

ORDINANCE NO. 7,614-N.S.

LICENSE AGREEMENT WITH BERKELEY COMMUNITY MEDIA FOR STORAGE AT  
2134 MARTIN LUTHER KING, JR. WAY

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

Section 1. The City Manager, or her designee, is hereby authorized to execute a license agreement with Berkeley Community Media to use City property at 2134 Martin Luther King, Jr. Way for one year and subject to future extensions by the City Manager. The license shall be substantially in the form attached hereto as Exhibit "A".

Section 2. All revenue from said license agreement shall be deposited in the General Fund.

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

At a regular meeting of the Council of the City of Berkeley held on June 26, 2018, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

## LICENSE AGREEMENT

This AGREEMENT is entered into by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California (“City”) and Berkeley Community Media (“Licensee”), 1528 Walnut Street, #3, Berkeley, CA 94709.

### 1. LICENSE

City hereby grants a license to Licensee, subject to all the terms and conditions herein, for the non-exclusive use of a portion of the City’s property, known as The Maudelle Shirek Building (Old City Hall), located at 2134 Martin Luther King, Jr. Way, Berkeley, California, specifically the South Wing of the first floor level and the room at the Northeast corner of the basement level as shown on the map attached hereto as Exhibit A and made a part hereof (hereinafter “the Premises”).

a. Licensee is a public access broadcast production entity and this License is granted for the purpose of placement of the broadcast infrastructure required for the broadcast of public meetings and for the storage of broadcast equipment, office furniture, and technical inventory, as further described in Exhibit B, attached hereto and made a part hereof. In the event Licensee fails to use the Premises for such purposes, or uses the Premises for any unauthorized purpose, City may, in its sole discretion, terminate this License.

### 2. TERM

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

a. The Initial License Term will expire at midnight on May 31, 2019. Each twelve (12) month period that ends on May 31st shall be considered a “License Year” and the first (“1<sup>st</sup>”) License Year shall be the period from the Effective Date until May 31, 2019.

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

c. The City Manager reserves and has the sole authority to extend the License Term beyond May 31, 2019. The City Manager shall give notice of the decision to extend or not extend 90 days prior to the end of the term.

d. If, after the option period described in 2.c. above expires, Licensee continues in possession and the City does not object, all provisions of the License shall continue in effect, with the following exceptions: 1) the new agreement shall be on a month-to-month basis and shall be terminable by either party with at least thirty (30) days prior written notice.

### 3. RENT

Licensee shall pay to City, on or before the first day of each month during the Term hereof, monthly rent of **ONE DOLLAR (\$1.00)**. If the term commences on other than the first

day of a calendar month or ends on other than the last day of a calendar month, Rent for such partial month shall be prorated on the basis of a 30-day month and paid on or before the first day of such month.

**4. NOTICES**

A written notice shall be deemed served upon mailing said notice to the other party and depositing 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:

Savita Chaudhary  
City of Berkeley  
Department of Information Technology  
2180 Milvia Street, 4<sup>th</sup> Floor  
Berkeley, CA 94704

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

Brian Scott  
Berkeley Community Media  
1528 Walnut Street, #3  
Berkeley, CA 94709

**5. MAINTENANCE AND ALTERATIONS**

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

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

**6. ACCESS AND ENTRY TO PREMISES BY OTHERS**

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

**7. USE OF PUBLIC PROPERTY**

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

b. Licensee agrees that except as otherwise provided in this License, it is not a covenant or condition of this License or of any other agreement with Licensee that City undertake or cause to be undertaken any development or redevelopment of the Premises or surrounding areas or any improvement thereto, and City shall incur no liability whatsoever to Licensee for failure to undertake such development or redevelopment.

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

d. City at all times shall have the sole and exclusive management and control of the Premises, including without limitation, the right to license or permit the use of space within the Premises and adjacent areas to persons for, including but not limited to, the sale/rental of merchandise and/or services and the right to permit advertising displays, educational/art displays, and promotional activities and entertainment.

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

f. City reserves to itself and the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Premises in locations that will not unreasonably interfere with Licensee's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Licensee shall be given reasonable notice before commencement of any work on the Premises. In the event the

installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, or to the Building, or other facilities located upon the Premises, the same shall be repaired by City at its expense, if not so repaired by the party installing and maintaining the line. City shall hold harmless and indemnify Licensee from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Licensee or its sub-licensees.

