

REVISED AGENDA

(ADDED CONTINUED ITEMS FROM DECEMBER 3, 2024)

BERKELEY CITY COUNCIL MEETING

Tuesday, December 10, 2024

6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – CECILIA LUNAPARRA

DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via internet video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244. All Council meetings are recorded.

*To access the meeting remotely use this URL: <https://cityofberkeley-info.zoomgov.com/j/1601063395>. To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter **Meeting ID: 160 106 3395**. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email council@berkeleyca.gov.*

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person. The City Council may take action related to any subject listed on the Agenda.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

Government Code Section 84308 (Levine Act) - Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$250 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$250 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

Preliminary Matters

Roll Call:

Land Acknowledgement Statement: *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

Ceremonial Matters: *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

1. Swearing in of newly elected and re-elected officials

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment on Non-Agenda Matters: *Up to ten persons will be selected to address matters not on the Council agenda. If five or fewer persons are identified to provide non-agenda comment, each person selected will be allotted two minutes each. If more than five persons are selected to address matters not on the Council agenda, each person selected will be allotted one minute each.*

In-person attendees wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to the moment that the Presiding Officer calls for public comment on non-agenda items. Remote attendees must raise their hand in the videoconference application when the Presiding Officer calls for non-agenda speakers. The first five raised hands on the videoconference application will be selected to speak and the first five cards drawn at the meeting will be selected to speak. The number of in-person and remote speakers selected may be adjusted by the Presiding Officer if fewer than five speakers from either format are identified.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.

Public Comment by Employee Unions (first regular meeting of the month): *This period of public comment is reserved for officially designated representatives of City of Berkeley employee unions, with five minutes allocated per union if representatives of three or fewer unions wish to speak and up to three minutes per union if representatives of four or more unions wish to speak.*

Consent Calendar

The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Three members of the City Council must agree to pull an item from the Consent Calendar or Information Calendar for it to move to Action. Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar – Continued Business

- A. Lease Agreement – The Framer’s Workshop LLC, at 2435 and 2439 Channing Way in Telegraph-Channing Mall and Garage** *(Continued from December 3, 2024)*
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,942-N.S. authorizing the City Manager to execute a lease agreement with Framer’s Workshop LLC, a limited liability corporation to use and occupy 2435 and 2439 Channing Way inside the Telegraph-Channing Mall and Garage for a ten (10) year lease term with the option to extend for two additional five (5) year terms. The initial lease term is anticipated to begin February 1, 2025.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300

Consent Calendar – Continued Business

- B. Lease Amendment: We Wield The Hammer at 2440 Durant Avenue in the Telegraph-Channing Mall and Garage** *(Continued from December 3, 2024)*
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,943-N.S. authorizing the City Manager to execute a Lease Amendment with We Wield The Hammer, a 501c3 organization, to use and occupy 2440 Durant Avenue for a five (5) year lease term with option to extend for one additional five (5) year term. This Lease Amendment modifies the Lease Commencement Date, Rent Commencement Date and increases months of rent abatement from six (6) to nine (9) months.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
- C. Lease Amendment: Dorothy Day House dba Dorothy's Closet at 2425a Channing Way in the Telegraph-Channing Mall and Garage** *(Continued from December 3, 2024)*
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,944-N.S. authorizing the City Manager to execute a Lease Amendment with Dorothy Day House, a 501c3 organization, d.b.a Dorothy's Closet to use and occupy 2425a Channing Way for a five (5) year lease term with option to extend for one additional five (5) year term. This Lease Amendment proposes a rental rate reduction \$2.26 per square foot per month with an annual 3% increase to \$1.95 per square foot with no annual increase.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
- D. Zoning Ordinance Amendments: Keep Innovation in Berkeley; Amending BMC Title 23** *(Continued from December 3, 2024)*
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,945-N.S. amending Berkeley Municipal Code Title 23 to encourage Research and Development (R&D) uses in Berkeley.
First Reading Vote: All Ayes.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Consent Calendar

- 1. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meetings of November 8, 2024 (closed), November 12, 2024 (regular), November 15, 2024 (closed), November 18, 2024 (special), November 19, 2024 (closed and regular).
Financial Implications: None
Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

- 2. Contract: CVL Economics for a Study of the Economic Impact of the Arts in Berkeley**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with CVL Economics for an amount not to exceed \$119,300 for analysis of pandemic cultural arts recovery investments and the economic impact of the arts in Berkeley for a term of two years.
Financial Implications: American Rescue Act Fund - \$119,300
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 3. Contract: Kala Art Institute for Framed Artwork Purchase Plan for City Buildings**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with Kala Art Institute for an amount not to exceed \$50,000 to implement a framed artwork purchase plan for two city administration buildings located at 1947 Center Street and 2180 Milvia Street. The artworks are to be hung in public areas of civic buildings and will become part of the City's Civic Art Collection.
Financial Implications: Cultural Trust Fund - \$50,000.
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 4. Contract: Masako Miki Public Artwork Commission for Aquatic Park Pathway Wall**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with artist Masako Miki for an amount not to exceed \$87,000 for a public art commission of a ceramic tile mural on the 42'-long curved wall located along the San Francisco Bay Trail west of the intersection of Addison Street and Bolivar Drive in Aquatic Park.
Financial Implications: Cultural Trust Fund - \$87,000
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 10, 2024**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300

Consent Calendar

6. Establish Classification and Salary – Senior Paralegal

From: City Manager

Recommendation: Adopt a Resolution establishing the job class specification and salary of Senior Paralegal with an hourly salary range of \$47.4636 to \$57.6923, and an annual range of \$98,724.30 to \$120,000.00.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

7. Revise Job Class Specifications – Communications Specialist

From: City Manager

Recommendation: Adopt a Resolution (1) revising the Communications Specialist job class specifications to allow Charter departments and offices to utilize the classification and (2) providing a 5% differential to Communication Specialists assigned to the City Manager's Office.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

8. Personnel Rule 9.03 Revision: Promotion Through a Non-Competitive Process

From: City Manager

Recommendation: Adopt a Resolution amending Section 9.03 of the City's Personnel Rules and Regulations, "Promotion Through a Non-Competitive Personnel Action," to add classifications including Deputy City Attorney I, II, III, and IV; Police Officer Recruit and Police Officer; Public Safety Dispatcher I and Public Safety Dispatcher II; Hazardous Materials Specialist I and Hazardous Materials Specialist II; and Housing Inspector I (Certified) and Housing Inspector II (Certified).

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

9. Contract No. 32400151 Amendment: SDR Consulting for Classification and Compensation Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32400151 with SDR Consulting for classification and compensation services to cover the period of February 26, 2023 through June 30, 2026, for a total cost not to exceed \$150,000.

Financial Implications: See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

Consent Calendar

10. **Accept Grant Funds from the U.S. Department of Energy's Zero Codes Award and contract with City and County of San Francisco to develop, implement, and enforce Building Performance Standards**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or their designee to accept the U.S. Department of Energy's Assistance for adoption of the "Latest and Zero Building Energy Codes" in the amount of \$5,729,943, and negotiate and execute a contract and any amendments, extensions, or change orders with City and County of San Francisco, to develop Building Performance Standards, for the duration of January 1, 2025 through December 31, 2033.

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

11. **Contract No. 112219-1 Amendment: Siemens Industry, Inc. for Fire and Life Safety Systems Maintenance**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 112219-1 with Siemens Industry, Inc. for Fire and Life Safety Systems Maintenance, increasing the current contract amount of \$100,000 for a total not to exceed amount of \$700,000 and extending the contract term through December 31, 2025.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

12. **Contract: Terocons Inc. for Sacramento Street Pedestrian Safety Project**

From: City Manager

Recommendation: Adopt a Resolution: 1. Approving plans and specifications for the Sacramento Street Pedestrian Safety Project ("Project"), Specification No. 24-11643-C; 2. Accepting the bid of Terocons Inc., the lowest responsive and responsible bidder; and 3. Authorizing the City Manager to execute a contract with Terocons Inc. and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved plans and specifications, in an amount not to exceed \$973,638, which includes a 15% contingency for unforeseen circumstances.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

Consent Calendar

- 13. Contract No. 32000078 Amendment: DC Electric Group, Inc for On-Call Electrical Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000078 between the City and DC Electric Group, Inc. for supplemental On-Call electrical services to support the Public Works Electrical Unit, increasing the current contract spending authority by \$250,000 for a new total not to exceed amount of \$725,000.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
- 14. Contract: Stommel Inc., dba Lehr for Hybrid Police Patrol Vehicles Supplies, Equipment, and Installation Services**
From: City Manager
Recommendation: Adopt a Resolution satisfying bid requirements of the City allowing the City to participate in competitively bid contracts, authorizing the City Manager to enter into contract with Stommel Inc. dba Lehr, for Hybrid Police Patrol vehicle supplies, equipment, and installation services with a contract term from December 15, 2024 to December 15, 2026 for an amount not to exceed \$400,000.
Financial Implications: Public Works Equipment Replacement - \$400,000
Contact: Terrance Davis, Public Works, (510) 981-6300
- 15. Purchase Order: Braun Northwest Inc. for Two (2) 2025 Ford F-450 North Star Engine Remount of Ambulance Bodies to New Chassis**
From: City Manager
Recommendation: Adopt a Resolution satisfying requirements of City Charter allowing the City of Berkeley ("City") to participate in HGACBuy contract bid procedures and authorizing the City Manager to purchase two (2) 2025 Ford F-450 North Star Ambulance chassis with Braun Northwest, Inc. in an amount not to exceed \$430,000.
Financial Implications: Equipment Replacement Fund - \$430,000
Contact: Terrance Davis, Public Works, (510) 981-6300
- 16. Agreement Regarding Allocation of Costs for Railroad Crossing Improvements for W-SW WBLs West Owner IX, L.P., a California limited liability company and the City**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an agreement and any amendments with the W-SW WBLs West Owner IX, L.P., ("Developer") for payment for all improvements mitigating the impact of their Development (Project) at the Bancroft Way at-grade railroad crossing.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300

Consent Calendar

17. Grant Applications: Metropolitan Transportation Commission Housing Incentive Pool

From: City Manager

Recommendation: Adopt two Resolutions certifying the City's compliance with State Housing Laws and authorizing the City Manager to submit grant applications to the Metropolitan Transportation Commission (MTC) Housing Incentive Pool (HIP) for the following projects: San Pablo Avenue/Ashby Avenue Intersection Improvements Project for up to \$1.9 million; Adeline Street Quick-Build for up to \$1.05 million; and 7th Street/Anthony Street Complete Intersections Project for up to \$2 million; accept the grants if awarded, and execute any resulting agreements and amendments.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

18. Establishing a New Schedule of Fines and Late Payment Penalties for Parking Violations; and Rescinding Resolution No. 70,924-N.S.

From: City Manager

Recommendation: Adopt a Resolution updating the existing schedule of parking violations and fines to include parking violations and late payment penalties for California's new daylighting law, Assembly Bill 413 (AB 413); and rescinding resolution No. 70,924-N.S.

Financial Implications: See report

Contact: Terrance Davis, Public Works, (510) 981-6300

19. City Council Committee and Regional Body Appointments

From: Mayor Arreguin

Recommendation: Adopt a Resolution approving appointments to City Council Policy Committees, Partnership Committees and Regional Bodies, to temporarily appoint Mayor Adena Ishii and Councilmembers Terry Taplin and Ben Bartlett to the Agenda & Rules Committee.

Financial Implications: None.

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action Calendar

The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during the Action Calendar public comment period on the item.

The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar

The Presiding Officer may open and close an additional comment period for Action items on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters), at the start of the Action Calendar. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by first the appellant and then the applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking during a public hearing, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

When applicable, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

20. *****Item Removed by the City Manager*** Changes to Selected Recreation Facilities and Camps Program Fees**

From: City Manager

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Action Calendar – Continued Business

E. **Bicycle and Pedestrian Access on the Richmond-San Rafael Bridge** *(Continued from December 3, 2024)*

From: Councilmember Lunaparra (Author), Councilmember Humbert (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)

Recommendation: Adopt a Resolution affirming the City of Berkeley's support for permanent 24/7 protected bicycle and pedestrian access to the Richmond-San Rafael Bridge Trail.

Financial Implications: See report

Contact: Cecilia Lunaparra, Councilmember, District 7, (510) 981-7170

Information Reports

21. **Fire Prevention Inspections Audit Status Report**

From: City Manager

Contact: David Sprague, Fire, (510) 981-3473

22. **Restaurant Inspection Audit Status Report**

From: City Manager

Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400

Information Reports

23. **Update: HR Response: Audit Directive(s) for Comprehensive Domestic Violence Policy to Support City Employees**
From: City Manager
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
24. **Audit Status Reports: Fleet Replacement Fund Short Millions and Rocky Road: Berkeley Streets at Risk and Significantly Underfunded**
From: City Manager
Contact: Terrance Davis, Public Works, (510) 981-6300

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <https://berkeleyca.gov/>.

Agendas, agenda reports, and revised/supplemental material may be accessed via the online agenda for this meeting at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

and may be accessed at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901
Email: clerk@berkeleyca.gov

Libraries: Main – 2090 Kittredge Street,
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,
North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at ada@berkeleyca.gov, (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900 or by email at clerk@berkeleyca.gov.

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***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on December 5, 2024.***

A handwritten signature in black ink, appearing to read "Mark Numainville".

