



Office of the City Manager

CONSENT CALENDAR

April 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Eleanor Hollander, Economic Development Manager

Subject: Amendment to Contract No 32200032, *Administration of Downtown Berkeley Property Based Business Improvement District (DPBID)*, with the Downtown Berkeley Association

RECOMMENDATION

Adopt a Resolution to amend Contract No. 32200032 between the Downtown Berkeley Association (DBA) and the City of Berkeley. This amendment intends to modify the existing Not-to-Exceed (NTE) amount of the contract to allow all pass-through amounts collected on behalf of the Downtown Berkeley Property Based Business Improvement District (DPBID) above the existing NTE amount to be paid to the DBA when received. This amendment to the contract with the DBA will increase the contract amount by \$1,408,096 for a new contract amount NTE \$8,693,353.

FISCAL IMPACTS OF RECOMMENDATION

Assessments levied in the Downtown Berkeley Property Based Business Improvement District (DPBID) support a package of improvements and activities approved by the property owners and the City Council when the Downtown Property-Based Business Improvement District was renewed for a ten-year period on May 31, 2016 (Resolution No. 67,520-N.S.). Assessment funds are collected by Alameda County, relayed to the City of Berkeley, and disbursed through a contract with the Downtown Berkeley Association (DBA), a private owners' association that was established to implement the DPBID's Management District Plan. In May of 2021, the City Council authorized the City Manager to execute a contract and any amendments with the DBA, not to exceed \$7,285,257 of DPBID revenues, to implement the Downtown Berkeley Management District Plan for the period July 1, 2021 to December 31, 2026 (Contract No. 32200032), attached as Exhibit A.

The City is obligated to pass through all amounts collected on behalf of the DPBID in Fund 786 to the DBA which is included in the city's budget. To do this through the term of the open contract, the NTE amount stated in Contract No. 32200032 must be modified.

Currently there is only \$194,486.63 available in the contract, and open invoice dated February 4, 2026, of \$927,289.69 of district revenues to be paid. Year 10 of the DPBID

payment schedule in Contract No.32200032 assumed \$1,602,582 in pass-through payments to the DBA. The current open invoice of \$927,289.69 indicates that \$675,292 is still yet to be received in Fund 786 from the county assessor in this fiscal year. Less the \$194,486.63 already available in the contract, the NTE must be increased by \$732,803.06 (the amount needed to pay the current open invoice) plus \$675,292 (remaining anticipated collection for year 10 of the DPBID) for a total contract increase of \$1,408,096. That amount (\$1,408,096) plus the existing contract NTE (of \$7,285,257 established in 2021) makes for a revised NTE of \$8,693,353.

CURRENT SITUATION AND ITS EFFECTS

The Downtown Berkeley Property Based Business Improvement District (DPBID, "Downtown BID" or "the District") provides cleaning, hospitality and marketing services for Berkeley's central business district. In May of 2016 the DPBID was geographically expanded and renewed for a ten-year period, authorizing operations through December 31, 2026, and designating the Downtown Berkeley Association (DBA) as the District's Owners' Association.

BACKGROUND

The DPBID is a property-based benefit assessment district that provides cleaning, hospitality and marketing services for Downtown Berkeley. The DPBID was created in 2011 pursuant to California's "Property and Business Improvement District Law of 1994" to provide needed improvements and activities to assessed property owners. The DPBID was reestablished and expanded by Resolution of the Berkeley City Council on May 31, 2016 (Resolution No. 67,520-N.S.) for the ten-year term beginning July 1, 2016 and ending June 30, 2026, with operations to occur over the ten-year calendar year period beginning January 1, 2017 and ending December 31, 2026.

Assessment funds are collected by Alameda County, relayed to the City of Berkeley, and disbursed through a contract with the Downtown Berkeley Association (DBA), a private owners' association that was established to implement the DPBID's Management District Plan. In May of 2021, the City Council authorized the City Manager to execute a contract and any amendments with the DBA, not to exceed \$7,285,257 of DPBID revenues, to implement the Downtown Berkeley Management District Plan for the period July 1, 2021 to December 31, 2026 (Contract No. 32200032). Currently there is only \$194,486.63 available in the contract, and open invoice dated February 4, 2026 of \$927,289.69 of district revenues to be paid.