**8. UTILITIES AND SERVICE FEES**

City will provide and pay for utility service to the Premises, including electrical service, water, sewer, and refuse services.

**9. ASSIGNMENT AND SUBLICENSING PROHIBITED**

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

**10. INDEMNIFICATION**

a. To the fullest extent permitted by law, Licensee shall (1) immediately defend and (2) indemnify City, 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 City, the City 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 City. 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 City 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. LICENSEE ACKNOWLEDGES THAT 2134 MARIN LUTHER KING, JR. WAY HAS BEEN DEEMED TO BE UNSAFE AND SUBJECT TO SEVERE DAMAGE DURING ANY MAJOR EARTHQUAKE. LICENSEE OCCUPIES THE BUILDING AT ITS OWN RISK. LICENSEE HEREBY RELEASES AND DISCHARGES THE CITY OF BERKELEY AND ITS EMPLOYEES, AGENTS, CONTRACTORS FROM ALL ACTIONS, CLAIMS OR DEMANDS THAT LICENSEE, ITS HEIRS, GUARDIANS, AND LEGAL REPRESENTATIVES NOW HAVE OR MAY HAVE IN THE FUTURE FOR INJURY OR DAMAGE RESULTING FROM AN EARTHQUAKE.

## 11. INSURANCE

a. Licensee shall, at its sole option, elect to be self-insured or, at its sole cost and expense, maintain at all times during the performance of this license a commercial general liability insurance policy, or if legally self-insured, provide a certificate of coverage for general liability. The general liability policy or the certificate of coverage must provide minimum occurrence coverage in the amount of \$2,000,000 (Two Million Dollars). The commercial general liability insurance or certificate coverage shall name the City, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to City.

b. All insurance policies shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days' written notice to the City's Risk Manager; 2) be evidenced by the original Certificate of Insurance attached to the City's form endorsement or the insurance carrier's standard form endorsement evidencing the required coverage; and 3) be approved as to form and sufficiency by the Risk Manager.

c. If the commercial general liability 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 (5) years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this License.

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: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days' written notice to the City's Risk Manager; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Risk Manager.

**12. RISK OF LOSS**

Licensee bears all risk of loss under this License.

**13. CONFORMITY WITH LAW**

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

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

c. If a release of hazardous materials or hazardous waste occurs in connection with the performance of this License, Licensee shall immediately notify the Berkeley Police Department and the City's Toxics Management office.

d. Licensee shall not store hazardous materials or hazardous waste on the Premises without a proper permit from the City.

**14. INDEPENDENT CAPACITY**

For purposes of this License, and for the duration of this License, Licensee, including its agents and employees shall be, and are, an independent contractor and not an agent or employee of the City. Licensee has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all

persons assisting Licensee in the performance of this License. Licensee shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security, withholding, and all other regulations governing such matters, and shall be solely responsible for its own acts and those of its agents and employees.

**15. CITY NON-DISCRIMINATION ORDINANCE**

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

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

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

c. Licensee represents that it is subject to state and federal anti-discrimination laws, and maintains a policy of non-discrimination in admission, access, and treatment in its programs, activities, and employment, which fulfill the requirements of subdivision (a), above. Assuming, arguendo, that the requirements of Chapter 13.26 would otherwise apply, for purposes of this License the City agrees that the documentation contemplated in subdivision (b) will not be required of Licensee.

**16. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

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

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



**17. BERKELEY EQUAL BENEFITS ORDINANCE**

a. Licensee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Licensee is currently subject to the Berkeley Equal Benefits Ordinance, Licensee will be required to provide all eligible employees with City mandated equal benefits during the term of this 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.

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

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

**18. BERKELEY LIVING WAGE ORDINANCE**

Licensee agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance (LWO). 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 of Berkeley (City) mandated minimum compensation during the term of this License, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein.

a. Licensee shall be required to maintain all reasonable records and documents that would establish whether Licensee is subject to the LWO. If Licensee is subject to the LWO, as defined therein, Licensee shall be further required to maintain monthly records of those employees located on the Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the Premises, the hourly rate paid, and the amount paid by Licensee for health benefits, if any, for each of its employees providing services under the License. The records described in this paragraph shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Paragraph 23 herein.