Mark Numainville, City Clerk

## **Communications**

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through [Records Online](#).*

### **Berkeley Holiday Gift Fair**

1. Beth Roessner

### **Mayor and Councilmember Send Off**

2. Tim O'Brien

### **Public Toilet Facility**

3. Nicole Spence (2)



**RV Living**

4. John Hershberger

**Rose Street**

5. Ben Gerhardtstein, Liza Lutzker, Charles Siegel, Benjamin Fry, Naveen Gattu, Brandon Yung, Rebecca Mirvish, Stewart Smith, Avery Arbaugh, Marc Hedlund, Ian Meyers, John Beaulaurier, Walk Bike Berkeley, Bryce Miller, Telegraph For People, Cal Berkeley Democrats, Sunrise Bay Area, Ren Fitzgerald, and Phyllis Orrick
6. Katherine Silver

**Notification of Service**

7. Yesica Prado

**The Black Repertory Group**

8. Moni T. Law

**Marine Protected Areas Petition**

9. Melissa A. Miller-Henson on behalf of the California Fish and Game Commission

**Encampment Resolution**

10. Stacie Blair

**Encampment Sweeps**

11. Boona Cheema
12. Moni T. Law
13. Paul Kealoha Blake
14. Willie Phillips

**Encampments**

15. Lyle Courtsal

**Zoning**

16. Mimi Moungovon
17. Bob Dougherty

**Berkeley Arts Center**

18. Thet Shein Win
19. Naz Cuguoglu
20. Natnael Amare

**La Pena Cultural Center**

21. Vanessa Whang
22. Ted Russell
23. Biel Delgado Trabal

**Virginia St.**

24. David Lerman

**Cannabis Policy**

25. Lynn Silver, Aurash J. Soroosh, and Kiara Gonzalez Garcia on behalf of Getting it Right from the Start

**Forwards of Information**

26. Josh Atwood  
27. Russbumper  
28. Kyle Ratia  
29. Eid (2)

**URLs**

30. Russbumper (3)

**UC Berkeley Class**

31. 891 Similarly worded form letters

**Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.

ORDINANCE NO. 7,942-N.S.

LEASE AGREEMENT: FRAMER'S WORKSHOP LLC AT 2435 AND 2439 CHANNING  
WAY AT TELEGRAPH-CHANNING MALL AND GARAGE

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

Section 1. FINDINGS:

The City owns the Telegraph-Channing Mall and Garage located at 2431 Channing Way, Berkeley, CA and Framer's Workshop LLC, a limited liability corporation, seeks to lease 2435 and 2439 Channing Way at the premises for purpose of operating a retail business offering custom framing, frame making, printing services and related materials to the public.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AT 2435 and 2439 Channing Way, Berkeley, CA ("2439 Channing Way"):

The City Manager is hereby authorized to enter into a ten-year lease agreement with the option for two five (5)-year extensions with Framer's Workshop LLC for real property located at 2435 and 2439 Channing Way, two connected ground floor retail spaces in the City of Berkeley Telegraph-Channing Mall and Garage building. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 3, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, and Wengraf.

Noes: None.

Absent: None.

## TELEGRAPH-CHANNING MALL LEASE

This lease is made on \_\_\_\_\_ with a start date of February 1, 2025, between the CITY OF BERKELEY ("Landlord"), a Charter City organized and existing under the laws of the State of California and The Framer's Workshop LLC ("Tenant"), a limited liability corporation, who agree as follows:

*This Lease is made with reference to the following facts and objectives:*

A. Landlord is the owner of the real property at 2435 and 2439 Channing Way located inside Telegraph-Channing Mall & Garage, 2431 Channing Way, Berkeley, California 94704, ("Premises") as further described in Exhibit A, attached to and made a part of this Lease.

B. Tenant is willing to lease the Premises from Landlord pursuant to the provisions stated in this lease.

C. Tenant wishes to lease the Premises for the purpose of operating a metalsmithing training program and retail store.

D. Tenant has examined the Premises and is fully informed of the condition thereof and agrees to accept it in "as-is" condition.

### **1. DESCRIPTION OF PREMISES**

Landlord leases to Tenant and Tenant leases from Landlord the Premises described above.

### **2. TERM**

The term of this lease shall commence on the effective date of the Ordinance which authorizes this lease unless the Ordinance provides otherwise and shall be for a period of ten (10) years plus the partial month, if any, immediately preceding the first full calendar month of this lease. Tenant shall have an option to extend the term of this Lease for up to two additional periods of five (5) years, pursuant to Section 35 of this Lease. The effective date of the Ordinance shall be no less than thirty (30) days after the second reading of the Ordinance and its approval by City Council. The Term is further described in Exhibit B, attached to and made a part of this Lease.

### **3. RENT**

Tenant shall pay to Landlord as monthly rent, without deduction, setoff, prior notice, or demand, the sum of \$6,416.00 (six thousand, four hundred, and sixteen dollars) per month in advance on the first day of each month, commencing on the date the Term commences,

and continuing during the Term. Monthly rent for the first month or portion of it shall be paid on the day the Term commences. Monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly rent per day. All rent shall be paid to Landlord at the address to which notices to Landlord are given.

Tenant will be responsible for all PG&E payments associated with 2435 and 2439 Channing Way from the commencement date of the lease.

#### **4. PERIODIC RENT INCREASES**

The monthly rent shall be increased at the commencement of the tenth year of the initial Term and the first year of each of the options Terms ("the adjustment date"). The adjusted monthly rent will be calculated by adding three percent (3%). Rent increases based on the 3% adjustment have been calculated and are further described in Exhibit C, attached to and made a part of this Lease.

#### **5. SECURITY DEPOSIT**

a. As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this lease, Tenant shall deposit with Landlord cash in an amount of \$1,000.00 (One Thousand Dollars). Such security shall be deposited on or before the effective date of the ordinance authorizing this lease.

b. Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant, or to clean the Premises.

c. If Tenant defaults in respect to any of the terms, provisions, covenants and conditions of this lease, including but not limited to the payment of rent, Landlord may use the security deposit or any portion of it to cure the default or compensate the Landlord for all damage sustained by Landlord resulting from Tenant's default. If Landlord so uses any portion of the security deposit, Tenant will restore the security deposit to its original amount within ten (10) days after written demand from Landlord.

d. Landlord will not be required to keep the security deposit separate from its own funds and Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this lease, or a payment of liquidated damages, or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this lease, Landlord shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term; however, if Landlord has evidence that the security deposit has been assigned to an assignee of the Tenant, Landlord shall return the security deposit to the assignee. Landlord may deliver the security deposit to a

purchaser of the Premises and be discharged from further liability with respect to it. Tenant waives the provisions of California Civil Code section 1950.7, and all laws in force or that become in force after the date of execution of this Lease, that provide that Landlord shall return the security deposit no later than thirty (30) days after the Landlord receives possession of the Premises.

**6. LATE CHARGES**

Tenant acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this lease, the exact amount of which will be extremely difficult to ascertain. Therefore, if any installment of rent or any other sum due from Tenant is not received by Landlord within ten (10) days after such amount is due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to it.

**7. USE OF PREMISES; OPERATION**

a. Tenant will use the Premises for the purpose of selling do-it-yourself, custom, and ready-made framing and printing services as well selling tools, supplies, and other related items and agrees to continuously and uninterruptedly occupy and use the entire leased Premises for said purpose and to maintain adequate personnel for the efficient service of clients or customers. Tenant shall not use nor permit the use of the whole or any part of the Premises for any other purpose without the Landlord's prior written consent.

b. Business may be conducted with the public on the leased Premises at any time on any day, provided that, 1) to do business after 10:00 p.m. on any day Tenant shall have obtained any permit required by federal, state or local law; and 2) Tenant hours of operation have been approved by the Landlord, including vacation, holiday, and seasonal schedule changes and/or closures (if any).

c. Tenant agrees to abide by all facility "Rules and Regulations" and are further described in Exhibit D, attached to and made a part of this Lease. Amendments to Exhibit D may be made from time to time and do not require approval by City Council.

d. In addition to Tenant's agreement to abide by all other restrictions on Tenant's use, Tenant hereby covenants that it shall not use the demised premises to engage in either the primary business of a flower shop, which shall include engaging in the primary business of selling flowers, plants, or related supplies nor the primary business of a deli/sandwich shop, which shall include engaging in the primary business of selling made to order sandwiches.

Tenant agrees that any violation of these use restrictions shall constitute a default by Tenant under this Lease, and that Landlord's notice to Lessee of this specific use restriction shall not be deemed a waiver by Landlord of any other use restriction imposed on the Tenant for the use of the demised Premises.

**8. TAXES AND ASSESSMENTS**

a. Tenant recognizes and understands that this lease may create a possessory interest subject to property taxation and assessment and utility taxation, and that the Tenant will be responsible for the payment of any property taxes and assessments, and utility taxes levied on such interest.

b. Tenant shall pay all taxes on its personal property, fixtures and on its leasehold or possessory interest in the leased Premises and any other assessment that may be lawfully levied.

**9. UTILITIES**

Tenant agrees to pay any and all charges for electricity, gas, heat, cooling, telephone, internet services, sewer use, water, refuse collection and other utilities used in the Premises. Tenant is responsible for directly paying any and all charges associated with the dedicated Pacific Gas and Electric meter for the Premises.

**10. MAINTENANCE AND REPAIR**

a. Tenant is responsible for ensuring that the Premise meet all applicable City of Berkeley codes prior to occupancy under this lease.

b. Tenant shall keep and maintain in good order, condition and repair (except for reasonable wear and tear) all portions of the Premises including without limitation, all fixtures, interior walls, floors, ceilings, plumbing, glass, roof, heating, ventilating and sewage facilities serving the leased Premises, landscaping, and the sidewalk adjacent to the Premises.

c. Tenant shall make all required repairs upon demand by Landlord. Failure to make such repairs within thirty (30) days of the Landlord's demand shall constitute a default by Tenant.

**11. IMPROVEMENTS**

a. Tenant shall not erect additions or structures nor make nor cause to be made any alterations, improvements, additions, or fixtures that affect the exterior or interior of the Premises, nor shall Tenant mark, paint, drill or in any way deface any floors, walls, ceilings, or partitions of the Premises without 1) first providing thirty (30) days' written notice to Landlord

and 2) obtaining City of Berkeley Building Permits as required by the Berkeley Municipal Code as it exists at the time of such improvements. Failure to notify the Landlord or failure to obtain Building Permits or meet other regulatory requirements shall constitute a default by Tenant.

b. Tenant shall require all contractors to provide a labor and materials bond for the full amount of the contract. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant, in, at, upon or about the leased Premises and which may be secured by any mechanic's, materialmen's or other lien against the Premises or Landlord's interest therein.

c. All alterations, improvements or additions that are now or in the future attached permanently to the Premises shall be the property of Landlord and remain with the Premises at the termination of this lease, except that Landlord can elect within thirty (30) days of the termination of the lease to require Tenant, at its cost, to remove any alterations, improvements or additions Tenant has made to the Premises.

## **12. INDEMNIFICATION**

Tenant shall indemnify, defend and hold Landlord, its officers, agents, volunteers and employees harmless from: 1) all claims of liability for any damage to property or injury or death to any person occurring in, on, or about the Premises; 2) all claims of liability arising out of Tenant's failure to perform any provision of this lease, or any act or omission by Tenant, its agents, contractors, invitees or employees; and 3) all damages, liability, fines, penalties, and any other consequences arising from any noncompliance or violation of any laws, ordinances, codes, or regulations, including but not limited to the Occupational Safety and Health Act of 1979 and the Americans with Disabilities Act of 1990. Except, however, that Landlord shall hold Tenant harmless from all claims of liability for damage resulting from the acts or omissions of Landlord or its authorized representatives.

## **13. INSURANCE**

a. Tenant at its cost shall maintain public liability insurance with a single combined liability limit of \$2,000,000 and property insurance against all risks of loss to any Tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises. All such insurance shall insure performance by Tenant of the preceding indemnity provisions. All insurance shall name the City of Berkeley (2180 Milvia Street, Berkeley, CA 94704), its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

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

c. Tenant at its cost shall maintain on all its personal property, Tenant's improvements, and alterations, in on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements. This coverage shall be considered primary, and the proceeds from any such policy shall be used by Tenant for the replacement of personal property or the restoration of Tenant's improvements or alterations.

d. If Tenant employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the Landlord. The workers' compensation insurance shall: provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said insurance except upon thirty (30) days prior written notice to the Landlord; provide for a waiver of any right of subrogation against Landlord to the extent permitted by law; and be approved as to form and sufficiency by the Landlord's Risk Manager.

e. Tenant shall forward copies of all insurance documents including renewals to: Real\_Property@berkeleyca.gov

#### **14. COMPLIANCE WITH LAW AND SAFETY**

a. Tenant 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 Tenant's activities, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All Tenant's activities must be in accordance with these laws, ordinances, codes, and regulations.

b. If a death, serious personal injury, or substantial property damage occurs in, on, or about the Premises, Tenant shall immediately notify the Landlord's Risk Management Office by telephone. If any accident occurs on the Premises, Tenant shall promptly submit a written report to Landlord, in such form as Landlord 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 Tenant's contractor, if any, (3) name and address of Tenant's liability insurance carrier, and (4) a detailed description of the accident.

c. Tenant shall report all existing hazardous materials handled at the site and any hazardous wastes generated at the site to the Toxics Management Division (TMD) on an annual basis and abide by all requirements of the TMD and other state and local environmental agencies. Upon release of hazardous materials or hazardous waste at the property or adjacent to

the property, Tenant shall immediately notify the City of Berkeley Toxics Management Division. If the release is significant, the Tenant must report it to the 911 and the Office of Emergency Services.

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

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

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

**16. REQUIRED ACCESSIBILITY DISCLOSURE**

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

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

**17. CITY NON-DISCRIMINATION ORDINANCE**

Tenant agrees to comply with the provisions of Berkeley Municipal Code Chapter 13.26 as amended from time to time. In the performance of this lease, the Tenant agrees as follows:

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

**18. NUCLEAR FREE BERKELEY**

Tenant agrees to comply with Berkeley Municipal Code Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

**19. OPPRESSIVE STATES**

a. In accordance with Resolution No. 59,853-N.S., Tenant certifies that it has no contractual relations with, and agrees during the term of this Lease to forego contractual relations to provide personal services to or to purchase, sell, lease or distribute commodities in the conduct of business with, 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 lease, the Tibet Autonomous Region and the provinces of Ado, Kham, and U-Tsang shall be deemed oppressive states.

c. Tenant's failure to comply with this section shall constitute a default of this lease and Landlord may terminate this lease pursuant to Section 29. In the event that the City

terminates this lease due to a default under this provision, City may deem Tenant a non-responsible bidder for five (5) years from the date this lease is terminated.