Year 10 of the DPBID payment schedule in Contract No.32200032 assumed \$1,602,582 in pass-through payments to the DBA. The current open invoice of \$927,289.69 indicates that \$675,292 is still yet to be received in Fund 786 from the county assessor in this fiscal year. Less the \$194,486.63 already available in the contract, the NTE must be increased by \$732,803.06 (the amount needed to pay the current open invoice) plus \$675,292 (remaining anticipated collection for year 10 of the DPBID) for a total contract increase of \$1,408,096. That amount (\$1,408,096) plus the

existing contract NTE (of \$7,285,257 established in 2021) makes for a revised NTE of \$8,693,353.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

RATIONALE FOR RECOMMENDATION

Council must now pass a Resolution to amend to the contract between the City and the Downtown Berkeley Association to allow all pass-through amounts collected on behalf of the DPBID above the existing not to exceed amount in contract to be paid to the DBA when received through the term of the contract.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Eleanor Hollander, Office of Economic Development, (510) 981-7536

Attachment

1: Resolution

Exhibit A: Executed Contract No. (32200032)

RESOLUTION NO. ##,###-N.S.

TO APPROVE AMENDMENT OF CONTRACT NO. 32200032 BETWEEN THE
DOWNTOWN BERKELEY ASSOCIATION AND THE CITY OF BERKELEY

WHEREAS, the Property and Business Improvement District Law of 1994 as amended (California Streets and Highways Code Section 36600 et.seq.) authorizes cities, with the consent of property owners, to fund property-related improvements, maintenance and activities through the levy of assessments upon the real property that benefits from the improvements, maintenance and activities; and

WHEREAS, the City Council renewed the Downtown Property Based Business Improvement District by Resolution No. 67,520 -N.S. on May 31, 2016, along with identifying the Downtown Berkeley Association (DBA) as the owners organization contracted to implement the District's Management Plan utilizing the DPBID funds; and

WHEREAS, in May of 2021, the City Council authorized the City Manager to execute a contract and any amendments with the DBA, not to exceed \$7,285,257 of DPBID revenues, to implement the Downtown Berkeley Management District Plan for the period July 1, 2021 to December 31, 2026 (Contract No. 32200032); and

WHEREAS, the City of Berkeley Office of Economic Development (OED) is obligated to distribute the full amount collected in Fund 786 (DPBID revenue) to the Downtown Berkeley Association via a multi-year contract; and

WHEREAS, payments due to the DBA in Fund 786 have exceeded the NTE amount of the existing Contract Number 32200032; and

WHEREAS, an amendment to modify the not to exceed (NTE) amount of Contract No. 32200032 between the Downtown Berkeley Association and the City of Berkeley is now needed to disburse the balance of Fund 786.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the not to exceed (NTE) amount of Contract No. 32200032 between the Downtown Berkeley Association and the City of Berkeley is amended to an NTE of \$8,693,353 to align with budget revenue projections for the Downtown Property-Based Business Improvement District or DPBID (Fund 786) for the remainder of the contract term.

BE IT FURTHER RESOLVED that though the remaining term of the contract period all amounts collected on behalf of the Downtown Property-Based Business Improvement District (Fund 786) above the contract's modified NTE amount are to be paid or "passed though" to the Downtown Berkeley Association (DBA) by the City of Berkeley when received.

Exhibit

A: Executed Contract No. (32200032)

EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM: NEW CONTRACT

CMS #
(To be filled in by department)

Contract # 32200032
(To be filled in by Auditor)

CONTRACTOR NAME: Downtown Berkeley Association

VENDOR # 4035

Subject of Contract: Downtown Berkeley Property and Business Improvement District (DPBID)

This contract package contains: 3 Original Contracts (Department, Vital Record and Vendor) in folders	Attached	Waiver Attached	Not Required
*The Vital Record contract MUST be in a folder. *Optional: In lieu of folders, Department and Vendor copies may be assembled with an Acco-fastener.			
1. CONTRACT BOILERPLATE	<input checked="" type="checkbox"/>		
2. Scope of Services (Exhibit A @ boilerplate)	<input checked="" type="checkbox"/>		
3. Payment Provisions (Exhibit B @ boilerplate)	<input checked="" type="checkbox"/>		
4. Evidence of Competitive Solicitation OR Waiver by CM or by Council Resolution [NO. 69,862]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. CERTIFICATIONS <u>SANCTUARY CITY FORM</u>	<input type="checkbox"/>		
a. Workforce Composition (businesses with 5 or more employees)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Nuclear Free Berkeley Disclosure	<input checked="" type="checkbox"/>		<input type="checkbox"/>
c. Oppressive States Disclosure (Exception: Community-based, non-profit organizations)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. Certification of Compliance with Living Wage Ordinance (LWO): use current form on web*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Certification of Compliance with Equal Benefits Ordinance: use current form on web*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Community Agency: Certification of Anti-Lobbying	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g. Community Agency: Certification of Drug-Free Workplace	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Insurance Certificate/s AND Endorsement/s OR Insurance Waiver/s (originals, not copies)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Authorizing Council Resolution # <u>CA 862-N.S.</u>	<input checked="" type="checkbox"/>		<input type="checkbox"/>
8. Consultant Contracts: Form 700, Statement of Economic Interests	<input type="checkbox"/>		<input checked="" type="checkbox"/>
9. Federally Funded Project Requirement: Debarment status printout	<input type="checkbox"/>		<input checked="" type="checkbox"/>

