

LICENSE AGREEMENT

This LICENSE AGREEMENT is entered into on **JULY 1, 2003** by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("City"), and the BOSS URBAN GARDENING INSTITUTE (BUGI), a community organization doing business at 2850 Sacramento Street in Berkeley, California ("Licensee").

1. LICENSE

a. City hereby grants an exclusive License to Licensee, subject to all the terms and conditions herein, to use City's property located at Sacramento Street and Oregon Street between Russell Street and Sojourner Truth Court in the City of Berkeley, California, as more fully described on Exhibit A, attached hereto ("the Property"). Licensee acknowledges that this License grants it the personal privilege to occupy and use the Property for the purposes stated herein, but does not convey an estate in land or a leasehold interest in the Property, does not create a landlord/tenant relationship, and is not a lease.

b. This License is granted for the purpose of Licensee improving the vacant Property and operating on the Property a community garden, a retail nursery, and an outdoor community classroom, provided such uses of the Property are in conformance with the Use Permit approved by the City attached hereto as Exhibit B.

c. All edible plants and/or fruit trees shall be placed and grown in raised beds with clean soil. Trees, flowers, bushes, and other similar materials used for landscaping and not for edible purposes may be grown in the native soil.

2. FEE

a. In consideration for the rights conveyed by this License, Licensee shall pay to City a total of **ONE HUNDRED DOLLARS (\$100)** per License Year. Licensee shall make payments to the City in accordance with the provisions described in Exhibit C, attached hereto.

3. TERM

This License shall take effect once executed by both the City and Licensee and duly approved by the Berkeley City Council, and shall remain in effect for a period of up to five (5) years, subject to the following:

(a) Licensee has the right to terminate this License for any reason with ninety (90) days prior written notice to the City.

(b) The City has the right to terminate this License with thirty (30) days prior written notice to Licensee upon Licensee's failure to comply with any of the terms and conditions herein set forth and including the approved Use Permit or if, in the City Manager's exercise of reasonable discretion, revocation is necessary in the interest of public health or safety.

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(c) If, after the term of this License expires, Licensee continues to use the Property as described herein 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 not for any yearly term, and shall be terminable by either party with at least thirty (30) days prior written notice; and, (2) the License Fee shall increase to 105% of that which applied to the minimum amount of the License Fee when the License expired, payable in advance as set forth herein.

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 the Director of the Parks Recreation and Waterfront Department, 3rd Floor, City Admin. Bldg., 2180 Milvia St., Berkeley, CA 94704.

For purposes of this License, all notices to Licensee shall be addressed to boona cheema, Executive Director, Building Opportunities for Self-Sufficiency (BOSS) at 2065 Kittredge Street, Suite E, Berkeley, CA 94704.

5. MAINTENANCE AND ALTERATIONS

a. Licensee shall maintain the Property in good order and repair and keep the Property reasonably free and clean of all debris, trash and rubble. Further, Licensee agrees to keep the private property immediately adjacent to the Property reasonably free and clean of all debris and trash that is generated by Licensee. Upon termination of this License, and at the City's sole option, Licensee shall remove any equipment, materials or improvements installed by Licensee and shall surrender the Property to City in the same condition as provided to Licensee at the commencement of this License.

b. Licensee shall not construct any facilities, install any equipment, or make any alterations to the Property without the City's prior written consent, which consent shall not be unreasonably withheld. The City consents to the installation by Licensee of all improvements reasonably necessary for Licensee to effectuate the purposes of the scope of services described in Exhibit B attached hereto. A proposed site plan of the Property is attached as Exhibit D.

6. ACCESS TO PROPERTY BY OTHERS

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

7. TAXES, ASSESSMENTS, AND OTHER CHARGES

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

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reason of Licensee's use or occupancy of the Property. Licensee shall pay for all local, state and federal permits and licenses necessary for the operation of its business.

8. UTILITIES

Licensee shall make all arrangements for and pay for all utilities and services furnished to or used by it, including without limitation, telephone, gas, electricity, garbage, water and sewer services, and for any connection charges therefor.

9. ASSIGNMENT AND SUBLICENSING PROHIBITED

This License is personal and exclusive to Licensee. Licensee may not assign or sublicense this License in whole or in part without the City Manager's prior written consent, to be granted or withheld in the exercise of reasonable discretion. No reference to sublicensees or assignees elsewhere in this License shall be construed to the contrary. If Licensee attempts to assign or sublicense this License without the City Manager's prior consent, the City Manager shall have the sole option to terminate the License.

10. INDEMNIFICATION

The Licensee, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless the City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions for personal injury or death or property damage arising out of or in any way connected with Licensee's operations under this License, or with the performance of this License by Licensee or its officers, employees, partners, directors, sublicensees, or agents.

11. INSURANCE

a. Licensee shall maintain at all times during the performance of this License a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$1,000,000 to cover any claims arising out of Licensee's performance of services under this License.

All insurance shall name the City, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City. 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 City's Risk Manager.

b. 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 years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this License.

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c. 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; 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 City's Risk Manager.

d. Licensee shall forward all insurance documents to the Director, Parks Recreation & Waterfront Dept. at the address provided in Section 4 above.

12. RISK OF LOSS

Licensee bears all risk of loss under this License.

13. CONFORMITY WITH LAW AND SAFETY

a. Licensee shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the activities of Licensee hereunder, including the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all applicable federal, state, municipal and local regulations relating to health, safety, noise, environmental protection, waste disposal, hazardous materials, water and air quality. All activities conducted by Licensee on the Property must be in accordance with these laws, ordinances, codes and regulations. Licensee shall 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. 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 sublicensee, if any; 3) name and address of Licensee's liability insurance carrier; and 4) a description of the accident, including if any of City's equipment, tools or materials were involved.

c. If a release of hazardous materials or hazardous waste that cannot be controlled occurs in connection with the performance of this License, Licensee shall immediately notify the Berkeley Police Department and the 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.

14. INDEPENDENT CAPACITY

For purposes of this License, and for the duration of this License, Licensee and its agents and employees shall be, and are, an independent Licensee 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 taxes and all regulations governing such matters, and shall be solely responsible for its own acts and those of its agents and employees.

15. NON-DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

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

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

16. 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.

17. CONFLICT OF INTEREST PROHIBITED

a. In accordance with Government Code section 1090, Berkeley City Charter section 36, and BMC 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 commission, board 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.

18. NUCLEAR FREE BERKELEY

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

19. OPPRESSIVE STATES

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

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its License 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 3. In the event that the City

terminates Licensee 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.

20. RECYCLED PAPER FOR WRITTEN REPORTS

If Licensee is required to prepare a written report, Licensee shall use recycled paper for said report or study when such paper is available at a cost of not more than 10% more than the cost of virgin paper, and when such paper is available at the time it is needed. Recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Licensee shall use white paper. Reports shall be printed on both sides of the page whenever practical.

21. BERKELEY LIVING WAGE ORDINANCE (LWO)

a. Licensee hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance (LWO), B.M.C. Chapter 13.27. If Licensee is currently subject to the LWO, as indicated by the Living Wage Certification form, attached hereto, 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, as well as comply with the terms enumerated herein. Licensee expressly acknowledges that, even if Licensee is not currently subject to the LWO, cumulative Licenses with City may subject Licensee to the requirements under B.M.C. Chapter 13.27 in subsequent Licenses.

b. If Licensee is currently subject to the LWO, Licensee shall be required to maintain monthly records of those employees providing service under the License. These records shall include the total number of hours worked, the number of hours spent providing service under this License, 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. These records are expressly subject to the auditing terms described in Section 17.

c. If Licensee is currently subject to the LWO, Licensee shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all sublicenses in which Licensee engages to execute its responsibilities under this License. All sublicensee employees who spend 25% or more of their compensated time engaged in work directly related to this License shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

d. If Licensee fails to comply with the requirements of this Section, 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 constitute a material breach of the License, upon which City may terminate this License pursuant to Section 3. In the event that City terminates Licensee due to a default under this provision, City may deem Licensee a non-responsible bidder for not more than five (5) years from the date this License is terminated.