**20. BERKELEY LIVING WAGE ORDINANCE**

a. Tenant agrees to comply with Berkeley Municipal Code Chapter 13.27, the Berkeley Living Wage Ordinance. If Tenant employs six (6) or more part-time, full-time or stipend employees, and generates \$350,000 or more in annual gross receipts, Tenant will be required to provide all eligible employees with City mandated minimum compensation during the term of this lease, as defined in B.M.C. Chapter 13.27, and well as comply with the terms enumerated herein.

b. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance (LWO). If Tenant is subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased Premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased property, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in sections 28 and 29 herein.

c. If Tenant is subject to the LWO, Tenant shall include the requirements of the ordinance, as defined in B.M.C. Chapter 13.27, in any and all subleases in which Tenant enters with regard to the subject Premises. Sub-Tenants shall be required to comply with this ordinance with regard to any employees who spend 25% or more of their compensated time on the leased property.

d. If Tenant fails to comply with the requirements of this the LWO and this lease, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 29.

In addition, at City's sole discretion, Tenant may be responsible for liquidated damages in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Tenant'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 damages set forth herein is the nearest and most exact measure of damage

for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Tenant's breach.

**21. BERKELEY EQUAL BENEFITS ORDINANCE**

a. Tenant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Tenant is currently subject to the Berkeley Equal Benefits Ordinance, Tenant will be required to provide all eligible employees with City mandated equal benefits during the term of this lease, as defined in B.M.C. Chapter 13.29, as well as comply with the terms enumerated herein.

b. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be considered a default, subject to the provisions of Sections 28 and 29 of this lease.

c. If Tenant 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.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 29.

In addition, at City's sole discretion, Tenant 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 Tenant'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 Tenant's breach.

**22. SANCTUARY CITY CONTRACTING ORDINANCE**

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

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

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

### **23. CONFLICT OF INTEREST PROHIBITED**

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

b. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 et seq.,) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is reasonable foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).

c. Interpretation of this paragraph shall be governed by the definitions and provisions use in the Political Reform Act, Government Code section 87100 et seq., its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, as amended from time to time.

### **24. PESTICIDES**

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

### **25. SIGNS**

Tenant shall not install or letter any signs on the Premises without the prior written consent of Landlord. All signs on the Premises shall conform to the provisions of Berkeley Municipal Code Chapter 20.04.

### **26. DAMAGE OR DESTRUCTION**

If the Premises are totally or partially destroyed from any cause, rendering the

Premises totally or partially inaccessible or unusable, Landlord may elect to terminate this lease or continue this lease in effect by giving notice to Tenant within thirty (30) days of the date of destruction. If Landlord elects to continue this lease in full force and effect, then Landlord shall restore the Premises and the rent shall be abated, from the date of destruction until the date restoration is completed, in an amount proportionate to the extent to which the destruction interferes with Tenant's use of the Premises. If Landlord fails to give notice of its decision to terminate or continue this lease within the period stated, Tenant may elect to terminate this lease. Tenant waives the provisions of Civil Code sections 1932(2) and 1933(4) with respect to any destruction of the Premises.

**27. EMINENT DOMAIN**

If the whole or any portion of the Premises is taken by any paramount public authority under the power of eminent domain, then the rights and obligations of the parties shall be determined as follows: If the Premises are totally taken by condemnation, this lease shall terminate on the date of taking. If any portion of the Premises is taken by condemnation, Tenant shall have the right to either terminate this lease or to continue in possession of the remainder of the Premises under the terms of this lease. Such right to terminate must be exercised by notifying Landlord within thirty (30) days after possession of the part taken by eminent domain. If Tenant does not terminate this lease within the thirty (30) day period, this lease shall remain in full force and effect except that the fixed rent shall be reduced in the same proportion that the square footage of the Premises taken bears to the square footage of the Premises immediately before the taking. All damages awarded for such taking shall belong to and be the property of Landlord; provided, however, that Landlord shall not be entitled to any portion of the award made for loss of business and of business installations or improvements made by Tenant in accordance with this lease.

**28. DEFAULT BY TENANT**

a. The occurrence of any of the following shall constitute a default by Tenant:

1. Failure to pay rent when due, if the failure continues for 10 days after notice has been given to Tenant.

2. Abandonment and vacation of the Premises (failure to occupy and operate the Premises for 14 consecutive days shall be deemed an abandonment and vacation).

3. Failure to perform any other provision of this lease if the failure to perform is not cured within 30 days after notice has been given to Tenant. If the default cannot reasonably be cured within 30 days, Tenant shall not be in default of this lease if Tenant commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

b. Notices given under this paragraph shall specify the alleged default and the applicable lease provisions, and shall demand that Tenant perform the provisions of this lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this lease unless Landlord so elects in the notice. The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

## **29. LANDLORD'S REMEDIES**

Landlord shall have the following remedies if Tenant commits a default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

a. Tenant's Right to Possession Not Terminated. Landlord can continue this lease in full force and effect, and the lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due. During the period Tenant is in default, Landlord can enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises. Reletting can be for a period shorter or longer than the remaining term of this lease. Tenant shall pay to Landlord the rent due under this lease on the dates the rent is due, less the rent Landlord receives from any reletting. No act by Landlord allowed by this paragraph shall terminate this lease unless Landlord notifies Tenant that Landlord elects to terminate this lease. After Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the Premises, Tenant shall have the right to assign or sublet its interest in this lease if Tenant obtains Landlord's consent, but Tenant shall not be released from liability.

If Landlord elects to relet the Premises as provided in this paragraph, rent that Landlord receives from reletting shall be applied to the payment of: first, any indebtedness from Tenant to Landlord other than rent due from Tenant; second, all costs, including for maintenance, incurred by Landlord in reletting; third, rent due and unpaid under this lease. After deducting the payments referred to in this paragraph, any sum remaining from the rent Landlord receives from reletting shall be held by Landlord and applied in payment of future rent as rent becomes due under this lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date rent is due under this lease, the rent received from the reletting is less than the rent due on that date, Tenant shall pay to Landlord, in addition to the remaining rent due, all costs, including for maintenance, Landlord incurred in reletting that remain after applying the rent received from the reletting as provided in this paragraph.

b. Termination of Tenant's Right to Possession. Landlord can terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving notice to Tenant shall terminate this lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this lease



shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

i. The worth, at the time of award, of the unpaid rent that had been earned at the time of termination of this lease;

ii. The worth, at the time of award, of the amount by which the unpaid rent that would have been earned after the date of termination of this lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

iii. The worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

iv. Any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

"The worth, at the time of award," as used in i and ii of this section, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of award," as referred to in iii of this section, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%.

c. Appointment of Receiver. If Tenant is in default of this lease Landlord shall have the right to have a receiver appointed to collect rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this lease.

d. Landlord's Right to Cure. Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be additional rent.

### **30. ASSIGNMENT AND SUBLETTING**

Tenant shall not voluntarily assign or encumber its interest in this lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representative) to occupy or use all or any part of the Premises, without first obtaining Landlord's consent. Any assignments, encumbrance, or sublease without Landlord's

consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this paragraph.

**31. ENTRY**

Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes: to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under the lease; to do any acts that may be necessary to protect Landlord's interest in the Premises; or to perform Landlord's duties under this lease. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises as provided in this section, except damage resulting from the acts or omissions of Landlord or its authorized representatives.

**32. NOTICES**

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

To the Landlord:      City of Berkeley (PW Real Property)  
                                 2180 Milvia Street  
                                 Berkeley, CA 94704  
                                 AND  
                                 Real Property  
                                 Department of Public Works  
                                 1947 Center Street, Fifth Floor, Suite 521  
                                 Berkeley, CA 94704

Additionally, please email a PDF of the document to  
[real\\_property@berkeleyca.gov](mailto:real_property@berkeleyca.gov)

To the Tenant:        The Framer's Workshop, LLC  
                                 2439 Channing Way  
                                 Berkeley, CA 94704

**33. WAIVER**

No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such a right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the lease.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term. Only a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

**34. EXCUSABLE DELAYS**

If the performance of any act required of Landlord or Tenant is prevented or delayed by reason of strikes, lockouts, labor disputes, act of God, acts of the public enemy, fire, floods, epidemics, freight embargoes or other cause beyond the control of the party required to perform an act, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for thirty (30) days.

**35. OPTION TO RENEW**

a. Option Period. So long as Tenant is not in default under this lease, either at the time of exercise or at the time the extended term commences, Tenant will have the option to extend the initial term of this lease for two (2) additional period of five (5) years (the "option period") on the same terms, covenants, and conditions of this lease, except that the rent will increase 3% at the start of each option period. In order to exercise this option, Tenant must give written notice of its election to do so to Landlord at least 180 days, but not more than one year, prior to the expiration date of the initial lease term. Tenant shall have no other right to extend the term beyond the option period.

b. Option Period Monthly Rent. Due to the longevity of tenancy and Tenants status as an excellent tenant, Landlord has predetermined and calculated the rental rates for each of the two (2), five-year option periods. Rent increases based on the 3% adjustment beginning with each of the option periods have been calculated and are further described in Exhibit C, attached to and made a part of this Lease.

**36. HOLDING OVER**

If Tenant remains in possession of the Premises with Landlord's consent after the expiration of the term of this lease without having exercised any option to renew this lease, or after the termination of any such option period, such possession by Tenant shall be construed to be a tenancy from month-to-month, terminable on thirty (30) days' notice given at any time by either party. All provisions of this lease, except those pertaining to term, shall apply to the month-to-month tenancy.

**37. SURRENDER OF PREMISES, REMOVAL OF PERSONAL PROPERTY**

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

**38. TERMS BINDING ON SUCCESSORS**

All the terms, covenants and conditions of this lease shall inure to the benefit of and be binding upon the successors and assigns of the parties to this lease. The provisions of this section shall not be deemed as a waiver of any of the conditions against assignment set forth above.

**39. TIME OF ESSENCE**

Time shall be of the essence of each provision of this lease.

**40. COVENANTS AND CONDITIONS**

Each term and each provision of this lease performable by Tenant shall be construed to be both a covenant and condition.

**41. GOVERNING LAW**

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

**42. ENTIRE AGREEMENT, AMENDMENTS**

This lease and all exhibits attached and any documents expressly incorporated by reference contain the entire agreement between the parties regarding the lease of the Premises described herein and shall supersede any and all prior agreements, oral or written, between the

parties regarding the lease of these Premises. This lease cannot be altered or otherwise modified except by a written amendment.

**43. CONSENT OF PARTIES**

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

**44. BUSINESS LICENSE**

Tenant certifies that it has obtained or applied for a City of Berkeley business license number as required by Berkeley Municipal Code Chapter 9.04; or Tenant claims that it is exempt from the provisions of B.M.C. Ch. 9.04 and has written below the specific B.M.C. section under which it is exempt.

///

///

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this lease as of the date written on the first paragraph of this lease.

LANDLORD  
CITY OF BERKELEY

By:

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

THIS CONTRACT HAS BEEN  
APPROVED AS TO FORM BY  
THE CITY ATTORNEY FOR  
THE CITY OF BERKELEY  
09/2022

Registered on behalf  
of the City Auditor by:

\_\_\_\_\_  
Finance Department

Attest by:

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

TENANT

By:

Printed Name:

\_\_\_\_\_  
Chelsea Whitney

Title:

\_\_\_\_\_  
Co-owner and Manager

Berkeley Business

License No.:

\_\_\_\_\_

By:

Printed Name:

\_\_\_\_\_  
Kirstie Bennett

Title:

\_\_\_\_\_  
Co-owner

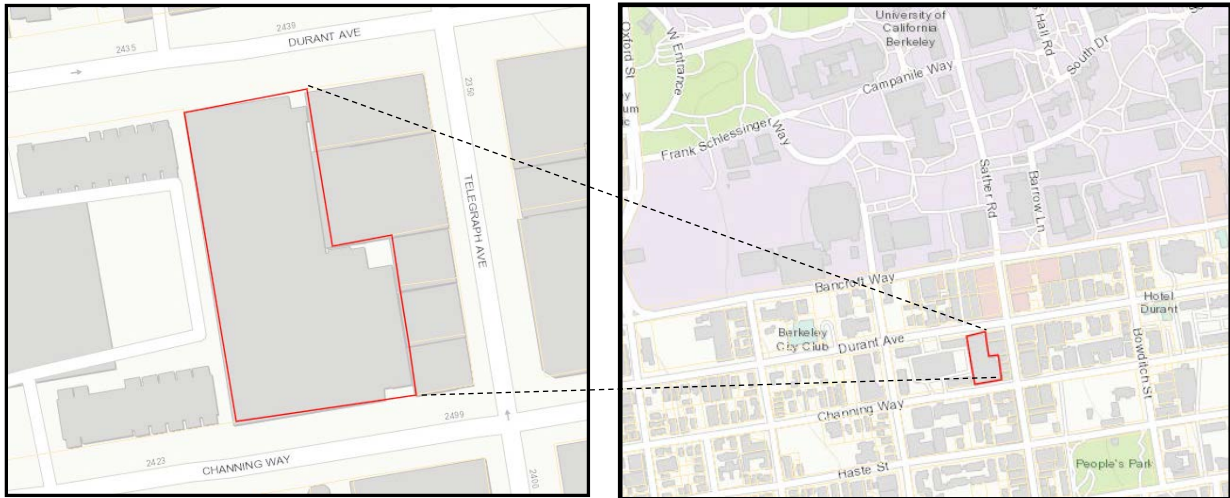
Berkeley Business

License No.:

