



Office of the City Manager

CONSENT CALENDAR  
May 12, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services

Subject: Dorothy Day House License Agreements: Veterans Memorial Building and Old City Hall

RECOMMENDATION

Adopt first reading of two ordinances authorizing the City Manager or her designee to execute license agreements and any amendments thereto with Dorothy Day House to provide services at the Veterans' Memorial Building at 1931 Center Street and the Old City Hall at 2134 Martin Luther King Jr. Way.

FISCAL IMPACTS OF RECOMMENDATION

A license fee is required for each license agreement and staff proposes continuing the collection of a nominal license fee of \$100 annually. This fee reflects no increase to the amount that the organizations are currently paying. While the proposed amount is minimal, it will help defray some administrative costs. A total of \$200 in annual license fees is proposed, inclusive of both buildings. These funds will be deposited into Revenue Fund 011-33-324-342-0000-000-000-461230.

CURRENT SITUATION AND ITS EFFECTS

License agreements are needed between the City and Dorothy Day House to continue occupancy of the buildings. Dorothy Day House continues to utilize the kitchen to prepare meals for its homeless community. Since October 2018, DDH has operated a nightly homeless shelter in the Veterans Memorial Building basement. Since November 30, 2018, it has also operated the Berkeley Emergency Storm Shelter (BESS) at Old City Hall on nights when inclement weather is forecast.

BACKGROUND

Dorothy Day House provides homeless services from the Veterans Memorial Building and the Old City Hall. The proposed license agreements are written with terms on a month-to-month basis, which gives the City the ability to terminate the agreements with 30 days' notice. The building may be a potential hazard in a seismic event and the City may wish to vacate, at some future date, all licensees at the same time 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 naming the City of Berkeley as an additional insured are needed. In addition to

insurance and indemnification, the City may use the license agreements to organize and compel occupants to participate in other building related matters such as recycling, janitorial, and maintenance, and specific security measures.

The services Dorothy Day House provides are free to the user, and as such, generate very little regular income. The limited leveraged funds that are received are used to deliver services. Taking into account the limited revenue, staff proposes no increase in the nominal charge of \$100 per year.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

Dorothy Day House has expanded its services to provide shelter in both the Veteran's Building and Old City Hall. Executing new license agreements ensures information is current and that the terms of use, fee collection, insurance, indemnification, and other City contract requirements are up to date.

#### 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 would result in a financial burden for the non-profits that occupy the building.

#### CONTACT PERSON

Wing Wong, Community Services Specialist, HHCS, 981-5428

#### Attachments:

- 1: Ordinance: License Agreement for 1931 Center Street for Dorothy Day House  
Exhibit A: License Agreement for the Veterans Memorial Building
- 2: Ordinance: License Agreement for 2134 Martin Luther King Jr. Way for Dorothy Day House  
Exhibit A: License Agreement for the Old City Hall

ORDINANCE NO. -N.S.

AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXECUTE A LICENSE AGREEMENT AND ANY NECESSARY AMENDMENTS WITH DOROTHY DAY HOUSE FOR REAL PROPERTY LOCATED AT 1931 CENTER STREET

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

Section 1. The City Council finds as follows:

- a. In June 2020, City Council allocated \$565,963 for fiscal year 2020 to Dorothy Day House's shelter program. Dorothy Day House has an existing contract (Contract No. 22000510) with the City of Berkeley and has been providing drop-in and shelter services continually since July 1, 2019; and
- b. In June 2018 as part of the biennial budget process, City Council allocated \$400,000 for fiscal year 2019 to Dorothy Day House to continue to operate the expanded winter shelter every night; and
- c. Dorothy Day House operated the winter shelter at the North Berkeley Senior Center (NBSC) at 1901 Hearst Avenue and must be relocated due to site closure; and
- d. The basement at 1931 Center Street allows Dorothy Day House to operate the expanded winter shelter, on a continuous basis; and

Section 2. The City Manager or her designee is hereby authorized to enter into a license agreement and necessary amendments starting July 1, 2019 with Dorothy Day House for real property located at 1931 Center Street, which property is more specifically described in the property description attached to the proposed lease as Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## LICENSE AGREEMENT

