in Exhibit A of the license; any agreement regarding berths is wholly separate from this license agreement. CMS No.: PBVF7.

CURRENT SITUATION AND ITS EFFECTS

In FY2004, the most recent five-year license agreement with the Cal Sailing Club terminated and the license fee was set at \$5,544 per year as a holdover position until a new license agreement could be executed. The City and Cal Sailing Club have agreed that in light of the significant public benefits provided by the club, no increase in the annual license fee is merited. Staff therefore recommends that the license agreement with Cal Sailing Club be renewed through June 30, 2009 with no increase in the annual license fee of \$5,544.

BACKGROUND

Cal Sailing Club has been active on the Berkeley waterfront since 1936. Although originally a student activity, CSC has been an independent educational non-profit organization since 1979 and has evolved into a very active and valuable public resource for low-cost access to sailing and windsurfing from the Berkeley Marina. The Cal Sailing Club's public service includes providing thousands of free sailboat rides to the general public each year, sailing programs for at-risk youth, educational programs for

schoolchildren, and an important role in maintaining the safety of sailors and windsurfers using waters on the south side of the Berkeley Marina through rescue operations.

On April 13, 2005, the Waterfront Commission took action to recommend a lease or license renewal with Cal Sailing club that involves no rent increases (M/S/C: Kamen/N. Smith; Aye's – 6; Noe's – 0; Abstentions - 3).

RATIONALE FOR RECOMMENDATION

The Cal Sailing Club continues to provide significant public service in the form of thousands of free sailboat rides to the general public each year, sailing programs for at-risk youth, educational programs for schoolchildren, and rescue operations in the South Sailing Basin. The license agreement should be renewed with no increase in the annual license fee.

ALTERNATIVE ACTIONS CONSIDERED

None considered.

CONTACT PERSON

Ann Hardinger, Acting Waterfront Manager, 981-6737

William Foley, Real Estate, Department of Public Works, 981-6337

Attachments:

1: Resolution

Exhibit A: License Agreement

RESOLUTION NO. –N.S.

LICENSE AGREEMENT WITH THE CAL SAILING CLUB TO USE CITY PROPERTY AT THE BERKELEY MARINA THROUGH JUNE 30, 2009 WITH NO INCREASE IN THE ANNUAL LICENSE FEE OF \$5,544

WHEREAS, in FY2004, the most recent five-year license agreement with the Cal Sailing Club terminated and the license fee was set at \$5,544 per year as a holdover position until a new license agreement could be executed; and

WHEREAS, the City of Berkeley benefits from the programs offered by the Cal Sailing Club and it is in the City's interest to promote programs that encourage the public to experience the Marina and San Francisco Bay; and

WHEREAS, the City and Cal Sailing Club have agreed that in light of the significant public benefits provided by the club, no increase in the annual license fee of \$5,544 is merited; and

WHEREAS, all revenue shall be deposited in the Marina Fund, Budget Code 825-5903-363-80-00. CMS No.: PBVF7.

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 Cal Sailing Club to use City property at the Berkeley Marina through June 30, 2009 with no increase in the annual license fee of \$5,544 (Exhibit A). A record signature copy of said agreement and any amendments to be on file in the Office of the City Clerk.

Exhibit A

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 CAL SAILING CLUB, a California non-profit corporation doing business at 124 University Avenue in Berkeley, California (Licensee).

1. LICENSE

a. City hereby grants a license to Licensee, subject to all the terms and conditions herein, for the exclusive use of the City's property located in the Berkeley Marina identified as Cal Sailing Club Site - the total property measuring approximately 80 feet by 150 feet, Parcel A (the "Property"), as shown on the map attached hereto as Exhibit A and made a part hereof.

b. Licensee has the non-exclusive right to use the public hoist and the public dock located directly south of the Property, identified on Exhibit A as the west hoist and west dock.

c. Licensee is a non-profit sailing and windsurfing club. This License is granted for the purpose of Licensee using the Property as described in Exhibit B and made a part hereof. In the event Licensee fails to use the Property for such purposes, or to provide the community services described in Exhibit B, or uses the property for unauthorized purposes, City may, in its sole discretion, terminate this License.

2. TERM

This License shall take effect once executed by both the City and the Licensee and duly approved by the Berkeley City Council (the "Effective Date"), subject to the following:

a. The Initial License Term will expire at midnight on June 30, 2009. Each twelve month period that ends on June 30th shall be considered a "License Year" and the 1st License Year shall be the period from the Effective Date until June 30, 2007. For purposes of determining the fee under Paragraph 3 below, the First License Year shall be pro-rated for any partial year.