In addition, at City's sole discretion, Licensee may be responsible for liquidated damage 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 damage 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

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forfeiture for Licensee's breach. City may deduct any assessed liquidated damages from any payments otherwise due Licensee.

21. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)

a. Licensee hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance (EBO), B.M.C. Chapter 13.29. If Licensee is currently subject to the EBO, as indicated by the Equal Benefits Certification form, attached hereto, Licensee will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this License, as well as comply with the terms enumerated herein.

b. If Licensee is currently or becomes subject to the EBO, Licensee agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 17 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 a material breach of the License, upon which City may terminate this License pursuant to Section 3. In the event the City terminates this License due to a default by Licensee under this provision, the City may deem Licensee a non-responsible bidder for not more than five (5) years from the date this License is terminated.

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. City may deduct any assessed liquidated damages from any payments otherwise due Licensee.

22. AUDIT

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

23. 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, License or resolution for any

unpaid taxes, fees, licenses, unpaid checks or other amounts.

24. CONFIDENTIALITY OF INFORMATION

Licensee agrees that, in the performance of the services under this License or in the contemplation thereof, Licensee may have access to private/confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Licensee agrees that all information disclosed by City to Licensee shall be held in confidence and used only in performance of the License. Licensee shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data.

25. GOVERNING LAW

This License shall be deemed to have been executed in Alameda County. The laws of the State of California, excluding its conflict of laws rules, shall govern the formation, interpretation and performance of this License. Venue for all litigation relative to the formation, interpretation and performance of this License shall be in Alameda County, California.

26. 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.

27. 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 I.D. number written below is correct.

28. SEVERABILITY

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

29. 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.

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30. 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.

31. 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 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 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.

32. 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.

IN WITNESS WHEREOF, City and Licensee acknowledge that they have read and understand this License, to be effective as of the Effective Date and hereby execute this License.

Approved as to form:



City Attorney

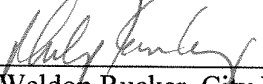
Dated: 7/30/03

Registered by:



Ann-Marie Hogan, City Auditor

CITY OF BERKELEY



Weldon Rucker, City Manager

Dated: 8/6/03

Attest:



for Sherry M. Kelly, City Clerk

BOSS URBAN GARDENING INSTITUTE, LICENSEE

By boona cheema
boona cheema, Executive Director

Dated: 6/9/03

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Tax Identification No. 51-0173390

Berkeley Business License No. 2003-02273, expires 2/2004

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 ☒

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EXHIBIT A

DESCRIPTION OF PROPERTY

The Property includes two vacant parcels in the City of Berkeley. Parcel #1 is APN 053-1669-30 (as shown on attached map) and starts at the southwest corner of Sacramento and Oregon Streets and proceeds south along the frontage of Sacramento St. to Russell St. This parcel measures approximately 11,100 square feet.

Parcel # 2 includes a portion of APN 054-1737-20, as shown on the attached map. This parcel starts at Oregon Street and runs approximately 250 feet north to a point where it intersects with the southern boundary of Sojourner Court. This point is delineated with a fence owned and maintained by the City. This parcel measures approximately 9,300 square feet.

ASSESSOR'S MAP 53

Code Area No. 13-000

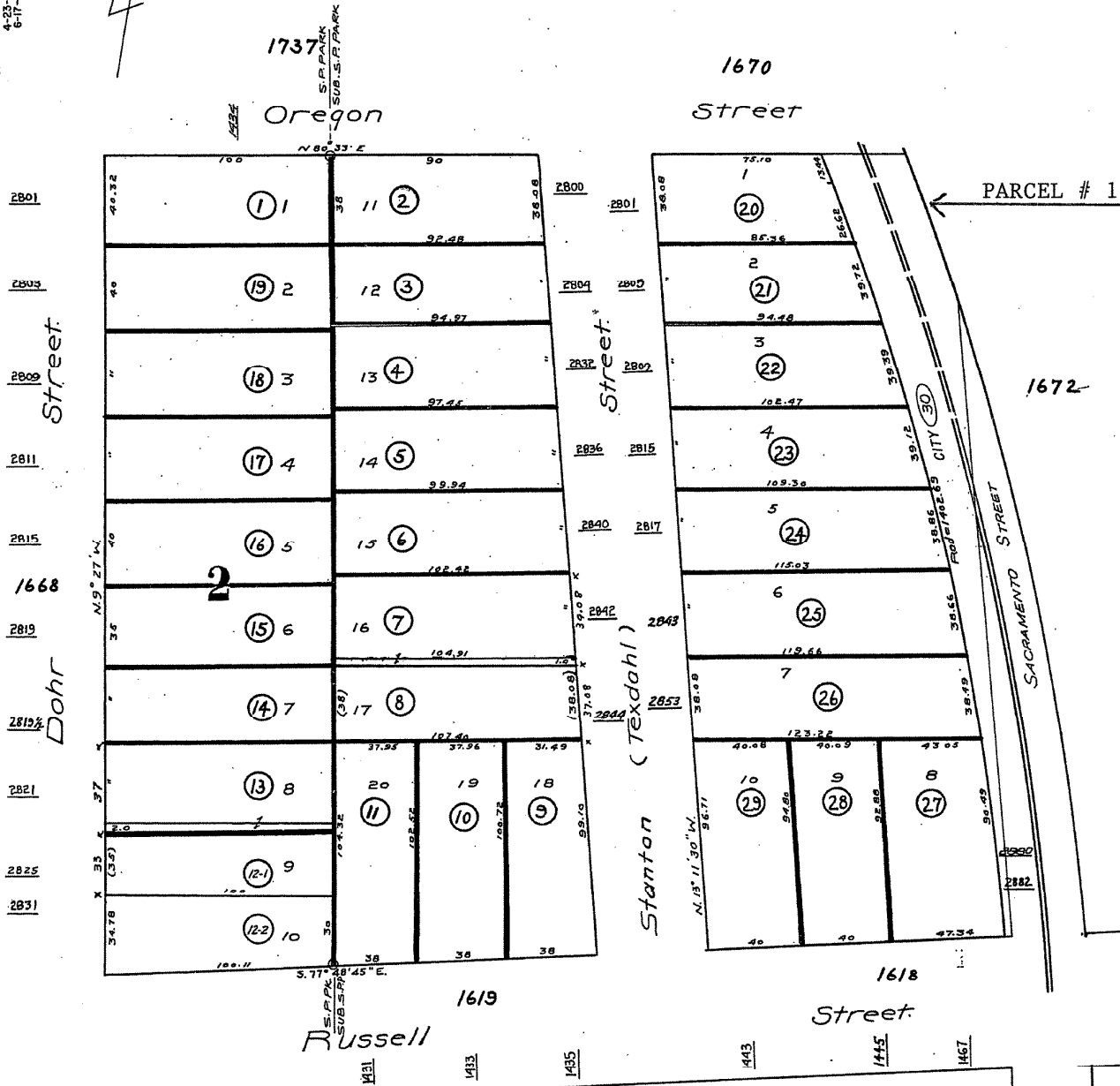
Subdivision of Lot 11 Block 2, San Pablo Park. (2d. 28 Pg. 17)

San Pablo Park. (2d. 22 Pg. 1)

Scale 1 in = 40 ft.

1669

Rev. 5-11-2004
4-23-05
6-17-05



1736

Code Area No. 13-000
San Pablo Park (BK. 22 Pg. 1)

Scale: 1" = 40'

1737

Ward Street

5-1-72 H.N.
4-23-81 ST :
6-17-81 DD

2725

2729

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Street

2065

Oregon

Street

Book 53

1425
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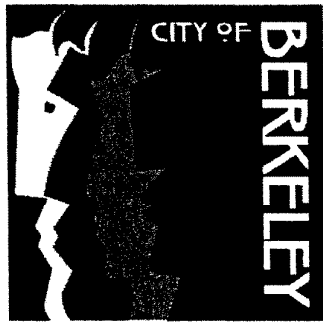


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EXHIBIT B

USE OF THE PROPERTY

Licensee shall operate on the Property a community garden, a retail nursery, and an outdoor community classroom in accordance with the terms and conditions of the attached Use Permit approved by the City.