\_\_\_\_\_

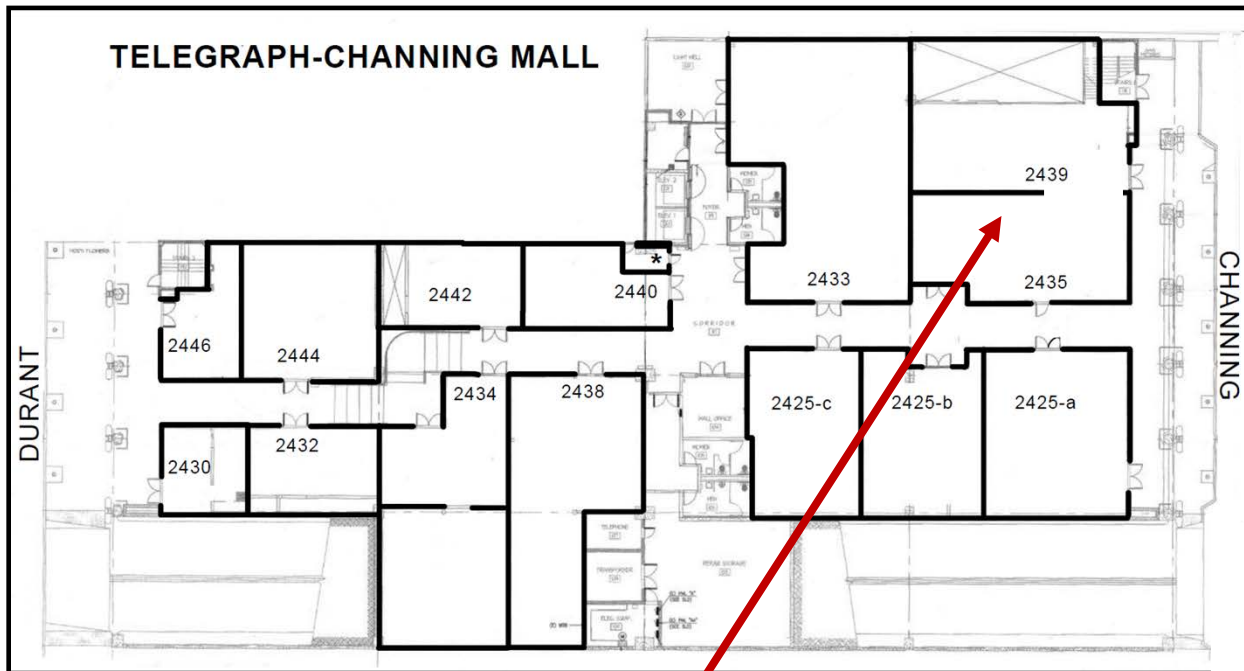
Exhibit A

PREMISES



**Physical (Legal) Address:** 2431 Channing Way, Berkeley, CA 94704

**Garage (and Commonly Used) Address:** 2450 Durant Avenue, Berkeley, CA 94704



**The Framers' Workshop**  
2435-2439 Channing Way  
Business/Mailing Address  
2439 Channing Way

**Exhibit B**

**AGREEMENT SPECIFYING TERM OF LEASE**

Attached to and made part of the Lease dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF BERKELEY, a municipal corporation, as Landlord, and THE FRAMER'S WORKSHOP LLC, A LIMITED LIABILITY CORPORATION as Tenant ("**Tenant**").

Landlord and Tenant do hereby confirm and acknowledge the following dates:

- a. Lease Commencement Date is **FEBRUARY 1, 2025** (DATE MUST BE AT LEAST 30 DAYS AFTER APPROVAL OF ORDINANCE)
- b. Rent Commencement Date is **FEBRUARY 1, 2025.**
- c. Expiration Date of the initial term of the Lease is **JANUARY 31, 2035** subject to extension as provided in the Lease.

This Agreement shall be binding on the parties hereto, their successor and assigns and all subtenants of Tenant and any other party claiming under or through Tenant. The Lease is in full force and effect as of the date hereof in accordance with its terms, and Tenant is in possession of the Premises. Landlord has fulfilled all of its obligations under the Lease that were required to be fulfilled by Landlord on or prior to the Rent Commencement Date and Tenant has no claim or right of set-off against any Rent (as defined in the Lease) under the Lease.

This Agreement was entered into as of the **21<sup>ST</sup> day of OCTOBER, 2024.**

**ATTEST/WITNESS:**

**LANDLORD:**

CITY OF BERKELEY, a municipal corporation

By: \_\_\_\_\_

Its: City Manager

By: \_\_\_\_\_

Its: City Attorney

By: \_\_\_\_\_

Its: City Auditor

**ATTEST/WITNESS:**

**TENANT:**

THE FRAMER'S WORKSHOP, LLC  
a limited liability corporation

By: \_\_\_\_\_  
CHELSEA WHITNEY

By: \_\_\_\_\_  
KIRSTIE BENNETT



Exhibit C

PAYMENTS

FRAMER'S WORKSHOP RENT PAYMENT SCHEDULE: 2435 & 2439 Channing@TCM (INITIAL TERM)

|               |      | 3%           |              |              |              |              |              |              |              |                                            |              |
|---------------|------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------------------------------------|--------------|
|               | YEAR | 1            | 2            | 3            | 4            | 5            | 6            | 7            | 8            | 9                                          | 10           |
| FEBRUARY      | 1    | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| MARCH         | 2    | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| APRIL         | 3    | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| MAY           | 4    | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| JUNE          | 5    | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| JULY          | 6    | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| AUGUST        | 7    | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| SEPTEMBER     | 8    | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| OCTOBER       | 9    | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| NOVEMBER      | 10   | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| DECEMBER      | 11   | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| JANUARY       | 12   | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00  | \$ 6,416.00                                | \$ 6,608.48  |
| ANNUAL TOTAL: |      | \$ 76,992.00 | \$ 76,992.00 | \$ 76,992.00 | \$ 76,992.00 | \$ 76,992.00 | \$ 76,992.00 | \$ 76,992.00 | \$ 76,992.00 | \$ 76,992.00                               | \$ 79,301.76 |
|               |      |              |              |              |              |              |              |              |              | TEN YEAR INITIAL TERM TOTAL: \$ 772,229.76 |              |

|                                |                  |
|--------------------------------|------------------|
| PREMISES AREA (SQFT):          | 3208             |
| MONTHLY RATE PER SQFT:         | \$ 2.00          |
| INITIAL MONTHLY RENT:          | \$ 6,416.00      |
| LEASE START DATE:              | February 1, 2025 |
| INITIAL TERM:                  | 120 MONTHS       |
| INITIAL TERM TERMINATION DATE: | January 31, 2035 |
| NOTIFY LANDLORD FOR OPTION BY: | August 1, 2034   |

|                                   |                         |
|-----------------------------------|-------------------------|
| PREMISES AREA (SQFT):             | 3208                    |
| MONTHLY RATE PER SQFT:            | \$ 2.00                 |
| INITIAL MONTHLY RENT:             | \$ 6,416.00             |
| LEASE START DATE:                 | <b>February 1, 2025</b> |
| INITIAL TERM:                     | 120 MONTHS              |
| INITIAL TERM TERMINATION DATE:    | <b>January 31, 2035</b> |
| NOTIFY LANDLORD FOR OPTION BY:    | <b>August 1, 2034</b>   |
| OPTION #1 START DATE:             | February 1, 2035        |
| OPTION #1 TERM:                   | 60 MONTHS               |
| OPTION #1 TERMINATION DATE:       | January 31, 2040        |
| NOTIFY LANDLORD FOR OPTION BY:    | <b>August 1, 2039</b>   |
| OPTION #2 START DATE:             | February 1, 2040        |
| OPTION #2 TERM:                   | 60 MONTHS               |
| OPTION #2 TERMINATION DATE:       | January 31, 2045        |
| NOTIFY LANDLORD FOR NEW LEASE BY: | <b>August 1, 2044</b>   |

**Exhibit D****RULES, RESTRICTIONS AND PROHIBITED USES**

Tenant shall not use or permit the use of the Premises for any other business or purpose, except as set forth in this Lease and in strict accordance with the Rules and Regulations. No part of the Premises shall be used in a way that endangers the health or safety of any user of the Premises. **THESE PROHIBITIONS AND RESTRICTIONS SHALL NOT BE DEEMED TO APPLY TO LANDLORD, BUT ONLY TO TENANT UNDER THIS LEASE.** Landlord shall have the right, in Landlord's sole and absolute discretion, to waive all or any of the prohibitions set forth herein upon such matters, terms and conditions as Landlord, in its sole discretion, may determine.

**RULES AND REGULATIONS FOR TELEGRAPH-CHANNING MALL**

All Tenants of Telegraph-Channing Mall ("TCM") shall comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the failure of any other tenant or occupant of the building to comply with any of these Rules and Regulations:

1. Smoking is prohibited at TCM and Garage in accordance with Berkeley Municipal Code ("BMC") 12.70.030, *Locations Where Smoking Is Prohibited*. Tenant, Tenant's employees/volunteers, invitees, clients, guests, and other occupants shall abide by this Code. "No Smoking" signs are posted by Landlord. Tenant shall abide by and support the enforcement of this regulation prohibiting smoking in all public places, including but not limited to restaurants, public restrooms, business establishments, and parking garages.
2. No pets are allowed on the premises, Building, or Property unless such animal is designated as a "service animal" and licensed with the City of Berkeley. Every dog over the age of six months must be licensed and must wear the license (BMC 10.04.030). Special tags for service animals may be obtained from Alameda County Animal Control at (925) 803-7046.
3. Tenant restrooms are exclusively for the use of Tenants, their employees/volunteers, and customers. Public restrooms, located directly across from the elevators, are available for use by all other visitors, parking garage customers, and the general public.
4. No sign, placard, picture, name, advertisement, or notice visible from the exterior of the premises will be inscribed, painted, affixed, or otherwise displayed by Tenant on any part of the mall or parking structure without the prior written consent of Landlord. The Landlord will adopt and furnish to the tenant general guidelines relating to signs inside TCM. The tenant agrees to comply with those guidelines. All approved signs or lettering on doors will be printed, painted, affixed, or inscribed at the expense of the tenant by a person approved in writing by the Landlord. Material visible outside TCM will not be permitted.
5. The Directory of TCM (if any) will be provided for the display of the name and location of Tenants, and Landlord reserves the right to exclude any other names from the directory. Any additional name that the tenant desires to place upon the directory must be first approved by Landlord, and, if so approved, a charge will be made for the additional name or name change.

6. Tenant shall display the days and hours of operation for their business. The days and hours of operation posted must match those shown in their Lease and/or approved by the Landlord. Tenant shall notify the Landlord in writing stating the reason (vacation, holiday or other observances, etc.,) and the start and end date of any and all closures or deviations from the posted hours of operation exceeding two (2) calendar days.
7. Tenant shall assume all responsibility for protecting the premises from theft, robbery, pilferage, vandalism, damage, or waste, including keeping doors locked and keep other means of entry to the premises closed, and turning off all water faucets, water apparatus, and utilities when needed or necessary. Tenant shall be responsible for any waste in or damage to the premises or any injuries sustained by other Tenants or occupants of TCM or Landlord for Tenant's negligent or willful acts or omissions in protecting the premises as set forth herein.
8. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular Tenant or Tenants, but no waiver by Landlord shall be construed as a waiver of those Rules and Regulations in favor of any other Tenant or Tenants, nor prevent Landlord from enforcing any of those Rules and Regulations against any or all of the Tenants of TCM. Any waiver of these Rules and Regulations by the Landlord shall be done in writing.
9. Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations or to make any additional reasonable Rules and Regulations that, in Landlord's judgment, may be necessary for:
  - A. The management, safety, care, and cleanliness of the Premises, Building, and Real Property;
  - B. The preservation of good order; and
  - C. The convenience of other occupants and Tenants in the Premises, Building, and Real Property.
10. No store merchandise and/or displays shall be placed in TCM's main corridor/paseo, arcade, or light well, nor block the path of travel within any part of TCM at any time. No events, classes, conferences, demonstrations, celebrations, or other gatherings shall occur in TCM's corridor, porticos, trash room, or light well.

## ORDINANCE NO. 7,943-N.S.

LEASE AMENDMENT: WE WIELD THE HAMMER AT 2440 DURANT AVENUE IN  
THE TELEGRAPH-CHANNING MALL AND GARAGE

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

Section 1. FINDINGS:

The City owns the Telegraph-Channing Mall and Garage, and We Wield The Hammer, a 501c3 nonprofit organization, seeks to lease 2440 Durant Avenue at the premises for purpose of operating a retail business offering specialized classes and related materials to the public. This Lease Amendment only modifies Exhibit B to Lease, *Agreement Specifying Term of Lease* as follows:

- a. Lease Commencement Date changes from April 1, 2024 to September 1, 2024;
- b. Rent Abatement Period changes from six months to nine (9) months;
- c. Rent Commencement Date changes from October 1, 2024 to July 1, 2025; and
- d. Expiration Date of the initial term of the lease changes from March 31, 2029 to August 31, 2029.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AMENDMENT AT 2440 DURANT AVENUE, BERKELEY, CA.

The City Manager is hereby authorized to enter into a five-year amended lease agreement with the option for a five-year extension with We Wield The Hammer for real property located at 2440 Durant Avenue, a ground floor retail space in the City of Berkeley Telegraph-Channing Mall and Garage. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 3, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, and Wengraf.

Noes: None.

Absent: None.

## LEASE AMENDMENT FOR TELEGRAPH-CHANNING MALL

This lease amendment (“**Amendment**”) is made on \_\_\_\_\_ between the CITY OF BERKELEY (“**Landlord**”), a Charter City organized and existing under the laws of the State of California and We Wield The Hammer (“**Tenant**”), a 501c3 nonprofit organization, who agree as follows:

This lease is made with reference to the following facts and objectives:

A. Landlord is the owner of the real property at 2431 Channing Way, Berkeley, California, (“**premises**”) commonly referred to as Telegraph-Channing Mall and Garage as further described in Exhibit A, attached to and made a part of this lease.

B. Tenant entered into a lease (“**Lease**”) with Landlord on February 13, 2024. Tenant is occupying and conducting business at 2440 Durant Avenue located on the ground floor of the premises and identified in Exhibit A, attached to and made part of this lease.