This AGREEMENT is entered into on July 1, 2019 by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("City") and DOROTHY DAY HOUSE ("Licensee"), a non-profit corporation under the laws of the State of California, who agree as follows doing business at P.O. Box 12701, Berkeley, CA 94712 who agrees 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 (hereinafter "the Premises"), 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 overnight shelter services to single individuals aged 18 or older in Berkeley seven (7) nights per week.
- c. This License is granted for the purpose of providing drop-in services to single individuals aged 18 or older in Berkeley seven (7) days per week from 8 a.m. to 4:30 p.m.
- d. This License is granted for the purpose of preparing food in the 1931 Center Street basement kitchen for the drop-in services and shelter seven (7) days and nights per week to the participants of the programs in the 1931 Center Street basement.

### 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 with 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 party if the other party has substantially failed to fulfill any of its obligations under this License in a timely manner.

### 3. LICENSE FEE

In consideration of the rights conveyed by this License, Licensee shall pay to City \$100.00 (ONE HUNDRED DOLLARS) per year which shall be due and payable 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:

Real Property Division  
Public Works Department  
1947 Center Street, 4th F.  
Berkeley, CA 94704

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

David Stegman, Executive Director  
Dorothy Day House  
P.O. Box 12701  
Berkeley, CA 94712

**5. GENERAL OCCUPANCY RULES AND REGULATIONS**

- a. City may waive any one or more of the occupancy rules or regulations contained in this License Agreement for the benefit of any particular licensee or licensees, but no waiver by City shall 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 right at any time to change or rescind any one or more of the rules and regulations or to make additional reasonable rules and regulations that, in City's judgment, may be necessary for:
  1. Management, safety, care and cleanliness of the premises, building and real property; and
  11. Preservation of good order; and
  111. Convenience of other occupants and licensees in the premises, building and real property.

**6. PARKING**

City will permit Licensee to access on a temporary basis two parking spaces (#5 and #11) in the parking lot at the rear of the Premises. Access to the parking space is not guaranteed for the term of this License or for any specified term and may be withdrawn at any time within the sole discretion of City. Licensee's access

to and use of the parking space and any portion of the parking lot is subject to all the terms and conditions of Paragraph 16 (Indemnity) and Paragraph 17 (Insurance) as shown on Exhibit C.

**7. HEALTH, SAFETY AND ACCESSIBILITY (Applicable to licensees described below)**

Dorothy Day House (DDH) shall comply with the [Alameda County Emergency Shelter Standards for Year-Round Shelters](#).

**8. MAINTENANCE AND ALTERATIONS**

Licensee shall maintain the Premises 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 Agreement, Licensee shall, at its own cost, remove any equipment or materials installed by Licensee and shall surrender the Premises to City in the same condition as at the commencement of the License with the exception of regular wear and tear. Licensee shall reimburse the City for any expenses incurred by the City for any damage to the Premises resulting solely from Licensee's use of the Premises.

- a. Licensee shall not construct or place any facilities on the Premises or the Property, or install any equipment on the Premises or the Property, or make any alterations or improvements to the Premises or the Property, without the City's prior written consent.
- b. The City shall be responsible for the payment of water, gas, electricity, trash collection, water and sewer utilities and other services delivered to the premises. Licensee shall pay the City a fee as provided in Section 3 above. Licensee shall be directly responsible for paying fees for other services, such as internet and phone.
- c. 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 without the prior written consent of the City. Material visible outside the building will not be permitted.
- d. Licensee acknowledges that the City does not currently have and is not likely to have in the future sufficient funding to improve, retrofit, refurbish or maintain the Property and Licensee agrees to accept the Premises in their "as is" condition.
- e. 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.

- f. Licensee shall conduct business in a manner that will not cause damage to the building or property including but not limited to not overloading the circuits, inappropriate use of extension cords, and exceeding maximum weight onstage and any other floor area.

## 9. **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 the building and 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 must have access to all space in the building in the event of an emergency.

Courtyard: Dorothy Day House (DDH) staff will open the gate at 7:30 a.m. and close the gate at 4:30 p.m. During this time, DDH will oversee guests in the courtyard and will be responsible for responding appropriately when unsafe behavior by clients on the premises threatens the safety of the building or the general public. DDH will monitor shelter participant use of courtyard as well.

