



Office of the City Manager

CONSENT CALENDAR
April 26, 2022

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Peter Radu, Assistant to the City Manager
 Subject: Urgency Ordinance for Leasing the Real Property at 1461 University Avenue

RECOMMENDATION

Adopt an Urgency Ordinance to enter into a lease for the real property located at 1461 University Avenue, Berkeley for a term of 18 months.

FISCAL IMPACTS OF RECOMMENDATION

Total costs for this lease are not to exceed \$124 per room per night for 43 rooms, plus a \$2000 per room fund for damages payable upon lease termination, for a total \$3,005,270, which will be paid for using State of California Encampment Resolution Funding grant funds as well as funds from the University of California, Berkeley. These funds will be appropriated in the Second Amendment to the FY 2022 Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to Article XIV of the City Charter, this urgency ordinance is needed for the “immediate preservation of the public peace, health or safety” in light of the current shelter crisis and planned affordable housing development at People’s Park. By adopting this agreement through an Urgency Ordinance, it will be possible to execute a lease with an effective date of May 1, 2022, thus allowing sufficient time to ensure those who are currently living in People’s Park have a safe, indoor destination when the Park closes for construction.

On March 8, 2022, the Council adopted a resolution authorizing the City Manager to contract with the State of California for just over \$4.7M in funding from the Encampment Resolution Funding grant program. Staff submitted an application to this grant opportunity in December 2021, proposing to use the funds, along with some funding provided by the University of California, Berkeley, to operate non-congregate interim housing at the Rodeway Inn for the cohort of individuals currently living in the encampment at People’s Park.

Since that time, staff have secured an agreement with the Rodeway Inn’s ownership to lease 43 rooms at the Rodeway for this purpose. The proposed lease, as specified in

Exhibit A attached to this report, covers 43 rooms at a flat price of \$124 per room per night, as well as a damage fund not to exceed \$2000/room payable at the end of the lease, for a total amount not to exceed \$3,005,270. This includes regular cleaning, linen service, and supplies to the rooms. Staff propose to contract with Abode Services to provide the social services component of the program and are bringing that to Council in a separate report. An agreement to receive funds from UC Berkeley is also being brought to Council in a separate report.

Increasing access to interim housing for persons experiencing homelessness is consistent with the City's strategic priorities.

BACKGROUND

In February 2022, the City was awarded just over \$4.7M in State of California Encampment Resolution Funding grant funds to operate the Rodeway Inn as the primary interim housing option for people living in People's Park. On March 8, the Council authorized the acceptance of the Encampment Resolution Funding grant funds.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental impacts associated with this lease. Providing noncongregate interim housing for those currently living in People's Park will reduce the likelihood that those individuals are displaced to other outdoor locations when construction begins at the Park, thus reducing the overall negative impact of encampments on Berkeley's environment and waterways.

RATIONALE FOR RECOMMENDATION

If adopted, this lease agreement will bring about the opportunity to shelter at least 42 individuals who are currently living in People's Park. The individuals living there need to be provided safe, low barrier interim housing options in order to secure the site for development of affordable student housing and affordable housing including permanent supportive housing for persons experiencing homelessness. Adopting the agreement by Urgency Ordinance is appropriate in light of the current shelter crisis and planned affordable housing development at People's Park. By adopting this agreement through an Urgency Ordinance, it will be possible to execute a lease with an effective date of May 1, 2022.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Peter Radu, Assistant to the City Manager, 510 981-7045

Attachments:

- 1: Ordinance
Exhibit A: Lease Agreement

ORDINANCE NO. X,XXX N.S.

URGENCY ORDINANCE AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXECUTE A LEASE AND ANY NECESSARY AMENDMENTS WITH SHREE JALASAI LODGING, LP, DBA RODEWAY INN, BERKELEY, FOR REAL PROPERTY LOCATED AT 1461 UNIVERSITY AVENUE, BERKELEY, CA.