NOTICE OF ADMINISTRATIVE DECISION

2850 SACRAMENTO STREET

Administrative Use Permit #02-20000150

ZONING OFFICER DECISION: The Zoning Officer has APPROVED, pursuant to Zoning Ordinance Section 23B.28.050 and subject to the attached findings and conditions, a Use Permit at the above address to establish a non-profit organic nursery, outdoor community classroom, and food gardens with:

- A fence exceeding six feet in height, under Section 23D.08.060; and
- A use defined as a "Park" under the "Parks and Playgrounds" category of the Use Table.

APPEAL PERIOD: January 14, 2003 to February 3, 2003

ZONING DISTRICT: CS-A, South Area Commercial

APPLICANT: Daniel Miller, BOSS Urban Gardening Institute (510) 843-1307

ENVIRONMENTAL REVIEW STATUS: Categorically exempt under the California Environmental Quality Act Guidelines, Section 15304 as a minor alteration to land (gardens) and 15303 as the construction of small accessory structures (fence, greenhouse, shade pergola, kiosks, tool shed, seedling and stock tables).

PUBLIC COMMENT AND APPEALS

Questions and comments should be directed to the project planner, Lucy Armentrout-Ma, at (510) 981-7416 or LArmentrout-Ma@ci.berkeley.ca.us. All project application materials, including full-size plans, may be viewed at the Permit Service Center, 2120 Milvia Street, during normal office hours.

The Zoning Officer's decision may be appealed by submitting a letter clearly stating the grounds for the appeal, along with a fee of \$63.00, to: Zoning Officer, Current Planning Division, 2120 Milvia Street, Berkeley, CA 94704. The appeal letter and fee must be received at the above address before 5 p.m. on February 3, 2003. Checks and money orders must be payable to 'City of Berkeley'.

If no appeal is received, the Administrative Use Permit will be issued on the first business day following expiration of the appeal period. Based on comments received, the Zoning Officer may extend the appeal period.

NOTICE CONCERNING YOUR LEGAL RIGHTS

If you object to a decision of the Zoning Officer, the following apply:

1. You **must** appeal to the Zoning Adjustments Board within the 20 days of posting and mailing of this notice, or the appeal period set by the Zoning Officer, whichever is longer.
2. No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Govt. Code §65009(c)(5)) a use permit may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure section 1094.6(b). Any lawsuit not filed within that 90-day period will be barred.
3. In any lawsuit that may be filed against a City Council decision to approve or deny a use permit, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing prior to the close of the last public hearing on the project.
4. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:

You must expressly state in writing, in your appeal, the following as applicable:

- That this belief is a basis of your appeal
- Why you believe that the decision or condition constitutes a "taking" of property as set forth above
- All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, before the Zoning Adjustments Board, the City Council, and/or in court.

FINDINGS FOR APPROVAL

1. As required by Section 23B.28.050 A of the Zoning Ordinance, the establishment of a non-profit organic nursery, outdoor community classroom, and food gardens with an eight foot chain link fence surrounding it – under the circumstances of this particular case existing at the time at which the application is granted – will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The eight foot high fence proposed will provide security and help to deter potential illegal activity or use of the site during those times that the gardens are closed or unoccupied.
 - The proposed tall fence will be planted with vines and otherwise camouflaged with plantings so that it will be an attractive element for both the surrounding residences and the streetscape at Sacramento Street between Russell and Oregon Streets.

- The proposed gardens and community-oriented use of this site will be a positive contribution to the neighborhood through converting currently underutilized space to a productive use.
 - This non-profit nursery and instruction facility will provide gardening education skills which will enhance quality of life, self-reliance and potential job skills for Berkeley residents – both those with homes and those without.
 - This non-profit nursery and instruction facility will meet social needs in the City of Berkeley by producing food for distribution to homeless and needy residents of the City, including those in the surrounding neighborhoods.
2. There would be no significant environmental effect from the project, which is categorically exempt from the California Environmental Quality Act.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The following conditions shall be printed on the first sheet, or on the next sheet thereafter as may be practical, of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'City of Berkeley Conditions of Approval'.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

SPECIAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

Prior to Issuance of Any Building Permit

- 9. Prior to issuance of a building permit for erection of the fence and any other structures requiring building permits, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The

individual shall record all noise complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.

☐ Individual Responsible for Noise Management:

Name: _____

Phone: _____

10. Prior to issuance of a building permit, the applicant shall secure the City Traffic Engineer's approval of a construction traffic management plan. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The City Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety, or convenience of the surrounding neighborhood. Call 981-CITY (2489) for Traffic Engineer contact information.

☐ City Monitor: Traffic Engineer

Signature

Date

During Construction

11. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday.
12. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
13. All excavations left unprotected overnight shall be covered with plastic at least one-eighth millimeter in thickness and secured to the ground.
14. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

Prior to Issuance of Occupancy Permit or Final Inspection:

15. All landscape, site and architectural improvements shall be completed as represented in the attached approved drawings labeled "Final Proposal – October 2002".
16. Prior to issuance of occupancy permit or final inspection, all construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
17. Flowering and evergreen vines shall be planted at each end of the fence, and at appropriate intervals

in between, to allow for even and fairly solid coverage of the fence with foliage and vine tendrils.

At All Times

18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two to three feet of board.
19. Public streets shall be kept clear of all visible soil material carried to or from the site, and shall be swept (preferably with water sweepers) as necessary.
20. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
21. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
22. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
23. The hours of operation of the nursery, gardens and outdoor community classroom shall be limited to 10:00 AM to 6:00 PM, daily. Hours of operation are defined as those hours between which members of the public arrive at, depart from, and otherwise occupy the gardens. Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
24. Notwithstanding condition #23 (above), employees of the managing non-profit organization may work on the premises before or after patrons arrive. However, they shall control any noise created on site so as to prevent complaints from residents in the adjacent neighborhood.
25. The operation shall be conducted as presented to the Board or the Zoning Officer. Changes in the nature of the operation including, but not limited to, the addition changes in hours shall require modification of this permit subject to approval by the Zoning Officer or the Zoning Adjustments Board.
26. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations such as the Uniform Building Code or fire regulations.
27. The applicant is responsible for the maintenance of the landscaping which is intended to screen, cover, or otherwise break up the appearance of the chain link fence structure. Failure to remain in compliance with this or any condition could result in further review by the Zoning Officer or Zoning Adjustments Board, which may modify or impose additional conditions, or revoke the Use Permit approval.
28. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment

is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

Seborah Diamond for
Mark Rhoades, Zoning Officer

Attachments: Applicant Statement, Vicinity Map/Project Plans, Organization information flier

cc: Zoning Adjustments Board
Building and Safety Division
Applicant
Abutting & Confronting Properties
Neighborhood Groups
Main Library

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BOSS



1998 Award for Excellence
in Nonprofit Management
by the Management Center & Chevron

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Warren Seeto
Ursula Sherman

EXECUTIVE DIRECTOR

boona cheema (510) 649-1930

ADMINISTRATIVE HEADQUARTERS

2065 Kittredge Street, Suite E
Berkeley, CA 94704
Phone: (510) 649-1930
Fax: (510) 649-0627
Email: HN0501@handsnet.org

OAKLAND OFFICE

1820 Jefferson Street
Oakland, CA 94612
Phone: (510) 465-0881
Fax: (510) 465-5908

HAYWARD OFFICE

258 A Street
Hayward, CA 94541
Phone: (510) 732-5956
Fax: (510) 732-5954

www.self-sufficiency.org



Collaborating Agencies
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BUILDING OPPORTUNITIES FOR SELF-SUFFICIENCY
DEDICATED TO ENDING POVERTY AND HOMELESSNESS IN OUR COMMUNITY
DEC 03 2002

CURRENT PLANNING

BOSS Urban Gardening Institute Organic Nursery, Food Gardens, and Outdoor Community Classroom 2850 Sacramento Street

Applicant's Statement

The BOSS Urban Gardening Institute (BUGI) is requesting an Administrative Use Permit to establish a nonprofit organic nursery, food production garden, and outdoor classroom at 2850 Sacramento Street, the two vacant lots of the old Santa Fe Railroad Right-of-Way at Sacramento and Oregon Streets.