Parking Lot: Dorothy Day House (DDH) staff will patrol the parking lot area and will be responsible for responding appropriately when unsafe behavior by clients on the premises threatens the safety of the building or the general public.

- c. Front Steps: DDH staff will ensure security of the front steps jointly daily and keep an activity log.

## 10. **MAINTENANCE**

**Dorothy Day House** is responsible for the maintenance, operation, and safety of the building. This includes being responsible for repairing damage or system failures caused by the tenant or any person(s) or client(s) the tenant has allowed on the Premises.

Tenant responsibilities include, but are not limited to:

- Bed bug treatment and pest treatment
- Clearing/repair of clogged drains limited to 25 feet;
- Replacement of light bulbs accessible with a household step ladder, including the light bulb supply;

- Grease trap maintenance
- Sanitary installations, fixtures and fittings (such as Tampon dispenser, soap dispenser, faucet, shower valve and clogged sink, etc.);
- Replacement and/or repairs of all appliances including kitchen and bathroom fixtures such as refrigerators and stoves;
- Repair and/or replacement of walls, doors and windows damaged by the tenants and/or their clients/customers;
- Prevention of excessive moisture and condensation of which could result in mold;
- Taking sensible precautions to prevent damage to the building and its contents;
- Responding appropriately to unsafe behaviors that occur on the Premises including the front steps, courtyard and parking lot; and
- Providing all janitorial services.

**Public Works Department** will perform and/or delegate to third party to perform the following maintenance work:

- Pest control – Contract with Pest Control Company to manage rodent bait stations – monthly service
- Alarm system: Fire sprinkler and alarm testing, maintenance and repair;
- HVAC System
- Mechanical and electrical maintenance and system repair
- Replacement of light bulbs/lamps requiring a ladder or lift, including light bulb/lamp supply;
- Repair of the boiler and heater(s), and hot water system repairs(located in the steam pipe between the boiler and radiators) due to system failure;
- Repair of bathroom and other ventilation fans;
- Water leak or pipe rupture due to plumbing system failure (located in the pipe between the water meter to the stop valve at each fixture);
- Annual kitchen fire suppression system testing, maintenance and repair
- Any other preventive maintenance services

**Procedure for Service Calls:**

- 1) If emergency – major system failure, call 311, 7 days a week
- 2) If not, wait until Monday a.m. and call 311

DDH to submit request via 311 for PW maintenance work. PW will respond within 72 hours and/or come out to assess to decide next step and who is responsible for follow up based on the responsibilities listed above.

**11. USE OF SHARED SPACE**

- a. Use of the kitchen will be exclusively for Dorothy Day House (DDH). Any DDH volunteers must be under supervision by a team leader.



- b. DDH team leaders will have access to the kitchen throughout the day in order to clean and receive deliveries;
- 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-served basis during all vacant periods.
- d. Two parking space in the parking lot behind the building shall be assigned Licensee.

**12. NO SMOKING**

- a. Pursuant to Berkeley Municipal Code (BMC) ch. 12.70, no smoking is allowed in public places. This prohibition 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 permitted in the parking lot or courtyard at 1931 Center Street.

**13. ENVIRONMENTAL**

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 programs, 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.

**14. 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 and with reasonable notice, 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.

**15. ASSIGNMENT AND SUBLICENSING PROHIBITED**

The License is personal to Licensee. Notwithstanding references to assignees and/or sublicensees elsewhere in this License Agreement, 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 any attempt to assign or sublicense this License shall terminate it.

**16. INDEMNIFICATION**

- a. To the fullest extent permitted by law, Licensee shall (1) immediately defend and (2) indemnify Landlord, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the License. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Licensee's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.
- b. The duty to defend is a separate and distinct obligation from the Licensee's duty to indemnify. The Licensee shall be obligated to defend, in

all legal, equitable, administrative, or special proceedings, with counsel approved by the Landlord, the Landlord and its directors, officers, and employees, immediately upon submittal to the Licensee of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Licensee from its separate and distinct obligation to defend Landlord. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Licensee asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Licensee may submit a claim to the Landlord for reimbursement of reasonable attorneys' fees and defense costs.