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

c. 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, with the following exceptions: (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; and, (2) the License Fee shall increase to 105% of that which applied when the License expired, payable in advance on a monthly basis.

3. FEE

a. In consideration for the rights conveyed by this License, Licensee shall pay to City FIVE THOUSAND FIVE HUNDRED AND FORTY FOUR DOLLARS (\$5,544) for each License Year ("License Fee"). Licensee shall make payments to the City as provided for in Exhibit C, attached hereto and made a part hereof.

b. In addition to the License Fee, the Licensee shall reimburse City sixty percent (60%), but not to exceed \$1,200, per License Year, of the City's actual costs to maintain the boat hoist ("boat hoist maintenance fee"). Licensee shall make all boat hoist maintenance fee payments as described in Exhibit C.

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, Public Works Department,
1947 Center Street, Fourth Floor Suite 400, Berkeley, CA 94704.

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

Commodore of the Cal Sailing Club
124 University Avenue, Berkeley, CA 94710.

5. MAINTENANCE AND ALTERATIONS

a. Licensee shall, to the City's satisfaction, maintain the Property in good order and repair and reasonably free and clean of all debris, trash and rubble.

b. Licensee shall not construct any facilities, install any equipment, or make any alterations to the Property without the City's prior written consent, which consent shall not be unreasonably withheld. The Licensee shall pay for all improvements and/or alterations to existing facilities used by Licensee. Upon termination of this License, Licensee shall, at its own expense, remove any equipment, materials or improvements installed or placed upon the Property by Licensee. Licensee shall otherwise surrender the Property to City in the same condition as at the commencement of this License.

c. City shall maintain the public docks in the South Sailing Basin in good order and repair.

6. ACCESS AND ENTRY TO THE PROPERTY BY OTHERS

The City, its agents and employees, and members of the public have the right to enter the Property, provided such entry does not cause unreasonable interference with Licensee's activities.

7. USE OF MARINA PROPERTY; PUBLIC TRUST.

A. So long as Licensee is not in default of this License, City hereby grants to Licensee, its sublicensees, concessionaires, suppliers, business invitees, customers, agents, representatives and employees, but only during the term of this License, the non-exclusive right, in common with others duly authorized by City, to use the Marina and public or common areas located on the Property, in each case for the uses and purposes designated therefore by City. It shall be the duty of Licensee to keep the such public or common areas of the Property and the Marina 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.

B. Licensee acknowledges and agrees that except as otherwise provided in this Lease, it is not a covenant or condition of this License or of any other agreement with Licensee that City undertake or cause to be undertaken any development or redevelopment of the Property or Marina, and City shall incur no liability whatsoever to Licensee for failure to undertake such development or redevelopment.

C. City at all times shall have the right and privilege of making such changes in and to the Marina from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, 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 Marina, as it may deem necessary or advisable for the proper 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 Marina, including, without limitation, the right to lease, license or permit the use of space within the Marina to persons for the sale of merchandise and/or services and the right to permit advertising displays, educational displays, displays of art, and promotional activities and entertainment.

E. Nothing contained herein shall be deemed to create any liability to City for any damage to motor vehicles of Licensee's customers, employees or others or for loss of property from within such motor vehicles, unless caused by the gross negligence or willful misconduct of City, its agents, servants or employees. Licensee acknowledges

that if City provides security guards or police patrols for the Marina or any portion thereof, City does not represent, guarantee or assume responsibility that Licensee or any person or entity will be secure from losses caused by the illegal acts of third parties and does not assume responsibility for any such illegal acts. To induce City to provide such security guards, if any, as City deems reasonable, appropriate and economically feasible, Licensee hereby waives any present or future claims Licensee may have against City, whether known or unknown, for bodily injury or property damage arising from the performance of such security guards. City shall not be obligated to provide any public liability or property damage insurance for the benefit of Licensee or any other person or entity, each such party being responsible for its own insurance.

F. Licensee acknowledges that City holds the Property and the Marina in trust pursuant to Chapter 347 of the California Statutes of 1913, as amended ("the Grant"), subject to the conditions, restrictions, limitations, rights, powers, and duties reversionary rights and other rights created or reserved in the Grant. Licensee agrees that, notwithstanding anything in this Lease to the contrary, Licensee shall use the Property and the Premises consistently with and in a manner, which shall not result in a violation of the Grant or of provisions of the Berkeley City Charter, the Berkeley Municipal Code, California or federal law or the California or United States Constitution, as such laws exist at the time of the violation.