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

Section 1. The City Council finds as follows:

- a. The City of Berkeley is facing a growing housing and homelessness crisis, in part exacerbated by the acute lack of affordable student housing and supportive housing for people experiencing homelessness; and
- b. To help address this crisis, on December 14, 2021, the City Council affirmed its support of the development of People's Park into affordable housing, including permanent supportive housing for people experiencing homelessness, by unanimously voting to commit \$14.4M in funding to help close the financing at this development; and
- c. Providing low-barrier, noncongregate interim housing options will be critical to end the unsheltered status and avoid the mere displacement of those currently living in People's Park to the surrounding communities of Berkeley; and
- d. On December 29, 2021, City staff partnered with the University of California, Berkeley to submit a grant application to the State of California, requesting \$4,708,015 in Encampment Resolution Funding (ERF) grant funds for one year of operations at the Rodeway Inn on University Avenue in Berkeley, which staff proposed as the primary interim housing option for those in the Park; and
- e. On February 24, 2022, the City learned that its ERF grant had been funded by the State in full; and
- f. The property owner, Shree Jalasai Lodging, LP, dba Rodeway Inn, Berkeley, has offered to lease 43 rooms at the property at 1461 University Avenue, Berkeley, at a rate of \$124 per room per night and \$2000 per room in damage funds, to the City for purposes of establishing a homeless shelter for 18 months.

Section 2. The City Manager or her designee is hereby authorized to enter into a lease and necessary amendments starting May 1, 2022 with Shree Jalasai Lodging, LP, dba Rodeway Inn, Berkeley for real property located at 1461 University Avenue on substantially the same terms as set forth in Exhibit A. The rent will be \$124 per room per night, including \$2000 per room in damage funds, and will be paid by State of California Encampment Resolution Funding grant funds and funds from the University of California, Berkeley.

Section 3. This Ordinance is adopted as an urgency ordinance pursuant to the Charter of the City of Berkeley, Article XIV, Section 93 and shall be effective immediately. The City Council finds and determines that the adoption of this Ordinance as an urgency ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City of Berkeley.

Section 4. Copies of this Ordinance 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.

CITY OF BERKELEY

EMERGENCY OCCUPANCY AGREEMENT

<u>OCCUPANCY AGREEMENT COVERING PREMISES</u> <u>LOCATED AT:</u> Rodeway Inn 1461 University Avenue, Berkeley, CA 94702
<u>OWNER'S FED. TAX. I.D., NO. OR SOCIAL SECURITY NO.:</u> 01-0973390
<u>TENANT:</u> City of Berkeley

File No:

Preamble **THIS OCCUPANCY AGREEMENT, made and entered into this ____ day of _____ 2022 by and between**

SHREE JALASAI LODGING, LP dba RODEWAY Inn, Berkeley

hereinafter called the Owner, without distinction as to number or gender, and the City of Berkeley, hereinafter called the City (“Occupancy Agreement”). This Occupancy Agreement is entered into for the purposes of providing interim housing for persons experiencing homelessness in Berkeley, California.

Owner is the record owner of or authorized party to grant such rights concerning certain real property defined as the Premises herein situated in the County of Alameda, State of California and has the authority to grant the rights contained herein this Occupancy Agreement to the City.

WITNESSETH

Description 1. The Owner hereby authorizes the City and the City hereby hires from the Owner those certain premises “AS IS” with appurtenances situated in the City of Berkeley, County of Alameda, State of California, and more particularly described as follows:

The Forty-Three (43) rooms (collectively, the “**Rooms**”) located at 1461 University Avenue, Berkeley, CA as outlined in red on the attached Exhibit A - Aerial Site Plan, consisting of one (1) page, dated June 14, 2020, said Exhibit A, hereby being incorporated into this Occupancy Agreement, and including all parking spaces contiguous to the subject hotel building, and unlimited use of the building's common facilities (collectively, the “**Premises**”). The City shall have exclusive access to and use of the Premises set forth in this Occupancy Agreement twenty-four (24) hours per day, seven (7) days per week with no exceptions. During the Term, Owner shall not rent or allow occupancy of any room or facilities in the hotel.

Term; Early Termination 2. The term of this Occupancy Agreement shall commence on May 1, 2022, with the City taking physical occupancy on May 15, 2022, and continue for eighteen (18) months until October 31, 2023; however, at any time after the first twelve (12) months of the Term (any time after April 30, 2023), the City shall have the right to terminate this Occupancy Agreement at any time by giving written notice to the Owner at least sixty (60) days prior to the date when such termination shall become effective (the “**Term**”). If the City fails to move out by the end of the Term, additional

rent shall be paid and prorated on a 30-day month, based on the actual number of days the City occupies the Premises following the effective date of termination.

