

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
FILED
2005 OCT 27 PM 6:55


TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Office of Parks and Recreation
DATE: October 26, 2005

RE: SUPPLEMENT REGARDING AN AMENDMENT TO THE DRAFT
LICENSE AGREEMENT BETWEEN THE CITY OF OAKLAND AND
ALAMEDA COUNTY YOUTH DEVELOPMENT, INC./GEORGE P.
SCOTLAN YOUTH AND FAMILY CENTER FOR A THREE YEAR
TERM WITH THREE CONSECUTIVE TWO-YEAR OPTIONS TO
RENEW

As directed by the Life Enrichment Committee on October 25, 2005, the draft of the License Agreement between the City of Oakland and Alameda County Youth Development, Inc./George P. Scotlan Youth and Family Center for a three year term with three consecutive two-year options to renew has been modified. Under Section 23, Annual Reporting and Accounting Records, the following provision has been added:

- 23.1 Certified Annual Reports prepared in accordance with Generally Accepted Accounting Principles including but not limited to an income and expense statement, a balance sheet showing all assets and liabilities and other related reports prepared by a Certified Public Accountant retained by Licensee at no cost to Licensor.

Respectfully submitted,


Audree V. Jones-Taylor
Director, Office of Parks and Recreation

APPROVED AND FORWARDED TO THE
CITY COUNCIL



OFFICE OF THE CITY ADMINISTRATOR

LICENSE AGEEMENT
BETWEEN THE CITY OF OAKLAND
AND ALAMEDA COUNTY YOUTH DEVELOPMENT, INC./
GEORGE P. SCOTLAN YOUTH AND FAMILY CENTER

This License Agreement ("License") is made as of this first day of November, 2005 by and between the City of Oakland ("City") and Office of Parks and Recreation ("OPR") jointly and severally called "Licensor" and, Alameda County Youth Development, Inc./George P. Scotlan Youth and Family Center ("Scotlan Center"), a California non-profit corporation, called "Licensee."

RECITALS

WHEREAS, the City of Oakland is the owner and OPR is the custodial agency of the real property shown ("Property") on the Plot Plan attached hereto and incorporated as Exhibit "A". The Property includes:

1. A building located at 1651 Adeline Street Oakland, California ("deFremery Recreation Center"). The deFremery Recreation Center is located on a parcel of land that also includes deFremery Park and Swim Center.

WHEREAS, Licensee is a tax exempt public benefit organization defined under the Internal Revenue Code.

WHEREAS, Licensee wishes to use the Property as follows:

1. To occupy the entire second floor of the deFremery Recreation Center and use the space for youth and family counseling programs and related activities.

WHEREAS, Licensor is willing to grant to Licensee a license for the restricted uses of the Property subject to the terms and conditions of this License.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Grant of Revocable License.** Licensor grants and Licensee accepts a license to use the Property for the License Period and any Extended License Period subject to the terms and conditions set forth in this License.

2. **License Period.** The License Period shall be for three (3) years commencing November 1, 2005 and ending October 31, 2008, unless terminated sooner by either party in accordance with this License.

3. **Extended License Period.** Subject to earlier termination by either party in accordance with this License, Licensee shall have the right to three (3) consecutive, two (2) year options to extend the License for an Extended License Period of up to six (6) years on the same terms and condition described in this License provided that the following conditions are satisfied:

- 3.1 Licensee shall not be in default under any provision of this License,
- 3.2 Licensee shall provide Licensor with advance written notice at least ninety (90) days prior to the termination of the License Period or any Extended License Period.

If Licensee fails to exercise the first 2 year option to extend the License Period, the subsequent options to extend shall have no force and effect, and Licensee shall have no other subsequent options to extend the License Period.