Berkeley Business License # 16-03558

Contract Amount \$ \$7,285,257

Requisition # 12200878 (Hard copy attached)

Council Approved Amount \$ 7,285,257

Budget Code 451-8703-465-35.10 186-21-200-251-0000-000-446-636110

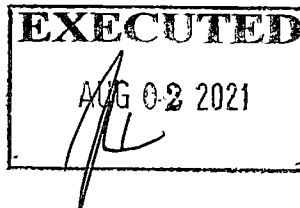
Was there any advance payment? No Yes If Yes, Advanced Amount \$ _____

If Yes, Purchase Order # _____

Routing and signatures:

All elements of the contract package, including information provided above, have been reviewed for completeness and accuracy and evidenced by the following signatures (Project Manager please print name):

- | | | |
|---|------------------------------|--------------------------|
| 1. <u>Eleanor Hollander, OED</u>
Project Manager (PRINT NAME) & Department | <u>981-7536</u>
Phone No. | <u>6/21/2021</u>
Date |
| 2. <u>Felicia Graham</u>
Department Administrative Officer/Accounting | | <u>6/23/21</u>
Date |
| 3. <u>[Signature]</u>
Department Head | | <u>7-7-21</u>
Date |
| 4. <u>JOSH ROSEN</u>
Contract Administrator | | <u>7/12/2021</u>
Date |
| 5. <u>BUDGET APPROVED VIA EMAIL</u>
Budget Manager | | <u>7/14/2021</u>
Date |



Routing continues to the following persons, who sign directly on the contract:

6. City Manager (Will not sign unless all signatures and dates appear above)
7. City Auditor (Initial _____) 8. City Clerk: CMS Login _____ Destruct _____ Review _____

* For current vendor forms, go to City of Berkeley website: <http://www.cityofberkeley.info/ContentDisplay.aspx?id=5418>

Roben, Josh

From: Murty, Rama
Sent: Tuesday, July 13, 2021 5:24 PM
To: Roben, Josh
Cc: Dupaya, Maricar C.; Cole, Shamika S.
Subject: RE: New Contract: Downtown Berkeley Association

Budget Final - Approved

Rama Murty, Acting Budget Manager
City Manager's Office - Budget Office
Phone: 981-7044
Fax: 981-7099

From: Cole, Shamika S.
Sent: Tuesday, July 13, 2021 4:44 PM
To: Murty, Rama <RMurty@cityofberkeley.info>
Cc: Dupaya, Maricar C. <MDupaya@cityofberkeley.info>
Subject: New Contract: Downtown Berkeley Association

Budget Initial- Approved

Notes:
Authorizing Council Resolution #: 69,862-N.S.
Council Authorized NTE: \$7,285,257
Contract Term: 7/1/21 – 12/31/26
Requisition #12200878 - released on June 30, 2021

The funding amount of \$643,077.18 is available in FY22 budget code: 786-21-208-251-0000-000-446-636110. The remaining NTE will be encumbered within the contract term.

-Shamika

Shamika Cole, MPA
Senior Management Analyst
Office of Budget and Fiscal Management
City Manager's Office
E sscole@cityofberkeley.info



PERSONAL SERVICES CONTRACT

THIS CONTRACT is between the CITY OF BERKELEY (“City”), a Charter City organized and existing under the laws of the State of California, and Downtown Berkeley Association (“Contractor”), a Non-Profit Corporation doing business at 2230 Shattuck Avenue, Suite C Lower Level, Berkeley, CA 94704 who agree as follows:

1. **SCOPE OF SERVICES**

Contractor agrees to perform all services described in Exhibit A, in accordance with its stated terms and conditions. Exhibit A is attached to and made a part of this Contract.