- c. The review, acceptance or approval of any of Licensee's work or work product by any indemnified party shall not affect, relieve or reduce the Licensee's indemnification or defense obligations. This Section survives the termination of this License. The provisions of this Section are not limited by and do not affect the provisions of this License relating to insurance.
- d. Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Licensee or any of the Licensee's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Licensee or its subcontractors, the Licensee shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.
- e. 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 conditions of the premises "as is."
- f. 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, AND 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 RESULTING FROM AN EARTHQUAKE.

**17. INSURANCE**

- a. Licensee at its cost shall maintain commercial general liability and property damage insurance with a single combined liability limit of \$2,000,000.00 and property damage limits of not less than \$100,000.00 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 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  
Public Works Department  
1947 Center Street, 4th Flr.  
Berkeley, CA 94704

**18. 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.

**19. 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.

**20. 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, EE0-1 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.

**21. 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.

**22. 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:
  - 1. The governing regime in any Oppressive State.
  - 11. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
  - 111. 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.

**23. 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 or full-time 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. 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 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.

#### **24. 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.

**25. 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.

**26. NUCLEAR FREE BERKELEY**

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

**27. SANCTUARY CITY CONTRACTING**

Licensee agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Licensee agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein.

- a. "Data Broker" means either of the following:
  - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies; or

- ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include the City's computer-network health and performance tools.

**28. 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.

**29. 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.

**30. 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.

**31. 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.

**32. 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.

**33. CITY BUSINESS LICENSE; PAYMENT OF TAXES. TAX I.D. NUMBER**

- a. 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 is correct.

**34. 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.

**35. 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

Dorothy Day House By: \_\_\_\_\_  
David Stegman  
Executive Director

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: \_\_\_\_\_

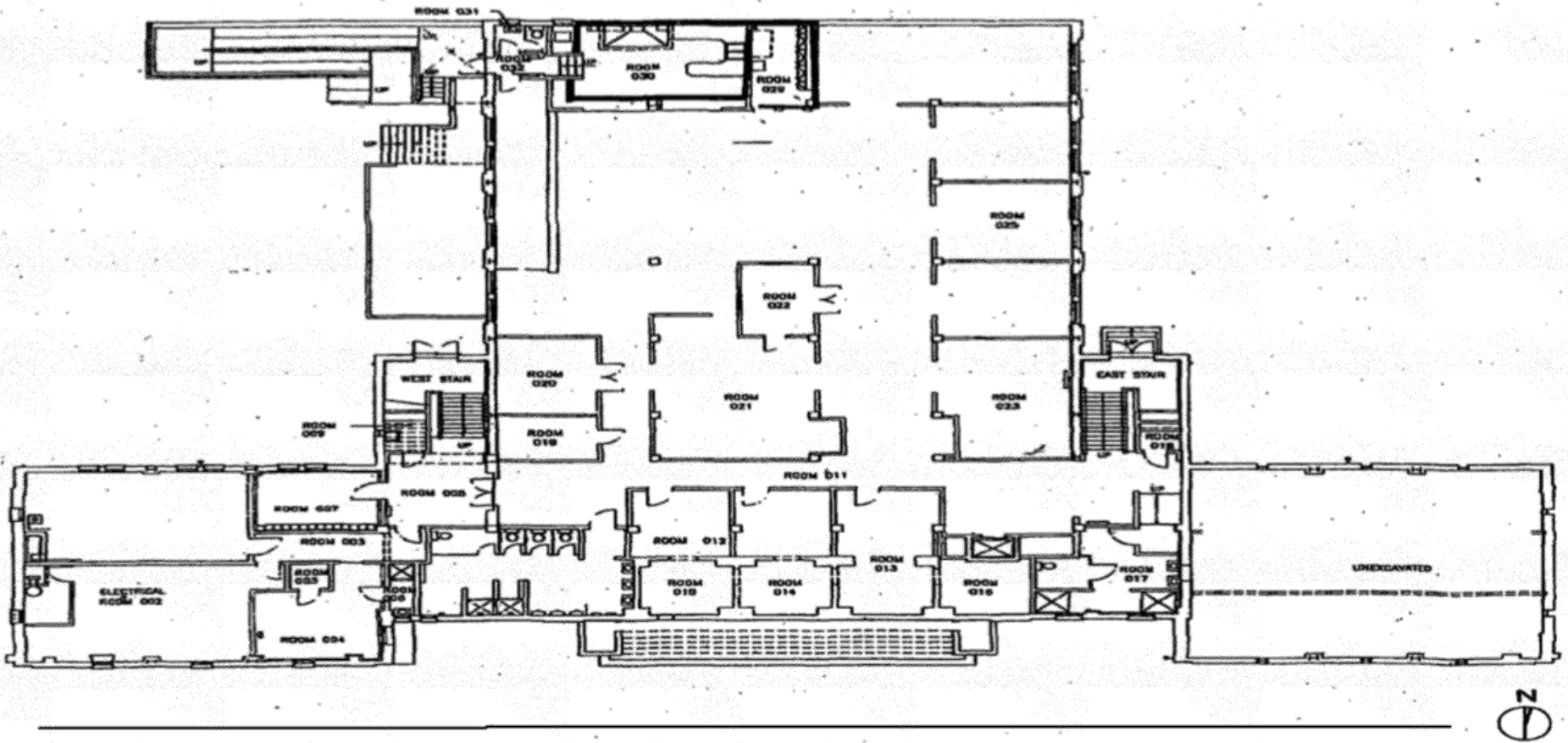
Certified Disadvantaged Business  
Enterprise: Yes: \_\_\_\_\_ No: \_\_\_\_\_