The organic nursery portion of the project will be located on the southern lot between Oregon and Russell Streets that faces onto Sacramento Street. The nursery will specialize in edible, native, butterfly habitat, and otherwise useful attractive and interesting plants, and will include demonstration plantings, a greenhouse, a shade house, a kiosk for sales, educational signage, a water garden, and a planted fence and border. Three accessory structures are planned for this lot. The proposed greenhouse is a 26' diameter dome with a 15' center height, constructed of aluminum framing and double-paned polycarbonate panels available as a prefabricated kit from Geo Tech Systems, Inc. An 8' x 12' kiosk for sales, with an average height of no more than 10', will be located in the commercially zoned section of the lot. A 10' high open pergola, approximately 55' x 15', will serve as the shade house. The kiosk and pergola will be custom built wooden structures. The main entry gate will be located mid-block on Sacramento Street. Additional gates will be located on the corner fencing at Sacramento and Oregon Streets to allow access for a produce stand on the corner or for special events, and at the far south end of the lot for drop off and pickup of plants and materials.

The northern lot between Oregon Street and the end of Sojourner Truth Court will include gardens for food production and an outdoor community classroom. An 8' wide pedestrian path connecting Oregon Street and Sojourner Truth Court will be included along the western edge of the garden, with gates on either end. The only structure planned for this site is a 3' x 12' tool shed, 8' in height. Soil toxicity and compaction test results will determine whether the garden beds will be raised beds or surface level. Other amenities will include a bulletin board, seating for the classroom, and a sink and table for cleaning produce.

All pathways will be at least 4' wide, composed of decomposed granite, and accessible, in accordance with the Americans with Disabilities Act. Both lots will be enclosed by landscaped fencing to a total height of 8', using 1" or 2" chain link.

Since installing new water service to each lot will be prohibitively expensive, we plan to run underground water lines from adjacent buildings—from our office at 2880 Sacramento Street, adjacent to the south lot of the project, and most likely from one of the businesses adjacent to the north lot, with an auxiliary meter. Since we will be watering by hand, with hoses, soaker hoses and small area sprinklers, an extensive irrigation system will not be installed.

BUGI has conducted screening level tests for soil contaminates in consultation and cooperation with the Toxics Management Division of the City of Berkeley. The Screening Level Soil Contaminant Testing Report and a copy of the test results from Curtis and Thompkins, Ltd. are included with this application. We will work with the Toxics Management Division of the City of Berkeley to determine if additional testing or remediation is necessary. We will also develop appropriate strategies and guidelines for food production methods to insure the health of staff, volunteers and the community both during construction and while the program is operating.

Existing Conditions

The two blocks of Santa Fe Right-of-Way at Oregon and Sacramento Streets are owned by the City of Berkeley. The lots are currently vacant, with no existing structures or uses. There is no irrigation or lighting on either lot. The Parks Recreation & Waterfront Department currently maintains both lots by mowing and string trimming 2-3 times a year, and picking up trash every other week.

The southern lot is an open triangle running the length of Sacramento Street from Oregon Street to the driveway of the BOSS Urban Gardening Institute/Job Training Institute Office building, 2880 Sacramento Street, at Russell Street. Seven residential properties on Stanton Street border the lot to the west. Wooden fencing that varies in height from 6' to 8' runs most of the length of this border; one structure abuts the lot directly and a small section of low chain link ends the fence at Oregon Street.

The northern lot runs at an angle from Oregon Street to the paved cul-de-sac at Sojourner Truth Court, neighboring businesses, churches, and residences on Sacramento Street and the Oregon Park senior housing complex at 1425 Oregon, to the west. This lot is entirely enclosed by chain link fencing varying in height, with barbed wire atop portions of it. The senior housing complex has fenced off a portion of this lot running the length of their building for a pedestrian pathway with some landscaping.

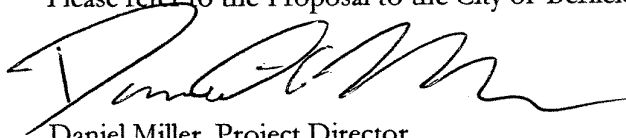
Project Benefits

Prior to submitting this application, BUGI did extensive outreach to the surrounding community and incorporated many of the suggestions received to ensure that the project would be an asset to the community. The project has met with overwhelming and enthusiastic support. Most of the concerns raised by the community focused on improving the existing aesthetic and security conditions of the project site. The gardens and nursery will be neat and clean, and the dome greenhouse, vine covered fences, landscaped borders, and flowers in the street tree wells will provide significant visual interest and appeal. Drug activity and associated violence occur within a block or two of the project site in several locations in the neighborhood. Staffing and regular educational and gardening activities as well as physical improvements, including fencing and gates that will be locked at night, will ensure that the area will not become a hangout for disreputable elements.

We believe that the nursery, gardens and classroom will be a positive and useful addition to the neighborhood. Additionally, BUGI's program, goals, and collaborations with other organizations in the food security community are directed toward addressing the needs of our immediate neighborhood. These include: hunger, lack of opportunities for income-generating activities, lack of affordable training and education appropriate for living wage jobs, lack of affordable mental and physical health care, lack of nutrition education and support, lack of healthy cooking and meal planning skills, life skills training, social and peer support, and the poor quality of the local food

supply. Overall, this project has the potential to be a benefit to the health, safety, peace, morals, comfort and general welfare of the people living and working in the neighborhood, and to the general welfare of the City of Berkeley. The Zoning Officer should make a finding of non-detriment under 23B.28.050 of the Zoning Ordinance.

Please refer to the Proposal to the City of Berkeley, June 2002 for any additional details.



11/25/02

Daniel Miller, Project Director
BOSS Urban Gardening Institute
2880 Sacramento Street
Berkeley, CA 94702