C. Landlord has negotiated with Tenant to modify Exhibit B to the lease,  
*AGREEMENT SPECIFYING TERM OF LEASE* as follows:

- a. Lease Commencement Date changes from April 1, 2024 to September 1, 2024;
- b. Rent Abatement Period changes from six months to nine (9) months resulting in a Rent Commencement Date changing from October 1, 2024 to July 1, 2025; and
- c. Expiration Date of the initial term of the lease changes from March 31, 2029 to August 31, 2029.

1. **Exhibit B. AGREEMENT SPECIFYING TERM OF LEASE**, is deleted in its entirety and replaced by Exhibit B. **AGREEMENT SPECIFYING TERM OF LEASE (REVISED)**, attached to and made part of this lease.

D. Landlord and Tenant agree that the impact of changes made to Exhibit B to the lease will reduce the anticipated revenue/rent from \$62,615 to \$58,275 a difference of \$4,340 for the initial five (5) year term.

1. Exhibit C. **PAYMENTS**, is deleted in its entirety and replaced by Exhibit C. **PAYMENTS (REVISED)**, attached to and made part of this lease.

Effect: Except for the amendment agreed to herein, the Lease effective as of March 14, 2024 remains in full force and effect.

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this lease amendment as of the date written on the first paragraph of this lease.

LANDLORD  
CITY OF BERKELEY

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

THIS LEASE HAS BEEN  
APPROVED AS TO FORM  
BY THE CITY ATTORNEY  
OF THE CITY OF BERKELEY  
6/2004

REGISTERED BY:  
\_\_\_\_\_  
City Auditor

ATTEST:  
\_\_\_\_\_  
Deputy City Clerk

**TENANT:**  
WE WIELD THE HAMMER  
A 501c3 NONPROFIT ORGANIZATION

Signature: \_\_\_\_\_  
By: KAREN SMITH

City of Berkeley Business License No.



**Exhibit B**  
**AGREEMENT SPECIFYING TERM OF LEASE (REVISED)**

Attached to and made part of the Lease dated the 13th day of February, 2024, by and between the CITY OF BERKELEY, a municipal corporation, as Landlord, and WE WIELD THE HAMMER, A 501c3 NONPROFIT ORGANIZATION as Tenant ("**Tenant**").

Landlord and Tenant do hereby confirm and acknowledge the following dates:

- a. Lease Commencement Date is September 1, 2024 [DATE MUST BE AT LEAST 30 DAYS AFTER APPROVAL OF ORDINANCE – Lease effective date March 14, 2024]
- b. Rent Commencement Date is July 1, 2025.
- c. Expiration Date of the initial term of the Lease is August 31, 2029 subject to extension as provided in the Lease.

This Agreement shall be binding on the parties hereto, their successor and assigns and all subtenants of Tenant and any other party claiming under or through Tenant. The Lease is in full force and effect as of the date hereof in accordance with its terms, and Tenant is in possession of the Premises. Landlord has fulfilled all of its obligations under the Lease that were required to be fulfilled by Landlord on or prior to the Rent Commencement Date and Tenant has no claim or right of set-off against any Rent (as defined in the Lease) under the Lease.

This Agreement was entered into as of the 17th day of October, 2024.

**ATTEST/WITNESS:**

**LANDLORD:**

CITY OF BERKELEY, a municipal corporation

By: \_\_\_\_\_

Its: City Manager

By: \_\_\_\_\_

Its: City Attorney

By: \_\_\_\_\_

Its: City Auditor

**ATTEST/WITNESS:**

**TENANT:**

WE WIELD THE HAMMER  
a 501c3 NON-PROFIT ORGANIZATION

By: \_\_\_\_\_

KAREN SMITH

**Exhibit C**  
**PAYMENT (REVISED)**

| RENT PAYMENT SCHEDULE: We Weld the Hammer 2440 Durant@TCM |      |             |                   |                                  |              |              |
|-----------------------------------------------------------|------|-------------|-------------------|----------------------------------|--------------|--------------|
|                                                           | YEAR | 1           | 2                 | 3                                | 4            | 5            |
| SEPTEMBER                                                 | 1    | \$ -        | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| OCTOBER                                                   | 2    | \$ -        | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| NOVEMBER                                                  | 3    | \$ -        | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| DECEMBER                                                  | 4    | \$ -        | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| JANUARY                                                   | 5    | \$ -        | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| FEBRUARY                                                  | 6    | \$ -        | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| MARCH                                                     | 7    | \$ -        | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| APRIL                                                     | 8    | \$ -        | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| MAY                                                       | 9    | \$ -        | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| JUNE                                                      | 10   | \$ -        | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| JULY                                                      | 11   | \$ 1,085.00 | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| AUGUST                                                    | 12   | \$ 1,085.00 | \$ 1,117.55       | \$ 1,151.08                      | \$ 1,185.61  | \$ 1,221.18  |
| ANNUAL TOTAL:                                             |      | \$ 2,170.00 | \$ 13,410.60      | \$ 13,812.92                     | \$ 14,227.31 | \$ 14,654.12 |
|                                                           |      |             |                   | 9 MONTH RENT ABATEMENT:          |              | \$ 9,765.00  |
|                                                           |      |             |                   | INITIAL TERM TOTAL: \$ 58,274.95 |              |              |
|                                                           |      |             |                   |                                  |              |              |
| PREMISES AREA (SQFT):                                     |      |             | 620               |                                  |              |              |
| MONTHLY RATE PER SQFT:                                    |      |             | \$ 1.75           |                                  |              |              |
| INITIAL MONTHLY RENT:                                     |      |             | \$ 1,085.00       |                                  |              |              |
| ANNUAL INCREASE:                                          |      |             | 3.00%             |                                  |              |              |
| LEASE START DATE:                                         |      |             | September 1, 2024 |                                  |              |              |
| INITIAL TERM:                                             |      |             | 60 MONTHS         |                                  |              |              |
| INITIAL TERM TERMINATION DATE:                            |      |             | August 31, 2029   |                                  |              |              |
| NOTIFY LANDLORD FOR OPTION BY:                            |      |             | March 1, 2029     |                                  |              |              |
| OPTION START DATE:                                        |      |             | September 1, 2028 |                                  |              |              |
| OPTION TERM:                                              |      |             | 60 MONTHS         |                                  |              |              |
| OPTION TERMINATION DATE:                                  |      |             | August 31, 2033   |                                  |              |              |

## ORDINANCE NO. 7,944-N.S.

## LEASE AMENDMENT: DOROTHY DAY HOUSE DBA DOROTHY'S CLOSET AT 2425A CHANNING WAY IN THE TELEGRAPH-CHANNING MALL AND GARAGE

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

Section 1. Findings:

The City owns the Telegraph-Channing Mall and Garage, and Dorothy Day House, a 501c3 nonprofit organization, d.b.a Dorothy's Closet seeks to lease 2425a Channing Way at the premises for the purpose of operating a retail business offering used clothing and gear for sale. This Lease Amendment only modifies Exhibit C to Lease, *Payment* as follows:

- a. Monthly rate per square foot is reduced from \$2.26 to \$1.95; and
- b. Annual increase is reduced from 3% to 0% for the initial term of the lease.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AMENDMENT AT 2425A CHANNING WAY, BERKELEY, CA.

The City Manager is hereby authorized to enter into a five-year amended lease agreement with the option for a five-year extension with Dorothy Day House d.b.a Dorothy's Closet, a ground floor retail space in the City of Berkeley Telegraph-Channing Mall and Garage. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 3, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, and Wengraf.

Noes: None.

Absent: None.

## LEASE AMENDMENT FOR TELEGRAPH-CHANNING MALL

This lease amendment (“**Amendment**”) is made on \_\_\_\_\_ between the CITY OF BERKELEY (“**Landlord**”), a Charter City organized and existing under the laws of the State of California and Dorothy Day House d.b.a Dorothy’s Closet (“**Tenant**”), a 501c3 nonprofit organization, who agree as follows:

This lease is made with reference to the following facts and objectives:

A. Landlord is the owner of the real property at 2425a Channing Way, Berkeley, California, (“**premises**”) commonly referred to as Telegraph-Channing Mall and Garage as further described in Exhibit A, attached to and made a part of this lease.

B. Tenant entered into a lease (“**Lease**”) with Landlord on July 29, 2024 with a retroactive start date of May 1, 2023. Tenant is occupying and conducting business at 2425a Channing Way located on the ground floor of the premises and identified in Exhibit A, attached to and made part of this lease.

C. Landlord has negotiated with Tenant to reduce the starting per square foot rental rate from \$2.26 per square foot to \$1.95 per square foot for the 1,400 square foot space and eliminate the annual 3% increase for the duration of the initial term of the lease. This effectively sets monthly rent at \$2,730 per month for the initial five-year term of the lease.

D. Landlord and Tenant agree that the impact of changes made to Exhibit C to the lease will reduce the anticipated revenue/rent from \$139,860 to \$114,660 a difference of \$25,260 for the initial five (5) year term.

1. Exhibit C. **PAYMENTS**, is deleted in its entirety and replaced by Exhibit C. **PAYMENTS (REVISED)**, attached to and made part of this lease.

Effect: Except for the amendment agreed to herein, the Lease effective as of July 29, 2024 remains in full force and effect.

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this lease amendment as of the date written on the first paragraph of this lease.

LANDLORD  
CITY OF BERKELEY

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

THIS LEASE HAS BEEN  
APPROVED AS TO FORM  
BY THE CITY ATTORNEY  
OF THE CITY OF BERKELEY  
6/2004

REGISTERED BY:

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

ATTEST:

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

**TENANT:**  
DOROTHY DAY HOUSE D.B.A DOROTHY'S CLOSET  
A 501c3 NONPROFIT ORGANIZATION

Signature: \_\_\_\_\_  
By: Robbi Montoya, Executive Director

City of Berkeley Business License No. BL-000275

**Exhibit C**  
**PAYMENT (REVISED)**

| <b>RENT PAYMENT SCHEDULE: Dorothy's Closet 2425A Channing @TCM</b> |             |          |              |              |              |                      |
|--------------------------------------------------------------------|-------------|----------|--------------|--------------|--------------|----------------------|
|                                                                    | <b>YEAR</b> | <b>1</b> | <b>2</b>     | <b>3</b>     | <b>4</b>     | <b>5</b>             |
| <b>MAY</b>                                                         | <b>1</b>    | \$ -     | \$ -         | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>JUNE</b>                                                        | <b>2</b>    | \$ -     | \$ -         | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>JULY</b>                                                        | <b>3</b>    | \$ -     | \$ -         | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>AUGUST</b>                                                      | <b>4</b>    | \$ -     | \$ -         | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>SEPTEMBER</b>                                                   | <b>5</b>    | \$ -     | \$ -         | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>OCTOBER</b>                                                     | <b>6</b>    | \$ -     | \$ -         | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>NOVEMBER</b>                                                    | <b>7</b>    | \$ -     | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>DECEMBER</b>                                                    | <b>8</b>    | \$ -     | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>JANUARY</b>                                                     | <b>9</b>    | \$ -     | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>FEBRUARY</b>                                                    | <b>10</b>   | \$ -     | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>MARCH</b>                                                       | <b>11</b>   | \$ -     | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>APRIL</b>                                                       | <b>12</b>   | \$ -     | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00  | \$ 2,730.00          |
| <b>ANNUAL TOTAL:</b>                                               |             | \$ -     | \$ 16,380.00 | \$ 32,760.00 | \$ 32,760.00 | \$ 32,760.00         |
| <b>INITIAL TERM TOTAL:</b>                                         |             |          |              |              |              | <b>\$ 114,660.00</b> |

|                                       |                         |
|---------------------------------------|-------------------------|
| <b>PREMISES AREA (SQFT):</b>          | <b>1400</b>             |
| <b>MONTHLY RATE PER SQFT:</b>         | <b>\$ 1.95</b>          |
| <b>INITIAL MONTHLY RENT:</b>          | <b>\$ 2,730.00</b>      |
| <b>LEASE START DATE:</b>              | <b>May 1, 2023</b>      |
| <b>INITIAL TERM:</b>                  | <b>60 MONTHS</b>        |
| <b>INITIAL TERM TERMINATION DATE:</b> | <b>April 30, 2028</b>   |
| <b>NOTIFY LANDLORD FOR OPTION BY:</b> | <b>November 1, 2027</b> |
| <b>OPTION START DATE:</b>             | <b>May 1, 2028</b>      |
| <b>OPTION TERM:</b>                   | <b>60 MONTHS</b>        |
| <b>OPTION TERMINATION DATE:</b>       | <b>April 30, 2033</b>   |

## ORDINANCE NO. 7,945-N.S.

AMENDMENTS TO THE COMMERCIAL DISTRICT CHAPTER (BMC 23.204), MANUFACTURING DISTRICT CHAPTER (BMC 23.206), PARKING AND LOADING REGULATIONS CHAPTER (BMC 23.322) AND GLOSSARY (BMC 23.502), TO SUPPORT BERKELEY'S INNOVATION BUSINESSES

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

Section 1. That the line named "Research and Development" in Table 23.204-1 in BMC Section 23.204.020 is amended, a new line "Research and Development, 20,000 sq. ft. of larger" is added, and the line named "Commercial, Physical and Biological" is amended to read:

**Table 23.204-1 Allowed Uses in the Commercial Districts**

| ZC = Zoning Certificate<br>AUP = Administrative<br>Use Permit<br>UP(PH) = Use Permit<br>NP = Not Permitted<br>-- = Permitted with AUP,<br>see 23.204.020(B)<br>[#] = Table Note Permit<br>Requirement<br>* Use-Specific<br>Regulations Apply | Commercial Districts |     |     |     |      |      |     |      |       |     |      | USE-SPECIFIC REGULATIONS |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-----|-----|-----|------|------|-----|------|-------|-----|------|--------------------------|
|                                                                                                                                                                                                                                              | C-C                  | C-U | C-N | C-E | C-NS | C-SA | C-T | C-SO | C-DMU | C-W | C-AC |                          |
| Research and Development Under 20,000 sq. ft.                                                                                                                                                                                                | ZC                   | ZC  | –   | –   | ZC   | –    | ZC  | –    | ZC    | ZC  | --   | 23.204.040(E)            |
| Research and Development, 20,000 sq. ft. or larger                                                                                                                                                                                           | AUP                  | AUP | --  | --  | AUP  | --   | AUP | --   | AUP   | AUP | --   | 23.204.040(E)            |
| Commercial Physical or Biological Testing                                                                                                                                                                                                    | AUP                  | AUP | NP  | NP  | NP   | NP   | NP  | NP   | AUP   | NP  | NP   | 23.204.040(E)            |