4. **License Fee Paid During Initial License Period.** Licensee agrees to pay in advance and in lawful money of the United States a monthly license fee of \$190.00 to Licensor. The first License Fee shall be due for the first (1st) day of the succeeding month in which the City Council approves this License Agreement. However, Licensee is a non profit agency which must bill funding sources under cost reimbursement contracts resulting in delays of up to 60 days before Licensee is reimbursed. Therefore, payment of the license fee shall be made by Licensee within 60 days of the due date of each license fee and shall be delinquent if not paid within 60 days of that due date. For subsequent months, the due date shall be the 1st of each month, and similarly payable within 60 days. All License Fees and other charges due under this License shall be payable to the City of Oakland and shall be remitted to the Office of Parks and Recreation, Attention: **OPR Fiscal Manager, 250 Frank H. Ogawa Plaza, 3rd Floor, Ste. 3330, Oakland, CA 94612.**

Licensee agrees that the Fair Market Rental Value of the property is Eight Hundred Dollars (\$800.00) per month. After comparison of the fair market rent and calculations of the in-kind services and benefits, as outline in "Services In-kind" (Ordinance No. 11722 C.M.S.), incorporated by this reference, the Licensor deems the value of said program as provided to the citizens of the City and other obligations undertaken by Licensee pursuant to the terms of this agreement to be equal to or exceed the fair market rental value of the Property.

Accordingly, Licensee agrees to pay Licensor One Hundred Ninety (190) Dollars per month through the term of this License. Licensor shall calculate the Fair Market Rent annually upon execution of any option period within this License. The Fair Market Rent for that option period will be compared to the value of the In Kind Services provided to calculate the License Fee for that option period. Licensor reserves the right to charge rent under either provision provided for above.

5. **Use.** Licensee shall have no other use of the Property except for the following:
 - 5.1 deFremery Recreation Center. The use of deFremery Recreation Center shall be restricted to a family and youth counseling center and other related activities that are open to the public in accordance with the deFremery Recreation Center's open hours as posted from time to time. The second floor of the deFremery Recreation Center shall be used for an office and for meetings relating to the programs offered by Licensee to members of the Community. Subject to first obtaining Licensor's written approval, Licensee may obtain a permit and be charged a fee for events that are socially and professionally compatible with Licensee's use and the use of the deFremery Recreation Center as a Community social and recreation center.

- 5.2 Other Areas (within the Exhibit "A" Plot Plan). The use of the other areas within the Exhibit "A" Plot Plan shall be restricted to those activities approved by the Office of Parks and Recreation through the Central Reservations process to permit the use of other areas in the deFremery Recreation Center.
- 5.3 Parking. The parking area abutting the deFremery Recreation Center shall be made available on a non-exclusive basis to employees and business invitees of the Scotland Youth Center

6. **Improvements.** Licensee shall not make any improvements or alterations to the Property without first obtaining the written consent from Licensor. If Licensee makes any improvements or alterations to Property, Licensor shall have the option to require Licensee to remove any such improvements or alterations made by Licensee prior to the end of this License at no cost to Licensor. If Licensee fails to comply with Licensor's request to remove any such improvements or alterations, Licensor shall have the option to remove any such improvements or alterations at Licensee's cost. In that event, Licensee shall promptly reimburse Licensor for Licensor's cost within 10 days after receiving Licensor's written demand. If any improvements or alterations are not removed when this License terminates, such improvements or alterations shall become part of the Property and Licensee shall not have any claim against Licensor or interest in such improvements or alterations.

6.1 **Improvements required by law.** Licensee shall, at no cost to Licensor, make all improvements or alterations to the Property required by law due to Licensee's use of the Property or Licensee's application for any governmental permit. If Licensor shall be required by any governmental agency to make any improvements or alterations to the Property, Licensor shall have the option to terminate this License in accordance with this License.

6.2 **Liens.** Licensee shall keep the Property free from any liens and shall pay when due all bills arising out of any work performed, materials, furnished, or obligations incurred by Licensee, its agents, employees, or contractors relating to the Property.

7. **Maintenance and Repair of the Property.** Licensor shall be responsible for the maintenance and repair of the portion of the Premises occupied by the Licensee and shall be required to provide janitorial and custodial services to the occupied portion of the Property at no cost to Licensor for the License Period and any Extended License Period. In addition, Licensee shall be responsible for providing its own form of security services to its occupied portion of the Property.

8. **Telephone/Cable Television.** Licensee shall be responsible for its telephone and cable television hook-up, services and related charges.