(510) 843-1307 office
(510) 843-1800 fax

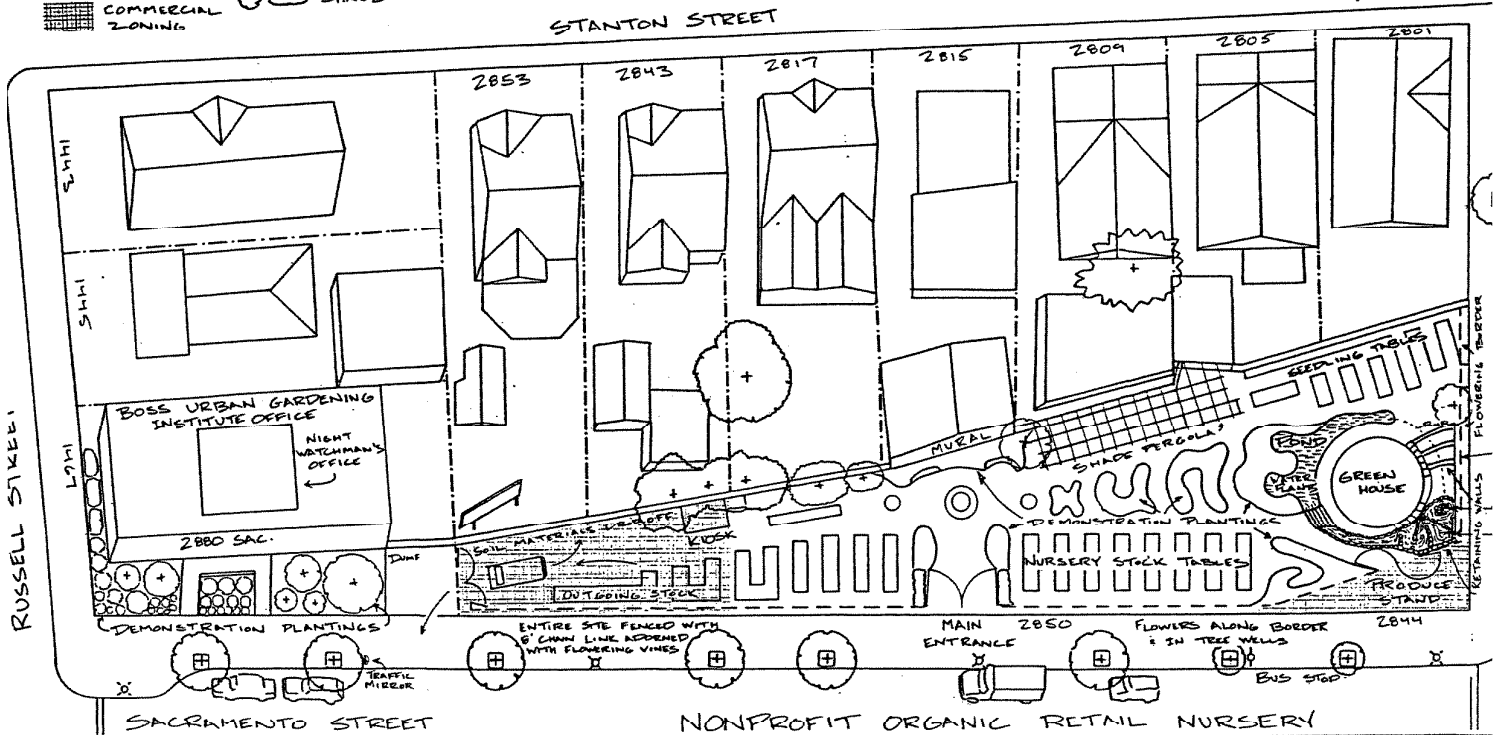
daniel@urbangardens.org
www.urbangardens.org

LEGEND

- PROPERTY LINES
- - - CHAIN LINK FENCE
- XXXX ROCK WALL
- X STREETLIGHT
- COMMERCIAL ZONING
- ⊕ TREE
- SHRUB

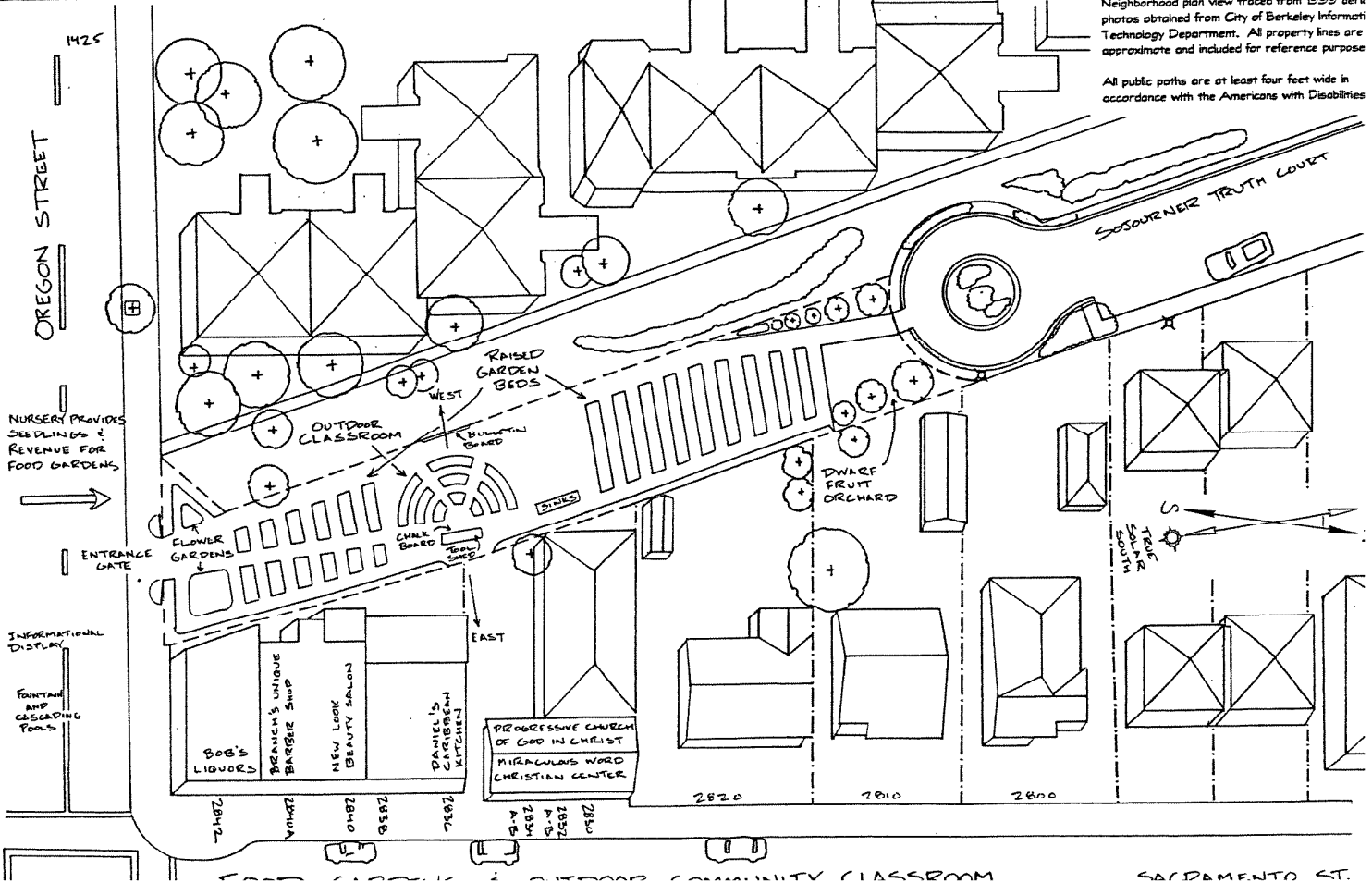
SCALE 1" = 50'

Cultivating Community Food Security
From the Ground Up



Neighborhood plan view traced from 1999 aerial photos obtained from City of Berkeley Information Technology Department. All property lines are approximate and included for reference purpose

All public paths are at least four feet wide in accordance with the Americans with Disabilities





Building Opportunities for Self-Sufficiency URBAN GARDENING INSTITUTE

Cultivating Food Security from the Ground Up

The BOSS Urban Gardening Institute (BUGI) is a training, education, and resource-sharing project dedicated to increasing individual and community self-reliance through urban gardening. BUGI is designed to facilitate long-term solutions and change through the multi-levelled activities provided to the communities we serve.

BUGI operates with five integrated strategies:

Food Production

We design, implement, and maintain a network of food producing sites throughout the East Bay, turning vacant urban land into multi-use gardens. The food produced is distributed to trainees, volunteers, seniors, and BOSS' shelters. We recently received a three year grant from the USDA to increase our production in order to fully supply our shelter kitchens with vital organic produce.

Horticultural Therapy & Job Training

BUGI provides vocational training in horticulture to individuals in transition from homelessness. Graduates know how to grow their own food and find or create their own employment. We are increasing to nine stipended, six-month internships per year.

Economic Development

BUGI enriches the local economy by incubating garden-based micro-enterprises. Low income trainees are supported through consulting, a skill-tailored curriculum, and material aid. Our organic nursery is a working model. We are ambitiously expanding it in order to provide long term revenue for BUGI while creating jobs and facilitating local food production.

Community Education

To catalyze community self-reliance, we host advertised, free, public educational forums up to twenty times annually; and our weekly gardening days serve as an information sharing and social nexus for low-income neighborhoods.