Section 2. That BMC Section 23.204.040(E) be added to read:

E. *Microbes or biological agents* – See Section 23.302.020(E).

Section 3. That the lines named "Research and Development" and "Commercial and Biological" in Table 23.206-1 in BMC Section 23.206.020 are amended to read:

| ZC = Zoning Certificate<br>AUP = Administrative Use Permit<br>UP(PH) = Use Permit<br>-- = Permitted with an AUP, see 23.206.020(B)<br>NP = Not Permitted<br>[#] = Floor Area Permit Requirement<br>* Use-Specific Standards Apply | Manufacturing Districts |         |         |      | Use-Specific Standards<br>Applies to uses with an asterisk<br>following the permit requirement<br>(e.g., ZC*) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|---------|---------|------|---------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                   | M                       | MM      | MU-LI   | MU-R |                                                                                                               |
| Research and Development                                                                                                                                                                                                          | --                      | ZC [12] | ZC [12] | --   | 23.206.040(L)                                                                                                 |
| Commercial Physical or Biological Testing                                                                                                                                                                                         | NP                      | AUP [4] | UP(PH)* | NP   | 23.206.040(L)                                                                                                 |

Section 4. That BMC Section 23.206.040(L) be added to read:

L. *Microbes or biological agents* – See Section 23.302.020(E).

Section 5. That BMC Section 23.206.070(A)(3) and 23.206.070(A)(5) are amended to read:

3. Encourage development of a manufacturing district targeted to manufacturing and industrial uses including research and development, so that manufacturers and industrial businesses will not be interfered with by incompatible uses;

5. Provide an appropriate location for the development of compatible industries which can provide high quality employment for people at all educational levels, and add significantly to the tax base, such as the biotechnology industry and other research and development uses;

Section 6. That BMC Section 23.206.080(A)(7) is amended to read:

7. Provide the opportunity for laboratory development and research and development facilities in appropriate locations;

Section 7. That BMC Section 23.302.020(E) is added to read:

E. *Microbes or biological agents* -- Use of microbes, biological agents, or similar organisms classified as Biosafety Level 3 (BSL-3) or 4 (BSL-4) by the US Centers for Disease Control and Prevention are not permitted in any Zoning District, in association with any land use.

Section 8. That a line named “Research and Development” is added to Table 23.322-2 in BMC Section 23.322.030(B) to read:

**Table 23.322-2. REQUIRED OFF-STREET PARKING REQUIREMENTS IN COMMERCIAL DISTRICTS (EXCLUDING C-T)**

|                          |                                                                                              |
|--------------------------|----------------------------------------------------------------------------------------------|
| Research and Development | C-DMU District: 1.5 per 1,000 sq. ft.<br>All Other Commercial Districts: 1 per 1,000 sq. ft. |
|--------------------------|----------------------------------------------------------------------------------------------|



Section 9. That a line named “Research and Development” is added to Table 23.322-4 in BMC Section 23.322.030(C) to read:

**Table 23.322-4. REQUIRED OFF-STREET PARKING IN MANUFACTURING DISTRICTS**

|                          |                     |
|--------------------------|---------------------|
| Research and Development | 1 per 1,000 sq. ft. |
|--------------------------|---------------------|

Section 10. That BMC Section 23.206.080(B)(5) to B(13) are amended to read:

5. General Retail. Allowed general retail uses in the MU-LI district are limited to food product stores and building materials and garden supply stores. Other types of general retail uses are not permitted. Food product stores are not permitted if over 2,000 square feet. Building materials and garden supplies stores are permitted with an AUP if under 20,000 square feet and with a Use Permit if 20,000 square feet or more.
6. Pharmaceuticals Manufacturing. Pharmaceuticals manufacturing is allowed in the MU-LI district only in locations at least 500 feet from a Residential District or the MU-R district.
7. Public Market, Open Air. Open air markets in the MU-LI district with 5,000 square feet or less of lot area are allowed with AUP.
8. Recycling Facilities. Recycled materials processing and recycling redemption centers are allowed in the MU-LI district only on lots greater than 20,000 square feet.
9. Theaters. Only live stage performances are allowed in a theater in the MU-LI district. Motion picture theaters are not permitted.
10. Vehicle Wrecking. Permits required for vehicle wrecking the MU-LI district is determined by size of lot, not floor area.
11. Vocational Schools. A vocational school in the MU-LI district must provide training for occupations and/or industries found in the West Berkeley Plan area.
12. Wholesale Trade Proximity to Residential Use. For wholesale trade use in the MU-LI district otherwise allowed with a Zoning Certificate, an AUP is required to establish the use within 150 feet of a residential use in a Residential District or in the MU-R district.

Section 11. That BMC Section 23.502.020(L)(1) is amended to read:

1. Laboratories.

(a) Commercial Physical or Biological Testing. A facility that provides controlled conditions in which scientific or technological testing and measurements may be performed. Any facility established as a Commercial Physical or Biological Laboratory to conduct scientific or technological research, experiments and measurements prior to January 9, 2025 shall be considered a conforming Commercial Physical or Biological Testing use.

(b) Cannabis Testing. A facility for the testing of the properties of cannabis intended for consumer use.

Section 12. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 3, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, and Wengraf.

Noes: None.

Absent: None.



Cecilia Lunaparra  
Councilmember, District 7

### ACTION CALENDAR

December 10, 2024

*(Continued from December 3, 2024)*

To: Honorable Members of the City Council

From: Councilmember Lunaparra (Author), Councilmember Humbert (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor)

Subject: Bicycle and Pedestrian Access on the Richmond-San Rafael Bridge

### RECOMMENDATION

Adopt a Resolution affirming the City of Berkeley's support for permanent 24/7 protected bicycle and pedestrian access to the Richmond-San Rafael Bridge Trail.

### BACKGROUND

Following decades of advocacy, in 2019, the protected bicycle and pedestrian trail opened on the Richmond-San Rafael Bridge, completing a 6-mile link in the Bay Trail and connecting Contra Costa and Marin counties.

Since the opening of the barrier-separated shared bike and pedestrian path, the Metropolitan Transportation Commission's (MTC) Phase II After Study for the Richmond-San Rafael Bridge found that both weekday and weekend vehicle flows have dropped, and weekday emissions have decreased. In the summer of 2021, the path received an 8.19 out of 10 safety rating by users. The report also states that "there is no statistical evidence that the bridge modifications are producing longer crash-related incidents or changing the location where crashes tend to occur on the bridge," or that the modifications are increasing the time needed to clear crashes.<sup>1</sup>

### CURRENT SITUATION AND ITS EFFECTS

The Metropolitan Transportation Commission (MTC) is proposing a weekday (Monday through Thursday) closure of Richmond-San Rafael pathway designated for pedestrians and people on bicycles. Under this proposal, the closed pathway would become a non-

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<sup>1</sup> After Study for the Richmond-San Rafael Bridge (Phase II), California PATH, UC Berkeley, [https://mtc.ca.gov/sites/default/files/meetings/attachments/6005/4a\\_ATTACHMENT\\_B\\_Phase\\_II\\_Pilot\\_Study\\_Final\\_Report.pdf](https://mtc.ca.gov/sites/default/files/meetings/attachments/6005/4a_ATTACHMENT_B_Phase_II_Pilot_Study_Final_Report.pdf)

drivable breakdown lane on weekdays. Unfortunately, doing so would eliminate critical access for people who do not drive and rely on the Bridge as the primary connection between the East & North Bay. Although MTC's movable barrier proposal would allow bikes and pedestrians to safely cross the Bridge on weekends, many are concerned about "equitable access needed for those who must cross during the week." <sup>2</sup>

MTC's proposal requires approval from the San Francisco Bay Conservation and Development Commission (BCDC) at an upcoming meeting. The Cities of Richmond and Albany have recently passed similar resolutions in support of a permanent protected Richmond-San Rafael Bay Trail with unanimous support.

#### FISCAL IMPACTS OF RECOMMENDATION

None.

#### ENVIRONMENTAL SUSTAINABILITY

Maintaining permanent 24/7 access to the Richmond-San Rafael Bridge Trail would continue to encourage safe and equitable access to transbay multimodal transportation.

#### CONTACT PERSON

Councilmember Cecilia Lunaparra, 510-981-7170

Attachments:

1: Resolution

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<sup>2</sup> Bike East Bay, <https://bikeeastbay.org/rsr2024-2/>

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

AFFIRMING BERKELEY'S SUPPORT FOR THE RICHMOND-SAN RAFAEL  
BRIDGE TRAIL

WHEREAS, the City of Berkeley is proud to promote connections between communities via the Richmond-San Rafael Bridge; and

WHEREAS, the Berkeley City Council recognizes that the Richmond-San Rafael Bridge Trail is a keystone section of the 500-mile regional San Francisco Bay Trail linking the East Bay and North Bay; and

WHEREAS, Berkeley City Council by unanimous vote adopted Resolution No. 68,486 - N.S., declaring a climate emergency and calling for urgent action to restore a safe climate; and

WHEREAS, the Council recognizes that an increase in the number of vehicle miles driven to and on the bridge increases pollution affecting vulnerable communities; and

WHEREAS, the Council recognizes that active transportation allows people to be physically active in everyday life by enabling them to walk, bike, or roll to their destinations; and

WHEREAS, bicyclists and pedestrians have enjoyed over 400,000 trips on the Richmond-San Rafael Bridge Trail since it opened in November 2019; and

WHEREAS, the Bay Area Toll Authority Report data showed no increase in westbound car congestion, a decrease in the number of motorist crashes, and no negative impact on the Air Quality Index (AQI); AQI is primarily impacted by vehicle miles traveled, road dust, tire wear, and brake wear, not by traffic congestion; and

WHEREAS, the Council recognizes that a closure of the Richmond-San Rafael Bridge Trail would cause individuals who currently rely on this trail to drive for more trips, and if they don't have access to a car they could be left with no other options; and

WHEREAS, the Council recognizes that access to transportation is a human right and reliable mobility options for those unable to afford or drive a car should be available.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Berkeley does hereby support 24 hours a day, 7 days a week access to the Richmond-San Rafael Bridge Trail for pedestrians and bicyclists.

BE IT FURTHER AND FINALLY RESOLVED, that upon passage, a copy of this Resolution be sent to the members of the San Francisco Bay Conservation and Development Commission and the members of the Metropolitan Transportation Commission.





## AGENDA

### BERKELEY CITY COUNCIL MEETING

**Tuesday, December 10, 2024**

**6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN

DISTRICT 6 – SUSAN WENGRAF

DISTRICT 7 – CECILIA LUNAPARRA

DISTRICT 8 – MARK HUMBERT

*This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via internet video stream at [http://berkeley.granicus.com/MediaPlayer.php?publish\\_id=1244](http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244). All Council meetings are recorded.*

*To access the meeting remotely use this URL: <https://cityofberkeley-info.zoomgov.com/j/1601063395>. To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter **Meeting ID: 160 106 3395**. To provide public comment, Press \*9 and wait to be recognized by the Chair. To submit a written communication for the public record, email [council@berkeleyca.gov](mailto:council@berkeleyca.gov).*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person. The City Council may take action related to any subject listed on the Agenda.*

*Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.*

**Government Code Section 84308 (Levine Act)** - Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$250 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$250 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

## Preliminary Matters

### Roll Call:

**Land Acknowledgement Statement:** *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

**Ceremonial Matters:** *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

1. Swearing in of newly elected and re-elected officials

**City Manager Comments:** *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

**Public Comment on Non-Agenda Matters:** *Up to ten persons will be selected to address matters not on the Council agenda. If five or fewer persons are identified to provide non-agenda comment, each person selected will be allotted two minutes each. If more than five persons are selected to address matters not on the Council agenda, each person selected will be allotted one minute each.*

*In-person attendees wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to the moment that the Presiding Officer calls for public comment on non-agenda items. Remote attendees must raise their hand in the videoconference application when the Presiding Officer calls for non-agenda speakers. The first five raised hands on the videoconference application will be selected to speak and the first five cards drawn at the meeting will be selected to speak. The number of in-person and remote speakers selected may be adjusted by the Presiding Officer if fewer than five speakers from either format are identified.*

*The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

**Public Comment by Employee Unions (first regular meeting of the month):** *This period of public comment is reserved for officially designated representatives of City of Berkeley employee unions, with five minutes allocated per union if representatives of three or fewer unions wish to speak and up to three minutes per union if representatives of four or more unions wish to speak.*



## Consent Calendar

*The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Three members of the City Council must agree to pull an item from the Consent Calendar or Information Calendar for it to move to Action. Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.*

*No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.*

*For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.*

**Public Comment on Consent Calendar and Information Items Only:** *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

*Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.*

## Consent Calendar

### 1. Minutes for Approval

**From:** City Manager

**Recommendation:** Approve the minutes for the Council meetings of November 8, 2024 (closed), November 12, 2024 (regular), November 15, 2024 (closed), November 18, 2024 (special), November 19, 2024 (closed and regular).

**Financial Implications:** None

Contact: Mark Numainville, City Clerk, (510) 981-6900

### 2. Contract: CVL Economics for a Study of the Economic Impact of the Arts in Berkeley

**From:** City Manager

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with CVL Economics for an amount not to exceed \$119,300 for analysis of pandemic cultural arts recovery investments and the economic impact of the arts in Berkeley for a term of two years.