Rent and Invoicing

3. Rent payments shall be paid by the City, from legally available funds and subject to the California Constitution, in arrears on the last day of each month during said term as follows:

THE DAILY ROOM RATE SHALL BE ONE HUNDRED TWENTY-FOUR AND 00/100 DOLLARS (\$124.00) PER GUEST ROOM (“RENT”), REGARDLESS OF WHETHER THE GUEST ROOM IS OCCUPIED OR NOT. OTHER THAN THE RENT AND PAYMENT FOR ROOM RESTORATION DESCRIBED BELOW, THE CITY SHALL NOT BE RESPONSIBLE FOR ANY OTHER PAYMENT TO OWNER.

Rent shall be paid to Owner at the address specified in Paragraph 4 or to such other address as the Owner may designate by a notice in writing.

Notices

4. All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and either: 1) deposited in the United States Mail, certified and postage prepaid; or 2) sent via an alternate commercial overnight delivery service (i.e. FedEx or similar) with receiver’s signature required; and addressed as follows:

To the Owner: Shree Jalasai Lodging, LP
Jaydipsinh (Jay) Devdhara, Manager
547 35th Avenue
San Francisco, CA 94121
Phone No.: 415-812-0756
Hotel No.: 510-848-3840
Email: jraput86@gmail.com

To the City: City Manager’s Office
City of Berkeley
2180 Milvia St, 5th Floor
Berkeley, CA 94704
Attn: Peter Radu
Phone No. (510) 981-7045
Email: pradu@cityofberkeley.info

ALL NOTICES AND CORRESPONDENCE MUST REFERENCE PREMISES ADDRESS.

Rent warrants shall be made payable to:

Shree Jalasai Lodging, LP,

and mailed to: 1461 University Avenue
Berkeley, CA 94702
Attn: Jay Devdhara

Nothing herein contained shall preclude the giving of any such written notice by personal service so long as it is acknowledged in writing by the parties. The address to which notices and

correspondence shall be mailed to either party may be changed by giving written notice to the other party.

Parking

5. Parking spaces, upon commencement of the Term of the Occupancy Agreement, shall be unobstructed and completely accessible for City's use. Parking spaces shall be provided at no additional charge.

**Services,
Utilities, and
Supplies**

6. Owner, at Owner's sole cost and expense, shall furnish normal and standard hotel operation functions, such as utilities and supplies, including without limitation the following: electricity and gas for heating, ventilating, air-conditioning and gas and electric services as the City needs for its operations, sewer, trash disposal up to 3 yards per week, hot and cold water service, internet, linen and laundry service, housekeeping and janitorial service, including toiletries, not less than every 3 days.

All housekeeping/janitorial services, as well as linen/terry and laundry services shall be provided in accordance with any applicable, current health and safety protocols established by public health officials as detailed in Exhibit C.

If Owner fails to provide the foregoing services or utilities, City may furnish the same and deduct the cost, plus City's administrative expenses, from the Rent.

**Repair and
Maintenance**

7. During the Term of this Occupancy Agreement, the Owner shall maintain the Premises in good repair and tenantable condition. With 24 hours' written notice given, Owner reserves the right to inspect any Room upon request. Owner warrants and represents the Premises shall be readily accessible to and usable by individuals with disabilities in compliance with Title III of the Americans with Disabilities Act of 1990 and California Title 24, as amended from time to time and regulations issued pursuant thereto and in effect from time to time. Any and all costs incurred to cause the Premises to comply with said Act shall be borne by Owner.

Assignment

8. The City shall have the right to assign this Occupancy Agreement.

**Quiet
Possession**

9. The Owner agrees that the City, while keeping and performing the covenants herein contained, shall at all times during the existence of this Occupancy Agreement, peaceably and quietly have, hold, and enjoy the Premises without suit, trouble, or hindrance from the Owner or any person claiming under the Owner.

Destruction

10. If the Premises are totally destroyed by fire or other casualty, this Occupancy Agreement shall terminate. If such casualty shall render ten percent (10%) or less of the floor space of the Premises unusable for the purpose intended, Owner shall effect restoration of the Premises as quickly as is reasonably possible, but in any event within thirty (30) days.