2. **PAYMENT**

For services referred to in Section 1, City will pay Contractor a total amount not to exceed \$7,285,257 plus any currently available carry forward from prior years payments of Downtown Berkeley Property-based Business Improvement District funds as provided by Council Resolution N.S. 69,862. City shall make payments to Contractor in accordance with the provisions described in Exhibit B, which is attached to and made a part of this Contract.

3. **TERM**

a. This Contract shall begin on July 1, 2021 and end on December 31, 2026. The City Manager of the City may extend the term of this contract by giving written notice as provided by Council Resolution N.S. 69862.

b. Either party may terminate this Contract for default upon five (5) days’ written notice to the other if the other party has substantially failed to fulfill any of its obligations under this Contract in a timely manner. City may terminate this Contract at its convenience and without cause upon thirty (30) days written notice to Contractor. Except as provided in this Contract, in no event shall City be liable for costs incurred by or on behalf of Contractor after the effective date of a notice of termination.

c. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Contract, all notices to City shall be addressed as follows:

City Manager
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

For purposes of this Contract, all notices to Contractor shall be addressed as follows:

John Caner, CEO
Downtown Berkeley Association
2230 Shattuck Avenue, Suite C Lower Level
Berkeley, CA 94704

d. If City terminates this Contract for convenience before Contractor completes the services in Exhibit A, Contractor shall then be entitled to recover its costs expended up to that point plus a reasonable profit, but no other loss, cost, damage, expense or liability may be claimed, requested or recovered.

4. **INDEMNIFICATION**

Contractor, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with Contractor's operations under this Contract, or with the performance of this Contract by Contractor or its officers, employees, partners, directors, subcontractors or agents.

5. **INSURANCE**

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 \$0 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 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 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 and include the CMS#.**

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: Office of Economic Development

CONTRACT Number:

Department Address: 2180 Milvia Street, 5th Street, Berkeley, CA 94704

6. **CONFORMITY WITH LAW AND SAFETY**

a. Contractor 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 scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations. Contractor 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 Contract, Contractor shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Contractor 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 Contractor's subcontractor, if any; 3) name and address of Contractor's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

c. If a release of hazardous materials or hazardous waste that cannot be controlled occurs in connection with the performance of this Contract, Contractor shall immediately notify the Berkeley Police Department and the City's Health Protection office.

d. Contractor shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

7. **MATERIAL SAFETY DATA SHEETS**

a. To comply with the City's Hazard Communication Program, Contractor agrees to submit Material Safety Data Sheets (MSDS) for all "hazardous substances" Contractor intends to use in the performance of work under this Contract in any City facility. "Hazardous substances" are defined as those substances so designated by the Director of Industrial Relations pursuant to the Hazardous Substances Information and Training Act (Labor Code sec. 6360 *et seq.*). The MSDS for all products must be submitted to the City before commencing work. The MSDS for a particular product must be reviewed and approved by the City's Risk Manager before Contractor may use that product.

b. City will inform Contractor about hazardous substances to which it may be exposed while on the job site and protective measures that can be taken to reduce the possibility of exposure.

8. **OWNERSHIP OF DOCUMENTS**

a. When this Contract is terminated, Contractor agrees to return to City all documents, drawings, photographs and other written or graphic material, however produced, that it received from City, its contractors or agents, in connection with the performance of its services under this Contract. All materials shall be returned in the same condition as received.

b. Contractor grants City a royalty-free, exclusive and irrevocable license to reproduce, publish, use and to authorize others to do so, all original computer programs, writing, sound recordings, pictorial reproductions, diagrams, charts, computations, drawings and other works of similar nature produced in the course of the performance of this Contract. Contractor shall not publish any such material without the prior written agreement of the City.

c. With the prior written approval of City's Project Manager, Contractor may retain and use copies of its work for reference and as documentation of its experience and capabilities.

9. **NON-DISCRIMINATION**

Contractor hereby agrees to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Chapter 13.26 as amended from time to time. In the performance of this Contract, Contractor agrees as follows:

a. Contractor 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. Contractor 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, Contractor shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

10. **INDEPENDENT CONTRACTOR**

a. Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Contractor performs the services required of Contractor by the terms of this Contract. Contractor shall be liable for its acts and omissions, and those of its employees and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between City and Contractor.

b. Direction from City regarding the subject of this Contract shall be construed as providing for direction as to policy and the result of Contractor's Work only and not as to the means or methods by which such a result is obtained.

c. Except as expressly provided in this Contract, nothing in this Contract shall operate to confer rights or benefits on persons or entities not party to this Contract.

d. Payment of any taxes, including California Sales and use Taxes, levied upon this Contract, the transaction, or the services or goods delivered pursuant hereto, shall be the obligation of Contractor.