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

c. If Licensee fails to comply with the requirements of the LWO and this License the City shall have the rights and remedies described in this Paragraph, in addition to any rights and remedies provided by law or equity. Licensee's failure to comply with this Paragraph shall constitute default of the License, upon which City may terminate this License pursuant to Paragraph 23.

d. 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 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 is not intended as a penalty of forfeiture for Licensee's breach.

## **20. OPPRESSIVE STATES**

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

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

For purposes of this License, the Tibet Autonomous Region and the provinces of Adu, Kham, and V-Tsang shall be deemed Oppressive States. Licensee's failure to comply with this paragraph shall constitute a default of this License and City may terminate this License. In the event that City terminates this License due to a default under this provision, City may deem Licensee a non-responsible bidder for five (5) years from the date this License is terminated

**21. CONFLICT OF INTEREST PROHIBITED**

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

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Licensee, or immediate family member of 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.

**22. DEFAULT**

The occurrence of any one of the following shall constitute an event of default on the part of Licensee:

- a. Failure to use the Premises as specified in Paragraphs 5 and 6;
- b. Nonpayment of Rent;
- c. Failure to perform any obligation, agreement or covenant under this License;
- d. A general assignment by Licensee for the benefit of creditors;
- e. Bankruptcy;
- f. Receivership taking possession of all or substantially all of Licensee's assets in the Premises;
- g. Insolvency or the attachment, execution or other judicial seizure of all or substantially all of Licensee's assets in or on the Premises;
- h. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts;

- i. Illegal Drugs, including any release or discharge of chemicals, toxics, solution in connection with the manufacturing and mixing of any illegal substance on the Premises; or
- j. Non-compliance with license term. Failure to perform any of the obligations and improvements listed on Exhibit B, such failure continuing for 30 days after notice from the City of said default.

**23. REMEDIES UPON DEFAULT**

a. Termination. In the event of the occurrence of any event of default, City shall have the right immediately to terminate this License by written notice and at any time thereafter to recover possession of the Premises or any part thereof and to expel and remove Licensee, any other person or party occupying the same and all Premises located therein, by any lawful means and to reenter the Premises without prejudice to any of the remedies that City may have under this License or under law or equity.

b. Continuation After Default. In the event of any default, this License shall continue in effect for so long as City does not terminate this License under subparagraph A above. In such case, City may enforce all its rights and remedies under this License, including without limitation, the right to recover rent as it becomes due, and all of its rights and remedies under law. Acts of maintenance, preservation, efforts to relet the Premises for Licensee's account or the appointment of a receiver upon application of City to protect City's interest under this License shall not constitute an election to terminate this License or Licensee's right to possession.

c. Damages Upon Termination. Should City terminate this License pursuant to subparagraph A above, in addition to any other rights and remedies to which it may be entitled under applicable law, City shall be entitled to recover from Licensee: (i) the worth at the time of the award of the unpaid rent and other amounts which had been earned at the time of termination; plus (ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rent loss that Licensee proves reasonably could have been avoided; plus (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Licensee proves reasonably could be avoided; plus (iv) any other amount necessary to compensate City for all the detriment proximately caused by Licensee's failure to perform its obligations under this License or which, in the ordinary course of things, would likely result therefrom, including without limitation, the costs and expenses (including brokerage commissions and advertising costs) incurred by City, with or without terminating the License, (1) in retaking possession of the Premises; (2) in cleaning and making repairs and alterations to the Premises reasonably necessary to return the Premises to good condition for the use permitted by this License and otherwise to prepare the Premises for reletting; (3) in removing all persons and personal property from the Premises and transporting and storing any of Licensee's personal property left at the Premises, although City shall have no obligation to remove, transport, or store any of such personal property; and (4) in reletting the Premises for such term, at such rent and upon such other terms and conditions as City in its sole discretion may deem advisable; plus (v) such other amounts in addition to or in lieu of the

foregoing as may be permitted from time to time under California law. The "worth at the time of award" of the amounts referred to in (i) and (ii) shall be computed with interest at the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

d. Computation of Rent for Purposes of Default. For purposes of computing unpaid rent which would have accrued and become payable pursuant to subparagraph C above, unpaid rent shall include the total rent for the balance of the term of the License.