EXHIBIT A  
PROPERTY DESCRIPTION

Dorothy Day House has use of rooms 004, 007, 015, 016, 017, 018, 019 in the basement

Dorothy Day House's Drop In Center has use of all available floor space and rooms 012, 020 in the basement during the hours of 8 a.m. to 5 p.m.

Dorothy Day House's Shelter has use of all available floor space and office space 011, 013, 014, 029, 030 in the basement during the hours of 5 p.m. to 8 a.m. daily, and has exclusive\_ use of the shelter bays (rooms 023 through 027, inclusive), and the kitchen (rooms 029 and 030). (See plan below for details)



**EXHIBITB**

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.



EXHIBIT C

## 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

No member of the public may remain on the exterior steps or exterior grounds<sup>1</sup> 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."<sup>2</sup> (See following text of BMC 13.36)

"Exterior grounds" means the area between the outer building facade 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 t-he- City-only leases a portion of a building, this rule still applies

## 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)

## 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. Educate employees about recycling procedures.
  - e. Cooperate fully to make recyclables available for collection.
  - f. 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

## MEMORANDUM

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! 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.

For more information, please contact Neal De Snoo of the Energy

ORDINANCE NO. -N.S.

AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXECUTE A LICENSE AGREEMENT AND ANY NECESSARY AMENDMENTS WITH DOROTHY DAY HOUSE FOR REAL PROPERTY LOCATED AT 2134 MARTIN LUTHER KING JR. WAY

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

Section 1. The City Council finds as follows:

- a. In June 2019, City Council allocated \$30,101 for fiscal year 2020 to Dorothy Day House to operate the Berkeley Emergency Storm Shelter (BESS). Dorothy Day House has an existing contract (Contract No. 22000510) with the City of Berkeley and has been providing these services continually since November 1, 2019; and
- b. In June 2018 as part of the biennial budget process, City Council allocated \$30,101 for fiscal year 2019 to Dorothy Day House to operate the Berkeley Emergency Storm Shelter (BESS) on cold and rainy nights only for up to 40 people for 45 nights; and
- c. At its November 27, 2018 City Council meeting, City Council authorized the repurpose of the Old City Hall building for a temporary Emergency Storm Shelter; and
- d. At its December 3, 2019 City Council meeting, City Council allocated additional \$60,000 for fiscal year 2020 to Dorothy Day House to operate Berkeley Emergency Storm Shelter (BESS), on a continuous basis through June 30, 2020; and

Section 2. The City Manager or her designee is hereby authorized to enter into a license agreement and necessary amendments starting November 1, 2019 with Dorothy Day House for real property located at 2134 Martin Luther King Jr. Way, which property is more specifically described in the property description attached to the proposed lease as Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## LICENSE AGREEMENT