Food Policy Networking

To comprehensively improve food access, BUGI donates staff time to the Berkeley Food Policy Council, a coalition of food systems stakeholders partnered with the Berkeley Public Health Department advocating for a local food system based on sustainable, locally-grown organic agriculture that fosters the local economy and assures all people have access to healthy, affordable and culturally appropriate food.

The Urban Gardening Institute is a partnership between Building Opportunities for Self-Sufficiency & Spiral Gardens. We also work synergistically with the following organizations:

- Berkeley Food Policy Council
- Food Systems Project
- Berkeley Department of Health and Human Services
- Farmer's Market / Ecology Center
- Berkeley Community Garden Collaborative
- Farm Fresh Choice
- Farme Farms
- Hayward Community Gardens
- UC Berkeley School of Public Health

The USDA Community Food Projects Grant Award funding our current expansion requires non-federal matching funds. Your tax-deductible contributions will be used effectively for all of the above mentioned work and more.



For more information or to find out how to participate please contact us at:

BOSS Urban Gardening Institute
2880 Sacramento Street
Berkeley, California 94702

www.urbangardens.org

Info: (510) 652-8222

Office: (510) 843-1307

Fax: (510) 843-1800

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DEC 03 2002

CURRENT PLANNING

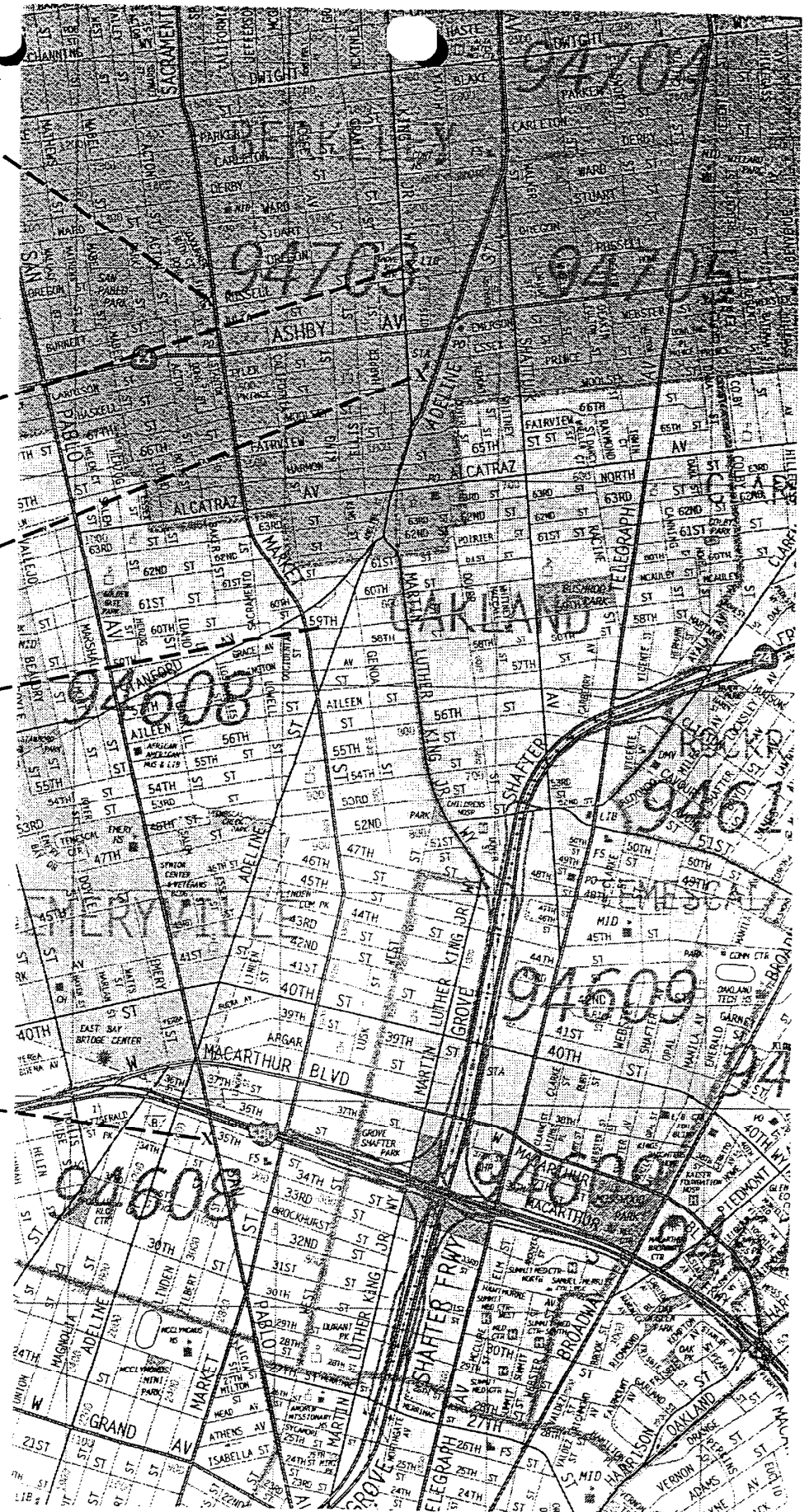
Getting to the Gardens

BOSS Urban Gardening Institute Office
BOSSWorks/Job Training Institute
2880 Sacramento St.
at the corner of Russell St.
one block north of Ashby Ave

South Berkeley Community Garden
On Martin Luther King Jr. Way
between Russell and Oregon Streets
to the left of the tool library
across MLK Jr. Way from Grove Park
1 1/2 blocks north of Ashby Bart

59th St. Spiral Garden
On 59th St. in the middle of the block
between Market and Adeline Streets
2 1/2 blocks west of MLK Jr. Way
1 block south of Stanford Ave.

California Hotel Garden
In the backyard of 3501 San Pablo Ave
between 35th and 34th Streets
Go through the hotel lobby or
BOSS Transitions Office



License Agreement with BUGI for Property at Sacramento & Oregon Sts.

EXHIBIT C

PAYMENT

Licensee must pay to the City the fee described in Section 2 of this License no later than ten (10) calendar days from the beginning of each License Year. Any payments received after t his t en (10) da y t ime p eriod m ay be assessed a ten percent (10%) late-penalty. Payments shall be made payable to the "City of Berkeley" and paid at the Finance Department at 2180 Milvia Street, Berkeley, CA 94704. Copies of all payments and invoices shall be provided each year to the Director of the City's Parks Recreation and Waterfront Dept.