In the event such casualty shall render more than ten percent (10%) of such floor space unusable but not constitute total destruction, Owner shall forthwith give notice to City of the specific number of days required to repair the same. If Owner under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from date such notice is given, City, in either such event, at its option may terminate this Occupancy Agreement or, upon notice to Owner, may maintain occupancy and elect to undertake the repairs itself, deducting the cost thereof from the Rent due or to become due under this Occupancy Agreement and any other occupancy agreement between Owner and City.

In the event of any such destruction other than total, where the City has not terminated the Occupancy Agreement as herein provided, or pursuant to the terms hereof has not elected to make the repairs itself, Owner shall diligently prosecute the repair of said Premises and, in any event, if said repairs are not completed within the period of thirty (30) days for destruction aggregating ten percent (10%) or less of the floor space, or within the period specified in Owner's notice in connection with partial destruction aggregating more than ten percent (10%), the City

shall have the option to terminate this Occupancy Agreement or complete the repairs itself, deducting the cost thereof from the Rent due or to become due under this Occupancy Agreement and any other occupancy agreement between Owner and City.

It is understood and agreed that the City or its agent has the right to enter the destroyed or partially destroyed Premises no matter what the condition. At the City's request, the Owner shall immediately identify an appropriate route through the building to access the Premises. If the Owner cannot identify an appropriate access route, it is agreed that the City may use any and all means of access at its discretion in order to enter the Premises.

Subrogation Waived

11. To the extent authorized by any fire and extended coverage insurance policy issued to Owner on the Premises, Owner hereby waives the subrogation rights of the insurer, and releases the City from liability for any loss or damage covered by said insurance.

Prevailing Wage Provision

12. For those projects defined as "public works" pursuant to Labor Code §1720.2, the following shall apply:

- A. Owner/contractor shall comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with §1770 et seq. of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications and subcontracts.
- B. The Owner/contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates which Owner will post at the job site. All prevailing wage rates shall be obtained by the Owner/contractor from:

Department of Industrial Relations
 Division of Labor Statistics and Research
 455 Golden Gate Avenue, 8th Floor
 San Francisco, California 94102
 Phone: (415) 703-4774
 Fax: (415) 703-4771

For further information on prevailing wage: http://www.dir.ca.gov/dlsr/statistics_research.html

- C. Owner/contractor shall comply with the payroll record keeping and availability requirement of §1776 of the Labor Code.
- D. Owner/contractor shall make travel and subsistence payments to workers needed for performance of work in accordance with the Labor Code.
- E. Prior to commencement of work, Owner/contractor shall contact the Division of Apprenticeship Standards and comply with §1777.5, §1777.6, and §1777.7 of the Labor Code and Applicable Regulations

Fair Employment Practices

13. During the Term of this Occupancy Agreement, the Owner shall not deny benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex. Owner shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Owner shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.8), and the regulations or standards adopted by the awarding City to implement such article.

Holding Over

14. In the event the City remains in possession of the Premises after the expiration of the Occupancy Agreement Term, or any extension or renewal thereof, this Occupancy Agreement shall be automatically extended on a month to month basis, subject to a thirty day (30) day termination by the City and otherwise on the terms and conditions herein specified, so far as applicable. If the City fails to vacate the Premises within the notice period and remains for an extended period, additional rent shall be paid and prorated on a thirty (30) day month, based on the actual number of days the City occupies the Premises following the effective date of termination. Any such payments for additional rent shall be limited to the actual number of Rooms occupied by the City following the effective date of termination.

Surrender of Possession

15. Upon termination or expiration of this Occupancy Agreement, the City will peacefully surrender to the Owner the Premises in good order, except for reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which City has no control or for which Owner is responsible pursuant to this Occupancy Agreement. Notwithstanding the foregoing, City's obligation to restore the Premises shall be limited to and in accordance with paragraph 19.

Time of Essence, Binding upon Successors

16. Time is of the essence of this Occupancy Agreement, and the terms and provisions of this Occupancy Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the respective parties hereto. All of the parties hereto shall be jointly and severally liable hereunder.

No Oral Agreements

17. It is mutually understood and agreed that no alterations or variations of the terms of this Occupancy Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

Hazardous Substance

18. City agrees that it will comply with all applicable laws existing during the Term of this Occupancy Agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event a government order is issued naming the City or the City incurs any liability during or after the Term of this Occupancy Agreement in connection with contamination which pre-existed the City's obligations and occupancy under this Occupancy Agreement or which were not caused by the City, Owner shall hold harmless, indemnify, and defend the City in connection therewith and shall be solely responsible as between City and Owner for all efforts and expenses thereto.