e. Remedies Cumulative. All rights, privileges and elections or remedies of the parties are cumulative and not alternative to the extent permitted by law and except as otherwise specifically provided herein.

f. No Waiver. City's waiver of any breach of a covenant or condition hereof, or City's failure to declare any default immediately upon occurrence thereof or a delay in taking any action in connection therewith shall not waive such breach or such covenant or condition or any subsequent breach thereof. The subsequent acceptance of rent or other monies by City shall not be deemed a waiver of any preceding default by Licensee, other than the failure of Licensee to pay the particular rent or other sum so accepted, regardless of City's knowledge of such default at the time of its acceptance of rent.

g. No Right of Redemption. Licensee waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179 or any other present or future law in the event Licensee is evicted or City takes possession of the Premises by reason of Licensee's default.

#### **24. 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 that 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.

#### **25. AUDIT**

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

**26. SETOFF AGAINST DEBTS**

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

**27. GOVERNING LAW**

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

**28. AMENDMENTS**

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

**29. 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 lawfully assessed and due. Licensee certifies under penalty of perjury that the taxpayer identification number written below is correct.

**30. SEVERABILITY**

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

**31. WAIVER**

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

**32. REQUIRED ACCESSIBILITY DISCLOSURE**

City hereby advises Licensee that the Premises has not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this License, City shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject Property comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject Property, the commercial property owner or lessor may not prohibit the lessee or Licensee from obtaining a CASp inspection of the subject Property for the occupancy or potential occupancy of the lessee or Licensee, if requested by the lessee or Licensee. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Property.” [*Cal. Civ. Code Section 1938(e)*]. Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Building with regard to such inspections and shall be subject to City’s prior written consent.

**33. SURRENDER OF PROPERTY, REMOVAL OF PERSONAL PROPERTY**

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

**34. EFFECT ON SUCCESSORS AND ASSIGNS**

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

**35. PESTICIDES**

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

**36. SIGNS**

Licensee shall not install or letter any signs on the Premises without the prior written consent of City. All signs on the Premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04 and the Marina design guidelines for signs.

**37. CONSENT OF PARTIES**

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

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

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

**39. AGREEMENT JOINTLY DRAFTED**

Licensee and City and counsel for each, if applicable, has reviewed and revised, or has the opportunity to revise this Agreement, and accordingly the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party is not applicable and therefore shall not be employed in the interpretation of this Agreement or any amendment of it.

**40. EXECUTION IN COUNTERPARTS**

This License may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same document.

**41. ENTIRE AGREEMENT**

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

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

**IN WITNESS WHEREOF**, City and Licensee have executed this License as of the date written on the second paragraph of this License.

Approved as to form:

CITY OF BERKELEY

\_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
City Manager

Registered by:

Attest:

\_\_\_\_\_  
City Auditor

\_\_\_\_\_  
City Clerk



LICENSEE

\_\_\_\_\_ , \_\_\_\_\_

By \_\_\_\_\_

BRIAN SCOTT

LICENSEE INFORMATION:

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

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

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

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

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

EXHIBIT A

Maudelle Shirek Building (Old City Hall)

Limit of License – The South Wing of the first floor level and the room at the Northeast corner of the basement level