G. City reserves to itself and the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Property 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 Property shall proceed expeditiously. Licensee shall be given reasonable notice before commencement of any work on the Property. 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 Property, 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 gross negligence or willful misconduct of Licensee or its sublicensees.

H. Licensee agrees that it shall not interfere with the free and unobstructed access by the public to the waters of the San Francisco Bay and the waterfront of such waters; provided, however, that Licensee shall be obligated to permit such access only as required for consistency with applicable laws of the United States, the State of California, Alameda County, the City of Berkeley, the Grant, and/or City's plans adopted from time to time, and that this sentence is not intended to, and shall not be construed to, confer any right of action upon any third party.

8. 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 Property, and pay any in-lieu, possessory interest, or use taxes lawfully imposed by reason of Licensee's use or occupancy of the Property. Licensee shall obtain and pay for all local, state and federal permits and licenses necessary for the operation of its business.

9. UTILITIES AND SERVICE FEES

Licensee shall make all arrangements for and pay for all utilities and services furnished to or used on the Property (except for water and electric services), including without limitation, gas, telephone, and garbage service, and for any connection charges thereof. City will provide and pay for electric service to the Property and also provide and pay for water and electric services to the public dock used by Licensee.

10. 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.

11. 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 operations under this License, or the performance of this License by Licensee or its officers, employees, partners, directors, agents, invitees, or guests.

12. 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 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 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. Licensee shall forward all insurance documents to Real Property Administrator, City of Berkeley Public Works Department, 1947 Center Street Suite 400, Fourth Floor, Berkeley, California 94704.

13. RISK OF LOSS

Licensee bears all risk of loss under this License.

14. 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 Regulations, 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 Property 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 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 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.

15. 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.

16. 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.

17. 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.

18. 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 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.

19. 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.

20. AUDIT

The City Auditor's Office, or its designee, may conduct 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.

21. 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.

22. GOVERNING LAW

The laws of the State of California shall govern this License.

23. 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.

24. 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 BMC 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.

25. 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.

26. 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.

27. BERKLEY 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 City of Berkeley (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 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 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 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 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 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.

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 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.

28. BERKELEY EQUAL BENEFITS ORDINANCE

a. Licensee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, BMC 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 License, as defined in BMC 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 or 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.

29. 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.

30. 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, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) 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.

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 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.

31. SURRENDER OF PROPERTY, REMOVAL OF PERSONAL PROPERTY

At the termination of this License, Licensee shall: 1) give up and surrender the Property, in as good state and condition as reasonable use and wear and tear thereof will permit, damage by fire and the elements excepted; and 2) remove all Property which is not a fixture of or permanent attachment to the Property and which is owned and was installed by Licensee during the term of this License.

32. 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.

33. 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.

34. SIGNS

Licensee shall not install or letter any signs on the Property without the prior written consent of City. All signs on the premises shall conform to the provisions of B.M.C. Chapter 20.04 and the Marina design guidelines for signs.

35. CONSENT OF PARTIES

Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

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

Licensee and City 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. AGREEMENT JOINTLY DRAFTED

Licensee and City and counsel for each, if applicable, has reviewed and revised, or had the opportunity to revise this Agreement, and accordingly the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting

party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

38. 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 second paragraph of this License.

Approved as to form:

CITY OF BERKELEY

City Attorney

By _____
City Manager

Registered by:

Attest:

City Auditor

City Clerk

LICENSEE

Cal Sailing Club

By _____
Commodore

LICENSEE INFORMATION

Tax Identification No. 94-1737515
Berkeley Business License 9902403
Incorporated: Yes x_ No__