Restoration of Premises

19. Upon termination of this Occupancy Agreement, Owner agrees that the equipment installed by the City shall be and remain the property of the City, and City shall remove such property when vacating the Premises. At the end of the Term, the City will reimburse the Owner a Fee not to exceed \$2,000.00 per Room for the actual out-of-pocket costs to replacing any damaged furniture, flooring and/or hard goods, beds and/or soft goods in the Rooms and any required deep cleaning, including pest control and heat treatments. Subject to the \$2,000.00 per Room cap, City shall pay the amount due to Owner within thirty (30) days of City's receipt of Owner's proof of payment including actual costs for the goods, services and labor, which may include Owner's labor expenses, in order for the hotel to be able to transition back to operating at capacity once this Occupancy Agreement terminates. City's obligation to restore the Premises to its condition prior to taking occupancy, subject to the limits in paragraph 15, shall be limited to the terms of this paragraph 19. The Owner reserves the right not to repair/replace any damages caused maliciously or intentionally by the City or its program guests in excess of the \$2,000.00 per Room reimbursement cap. The City will include language in any program guest agreement paperwork stipulating that excessive damages caused to the Room may be grounds for discharge from the program.

Access

20. Owner shall permit City to access to those Rooms on the Premises that are not undergoing rehabilitation or repairs beginning on May 1, 2022, and all Rooms beginning May 15,

2022, to stage and prepare the Premises for occupants, or for any other purpose the City deems necessary.

Indemnification and Insurance

21. The City agrees to indemnify and hold harmless the Owner in the event of any claim, demand, cause of action, judgments, obligations, or liabilities, and all reasonable expenses which Owner may suffer as direct and proximate result of the negligence or other wrongful act or violation of law by the City, its employees, or any person or persons acting under the direct control and authority of the City or its employees, in connection with the City's occupancy of the Premises under and during the Term of this Occupancy Agreement and agrees to repair or pay for any damage proximately caused by reason of the City's use of the Premises during the Term of this Occupancy Agreement, including fire damage caused by City occupants' sole negligence or arson, except to the extent that any such damages suffered by Owner are the result of Owner's negligent or wrongful acts or the acts of any persons acting under or on behalf of the Owner and/or where the City is found to have no liability by reason of any immunity arising by statute or common law in connection with the fulfillment of the City's constitutional and statutory public responsibilities.

Owner agrees to indemnify and hold harmless the City in the event of any claim, demand, cause of action, judgments, obligations, or liabilities, and all reasonable expenses which City may suffer as direct and proximate result of the negligence or other wrongful act or violation of law by the Owner, its employees, or any person or persons acting under the direct control and authority of the Owner or its employees, in connection with the City's occupancy of the Premises under and during the Term of this Occupancy Agreement except to the extent that any such damages or expenses suffered by City are the result of City's sole negligence. Owner specifically waives any claim to special or consequential damages it may have against City, including but not limited to claims concerning business reputation. Owner's defense and indemnity obligations under this paragraph shall not be limited by the policy limits of any policy of insurance.

Owner shall maintain in force at all times such policies of insurance as specified in Exhibit B, and shall abide by all of the terms and conditions of Exhibit B, which are incorporated by reference as if set forth in full herein.

For the Term of this Occupancy Agreement, City shall self-insure or maintain, at its own expense, Comprehensive general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single and aggregate limits for both bodily injury and property damage, personal injury, completed operations and products liability. City insures City's personal property located on or in the Premises.

Taxes

22. Owner is solely responsible for all tax liabilities, including property taxes.

Exclusive Use

23. Owner shall not rent or allow occupancy of any vacant rooms or facilities in the hotel during the Term of the City's occupancy of the Premises.

Occupancy of Premises

24. Owner and City understand that they shall not receive rent, fees, or any other form of payments or consideration, or gifts from occupants of Rooms in exchange for access to or use of the Premises. Owner and City also understand that neither has entered into any contract with the occupants of the Rooms related to the use of the Premises within the meaning of California Civil Code section 1925. The occupants of the Rooms are not persons who hire any dwelling unit from Owner or City within the meaning of California Civil Code section 1940 and are not subject to the benefits of the California Civil Code or any other state statutes, rules, or regulations or local government rules, regulations or ordinances that confer tenancy rights on the occupants.