11. **CONFLICT OF INTEREST PROHIBITED**

a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Contractor nor any employee, officer, director, partner or member of Contractor, 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 Contract.

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 Contractor, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Contractor.

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.

12. **NUCLEAR FREE BERKELEY**

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

13. **OPPRESSIVE STATES CONTRACTING PROHIBITION**

a. In accordance with Resolution No. 59,853-N.S., Contractor certifies that it has no contractual relations with, and agrees during the term of this Contract 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 contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this Contract, the Tibet Autonomous Region and the provinces of Amdo, Kham, and U-Tsang shall be deemed oppressive states.

c. Contractor's failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 3. In the event that the City terminates Contractor due to a default under this provision, City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

14. **RECYCLED PAPER FOR WRITTEN REPORTS**

If Contractor is required by this Contract to prepare a written report or study, Contractor shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this Contract, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Contractor shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the page whenever practical.

15. **BERKELEY LIVING WAGE ORDINANCE**

a. Contractor hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Contractor is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Contractor will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Contractor expressly acknowledges that, even if Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Contractor to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

b. If Contractor is currently subject to the Berkeley Living Wage Ordinance, Contractor shall be required to maintain monthly records of those employees providing service under the Contract. These records shall include the total number of hours worked, the number of hours spent providing service under this Contract, the hourly rate paid, and the amount paid by Contractor for health benefits, if any, for each of its employees providing services under the Contract. These records are expressly subject to the auditing terms described in Section 17.

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

d. If Contractor 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.

Contractor's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this Contract pursuant to Section 3. In the event that City terminates Contractor due to a default under this provision, City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Contractor 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 Contractor'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 or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

16. **BERKELEY EQUAL BENEFITS ORDINANCE**

a. Contractor hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Contractor is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Contractor 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 contract, as well as comply with the terms enumerated herein.

b. If Contractor is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Contractor 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 contract.

c. If Contractor 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.

Contractor's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Section 3. In the event the City terminates this contract due to a default by Contractor under this provision, the City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Contractor 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 Contractor'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 Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

17. **AUDIT**

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

18. **SETOFF AGAINST DEBTS**

Contractor agrees that City may deduct from any payments due to Contractor under this Contract any monies that contractor owes City under any ordinance, contract or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

19. **CONFIDENTIALITY OF INFORMATION**

Contractor understands and agrees that, in the performance of the services under this Contract or in the contemplation thereof, Contractor may have access to private or confidential information which 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. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Contract. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data.

20. **PREVAILING WAGES**

Certain labor categories under this contract may be subject to prevailing wages as identified in the State of California Labor Code commencing with Sections 1720 et. seq. and 1770 et. seq. These labor categories, when employed for any “work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work,” constitute a “Public Work” within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages. In performing its obligations under this contract, Contractor is solely responsible to determine which, if any, of the work is governed by a labor category pursuant to California Labor Code sections 1720 et. seq. and 1770 et. seq. and pay the pertinent prevailing wage. Contractor shall defend, indemnify and hold harmless City concerning any liability arising out of Labor Code section 1720 et. seq. and 1770 et. seq.

21. **GOVERNING LAW**

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

22. **AMENDMENTS**

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

23. **ENTIRE CONTRACT**

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

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

24. **SEVERABILITY**

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

25. **WAIVER**

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

26. **ASSIGNMENT**

Contractor may not assign this Contract without the prior written consent of the City, except that Contractor may assign its right to any money due or to become due hereunder.

26. **EFFECT ON SUCCESSORS AND ASSIGNS**

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

28. **CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST**

The City's Conflict of Interest Code, Resolution No. 60,788-N.S., as amended, requires consultants who make a governmental decision or act in a staff capacity as defined in 2 Cal. Code of Regs. §18700, as amended from time to time, to disclose conflicts of interest by filing a Statement of Economic Interest (Form 700). Consultants agree to file such statements with the City Clerk at the beginning of the contract period and upon termination of the Contractor's service.

29. **SECTION HEADINGS**

The sections and other headings of this Contract are for convenience of reference only and shall be disregarded in the interpretation of this Contract.