This AGREEMENT is entered into on November 1, 2019 by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("City") and DOROTHY DAY HOUSE ("Licensee"), a non-profit corporation under the laws of the State of California, who agree as follows doing business at P.O. Box 12701, Berkeley, CA 94712 who agrees 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 2134 Martin Luther King Jr. Way in Berkeley, County of Alameda, State of California ("the Property") shown on Exhibit A (hereinafter "the Premises"), 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. The License is subject to all the conditions and requirements listed in the Building Permit Application # B2019-05326.
- c. This License is granted for the purpose of providing Berkeley Emergency Storm Shelter services to single individuals aged 18 or older in Berkeley on nights when inclement weather is forecast.

### 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 with 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 party if the other party has substantially failed to fulfill any of its obligations under this License in a timely manner.

### 3. **LICENSE FEE**

In consideration of the rights conveyed by this License, Licensee shall pay to City \$100.00 (ONE HUNDRED DOLLARS) per year which shall be due and payable 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:

Real Property Division  
Public Works Department  
1947 Center Street, 4<sup>th</sup> Flr.  
Berkeley, CA 94704

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

David Stegman Executive Director  
Dorothy Day House  
P.O. Box 12701  
Berkeley, CA 94712

**5. GENERAL OCCUPANCY RULES AND REGULATIONS**

- a. City may waive any one or more of the occupancy rules or regulations contained in this License Agreement for the benefit of any particular licensee or licensees, but no waiver by City shall 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 right at any time to change or rescind any one or more of the rules and regulations or to make additional reasonable rules and regulations that, in City's judgment, may be necessary for:
  1. Management, safety, care and cleanliness of the premises, building and real property; and
  11. Preservation of good order; and
  111. Convenience of other occupants and licensees in the premises, building and real property.

**6. PARKING**

The Licensee will not have any to parking at this site.

**7. HEALTH, SAFETY AND ACCESSIBILITY (Applicable to licensees described below)**

Dorothy Day House (DDH) shall comply with the Alameda County-Wide Homeless Continuum of Care Health, Safety and Accessibility Standards for Shelter Facilities in Alameda County.



**8. MAINTENANCE AND ALTERATIONS**

Licensee shall maintain the Premises 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 Agreement, Licensee shall, at its own cost, remove any equipment or materials installed by Licensee and shall surrender the Premises to City in the same condition as at the commencement of the License with the exception of regular wear and tear. Licensee shall reimburse the City for any expenses incurred by the City for any damage to the Premises resulting solely from Licensee's use of the Premises.

- a. Licensee shall not construct or place any facilities on the Premises or the Property, or install any equipment on the Premises or the Property, or make any alterations or improvements to the Premises or the Property, without the City's prior written consent.
- b. The City shall provide janitorial services in the restrooms and all common areas.
- c. The City shall be responsible for the payment of water, gas, electricity, trash collection/maintenance, water and sewer utilities and other services delivered to the premises. Licensee shall pay the City a fee as provided in Section 3 above. Licensee shall be directly responsible for paying fees for other services, such as internet and phone.
- d. 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 without the prior written consent of the City. Material visible outside the building will not be permitted.
- e. Licensee acknowledges that the City does not currently have and is not likely to have in the future sufficient funding to improve, retrofit, refurbish or maintain the Property and Licensee agrees to accept the Premises in their "as is" condition.
- 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 not overloading the circuits, inappropriate use of extension cords, and exceeding maximum weight onstage and any other floor area,

**9. 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 the building and 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 must have access to all space in the building in the event of an emergency.

Dorothy Day House will be responsible for responding appropriately when unsafe behavior by clients on the premises threatens the safety of the building or the general public. DDH will monitor the area nightly at 7 p.m.

**Shelter Schedule:**

7 p.m. – 7 a.m. when it meets the weather requirements

Front Steps: Dorothy Day House staff will ensure security of the front steps daily and keep an activity log.

**10. MAINTENANCE**

Dorothy Day House will maintain the bathrooms and the hallway and office space on nights when the shelter is operating. The following morning it will clean and restock the restrooms, clean and mop the sleeping areas and clean and stack the mats.