Remedies

25. In the event of a breach by the Owner of any term or provision of this Occupancy Agreement, the City shall have the right to pursue all available remedies at law or equity,

including recovery of damages and specific performance of this Occupancy Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by Owner of any of the provisions of this Occupancy Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, Owner shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Occupancy Agreement, each party's rights and remedies under this Occupancy Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

Conflict of Interest

26. By executing this Occupancy Agreement, Owner certifies that it does not know of any fact which constitutes a violation of California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, and further agrees promptly to notify the City if it becomes aware of any such fact during the Term of this Occupancy Agreement.

HOTEL LABOR PROVISIONS

Employment

27. During the Term of this Occupancy Agreement, no employee shall be terminated except for just cause.

28. The Owner shall comply with all local, state and federal wage-and-hour and other employment standards laws covering employers in the hotel industry. The City shall have the right to audit the Owner for compliance with such wage-and-hour and other employment-standards laws.

Health & Safety

29. In the event a room is to be cleaned while it is occupied by a guest, Owner shall ensure that at least two employees are present to do so. Owner shall furthermore ensure that personnel or a manager are readily accessible to provide assistance while such occupied rooms are being cleaned, and shall follow any local law requiring the provision of "panic buttons" or emergency contact devices to employees.

30. In the event that an employee has a reasonable concern that an assignment does not conform to Exhibit C and thus places their health and safety at risk, the employee may refrain from performing the assignment. No employee shall suffer retaliation from doing so. Owner shall ensure employees have read, understood and follow all safety provisions in Exhibit C, which will be updated from time to time.

31. Owner will comply with the March 31, 2020 Alameda County Health Order Section 13(h) and take all necessary and reasonable steps to ensure employees are in compliance with the order as it applies to Essential Businesses. As future Health Orders have been or are released, Owner shall follow all applicable requirements. Owner shall take reasonable steps to ensure employees are able to remain at least six (6) feet apart from other hotel personnel and guests while they are performing their assigned work and during breaks, in addition to any other social distancing protocols required by state or local public health agencies. In no event shall any employee be required to work within six feet of, or in the same room as, an individual who is under quarantine or in isolation, or who has or is suspected to have COVID-19.

32. Owner will comply with all relevant CDC standards, as listed in Exhibit C of this Occupancy Agreement.

Enforcement

33. Employees shall be considered third-party beneficiaries of the requirements set forth in Paragraphs 27-33.

CITY OF BERKELEY PROVISIONS

34. City Non-Discrimination Ordinance. Owner hereby agrees to comply with the provisions of the Berkeley Municipal Code (“**B.M.C.**”), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Occupancy Agreement, Owner agrees as follows:

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

35. Non-Discrimination Against Persons With Disabilities.

a. If Owner provides any aid, service or benefit to others on the City’s behalf, Owner 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. Owner 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, if applicable.

b. If Owner is or becomes a “public accommodation” as defined in Title III of the Americans with Disabilities Act of 1990, Owner 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 Owner. All of Owner’s activities must be in accordance with these laws, ordinances, codes, and regulations, and Owner shall be solely responsible for complying therewith.

36. Conflict of Interest Prohibited.

a. In accordance with California Government Code Section 1090, Berkeley City Charter Section 36 and B.M.C. Chapter 3.64, neither Owner nor any employee, officer, director, partner or member of Owner, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a committee or commission member of City, who has directly or indirectly influenced the making of this Occupancy Agreement.

b. In accordance with California 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 Owner, or immediate family member of any of the preceding, shall make or participate in a decision made by City or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or City, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

Interpretation of this paragraph shall be governed by the definitions and provisions use 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, as amended from time to time.

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

38. Oppressive States.

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

i. The governing regime in any Oppressive State.

ii. Any business or corporation organized under the authority of the governing regime of any Oppressive State.

iii. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of this Occupancy Agreement) 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 Occupancy Agreement, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed Oppressive States.

c. Owner's failure to comply with this paragraph 60 shall constitute a default of this Occupancy Agreement and Owner may terminate this Occupancy Agreement on five days' written notice to Owner. In the event that City terminates this Occupancy Agreement due to a default under this provision, City may deem Owner a non-responsible bidder for five (5) years from the date this Occupancy Agreement is terminated.