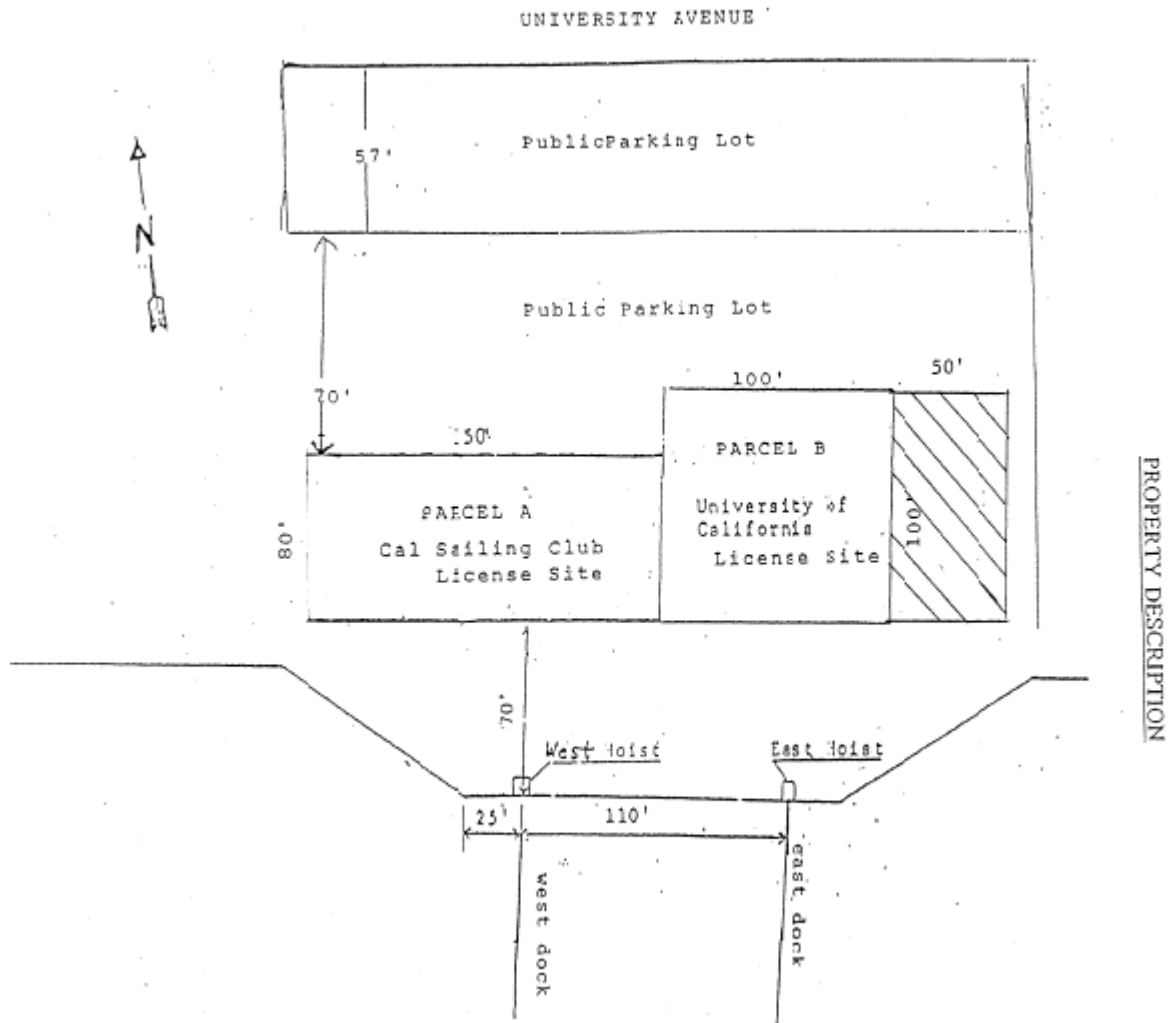
Approved as to form Yes__No__

Certified Woman Business Enterprise: Yes__No__

Certified Minority Business Enterprise: Yes__No__

Certified Disadvantaged Business Enterprise: Yes __ No__

EXHIBIT A



PROPERTY DESCRIPTION

EXHIBIT A

EXHIBIT B

USE OF PROPERTY

Licensee shall only use the Property described on Exhibit A attached hereto to operate the CAL SAILING program as follows:

1. Teach sailing and windsurfing techniques and provide low cost access to sailing and windsurfing equipment and programs through a membership program that is open to the general public. Licensee may operate and lease sailboats, windsurf boards, and maintain an accessory storage facility for its members. Licensee will primarily use the west boat hoist and adjacent dock to support its activities and operate an accessory storage facility for boats and windsurfing equipment.
2. Provide social events and administer Club business.
3. Provide rental storage lockers for windsurfing boards and other sailing equipment, except boats.
4. Conduct community service and recreational sailing activities as follows:
 - a) Participate in youth programs sponsored by the City.
 - b) Sponsor outreach programs to youth to provide them with the opportunity to experience seamanship, sailing, and windsurfing. Provide scholarships to youth who cannot afford to participate in Licensee's programs.
 - c) Participate in and promote City's "Berkeley Bay Festival" in which the general public is invited to learn more about the Marina and its activities. Participation includes free demonstration rides in various sailing craft, and promotion includes distribution of City fliers advertising the event.
 - d) Sponsor and participate in such other boating and related activities as may be mutually agreed upon by Licensee and the City's Waterfront Manager.
5. Licensee may use and provide its services on the Property from 6:00 AM to 10:00 PM on any day of the year.
6. Licensee shall submit an annual report to the City that describes Licensee's community activities. This report shall be due on March 1st of each license year.