Limit of License is represented by the dashed/dotted lines

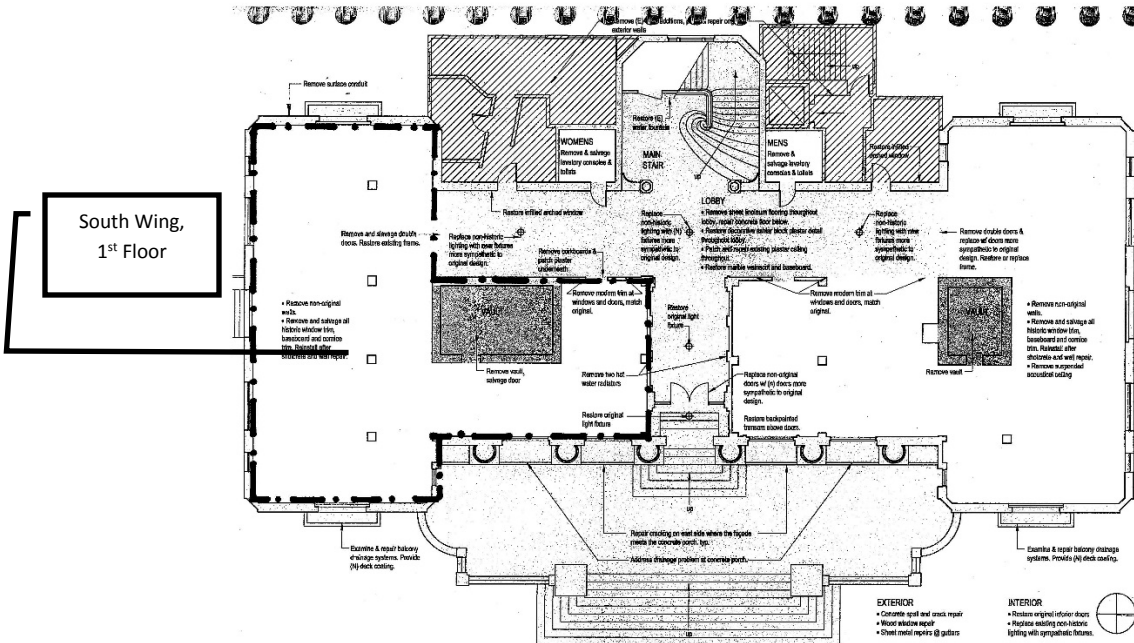


Illustration 3: Historic Significance Diagram First Floor Plan

Significant Well-preserved character-defining feature  
 Contributing Well-preserved feature less integral to the building's design  
 Non-Contributing Areas of the building that are neither character-defining nor well preserved

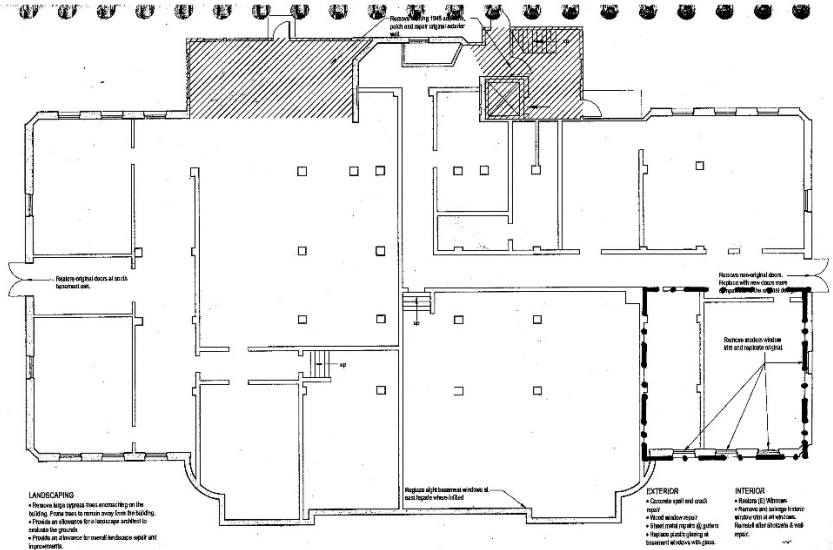


Illustration 2: Historic Significance Diagram Basement Plan

Significant Well-preserved character-defining feature  
 Contributing Well-preserved feature less integral to the building's design  
 Non-Contributing Areas of the building that are neither character-defining nor well preserved

South Wing,  
1st Floor

Northeast Room,  
Basement

**EXHIBIT B**

**USE OF PREMISES**

Licensee shall only use the Premises described on Exhibit A for placement of broadcast production equipment as follows:

1. Maintain the “Head End” infrastructure and technology to ensure the live broadcast of City of Berkeley public meetings as provided for in the existing contract between BCM and the City.
2. Storage for BCM’s furniture, files, computer equipment, cameras and other broadcast or video production inventory, other belongings related to the broadcast function of a public access television channel.