30. **CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Contractor has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Contractor 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. Contractor shall pay all state and federal income taxes and any other taxes due. **Contractor certifies under penalty of perjury that the taxpayer identification number written below is correct.**

BL-003558

Business License Number 16-03558

B.M.C. §

Taxpayer ID Number 94-3107356

IN WITNESS WHEREOF, City and Contractor have executed this Contract as of the date first mentioned above.

CITY OF BERKELEY

By: Paul Bussbacher
CITY MANAGER *Paul*

Registered by:

Pre-approved as to form:
CITY ATTORNEY
2/2015

CITY AUDITOR

Registered on behalf of the City Auditor:
[Signature]
Finance Department

Attest:

for Memo Mead
CITY CLERK

CONTRACTOR

Downtown Berkeley Assoc.
Contractor Name (print or type)

[Handwritten Signature]
Signature

John E-Z. Conner Jr
Print Name

Tax Identification # _____

Berkeley Business License # BL-003558

Incorporated: Yes No

Certified Woman Business Enterprise: Yes No

Certified Minority Business Enterprise: Yes No

If yes, state ethnicity: _____

Certified Disadvantaged Business Enterprise: Yes No

EXHIBIT A

SCOPE OF SERVICES

This Scope of Services outlines the work to be performed by the Downtown Berkeley Association over the course of the years 2021-2026.

I. WORK PROGRAM IMPLEMENTATION

Contractor will implement the Downtown Berkeley Property Based Business Improvement District Management Plan (Management Plan), approved by a weighted majority of property owners on May 31, 2016 and approved by the Berkeley City Council on May 31, 2016. Contractor shall work diligently to implement all Management Plan Action Items:

Management of Environmental Enhancements:

- Maintenance Teams that sweep, scrub and pressure wash sidewalks, remove litter and graffiti, increase the frequency of trash removal and maintain landscaping throughout the District.
- Hospitality Ambassadors that provide visitor information, safety escorts, merchant outreach, city services liaison, event support, homeless services outreach and referrals, and work with local police and business and property owners to prevent crime and address quality of life issues.
- Beautification and placemaking improvements that make Downtown Berkeley more visually attractive, which may include: enhanced landscaping, holiday décor, way-finding signage, trash receptacles, streetscape, planters, urban design plans, bike racks, programming of BART Plaza and other public spaces, etc.

Management of Economic Enhancements:

- Promote and support local business through marketing programs and city liaison role and attract new businesses and investment that further the strategic goals of the Downtown.
- Advance Downtown Berkeley's evolution as a regional destination for arts, culture and entertainment.
- Marketing and communications to support PBID activities and improvements and promote a positive image for Downtown Berkeley.
- Strategies to improve the parking and transit experience to support local businesses, residents, and arts/culture/civic destinations.
- Leadership through research and community education to represent the downtown community with one clear voice.

Contractor will implement its Management Plan over the course of its operating year. Specific work plan goals, objectives, and measures may be modified during the period of implementation by agreement of the DPBID Board and City Economic Development staff.

The DBA shall prepare an Annual Report in close coordination with the City's Office of Economic Development and the DPBID Board and in conformance with the requirements of the City and State law.

II. REPORTING

Contractor shall submit the following:

- **Quarterly Reports** - Four (4) quarterly progress reports to be submitted every ninety days from the execution of this contract.
- **Annual Report** – The report should be submitted to the Office of Economic Development, City of Berkeley, which will file the report with the City Clerk. This report shall refer to the property and business district by name, specify the fiscal year to which the report applies, and with respect to that fiscal year, shall contain all of the following information:
 - Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.
 - The improvements and activities to be provided for that fiscal year.
 - An estimate of the cost of providing the improvements and the activities for that fiscal year.
 - The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.
 - The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
 - The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

EXHIBIT B
PAYMENT

The City will pay funds to the Downtown Berkeley Association upon receipt of a complete invoice and only after the City has received payments from the County of Alameda for the Downtown Berkeley Property and Business Improvement District (DPBID) assessment revenue.

Invoices shall be submitted for payment 3 (three) times per year according to the following schedule:

- Submit invoice for Payment 1 by February 15
- Submit invoice for Payment 2 by May 15
- Submit invoice for Payment 3 by September 15

Each invoice shall be for the balance of the amount of assessment funds collected by the County of Alameda and received by the City of Berkeley less the 1.7% processing fee levied by the County for collection services.

The estimated total amounts not to exceed in each year if the full (optional) cost of living fee increases of 5% annually are approved by the Owners' Association shall be:

	Amount NTE
Year one	\$ 1,318,448
Year two	\$ 1,384,370
Year three	\$ 1,453,589
Year four	\$ 1,526,268
Year five	\$ 1,602,582
Total years 1-5	\$7,285,257

The total 5 (five) year a cumulative total amount not to exceed is \$7,285,257.