EXHIBIT C

PAYMENT

1. The License Fee described in Paragraph 3 of the License Agreement shall be paid in advance by the Licensee to the City in equal installments every month of each License Year. All payments must be received no later than thirty (30) calendar days from the start of each month. Any payment received after this thirty (30) day time period will be assessed a ten percent (10%) late-penalty.
2. Payments shall be made payable to the "City of Berkeley" and paid at the Finance Department located at 2180 Mi1via Street, Berkeley, CA 94704.
3. Failure to make full payments on time is grounds for termination of this License by the City.

NON-DISCRIMINATION WORK FORCE

FOR ALL NON-CONSTRUCTION CONTRACTS

To assist the City of Berkeley in implementing its Non-Discrimination policy, it is requested that you furnish information regarding your personnel as requested below and return it to the City Department handling your contract.

ORGANIZATION: CAE SAILING CLUB

ADDRESS: 124 UNIVERSITY AVE. BERKELEY, CA 94710

BUSINESS LICENSE NO: 9902903

Occupational Category/ (see reverse side for explanation of terms)	Total Employees		WHITE		BLACK		ASIAN		HISPANIC		OTHER (SPECIFY)	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Officials/Administrators												
Professionals												
Technicians												
Protective Service Workers												
Para-professionals												
Office/Clerical												
Skilled Craft Workers												
Service/Maintenance	2	4	2	2								
Other (Specify)												
Totals												

Is your business MB/MBE/DBE certified?

Yes

No

If yes, by what agency?

If yes, please specify:

Male

Yes

Female

No

or indicate ethnic identification

Do you have a policy of non-discrimination?

Yes

No

or indicate ethnic identification

Signed:



Date: 1/29/07

Verified by:

City of Berkeley Contract Compliance Officer

Date:

Occupational Categories

Officials and Administrators - Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy superintendents, unit supervisors and kindred workers.

Professionals - Occupations that require specialized and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dietitians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, and kindred workers.

Technicians - Occupations that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences) and kindred workers.

Protective Service Workers - Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police officers, fire fighters, guards, sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

Para-Professionals - Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of a staff development and promotion under a "New Careers" concept. Includes: library assistants, research assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemaker aides, home health aides, and kindred workers.

Office and Clerical - Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearings reporters, statistical clerks, dispatchers, license distributors, payroll clerks, and kindred workers.

Skilled Craft Workers - Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairpersons, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters, and kindred workers.

Service/Maintenance - Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundskeepers, refuse collectors, and construction laborers.

**CITY OF BERKELEY
NUCLEAR FREE ZONE DISCLOSURE FORM**

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, this disclosure form may be signed by more than one individual, if a description of which type of contracts each individual is cognizant is attached.)

2. I (we) understand that section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.

3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code section 12.90.130:

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).

4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

I (we) declare under penalty of perjury of the laws of the state of California that the foregoing is true and correct.

Signed:  Date: 11/29/07

Printed Name & Title: ALLAN CHAMPION, Commodore

Company: CAL SAILING CLUB

To be completed by Contractor/Vendor

Form EBO-1
CITY OF BERKELEY



CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

If you are a **contractor**, return this form to the originating department/project manager. If you are a **vendor** (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Name: CAL SAILING CLUB	Vendor No.:
Address: 124 UNIVERSITY AVE	City: BERKELEY State: CA ZIP: 94710
Contact Person: ALLAN CHAMPION OR CURRENT COMMODORE	Telephone: NONE
E-mail Address: COMMODORE@CAL-SAILING.ORG	Fax No.: NONE

SECTION 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.
 Yes No (If "Yes," proceed to Section 5; if "No," continue to the next question.)
- B. Does your company provide (or make available at the employees' expense) any employee benefits?
 Yes No
 If "Yes," continue to Question C.
 If "No," proceed to Section 5. (The EBO is not applicable to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee? Yes No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee? Yes No
If you answered "No" to both Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.)
If you answered "Yes" to both Questions C and D, please continue to Question E.
If you answered "Yes" to Question C and "No" to Question D, please continue to Section 3.
- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee? Yes No
If you answered "Yes," proceed to Section 4. (You are in compliance with the EBO.)
If you answered "No," continue to Section 3.