9. **Hazardous & Toxic Materials.** The Licensee shall not use, create, store or allow any hazardous and toxic materials on the Property except for those materials and supplies normally and customarily used for housekeeping, maintenance or cleaning and are considered safe. Licensee shall not cause or allow the deposit or disposal of any such hazardous material and toxic materials on the Property.

Licensee acknowledges Licensor's disclosure and has reviewed the issues relating to the past

history of hazardous and toxic materials contamination and remediation actions undertaken by Licensor. Licensor agrees to be solely responsible and liable for any prior hazardous and toxic materials conditions which may have occurred prior to Licensee's involvement in the Property.

10. **Insurance.** At Licensee's own cost, Licensee shall purchase and maintain insurance policies in an amount and coverage satisfactory to Licensor for the License Period and any Extended License Period. A copy of all required insurance policies shall be delivered to Licensor prior to the execution of this License unless Licensor shall request from Licensee a Certificate of Insurance. In any event, a copy of any required insurance policy or Certificate of Insurance as requested by Licensor shall be attached hereto as Exhibit D and made a part of this License

10.1 Licensee's Insurance. Licensee's insurance policies shall consist of the following:

(a) Comprehensive or Commercial Form General Liability Insurance (contractual liability and fire legal liability included), with minimum limits as follows:

1. Each Occurrence:

One Million Dollars (\$1,000,000)

2. Products/Completed Operations Aggregate:

Two Million Dollars (\$2,000,000)

3. General Aggregate:

Two Million Dollars (\$2,000,000)

If the insurance is written on a claims-made form, following termination of this License, the coverage shall survive for a period of not less than three years. Coverage shall provide for a retroactive date of coverage coinciding with the commencement date of this License.

(b) Business Automobile Liability Insurance for any owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

(c) Workers' Compensation and Employers Liability Insurance in a form and amount covering Licensee's full liability under the Workers' Compensation Insurance and Safety Act of the State of California as amended from time to time.

(d) Property Insurance, Fire and Extended Coverage Form in an amount sufficient to reimburse Licensor for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises and for all leasehold improvements including those hereinafter constructed or installed by Licensor or Licensee.

(e) Such other insurance in amounts which at any time may be reasonably

required by the City against other insurable risks relating to Licensee's use of the premises. In no event shall Licensee be required to secure and maintain earthquake insurance.

In each of the insurance policy referenced under this paragraph, the City of Oakland shall be a named insured. The insurance policies shall apply only to the extent of the negligent acts or omissions of Licensee, its officers, agents, employees; or any other person or persons under Licensee's direct supervision and control. Prior to the execution of this License, Licensee shall either furnish the City with a copy of the insurance policies or Certificates of Insurance evidencing compliance with all insurance requirements. The Certificates shall contain provisions for thirty (30) day advance written notice to City of any modification, change or cancellation of any of the above insurance coverage.

The insurance coverage required herein shall not limit the liability of Licensee, its officers, agents, or employees.

- 10.2 **Waivers of Subrogation.** The City and Licensee each hereby waive any right of recovery against the other due to any loss or damage to the Property owned either by the City or Licensee when such loss of or damage to Property arises from any acts of God or any of the property perils included in the classification of fire, extended perils ("all risk" as such term is used in the insurance industry) including perils that have been insured, self-insured or non-insured.
- 10.3 **Exemption of City from Liability.** Licensee agrees that City shall not be liable under this License for any injury to Licensee's business or loss of Licensee's income or for damage to the goods, wares, merchandise or other property of Licensee, Licensee's employees, invitees, customers, or any other person in or about the Property, nor shall the City be liable for injury to any person of Licensee, Licensee's employees, agents or contractors, as a result of any condition of the Property or any building or structure on the Property, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause in or about the Property, *whether the said damage or injury results from conditions arising from the Property or in other parts of the building or structure on the Property, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Licensee.* The City shall not be liable under this License for any damages arising from any act or neglect of any other Licensee, if any, of the building or structure on the Property.

11. **Indemnification.** Licensee shall unconditionally indemnify, save, protect, defend and hold harmless the City, its Council members, officers, employees, agents, and contractors from and against any and all loss, injury, liability, expense, claims, costs, suits and damages, including attorney's fees and court costs, relating in any way to the use of the Property by Licensee, (including without any limitations, its employees, contractors, agents, and invitees), or resulting from conditions caused by Licensee's use of the Property. Licensee shall be solely

responsible for all charges or claims from Licensee's employees and contractors with respect to any improvements or alterations to the Property. Licensee shall keep the Property free and clear of any claims for mechanics lien and Licensor shall not be responsible for any debts incurred by Licensee.