Public Works will perform and/or delegate to third party to perform the following maintenance:

- Pest control
- Janitorial services
- Deep cleaning
- Alarm system
- HVAC system
- Mechanical and electrical maintenance
- Any other preventive maintenance services

**11. USE OF SHARED SPACE**

Dorothy Day House will operate the shelter on nights when inclement weather forecast. It will maintain the sleeping area in a way that Berkeley Community Media staff and visitors can continue to access its office space on the main floor.

**12. NO SMOKING**

- a. Pursuant to Berkeley Municipal Code (BMC) ch. 12.70, no smoking is allowed in public places. This prohibition 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 permitted in the parking lot or courtyard at 1931 Center Street.

**13. ENVIRONMENTAL**

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:

- a. Assign someone to be in charge of its recycling programs, 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.

**14. 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 and with reasonable notice, 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.

**15. ASSIGNMENT AND SUBLICENSING PROHIBITED**

The License is personal to Licensee. Notwithstanding references to assignees and/or sublicensees elsewhere in this License Agreement, 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 any attempt to assign or sublicense this License shall terminate it.

**16. INDEMNIFICATION**

- a. To the fullest extent permitted by law, Licensee shall (1) immediately defend and (2) indemnify Landlord, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the License. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Licensee's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.
- b. The duty to defend is a separate and distinct obligation from the Licensee's duty to indemnify. The Licensee shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Landlord, the Landlord and its directors, officers, and employees, immediately upon submittal to the Licensee of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Licensee from its separate and distinct obligation to defend Landlord. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Licensee asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Licensee may submit a claim to the Landlord for reimbursement of reasonable attorneys' fees and defense costs.
- c. The review, acceptance or approval of any of Licensee's work or work product by any indemnified party shall not affect, relieve or reduce the Licensee's indemnification or defense obligations. This Section survives the termination

of this License. The provisions of this Section are not limited by and do not affect the provisions of this License relating to insurance.

- d. Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Licensee or any of the Licensee's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Licensee or its subcontractors, the Licensee shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.
- e. 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 conditions of the premises "as is."
- f. 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, AND 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 RESULTING FROM AN EARTHQUAKE.

## 17. **INSURANCE**

- a. Licensee at its cost shall maintain commercial general liability and property damage insurance with a single combined liability limit of **\$2,000,000.00** and property damage limits of not less than **\$100,000.00** 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 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  
Public Works Department  
1947 Center Street, 4<sup>th</sup> Fl.  
Berkeley, CA 94704

**18. 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.

**19. 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 O"fl acts and those of its agents and employees.

**20. 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.

**21. 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.

**22. 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:
  - 1. The governing regime in any Oppressive State.
  - 11. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
  - 111. 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.

**23. 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 or full-time 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. 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 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.

#### **24. 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.

**25. 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.

**26. NUCLEAR FREE BERKELEY**

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

**27. SANCTUARY CITY ORDINANCE**

Licensee agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Licensee agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein.

- a. "Data Broker" means either of the following:

- i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies; or
  - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include the City's computer-network health and performance tools.