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
- By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor submits evidence of taking reasonable measures to comply with the EBO; or
 - At such time that administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure, not to exceed three months; or
 - Upon expiration of the contractor's current collective bargaining agreement(s).
- B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent? Yes No

* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

SECTION 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

SECTION 5. CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this 29th day of JANUARY, in the year 2007, at CASTRO VALLEY, CA
(City) (State)

ALLAN CHAMPION
Name (please print)

[Signature]
Signature

COMMODORE
Title

94-173515
Federal ID or Social Security Number

FOR CITY OF BERKELEY USE ONLY

- Non-Compliant (The City may not do business with this contractor/vendor)
- One-Person Contractor/Vendor Full Compliance Reasonable Measures
- Provisional Compliance Category, Full Compliance by Date: _____

Staff Name (Sign and Print): W. Foley William Foley Date: 2/5/07

CITY OF BERKELEY
Oppressive States Compliance Statement for Personal Services

The undersigned, an authorized agent of SAC SAILING CLUB (hereafter "Contractor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S (hereafter "Resolution"). Contractor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Contractor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association, or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

"Oppressive State" means: 1) **Tibet Autonomous Region and the Provinces of Abo, Kham, and U-Tsang.**

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract, it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Contractor further understands and agrees that Contractor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Contractor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Contractor's business structure and the geographic extent of its operations. By executing this Statement, Contractor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Contractor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: ALLAN CHAMPION Title: COMMODORE

Signed:  Date: 1/29/07

Business Entity:

Contract description/Specification No.:

I am unable to execute this Statement; however, Contractor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Contractor cannot comply and the basis for any requested exemption.

Signed: _____ Date: _____

CITY OF BERKELEY

Living Wage Certification for Lessees Of Public Property, Licensees, Concessionaires, And Franchisees

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that lessees of public property, licensees, concessionaires, and franchisees ("user of public property" or "user") shall comply with all provisions of this Ordinance. The LWO requires a user of public property to provide City-mandated minimum compensation to all eligible employees, as defined in the LWO. In order to determine whether this lease, license, concession or franchise ("agreement") is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those agreements where the user generates a certain amount of annual gross receipts. Non-profit organizations should look to their operating budget to determine whether this threshold has been reached. In addition, the agreement may become subject to the LWO if the status of the user's employees change (i.e. additional employees are hired) or the annual gross receipts meet the threshold level, so that user falls within the scope of the Ordinance.

Section I.

1. PLEASE ANSWER THE FOLLOWING QUESTIONS

a. Do you generate \$350,000 or more in annual gross receipts?
YES _____ NO

If no, this agreement is NOT subject to the requirements of the LWO at this time, and you may continue to Section II. If yes, please continue to question 1(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?
YES _____ NO

If you have answered, "YES" to questions 1(a) and 1(b) this agreement IS subject to the LWO. If you responded "NO" to 1(b) this agreement IS NOT subject to the LWO. Please continue to Section II.

Section II

Please read, complete, and sign the following:

THIS AGREEMENT IS SUBJECT TO THE LIVING WAGE ORDINANCE.

THIS AGREEMENT IS NOT SUBJECT TO THE LIVING WAGE ORDINANCE.

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, as indicated above, and the applicability of the subject agreement. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the agreement, the answers to the questions posed herein change so that user would be subject to the LWO, user will promptly notify the City Manager in writing. User further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the agreement as it applies to the LWO, shall constitute a default of the agreement and the City Manager may terminate the agreement and bar user from future agreements with the City for five (5) years from the effective date of the agreement termination. If the LWO is applicable to this agreement, the user must pay a living wage to all employees who spend 25% or more of their compensated time on the leased property, or engaged in work directly related to the license, concession or franchise.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: ALAN CHAMPION Title: COMMODORE

Signature: [Handwritten Signature] Date: 1/29/07

Business Entity: CAL SAILING CLUB

Agreement Description/Specification No: _____

Section III

• ** FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY ** •

I have reviewed this Living Wage Certification form, and determined that this Agreement IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

Public Works
Department Name

William Foley
Department Representative