NON-DISCRIMINATION/WORKFORCE COMPOSITION

FOR ALL CONTRACTS: 5 OR MORE EMPLOYEES

To assist the City of Berkeley in implementing its Non-Discrimination policy, you're requested to furnish information regarding your personnel, as indicated below, and return this form to the City Department handling your contract.

ORGANIZATION

ADDRESS

BUSINESS LICENSE #

Downtown Berkeley Association
 2230 Shattuck Avenue Suite C Lower Level

You may complete this online & make entries in these cells, they will be automatically totaled at the bottom; or print the form & complete by hand/typewriter.

Occupational Category (see page 2 for definitions)	ALL EMPLOYEES		WHITE		BLACK		ASIAN		HISPANIC		OTHER (specify)**	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Officials/Administrators	2		2									
Professionals												
Technicians												
Protective Service Workers												
Para-professionals												
Office/Clerical												
Skilled Craft Workers												
Service/Maintenance												
Other Occupation: Specify*												
Totals	2		2									

*Specify other occupation: _____

**Specify other ethnicity: _____

Is your business MBE/WBE/DBE certified?

If Yes, by what agency? _____

If Yes, please specify:

or ethnic identification: _____

Do you have a policy of non-discrimination?

Signature _____

Date

Print/Type Name of Signer _____

Verified by _____

Date _____

City of Berkeley Contract Administrator

OCCUPATIONAL CATEGORIES

Officials and Administrators - Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy superintendents, unit supervisors and kindred workers.

Professionals - Occupations that require specialized and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dietitians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, and kindred workers.

Technicians - Occupations that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences) and kindred workers.

Protective Service Workers - Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police officers, fire fighters, guards, sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

Para-Professionals - Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of a staff development and promotion under a "New Careers" concept. Includes: library assistants, research assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemaker aides, home health aides, and kindred workers.

Office and Clerical - Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearings reporters, statistical clerks, dispatchers, license distributors, payroll clerks, and kindred workers.

Skilled Craft Workers - Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairpersons, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters, and kindred workers.

Service/Maintenance - Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundskeepers, refuse collectors, and construction laborers.

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, more than one individual may sign this disclosure form, 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.

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: John E. Z. Carter Jr. Title: CEO

Signature: [Handwritten Signature] Date: 6-23-21

Business Entity: Downtown Berkeley Association

Contract Description/Specification No. _____

Attachment C

CITY OF BERKELEY
Oppressive States Compliance Statement for Personal Services

The undersigned, an authorized agent of Downtown Berkeley Association (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S. (hereafter "Resolution"). Vendor 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. Vendor 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).

"Oppressive State" means: Tibet Autonomous Region and the Provinces of Amdo, Kham and U-Tsang

"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."

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.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor 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, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor 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, Vendor 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: John E. Z. Carter Jr Title: CEO

Signature: [Handwritten Signature] Date: 6-23-21

Business Entity: Downtown Berkeley Association

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

Signature: Date:

Contract description/Specification No.:

CITY OF BERKELEY
Sanctuary City Compliance Statement

The undersigned, an authorized agent of Downtown Berkeley Association (hereafter "Contractor"), has had an opportunity to review the requirements of Berkeley Code Chapter 13.105 (hereafter "Sanctuary City Contracting Ordinance" or "SCCO"). Contractor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security ("ICE"). Contractor understands the meaning of the following terms used in the SCCO:

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

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 Data Broker or Extreme Vetting services to ICE.

Contractor further understands and agrees that Contractor's failure to comply with the SCCO shall constitute a material 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.

By executing this Statement, Contractor certifies that it complies with the requirements of the SCCO and that if any time during the term of the Contract it ceases to comply, Contractor will promptly notify the City Manager in writing. Any person or entity who knowingly or willingly supplies false information in violation of the SCCO shall be guilty of a misdemeanor and up to a \$1,000 fine.

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. Executed this 27th day of July, 2021, at Berkeley, California.

Printed Name: John E. Z. Coner Jr. Title: CEA

Signed: [Signature] Date: July 27, 2021

Business Entity: Downtown Berkeley Assoc

CITY OF BERKELEY
Living Wage Certification for Providers of Personal Services

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.

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, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 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 [X]

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. Please 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, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 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 2(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 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. Please continue to Section II.