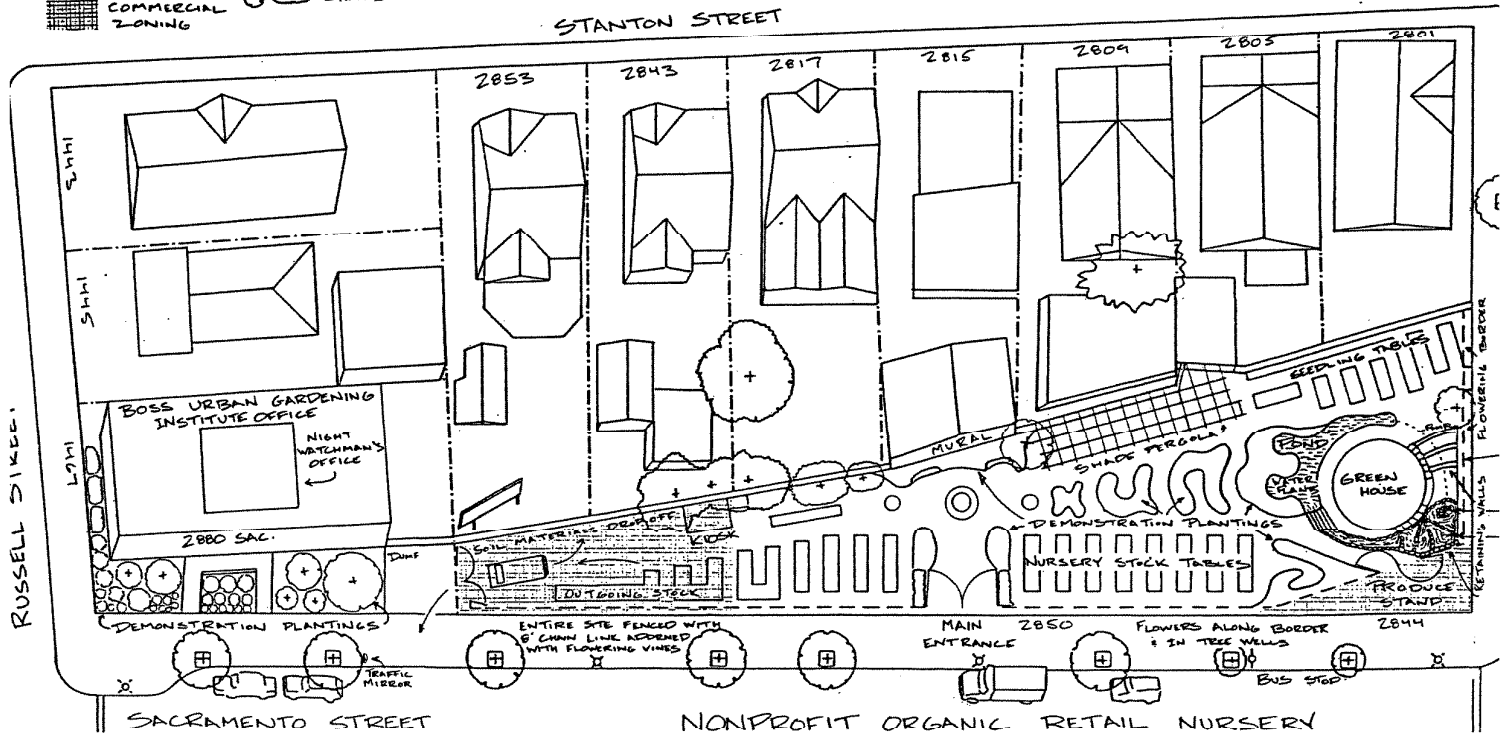
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LEGEND

- PROPERTY LINES
- - - CHAIN LINK FENCE
- XXXX ROCK WALL
- X STREETLIGHT
- XXXX COMMERCIAL ZONING
- ⊕ TREE
- SHRUB

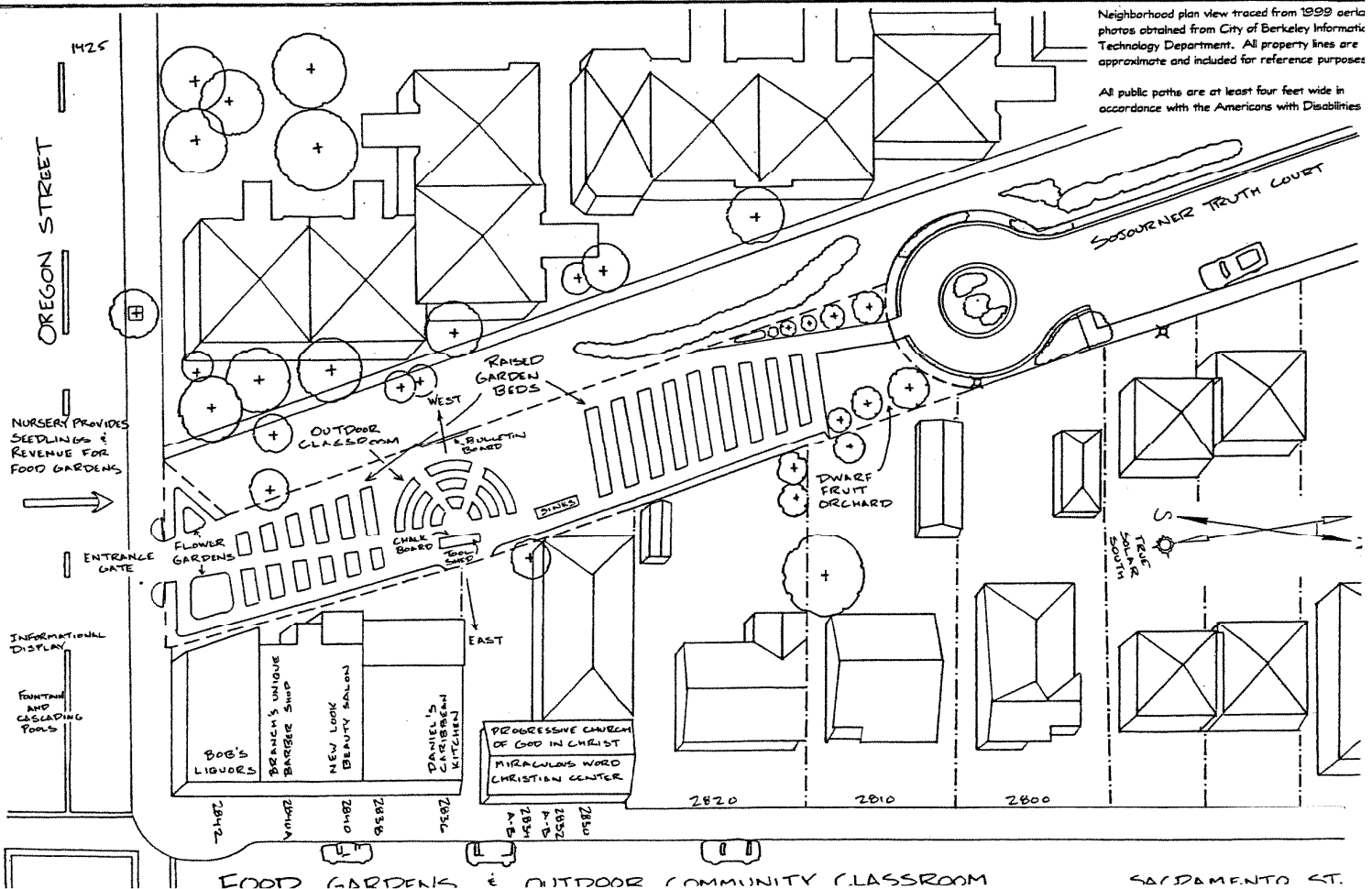
SCALE 1" = 50'

Cultivating Community Food Security
From the Ground Up



Neighborhood plan view traced from 1999 aerial photos obtained from City of Berkeley Informatics Technology Department. All property lines are approximate and included for reference purposes.

All public paths are at least four feet wide in accordance with the Americans with Disabilities



69. **Use Portion of Santa Fe Right-of-Way for Community Gardens and Retail Nursery (PDF, 3 MB) (CF 47-02)**

From: City Manager

Recommendation: Take one of the following actions: 1) Ask BOSS Urban Gardening Institute (BUGI) to provide letters of endorsement from surrounding neighborhood organizations and bring results back to Council; or 2) direct the City Manager to develop an agreement with BUGI to file an application for a use permit for the portion of the Santa Fe right-of-way (SFROW) at Sacramento and Oregon Streets for community gardens and a retail nursery; or 3) not take any action to sell or dispose property along the SFROW until an assessment and inventory of the entire SFROW has been completed and any project can be considered in the context of a larger planning process.

Contact: Carol Barrett, Planning and Development, 705-8100

Action: Moved to the Consent Calendar by Councilmember Armstrong directing the City Manager to develop an agreement with BUGI to file an application for a use permit for the portion of the Santa Fe right-of-way (SFROW) at Sacramento and Oregon Streets for community gardens and a retail nursery. Councilmember Olds noted she did not want this to set a precedent for the Santa Fe Right-of-Way.

From Council Action taken on July 23, 2002.