12. **Relocation.** Licensee understands and agrees: (1) that Licensee shall not be eligible for any relocation benefits (including any advisory services) when this License terminates, (2) that this License shall not create any rights or interests in Licensee to receive any relocation benefits and (3) that Licensee shall not make any claims against Licensor for any relocation benefits. As a material inducement for Licensor to enter into this License, Licensee waives all rights to any relocation benefits under any applicable law or regulation and releases Licensor from any obligation to provide any relocation benefits.

13. **Possessory Interest Taxes.** If Licensee's interest under this License is subject to any possessory interest tax or other property tax, Licensee shall be responsible for the payment of such taxes or assessments.

14. **Right of Entry.** After providing advance 24 hour notice to Licensee, Licensor may enter the Property to inspect, install, construct, repair or maintain any part of the Property. In the event of any emergency, Licensor shall not be required to provide any advance 24 hour notice.

15. **Condition of Property.** Licensee has inspected the Property and agrees to accept the Property in the "as is" condition, without any warranty expressed or implied. When the License terminates, at Licensee's own cost, Licensees shall clean and restore the Property to the condition which existed on the day this License Period commenced, except for normal wear and tear.

16. **Assignment or Subletting.** This License is personal to Licensee. Licensee shall not transfer, pledge, assign or sublicense this License or any rights or interest under this License. Any attempted transfer, pledge, assignment, or sublicense of this License shall be null and void resulting in a default under this License.

17. **Termination.** Either party may terminate this License at any time. When the party intending to terminate this License delivers 90 days advance written notice to the other party, this License shall terminate 90 days thereafter from the receipt of such notice.

18. **Notices.** Any notice, demand, or communication relating to this License shall be delivered personally or sent by prepaid, registered or certified, U.S. Mail addressed to the respective parties as follows:

To: Office of Parks and Recreation:
250 Frank H. Ogawa Plaza
Third Floor
Oakland, CA 94612
Attention: Director

Copy to: CEDA-Real Estate Division
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612-2033
Attention: Ron Basarich

To: Scotlan Youth and Family Center
1651 Adeline Street, 2nd Floor
Oakland, CA 94607
Attention: Richard Dejauregui

Any notice given by registered mail shall be deemed given on the third business day after its deposit in the United States mail. Any notice given by certified mail shall be deemed given on the date receipt is acknowledged to the postal authorities. Any notice given by mail shall be deemed given only if received by the other party, and then on the date of such receipt. Each party may by written notice to the other party in the manner described in this paragraph change the address to which notices addressed to it shall thereafter be mailed.

19. **Default.** The occurrence of any of the following events shall constitute a default under this License:

19.1 Failure to pay any sums of money due under this License when such failure to pay continues for ten (10) days after Licensee shall have received notice from Licensor.

19.2 Failure to act or perform any conditions, covenants or restrictions, or any other provision of this License if the failure to act or perform is not cured after ten (10) days after Licensee shall have received notice from Licensor. If the default cannot be reasonably cured within thirty (30) days, Licensee shall not be in default if Licensee commences to cure the default within such thirty (30) day period and exercises due diligence and best efforts to cure the default.

19.3 Licensee shall have abandoned the Property or have breached or violated any terms and conditions of this License.

20. **Licensor's Remedies.** In the event of any default by Licensee, Licensor shall have the following remedies in addition to all other rights and remedies provided by law or otherwise provided in this License which Licensor may enforce cumulatively or in the alternative:

20.1 Licensor shall have the option to keep this License in force and effect and to enforce any action at law or in equity to: (1) recover any sums of money becoming due under this License, (2) make payments required by Licensee or perform Licensee's obligations and to be reimbursed by Licensee for such cost with interest at the then maximum rate of interest permitted by law from the date of Licensor's payment until Licensor is reimbursed, and (3) remedies of injunctive relief and specific performance to prevent Licensee from violating the

terms of this License and to compel Licensee to perform its obligation under this License.