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

a. "Data Broker" means either of the following: (1) The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies; (2) the aggregation of data that was collected for another purpose from that for which it is ultimately used.

b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include: (1) The City's computer-network health and performance tools; (2) Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer-based activity.

IN WITNESS WHEREOF, this Occupancy Agreement has been executed by the parties hereto as of the dates written below.

By _____

CITY:

CITY OF BERKELEY

Date _____

Approved as to Form

CITY ATTORNEY
By _____

Internal

JAYDIPSINH DEVDHARA,
Managing Member

Date _____

Date _____

OWNER:

SHREE JALASAI LODGING, LP

By _____

Exhibit A
Aerial Site Plan

This is an aerial site plan including all parking spaces contiguous to the subject hotel building.

https://earth.google.com/web/search/1461+University+Avenue,+Berkeley,+CA,+USA/@37.87052798,-122.28331165,29.73265671a,130.83737455d,35y,0.0000001h,44.99566261t,360r/data=CigiJgokCRE_M3UOQ70JAEbC2JKSD70JAGVEzhUqikV7AlbHGd7y7kV7A

Dated 06/14/2020



<https://earth.google.com/web/search/1461+University+Avenue,+Berkeley,+CA,+USA/@37.87032048,-122.28330065,30.80211199a,0d,88.22010856y,332.71991788h,99.18980124t,0r/data=CigiJgokCREM3UOQ70JAEbC2JKSD70JAGVEzhUqikV7AlbHGd7y7kV7AlhoKFJU5X3JbJpMcGVoejFhY2NGaTRkT3cQ>

Ag



Exhibit B

City of Berkeley Minimum Insurance Requirements

a. Contractor shall maintain at all times during the performance of this Contract a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$2,000,000 (two million dollars); an automobile liability insurance policy in the minimum amount of \$1,000,000 (one million dollars); and, if any licensed professional performs services under this contract, a professional liability insurance policy in the minimum amount of \$1,000,000 to cover any claims arising out of Contractor's performance of services under this Contract. All insurance, except professional liability, shall name the City, its officers, agents, volunteers and employees as additional insureds or certificate holder 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 Contract Administrator; 2) be evidenced by the original Certificate of Insurance, specifying the required coverage and the insurance carrier's standard additional insured or certificate holder form endorsement; and 3) be approved as to form and sufficiency by the City's Contract Administrator. The original insurance certificates and all extensions to the insurance certificates should be sent to the address identified below.

b. If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of this Contract, 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 Contract.

c. If Contractor 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 Contract Administrator; 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 Contract Administrator.

d. Contractor shall forward all insurance documents to:

Department Name: City Manager

Department Address: 2180 Milvia Street, Berkeley, CA 94704

Exhibit C

Health and Safety Requirements for Housekeeping and Hotel Staff*

Sanitation of Rooms Between Guest Departure and Arrival

In addition to standard room cleaning procedures usually followed by the hotel provider between guest departures and arrivals, hotel staff will take the following additional cleaning measure for room cleaning between guests:

- All cleaning shall be performed in alignment with guidelines as set forth in the California State Department of Public Health and CalOSHA's publication, "COVID-19 INDUSTRY GUIDANCE: Hotels and Lodging", most recent release date of May 6, 2020 and all updates issued thereafter and incorporated as procedure herein.
- Personal protective equipment and training of housekeepers will be provided in alignment with guidelines available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>
- Owners shall ensure compliance with social distancing protocol as required and updated by the local health official and as first introduced in the 3/31/20 Alameda County Health Order Section 13(k).
- Owner shall ensure that employees are provided break rooms in compliance with social distancing protocols that avoid congregate settings.
- Owner shall ensure that employees are practicing social distancing while performing all functions.

Sanitation of Guest Rooms During Guest Stays

Owner will provide guests cleaning supplies at the beginning of their stay to maintain cleanliness of their own rooms, and informed of their responsibility to maintain cleanliness of their rooms. Hotel staff will not enter the guest rooms during guest stays. Any towels and linens that the guest would like to be laundered may be left outside their door every third day in single-use, sealed bags within an established laundry pickup schedule every 3 days, to be exchanged for a clean set of towels and linens.

*City reserves the right to modify these requirements as necessary to conform to any changes to rules, regulations, guidance or advice from public health officials.

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