Section II

Please read, complete, and sign the following:

THIS CONTRACT IS SUBJECT TO THE LIVING WAGE ORDINANCE. []

THIS CONTRACT IS NOT SUBJECT TO THE LIVING WAGE ORDINANCE. [X]

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, and the applicability of 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. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

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

Printed Name: John E. Z. Condit Title: CEO

Signature: [Handwritten Signature] Date: 6-23-21

Business Entity: Downtown Berkeley Assoc.

Contract Description/Specification No: _____

Section III

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

I have reviewed this 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 determined that this Contract IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

Department Name

Department Representative

To be completed by Contractor/Vendor

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

Form with handwritten entries: Name: Downtown Berkeley Association, Vendor No., Address: 2230 Shattuck Ave, City: Berkeley, State: CA, ZIP: 94704, Contact Person: John Caner, Telephone: 510 549-2230 Ex 12, E-mail Address: jcaner@downtownberkeley.com, Fax No.: 510 549-2267

SECTION 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.
B. Does your company provide (or make available at the employees' expense) any employee benefits?
C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee?
D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee?
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?

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
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?*

* 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 2023, at Berkeley, CA
(City) (State)

John Carter
Name (please print)

[Signature]
Signature

CEO
Title

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): _____ Date: _____



THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: AJ GALLAGHER & CO INS BRKRS CA/PHS 72255037 The Hartford Business Service Center 3600 Wiseman Blvd San Antonio, TX 78251
CONTACT NAME: (888) 920-6259 FAX (888) 443-6112
INSURER A: Sentinel Insurance Company Ltd. NAIC# 11000

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSR, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Includes rows for General Liability, Automobile Liability, Umbrella Liability, Workers Compensation, and Data Breach - Defense & Liability Coverage.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Those usual to the Insured's Operations. Certificate holder is an additional insured per the Business Liability Coverage Form SS0008 attached to this policy.

CERTIFICATE HOLDER: City Of Berkeley 2180 MILVIA ST BERKELEY CA 94704
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: Susan L. Castaneda



THE HARTFORD
BUSINESS SERVICE CENTER
3600 WISEMAN BLVD
SAN ANTONIO TX 78251

February 3, 2021

City Of Berkeley
2180 MILVIA ST
BERKELEY CA 94704

Account Information:

Policy Holder Details :	DOWNTOWN BERKELEY ASSOCIATION
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Contact Us

Business Service Center

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(7AM - 7PM Central Standard Time)

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Email: agency.services@thehartford.com

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Enclosed please find a Certificate Of Insurance for the above referenced Policyholder. Please contact us if you have any questions or concerns.

Sincerely,

Your Hartford Service Team

RESOLUTION NO. 69,862-N.S.

AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH DOWNTOWN BERKELEY ASSOCIATION TO IMPLEMENT THE MANAGEMENT DISTRICT PLAN FOR THE DOWNTOWN PROPERTY BUSINESS IMPROVEMENT DISTRICT

WHEREAS, the Downtown Berkeley Association (DBA) has proven to be an effective partner implementing the Management District Plan for the Downtown Property Business Improvement District (DPBID) since its establishment in 2011; and

WHEREAS, the DBA has worked steadily for more than a decade to develop and implement programs that address a wide range of important commercial revitalization issues and improve the economic vitality of the Downtown area; and

WHEREAS, the DPBID has been re-established for a term of ten years from July 1, 2016 to December 31, 2026 and assures a future source of revenue for the service, provided assesses or Council do not take action to dis-establish the DPBID; and

WHEREAS, the DPBID Management District Plan allows the Owners' Association to approve assessment increases by up to 5% per year to cover inflation costs.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute a contract with the Downtown Berkeley Association to continue to implement the adopted District Management Plan for the Downtown Property Business Improvement District and any currently available carry forward from prior years payments of the Downtown Property BID funds to implement the adopted District Management Plan for the DPBID. A record signature copy of said contract and any amendments are to be filed in the Office of the City Clerk.

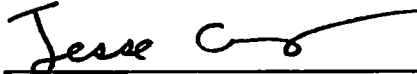
BE IT FURTHER RESOLVED by the City Council of the City of Berkeley to authorize the City Manager to execute a sole source contract and any amendments with the Downtown Berkeley Association (DBA) not to exceed \$7,285,257 of DPBID funds to support the Downtown area for the period July 1, 2021 to December 31, 2026, through the expiration of the DPBID's current operational period.

The foregoing Resolution was adopted by the Berkeley City Council on May 25, 2021 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk