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

I (we) certify that:

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

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

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


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

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

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

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

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

Signed:  Date: 6-9-03

Printed Name & Title: Robert Barver, Contracts/MIS Director

Company: Building Opportunities for Self-Sufficiency

AFFIRMATIVE ACTION/WORK FORCE COMPOSITION FORM

FOR ALL NON-CONSTRUCTION CONTRACTS

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

Organization: Building Opportunities for Self-Sufficiency **Business License No:** 2003-C2273

Address: 2065 Kittredge, Ste. E, Berkeley, CA 94704

Occupational Category (see reverse side for explanation of terms)	Total Employees		White		Black		Asian		Hispanic		Other	
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
Officials/Administrators	4	3	2	1	0	1	2	0	0	0	0	1
Professionals	10	4	8	3	1	1	1	0	0	0	0	0
Technicians/Supervisors/Managers	4	3	1	2	3	1	0	0	0	0	0	0
Protective Services Workers	0	0	0	0	0	0	0	0	0	0	0	0
Para-Professionals	39	23	10	4	25	16	0	0	2	1	2	2
Office/Clerical	6	3	2	1	0	0	2	2	1	0	1	0
Skilled Craft Workers (Cooks)	2	2	0	0	2	2	0	0	0	0	0	0
Services/Maintenance	4	8	1	1	3	5	0	1	0	1	0	0
Other (Specify)	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS:	69	46	24	12	34	26	5	3	3	2	3	3

Is your business MBE/WBE/DBE certified?

Yes ☐ No ☒ X

If yes, by what agency?

If yes, please specify: Male: ☐ Female: ☐


Indicate ethnic identification

Do you have an Affirmative Action plan?

Yes ☒ X No ☐

Signed: 

Date: 6-9-02

Verified by: 

Date: 7/1/03

City of Berkeley Contract Compliance Officer

Form EBO-1
CITY OF BERKELEY



CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

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

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Name: BUILDING OPPORTUNITIES for SELF-SUFFICIENCY - UGI	Vendor No.: N/A		
Address: 2065 Kittredge St, Suite E	City: Berkeley	State: CA	ZIP: 94704
Contact Person: Robert Barrer	Telephone: 510-649-8174		
E-mail Address: rbarrer@lmi.net	Fax No.: 510-649-0627		

SECTION 2. COMPLIANCE QUESTIONS

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

SECTION 3. PROVISIONAL COMPLIANCE

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

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

SECTION 4. REQUIRED DOCUMENTATION

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

SECTION 5. CERTIFICATION

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

Executed this 23 day of June, in the year 2003, at Berkeley, CA
(City) (State)

Robert barre r
Name (please print)

[Signature]
Signature

Contracts / MIS director
Title

510-0173390
Federal ID or Social Security Number

FOR CITY OF BERKELEY USE ONLY

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

Staff Name(Sign and Print): [Signature] Date: 7-10-03

**CITY OF BERKELEY
LIVING WAGE CERTIFICATION
Providers of Personal Service**

TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR PERSONAL SERVICES WITH THE CITY OF BERKELEY.

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions posed below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, subsequent contracts may be subject to compliance with the LWO. Furthermore, the instant contract may become subject to the LWO if Contractor's employees' condition changes (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

Section I.

1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS.

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?

yes _____

no _____

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

b. Do you have six (6) or more employees, including part-time and stipend workers?

yes _____

no _____

IF YOU HAVE ANSWERED "YES" TO QUESTIONS (a) AND (b) THIS CONTRACT IS SUBJECT TO THE LWO. PLEASE CONTINUE TO SECTION II. If you responded "no" to 1(b) this contract is NOT subject to the LWO, and you may continue to Section II.

2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?

yes X _____

no _____

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

b. Do you have six (6) or more employees, including part-time and stipend workers?

yes _____

no _____

IF YOU HAVE ANSWERED "YES" TO QUESTIONS (a) AND (b) THIS CONTRACT IS SUBJECT TO THE LWO. If you responded "no" to 2(b) this contract is NOT subject to the LWO.

Section II.

PLEASE READ, COMPLETE, AND SIGN THE FOLLOWING:

THIS CONTRACT IS / IS NOT (CIRCLE ONE) SUBJECT TO THE LIVING WAGE ORDINANCE.

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance to the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination.

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

Signed: [Signature] Date: 6/23/03

Printed name: Robert Barrer Title: Contracts / MIS director

Company: Building Opportunities for Self-Sufficiency

Section III.

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

I have reviewed the instant Living Wage Certification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and this Contract IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

PR4W
DEPARTMENT NAME

[Signature]
DEPARTMENT REPRESENTATIVE

**CITY OF BERKELEY
TROPICAL HARDWOOD DISCLOSURE FORM
Construction Contractors and
Providers of Services Involving the Provision of Wood**

I understand that for the purposes of this disclosure form:

"Bid" or "proposal" means the offer to construct a public work or improvement on behalf of the City of Berkeley, or any other offer to perform services that involve the provision of wood or wood products, pursuant to a formal or informal solicitation of bids or proposals of which this disclosure form is a part.


"Person" means any individual firm, partnership, corporation, association, or any other organization or entity, however formed.

"Tropical Hardwood" means any and all hardwood, scientifically classified as angiosperm, that grows in any Tropical Rain Forest, and includes, but is not limited to, the species listed on the attached.

"Tropical Wood Products" means any wood products, wholesale or retail, in any form, including but not limited to veneer, plywood, furniture, cabinets, paneling, mouldings, doorskins, joinery, or sawnwood (defined on the attached), which are composed of tropical hardwood.

I certify that the bid or proposal does not propose or call for the use of any tropical hardwood or tropical wood products in the performance of the contract. I understand that any bid or proposal that does call for the use of any tropical hardwood or tropical wood product shall be deemed non-responsive.

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

Signed:  Date: 6-9-03
Printed name: Robert Banner Title: Contracts/MIS Director
Company: Building Opportunities for Self-Sufficiency

If unable to sign above, explain why not.

(Pursuant to Resolution No. 58,291-N.S. adopted December 12, 1995.)

CITY OF BERKELEY
Oppressive States Compliance Statement for Personal Services

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

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

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

"Oppressive State" means: 1) Nation of Burma (Union of Myanmar), 2) Federal Republic of Nigeria, 3) Tibet Autonomous Region and the Provinces of Abo, Kham, and U-Tsang, and 4) the Republic of Indonesia and the territory of East Timor.

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

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

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

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

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

Printed Name: Robert Barres Title: Contracts / MIS Director

Signed: [Signature] Date: 6-9-03

Business Entity: Building Opportunities for Self-Sufficiency

Contract description/Specification No.: San Francisco Right of Way, garden, nursery, outdoor classroom

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

Signed: _____ Date: _____

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YY) 06/20/2003
PRODUCER (925)934-0505 FAX (925)977-1591 Insurance Associates of Northern CA 2735 North Main Street PO Box 8070 Walnut Creek, CA 94596		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Building Opportunities For Self-Sufficiency 2065 Kittredge Street, #E Berkeley, CA 94704 Fax: 510-649-9346		
INSURERS AFFORDING COVERAGE		
INSURER A: Great American Insurance Co		
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	PAC101672707	07/01/2003	07/01/2004	EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$ 100,000
					MED EXP (Any one person)	\$ 5,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	\$
					AGGREGATE	\$
						\$
						\$
						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	\$
					OTH-ER	\$
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE - EA EMPLOYEE	\$
					E.L. DISEASE - POLICY LIMIT	\$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Re: 2850 Sacramento Street, Berkeley, CA 94702.

Additional insured per CG 2026 attached.

10 day notice of cancellation in the event of nonpayment of premium.

CERTIFICATE HOLDER <input checked="" type="checkbox"/> ADDITIONAL INSURED; INSURER LETTER A	CANCELLATION
City of Berkeley Dept. of Parks Recreation & Waterfront Attn: Ed Murphy 2180 Milva Street Berkeley, CA 94702	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE Cathy Contreras <i>Cathy Contreras</i>

POLICY NUMBER: PAC101672707 COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED -- DESIGNATED PERSON OR
ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your operations or premises owned by or rented by you..

SCHEDULE

Name of Person or Organization:

City of Berkeley, its officers, agents, volunteers and employees
Department of Parks Recreation & Waterfront
2180 Milva Street
Berkeley, CA 94702

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement)

CG 20 26 11 85