**28. 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.

**29. 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.

**30. 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.

**31. 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.

**32. 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.

**33. 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 is correct.

**34. 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.

**35. 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

Dorothy Day House By: \_\_\_\_\_  
David Stegman  
Executive Director

Tax Identification No. \_\_\_\_\_

Berkeley Business License No. \_\_\_\_\_

Incorporated: Yes \_\_\_\_\_ No \_\_\_\_\_

Certified Woman Business Enterprise:  
Yes: \_\_\_\_\_ No: \_\_\_\_\_

Certified Minority Business Enterprise:  
Yes: \_\_\_\_\_ No: \_\_\_\_\_

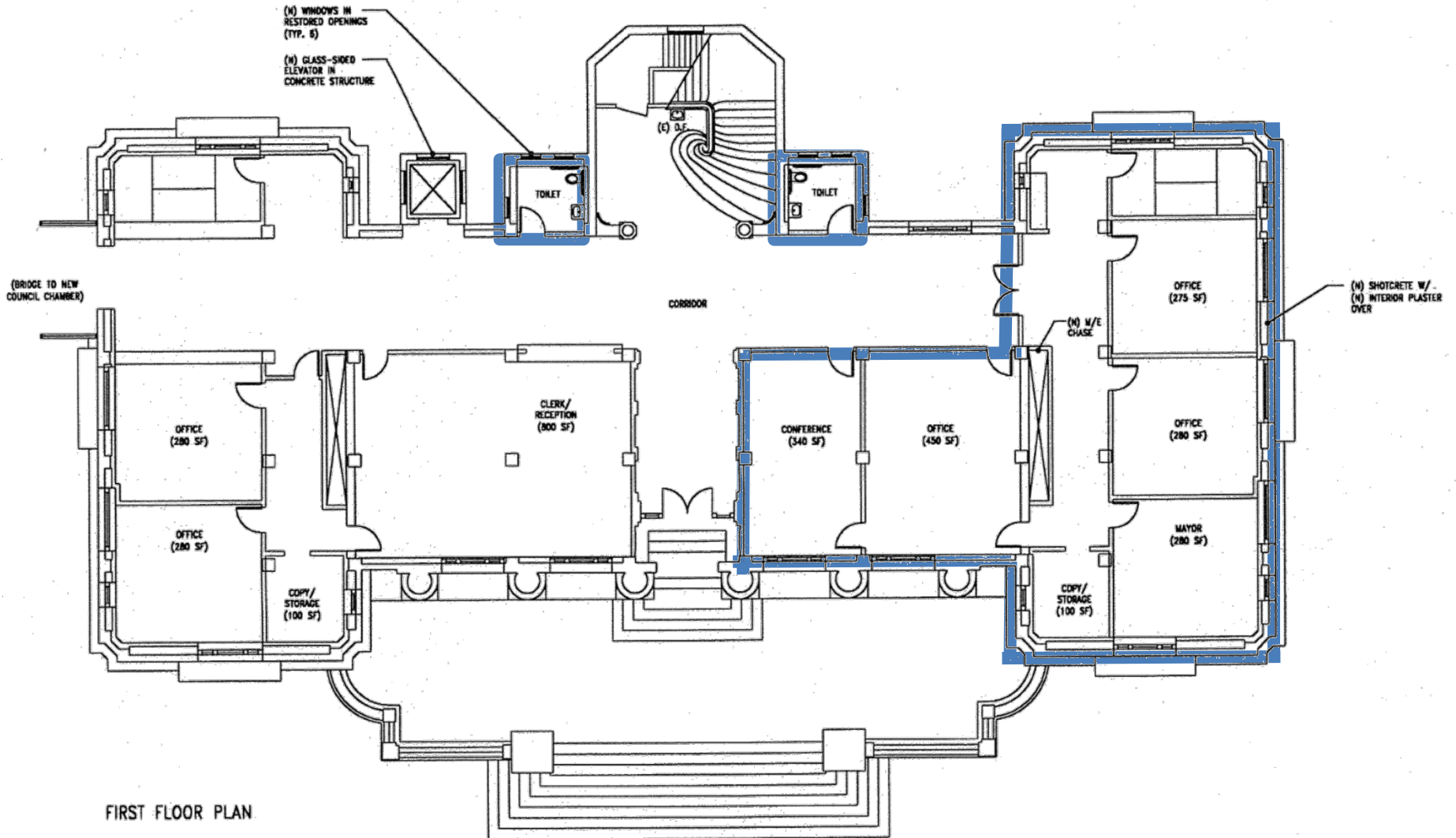
If yes, state ethnicity: \_\_\_\_\_

Certified Disadvantaged Business  
Enterprise: Yes: \_\_\_\_\_ No: \_\_\_\_\_

EXHIBIT A

PROPERTY DESCRIPTION

Dorothy Day House's Berkeley Emergency Storm Shelter (BESS) has use of the North Wing office and conference spaces, and restrooms. (See plan below for details)



FIRST FLOOR PLAN

1/16"=1'-0"

**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.

## 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

No member of the public may remain on the exterior steps or exterior grounds 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)

"Exterior grounds" means the area between the outer building facade 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.

## 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)

## 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.
  - e.
  - f. Standard Rates:
  - g. There is no charge for recycling services for bottles/cans, papers and cardboard.
  - h. 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

**MEMORANDUM**

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! 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.

For more information, please contact Neal De Snoo of the Energy