20.2 Licensor shall have the option to terminate this License by providing written notice to Licensee to be effective on the date set forth in such termination notice. Any such termination shall not release Licensee from its obligation to make any payments due under this License or to comply with any provision of this License.

20.3 In the event that Licensee abandons the Property, Licensor may terminate this License provided that Licensor shall first provide written notice to Licensee with expressed notice of such termination.

21. **Damage or Destruction.** If all or part of the Property is destroyed or damaged from any cause and the resulting damages frustrates Licensee's use of the Property or causes the use of Property to be unfit for the intended purpose or use described in this License or creates a unsafe or hazardous condition, either party shall have the option to terminate this License upon 30 days written notice to the other party. In any event, Licensor shall not have any obligation to Licensee under any circumstances to repair any damage to the Property or to rebuild any structure on the Property.

22. **Compliance with Laws and Nondiscrimination.** Licensee shall at all times and at no cost to Licensor comply with all applicable laws and regulations relating to this License. Licensee shall not unlawfully discriminate or permit any discrimination against any person or group of persons including but not limited to members of the public, employees, or applicants for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, gender or Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related condition (ARC).

23. **Annual Reporting and Accounting Records.** At the end of each year of the License Period and for any Extended License Period, Licensee shall deliver to Licensor on or before October 1 of that year current statements for fiscal year beginning July and ending June 30 of that year the following:

23.1 Certified Annual Reports prepared in accordance with Generally Accepted Accounting Principles including but not limited to an income and expense statement, a balance sheet showing all assets and liabilities and other related reports prepared by a Certified Public Accountant retained by Licensee at no cost to Licensor.

23.2 Certified Statement signed by a duly authorized director or officer of Licensor confirming the number of participants, the number of activities undertaken, an operating budget for the current year, and the names and telephone numbers of the current President and Directors of Licensee.

23.2 Accounting Records, including up-to-date general ledger accounts on the accrual basis in accordance with Generally Accepted Accounting Principles. Licensee shall make all books and records open to audit and inspection by Licensor or any assigned designee, with five (5) days notice, during normal business hours at Scotlan Center for the period of this License and any extended period. All books

and records of Licensee shall be retained for a period of four (4) years after the close of each Licensee fiscal year.

- a. Licensee shall maintain financial and operational records until the later of four (4) years after the termination of this License or two (2) years after the closure of any disputed matter. Such records shall be retained at Scotlan Center. When this License terminates, all accounting records including books and records of Licensee shall be delivered to Licensor.
- b. Licensee unconditionally and irrevocably waives the confidentiality of all information in the possession of banks, financial institutions, credit reporting services, bookkeeping services, certified public accountants, and financial consultants. Licensee authorizes Licensor or any designee to obtain such information directly from these sources.

23.3 Tax reports and payments currently filed and paid.

23.4 All other documents requested by the City Auditor relating to the Property.

24. **Condemnation.** If all or part of the Property is taken under the power of eminent domain, or sold under the threat of condemnation, either party shall have the option to terminate the License upon 30 days written notice to the other party.

25. **Entire Agreement.** This License contains the entire agreement of the parties relating to the subject matter of this License and may not be amended except in writing signed by both parties. Any prior lease or agreement between the parties shall have no force and effect on this License.

26. **Legal Effect.** This License shall not be construed as a partnership between Licensor and Licensee and it is not intended to create a third party beneficiary contract.

27. **Time.** Time is of the essence as to each and every part of this License.

In Witness hereof, the parties have executed this License on the dates set forth below.

Licensee:

ALAMEDA COUNTY YOUTH DEVELOPMENT, INC./ GEORGE P. SCOTLAN YOUTH AND FAMILY CENTER

By: _____

Title: _____

Date: _____

Licensor:

Office of Parks and Recreation

**Approved as to Form and Legality:
Office of the City Attorney**

By: _____

Title: _____

Date: _____

Table of Exhibits

| Exhibit | Description |
|---------|-------------------------------------------------------------------|
| A | Plot Plan and Property Description |
| B | Example of Past Electrical Utility Bills |
| C | Licensee's Certificates of Insurance (Or copy of the policies) |
| | |