**Financial Implications:** American Rescue Act Fund - \$119,300

Contact: Eleanor Hollander, Economic Development, (510) 981-7530

## Consent Calendar

- 3. Contract: Kala Art Institute for Framed Artwork Purchase Plan for City Buildings**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with Kala Art Institute for an amount not to exceed \$50,000 to implement a framed artwork purchase plan for two city administration buildings located at 1947 Center Street and 2180 Milvia Street. The artworks are to be hung in public areas of civic buildings and will become part of the City's Civic Art Collection.  
**Financial Implications:** Cultural Trust Fund - \$50,000.  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 4. Contract: Masako Miki Public Artwork Commission for Aquatic Park Pathway Wall**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with artist Masako Miki for an amount not to exceed \$87,000 for a public art commission of a ceramic tile mural on the 42'-long curved wall located along the San Francisco Bay Trail west of the intersection of Addison Street and Bolivar Drive in Aquatic Park.  
**Financial Implications:** Cultural Trust Fund - \$87,000  
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 10, 2024**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 6. Establish Classification and Salary – Senior Paralegal**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution establishing the job class specification and salary of Senior Paralegal with an hourly salary range of \$47.4636 to \$57.6923, and an annual range of \$98,724.30 to \$120,000.00.  
**Financial Implications:** See report  
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

## Consent Calendar

**7. Revise Job Class Specifications – Communications Specialist**

**From: City Manager**

**Recommendation:** Adopt a Resolution (1) revising the Communications Specialist job class specifications to allow Charter departments and offices to utilize the classification and (2) providing a 5% differential to Communication Specialists assigned to the City Manager's Office.

**Financial Implications:** See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

**8. Personnel Rule 9.03 Revision: Promotion Through a Non-Competitive Process**

**From: City Manager**

**Recommendation:** Adopt a Resolution amending Section 9.03 of the City's Personnel Rules and Regulations, "Promotion Through a Non-Competitive Personnel Action," to add classifications including Deputy City Attorney I, II, III, and IV; Police Officer Recruit and Police Officer; Public Safety Dispatcher I and Public Safety Dispatcher II; Hazardous Materials Specialist I and Hazardous Materials Specialist II; and Housing Inspector I (Certified) and Housing Inspector II (Certified).

**Financial Implications:** See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

**9. Contract No. 32400151 Amendment: SDR Consulting for Classification and Compensation Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32400151 with SDR Consulting for classification and compensation services to cover the period of February 26, 2023 through June 30, 2026, for a total cost not to exceed \$150,000.

**Financial Implications:** See report

Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800

**10. Accept Grant Funds from the U.S. Department of Energy's Zero Codes Award and contract with City and County of San Francisco to develop, implement, and enforce Building Performance Standards**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager or their designee to accept the U.S. Department of Energy's Assistance for adoption of the "Latest and Zero Building Energy Codes" in the amount of \$5,729,943, and negotiate and execute a contract and any amendments, extensions, or change orders with City and County of San Francisco, to develop Building Performance Standards, for the duration of January 1, 2025 through December 31, 2033.

**Financial Implications:** See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

## Consent Calendar

- 11. Contract No. 112219-1 Amendment: Siemens Industry, Inc. for Fire and Life Safety Systems Maintenance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 112219-1 with Siemens Industry, Inc. for Fire and Life Safety Systems Maintenance, increasing the current contract amount of \$100,000 for a total not to exceed amount of \$700,000 and extending the contract term through December 31, 2025.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300
- 12. Contract: Terocons Inc. for Sacramento Street Pedestrian Safety Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1. Approving plans and specifications for the Sacramento Street Pedestrian Safety Project ("Project"), Specification No. 24-11643-C; 2. Accepting the bid of Terocons Inc., the lowest responsive and responsible bidder; and 3. Authorizing the City Manager to execute a contract with Terocons Inc. and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved plans and specifications, in an amount not to exceed \$973,638, which includes a 15% contingency for unforeseen circumstances.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300
- 13. Contract No. 32000078 Amendment: DC Electric Group, Inc for On-Call Electrical Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 32000078 between the City and DC Electric Group, Inc. for supplemental On-Call electrical services to support the Public Works Electrical Unit, increasing the current contract spending authority by \$250,000 for a new total not to exceed amount of \$725,000.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300
- 14. Contract: Stommel Inc., dba Lehr for Hybrid Police Patrol Vehicles Supplies, Equipment, and Installation Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying bid requirements of the City allowing the City to participate in competitively bid contracts, authorizing the City Manager to enter into contract with Stommel Inc. dba Lehr, for Hybrid Police Patrol vehicle supplies, equipment, and installation services with a contract term from December 15, 2024 to December 15, 2026 for an amount not to exceed \$400,000.  
**Financial Implications:** Public Works Equipment Replacement - \$400,000  
Contact: Terrance Davis, Public Works, (510) 981-6300

## Consent Calendar

- 15. Purchase Order: Braun Northwest Inc. for Two (2) 2025 Ford F-450 North Star Engine Remount of Ambulance Bodies to New Chassis**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter allowing the City of Berkeley ("City") to participate in HGACBuy contract bid procedures and authorizing the City Manager to purchase two (2) 2025 Ford F-450 North Star Ambulance chassis with Braun Northwest, Inc. in an amount not to exceed \$430,000.  
**Financial Implications:** Equipment Replacement Fund - \$430,000  
Contact: Terrance Davis, Public Works, (510) 981-6300
- 16. Agreement Regarding Allocation of Costs for Railroad Crossing Improvements for W-SW WBLs West Owner IX, L.P., a California limited liability company and the City**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an agreement and any amendments with the W-SW WBLs West Owner IX, L.P., ("Developer") for payment for all improvements mitigating the impact of their Development (Project) at the Bancroft Way at-grade railroad crossing.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300
- 17. Grant Applications: Metropolitan Transportation Commission Housing Incentive Pool**  
**From: City Manager**  
**Recommendation:** Adopt two Resolutions certifying the City's compliance with State Housing Laws and authorizing the City Manager to submit grant applications to the Metropolitan Transportation Commission (MTC) Housing Incentive Pool (HIP) for the following projects: San Pablo Avenue/Ashby Avenue Intersection Improvements Project for up to \$1.9 million; Adeline Street Quick-Build for up to \$1.05 million; and 7th Street/Anthony Street Complete Intersections Project for up to \$2 million; accept the grants if awarded, and execute any resulting agreements and amendments.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300
- 18. Establishing a New Schedule of Fines and Late Payment Penalties for Parking Violations; and Rescinding Resolution No. 70,924-N.S.**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution updating the existing schedule of parking violations and fines to include parking violations and late payment penalties for California's new daylighting law, Assembly Bill 413 (AB 413); and rescinding resolution No. 70,924-N.S.  
**Financial Implications:** See report  
Contact: Terrance Davis, Public Works, (510) 981-6300

## Council Consent Items

### 19. City Council Committee and Regional Body Appointments

**From: Mayor Arreguin**

**Recommendation:** Adopt a Resolution approving appointments to City Council Policy Committees, Partnership Committees and Regional Bodies, to temporarily appoint Mayor Adena Ishii and Councilmembers Terry Taplin and Ben Bartlett to the Agenda & Rules Committee.

**Financial Implications:** None.

Contact: Jesse Arreguin, Mayor, (510) 981-7100

## Action Calendar

*The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during the Action Calendar public comment period on the item.*

*The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

*Action items may be reordered at the discretion of the Chair with the consent of Council.*

*The Presiding Officer may open and close an additional comment period for Action items on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters), at the start of the Action Calendar. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.*

## Action Calendar – Public Hearings

*Staff shall introduce the public hearing item and present their comments. For certain hearings, this is followed by five-minute presentations each by first the appellant and then the applicant. The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to be recognized and to determine the number of persons interested in speaking at that time.*

*If ten or fewer persons are interested in speaking during a public hearing, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

*When applicable, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.*

## Action Calendar – Public Hearings

20. **\*\*\*Item Removed by the City Manager\*\*\* Changes to Selected Recreation Facilities and Camps Program Fees**  
**From: City Manager**  
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

## Information Reports

21. **Fire Prevention Inspections Audit Status Report**  
**From: City Manager**  
Contact: David Sprague, Fire, (510) 981-3473
22. **Restaurant Inspection Audit Status Report**  
**From: City Manager**  
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
23. **Update: HR Response: Audit Directive(s) for Comprehensive Domestic Violence Policy to Support City Employees**  
**From: City Manager**  
Contact: Aram Kouyoumdjian, Human Resources, (510) 981-6800
24. **Audit Status Reports: Fleet Replacement Fund Short Millions and Rocky Road: Berkeley Streets at Risk and Significantly Underfunded**  
**From: City Manager**  
Contact: Terrance Davis, Public Works, (510) 981-6300

## Public Comment – Items Not Listed on the Agenda

## Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Archived indexed video streams are available at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>.

Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <https://berkeleyca.gov/>.

Agendas, agenda reports, and revised/supplemental material may be accessed via the online agenda for this meeting at:

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

and may be accessed at reference desks at the following locations:

City Clerk Department - 2180 Milvia Street, First Floor  
Tel: 510-981-6900, TDD: 510-981-6903, Fax: 510-981-6901  
Email: [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov)

Libraries: Main – 2090 Kittredge Street,  
Claremont Branch – 2940 Benvenue, West Branch – 1125 University,  
North Branch – 1170 The Alameda, Tarea Hall Pittman South Branch – 1901 Russell

#### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at [ada@berkeleyca.gov](mailto:ada@berkeleyca.gov), (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900 or by email at [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov).

~~~~~  
I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on November 27, 2024.

A handwritten signature in black ink, appearing to read "Mark Numainville", written in a cursive style.

Mark Numainville, City Clerk

Communications

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through [Records Online](#).

Berkeley Holiday Gift Fair

1. Beth Roessner

Mayor and Councilmember Send Off

2. Tim O'Brien

Public Toilet Facility

3. Nicole Spence (2)

RV Living

4. John Hershberger

Rose Street

5. Ben Gerhardtstein, Liza Lutzker, Charles Siegel, Benjamin Fry, Naveen Gattu, Brandon Yung, Rebecca Mirvish, Stewart Smith, Avery Arbaugh, Marc Hedlund, Ian Meyers, John Beaulaurier, Walk Bike Berkeley, Bryce Miller, Telegraph For People, Cal Berkeley Democrats, Sunrise Bay Area, Ren Fitzgerald, and Phyllis Orrick
6. Katherine Silver

Notification of Service

7. Yesica Prado

The Black Repertory Group

8. Moni T. Law

Marine Protected Areas Petition

9. Melissa A. Miller-Henson on behalf of the California Fish and Game Commission

Encampment Resolution

10. Stacie Blair

Encampment Sweeps

11. Boona Cheema
12. Moni T. Law
13. Paul Kealoha Blake
14. Willie Phillips

Encampments

15. Lyle Courtsal

Zoning

- 16. Mimi Moungovan
- 17. Bob Dougherty

Berkeley Arts Center

- 18. Thet Shein Win
- 19. Naz Cuguoglu
- 20. Natnael Amare

La Pena Cultural Center

- 21. Vanessa Whang
- 22. Ted Russell
- 23. Biel Delgado Trabal

Virginia St.

- 24. David Lerman

Cannabis Policy

- 25. Lynn Silver, Aurash J. Soroosh, and Kiara Gonzalez Garcia on behalf of Getting it Right from the Start

Forwards of Information

- 26. Josh Atwood
- 27. Russbumper
- 28. Kyle Ratia
- 29. Eid (2)

URLs

- 30. Russbumper (3)

UC Berkeley Class

- 31. 891 Similarly worded form letters

Supplemental Communications and Reports

Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.

- **Supplemental Communications and Reports 1**
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**
Available by 5:00 p.m. two days following the meeting.



Office of the City Manager

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council
From: Paul Buddenhagen, City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Minutes for Approval

RECOMMENDATION

Approve the minutes for the Council meetings of November 8, 2024 (closed), November 12, 2024 (regular), November 15, 2024 (closed), November 18, 2024 (special), November 19, 2024 (closed and regular).

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1. November 8, 2024 – Special Closed City Council Meeting
2. November 12, 2024 – Regular City Council Meeting
3. November 15, 2024 – Special Closed City Council Meeting
4. November 18, 2024 – Special City Council Meeting
5. November 19, 2024 – Special Closed City Council Meeting
6. November 19, 2024 – Regular City Council Meeting

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES
FRIDAY, NOVEMBER 8, 2024
3:30 P.M.

REDWOOD ROOM – 2180 MILVIA STREET, BERKELEY, CA 94704
TELECONFERENCE LOCATION – 1404 LE ROY AVENUE, BERKELEY, CA 94708
TELECONFERENCE LOCATION - 1619 EDITH STREET, BERKELEY, CA 94703
TELECONFERENCE LOCATION - 4545 LAGUNA SPRINGS DR, STE 200,
ELK GROVE, CA 95758

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation.

*To access the meeting remotely use this URL: <https://cityofberkeley-info.zoomgov.com/j/1618875706>. To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: **161 887 5706**. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email council@berkeleyca.gov.*

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person. The City Council may take action related to any subject listed on the Agenda.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. “Disrupting” means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

Government Code Section 84308 (Levine Act) - Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$250 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$250 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

Preliminary Matters

Roll Call: 3:35 p.m.

Present: Kesarwani, Tregub, Hahn, Wengraf, Lunaparra, Humbert, Arreguin

Absent: Taplin, Bartlett

Councilmember Bartlett present at 3:52 p.m.

Public Comment - Limited to items on this agenda only – 31 speakers

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTIONS 54956.8:

Property Address:	2113-2115 Kittredge Street, Berkeley CA
Agency Negotiators:	Paul Buddenhagen, City Manager, Henry Oyekanmi, Director of Finance
Negotiating Parties:	City of Berkeley, California Theater Consortium, and Gilbane Development Company dba 2115 Kittredge Street, LLC
Property Owner:	Robin Lent
Under Negotiation:	Price and Terms

Action: No reportable action taken.

OPEN SESSION:

No reportable action taken.

Adjournment

Action: M/S/C (Arreguin/Wengraf) to adjourn the meeting.

Vote: Ayes – Kesarwani, Bartlett, Tregub, Hahn, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Taplin.

Adjourned at 5:50 p.m.

I hereby certify that the forgoing is a true and correct record of the City Council special closed session meeting held on November 8, 2024.

Neetu Salwan, Assistant City Clerk

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, November 12, 2024
6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

TELECONFERENCE LOCATION -1600 S. DISNEYLAND DRIVE, ANAHEIM, CA 92802

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
 DISTRICT 2 – TERRY TAPLIN
 DISTRICT 3 – BEN BARTLETT
 DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
 DISTRICT 6 – SUSAN WENGRAF
 DISTRICT 7 – CECILIA LUNAPARRA
 DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via internet video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244. All Council meetings are recorded.

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Government Code Section 84308 (Levine Act) - *Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over \$250 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$250 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.*

Preliminary Matters

Roll Call: 6:09 p.m.

Present: Kesarwani, Taplin, Bartlett, Tregub, Hahn, Wengraf, Lunaparra, Humbert, Arreguin

Absent: None

Land Acknowledgement Statement: *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

Ceremonial Matters

1. Recognition of Ray Yep, City of Berkeley Transportation and Infrastructure Commissioner
2. Adjourned in Memory of Joseph (Joe) Panicali, Physician and Community Volunteer

City Manager Comments: None.

Public Comment on Non-Agenda Matters: 10 speakers.

Public Comment by Employee Unions (first regular meeting of the month): 2 speakers.

Action: M/S/C (Arreguin/Tregub) to accept an urgency item from Mayor Arreguin pursuant to Government Code Section 54954.2(b)(2) entitled Excused Absence for Councilmember Hahn. Added to the Consent Calendar.

Vote: All Ayes.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 18 speakers.

Action: M/S/C (Arreguin/Tregub) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

Consent Calendar

Urgent Item: Excused Absence for Councilmember Hahn

From: Mayor Arreguin (Author)

Recommendation: Excuse Councilmember Sophie Hahn from the October 29, 2024 Council meeting due to illness.

Financial Implications: None

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action: Approved recommendation.

1. Cooperative Agreement with East Bay Regional Parks District

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to enter into an agreement with East Bay Regional Parks District from October 15, 2024, to October 14, 2029, to collaborate to manage free-roaming cat populations in East Bay Parks, educate the public, and minimize the impact on sensitive wildlife areas.

Financial Implications: See report

Contact: Peter Radu, City Manager's Office, (510) 981-7000

Action: Adopted Resolution No. 71,560–N.S.

2. Amendment to Contract No. 108410-1: Paw Fund for Spay and Neuter Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend the contract with Paw Fund (Contract #108410-1) to provide no-cost spay and neuter surgeries to eligible pet owners and shelter animals for FY 2025, increasing the contract amount by \$10,000 for a new total contract amount not to exceed \$144,466 and extending the term of the contract to October 31, 2026.

Financial Implications: See report

Contact: Peter Radu, City Manager's Office, (510) 981-7000

Action: Adopted Resolution No. 71,561–N.S.

3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on November 12, 2024

From: City Manager

Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Financial Implications: Various Funds - \$10,200,000

Contact: Henry Oyekanmi, Finance, (510) 981-7300

Action: Approved recommendation.

Council Consent Items

4. Berkeley Holiday Fund: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Mayor Arreguin (Author)

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Mayor Arreguin to the Berkeley Holiday Fund's annual campaign with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Mayor Arreguin and any other Councilmembers who would like to contribute.

Financial Implications: Mayor's Discretionary Fund - \$500

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action: Adopted Resolution No. 71,562–N.S. amended to include contributions from the following Councilmembers up to the amounts listed: Vice-Mayor Wengraf - \$500; Councilmember Taplin - \$500; Councilmember Hahn - \$500; Councilmember Tregub - \$100; Councilmember Humbert - \$500; Councilmember Kesarwani - \$100; Councilmember Bartlett - \$250; Councilmember Lunaparra - \$200.

5. Budget Referral Funding South Cove Seawall Design Project

From: Councilmember Taplin (Author)

Recommendation: Refer to the November 2024 AAO#1 budget process \$250,000 for the funding of the South Cove Seawall Design Project.

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Action: Approved recommendation.

6. Budget Referral Funding F and G Dock Deck Replacement

From: Councilmember Taplin (Author)

Recommendation: Refer to the November 2024 AAO#1 budget process \$500,000 for the funding of F and G dock deck replacement.

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Action: Approved recommendation.

7. Budget Referral Funding Afterschool Program Expansion

From: Councilmember Taplin (Author)

Recommendation: Refer to the November 2024 AAO#1 budget process \$300,000 to fund afterschool program expansion.

Financial Implications: See report

Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Action: Approved recommendation.

Council Consent Items

8. **Budget Referral: One-Time \$50,000 Funding for a Traffic Study and Pedestrian Safety Operations at the Pedestrian Crossing on Shattuck Avenue and Delaware Street**
From: Councilmember Tregub (Author), Councilmember Hahn (Co-Sponsor)
Recommendation: Refer \$50,000 to the November 2024 AAO #1 budget process for one-time funding for a traffic study and pedestrian safety operations at the pedestrian crossing on Shattuck Avenue at Delaware Street with the aim to significantly improve safety for all residents. If any funds remain after the study is conducted, direct the remainder of the funds towards designing and implementing safety measures at this crosswalk.
Financial Implications: See report
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140
Action: Approved recommendation as revised in Supplemental Communications Packet #2 from Councilmember Tregub to read as follows: *Refer \$125,000 to the November 2024 AAO #1 budget process for one-time funding for safety improvements and inspections at the pedestrian crossing on Shattuck Avenue at Delaware Street with the aim to significantly improve safety for all residents. If any funds remain after the study is conducted, direct the remainder of the funds towards repaving or pavement rehabilitation work at this crosswalk.*

9. **Budget Referral: One-Time \$30,000 Funding to Install an Accessible Pedestrian Signal (APS) at the intersection of Sacramento Street and Allston Way**
From: Councilmember Tregub (Author)
Recommendation: Refer \$30,000 to the November 2024 AAO#1 budget process for one-time funding to install an Accessible Pedestrian Signal (APS) at Allston Way and Sacramento Street Intersection.
Financial Implications: See report
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140
Action: Approved recommendation as revised in Supplemental Communications Packet #2 from Councilmember Tregub.

10. **Budget Referral and Technical Support for the Berkeley Art Center**
From: Councilmember Hahn (Author)
Recommendation: Direct the City Manager to support the Berkeley Art Center (BAC) during a time of financial crisis with technical assistance and other resources at the City's disposal, and to work with BAC to develop a long-term plan for viability. Refer to the November Budget Process a one-time emergency grant of \$100,000 for the Berkeley Art Center, pending review of the organization's current financial status and plans for long-term recovery by the City's Economic Development and Civic Arts team.
Financial Implications: See report
Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150
Action: Approved recommendation.

Council Consent Items

- 11. Referral to the November 2024 AAO1 Budget Process for \$150,000 to Create a Five-Year Sustainable and Comprehensive Recovery Plan for the Arts and Culture Sector in Berkeley**
From: Councilmember Wengraf (Author)
Recommendation: Referral to the November 2024 AAO1 Budget Process for \$150,000 to engage a consultant to develop a multi-year comprehensive road map to support, maintain and sustain a resilient Arts and Culture sector in Berkeley. The results of this plan will be critical to guiding and informing discussion and consideration of a ballot measure in support of the Arts in 2026.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: Added Councilmember Lunaparra as a co-sponsor. Approved recommendation as revised in Supplemental Communications Packet #1 from Vice Mayor Wengraf to add Councilmembers Hahn and Tregub as co-sponsors.
- 12. Referral to the November 2024 AAO1 Budget Process for \$250,000 for the design and planning for replacement of play structures and ADA access improvements at Glendale La Loma Park**
From: Councilmember Wengraf (Author)
Recommendation: Referral to the November 2024 AAO1 Budget Process for \$250,000 for design and planning for replacement of play structures and design of ADA access in Glendale La Loma Park.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160
Action: Approved recommendation.
- 13. Budget Referral: Create a City park at Parkside Drive terminus median**
From: Councilmember Humbert (Author)
Recommendation: Refer \$150,000 to the November 2024 AAO#1 budget process for consultants, conceptual design, and public engagement for converting the median informally known as “Round Park” (and possibly other nearby medians) to an official City park. Longer-term improvements could include but are not limited to ADA access, fencing, improved landscaping, and signage and would be funded separately.
Financial Implications: See report
Contact: Mark Humbert, Councilmember, District 8, (510) 981-7180
Action: Approved recommendation.

Council Consent Items

14. **Budget Referral: One-time \$70,000 bridge funding to the Bread Project**
From: Councilmember Humbert (Author), Councilmember Tregub (Author)
Recommendation: Refer \$70,000 to the November 2024 AAO#1 budget process for one-time bridge funding for the Bread Project, a Berkeley non-profit that provides job training (with an emphasis on culinary work) and soft skills development for economically disadvantaged and systems-impacted individuals.
Financial Implications: See report
 Contact: Mark Humbert, Councilmember, District 8, (510) 981-7180
Action: Added Councilmembers Bartlett and Kesarwani as co-sponsors. Approved recommendation.

Action Calendar – Public Hearings

15. **Contract: Ava Community Energy for Energy Resilient Critical Municipal Facilities “Solar + Storage”**
From: City Manager
Recommendation: Conduct a public hearing, and upon conclusion adopt a Resolution authorizing the City Manager to negotiate and execute a Power Purchase Agreement (PPA) contract and any amendments, extensions, or change orders with Ava Community Energy, to install solar and battery back-up storage systems at critical municipal facilities.
Financial Implications: See report
 Contact: Jordan Klein, Planning and Development, (510) 981-7400
- Public Testimony:** The Vice-Mayor opened the public hearing. 2 speakers. M/S/C (Taplin/Hahn) to close the public hearing.
Vote: All Ayes.
- Action:** M/S/C (Tregub/Humbert) to adopt Resolution No. 71,563–N.S.
Vote: All Ayes.

Action Calendar – Old Business

16. **Amending BMC Section 9.04.165 -Tax Exemption for Research & Development Grants** *(Continued from October 15, 2024)*
From: Mayor Arreguin (Author)
Recommendation: Adopt a first reading of an Ordinance amending Berkeley Municipal Code Section 9.04.165 to exempt the taxation of business gross receipts relating to government and philanthropic research and development grants in the public interest.
Financial Implications: See report.
 Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: 23 speakers. Councilmembers Humbert and Tregub added as a co-sponsors. M/S/C (Arreguin/Wengraf) to adopt first reading of Ordinance No. 7,937–N.S. Second reading scheduled for December 3, 2024.
Vote: All Ayes.

Action Calendar – New Business

- 17. Pursuant to Chapter 2.99 of the Berkeley Municipal Code Annual Surveillance Technology Report for Body Worn Cameras, GPS Trackers, Fixed Surveillance Video Cameras, Automatic License Plate Readers, the Street Level Imagery Project, and Unmanned Aerial Systems (UAS)**

From: City Manager

Recommendation: Pursuant to Chapter 2.99 of the Berkeley Municipal Code, adopt a Resolution accepting the Surveillance Technology Report for Body Worn Cameras, GPS Trackers, Fixed Surveillance Video Cameras, Automatic License Plate Readers, the Street Level Imagery Project, and Unmanned Aerial Systems (UAS).

Financial Implications: None.

Contact: Jennifer Louis, Police, (510) 981-5900, Terrance Davis, Public Works, (510) 981-6300

Action: Moved Item 17 to the Consent Calendar. Approved recommendation.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Tregub, Hahn, Wengraf, Humbert, Arreguin; Noes – None; Abstain – Lunaparra; Absent – None.

- 18a. Resolution Opposing the Criminalization of Poverty and Homelessness**

From: Peace and Justice Commission

Recommendation: Adopt a resolution that the City of Berkeley Council opposing the criminalization of poverty and homelessness including:

City of Berkeley will continue to operate under the framework of Martin v. Boise, as permitted under the recent Supreme Court decision in Grants Pass v. Johnson, and refrain from any criminalization or effective prohibition of sleeping while unhoused, including citation or arrest simply for sleeping outside if no adequate shelter is available, without precluding enforcement of laws banning actions that threaten the health and safety of the whole community.

The City of Berkeley shall strengthen its commitment to connecting unhoused people with vital services including adequate short-term shelter and regional permanent supportive housing solutions.

Financial Implications: None

Contact: Okeya Vance-Dozier, Commission Secretary, (510) 981-7100

Action Calendar – New Business

18b. Companion Report: Resolution Opposing the Criminalization of Poverty and Homelessness

From: City Manager

Recommendation: The City Council has already adopted an encampment policy that is consistent with the Commission's resolution by adopting the amended September 10, 2024 item, "Encampment Policy Resolution to Promote Healthy and Safe Neighborhoods and Related First Reading of Ordinance Amending Chapter 14.48 of the Berkeley Municipal Code." Therefore there is no need to take any action on the Peace and Justice Commission's resolution and the City Manager recommends taking no action.

Financial Implications: None

Contact: Peter Radu, City Manager's Office, (510) 981-7000

Action: Moved Items 18a and 18b to the Consent Calendar to take no action on Item 18a and approve the recommendation of 18b.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Tregub, Hahn, Wengraf, Humbert, Arreguin; Noes – None; Abstain – Lunaparra; Absent – None.

Information Reports

19. Civic Arts Commission Final FY25 Work Plan

From: Civic Arts Commission

Contact: Jennifer Lovvorn, Commission Secretary, (510) 981-7530

Action: Received and filed.

20. Fiscal Year 2025 Public Art Budget

From: Civic Arts Commission

Contact: Jennifer Lovvorn, Commission Secretary, (510) 981-7530

Action: Received and filed.

Adjournment

Action: M/S/C (Arreguin/Kesarwani) to suspend the rules and adjourn the meeting.

Vote: All Ayes.

Adjourned at 9:17 p.m.

I hereby certify that the foregoing is a true and correct record of the regular meeting held on November 12, 2024.

Rose Thomsen, Deputy City Clerk

Communications

Item #8: Budget Referral: One-Time \$50,000 Funding for a Traffic Study and Pedestrian Safety Operations at the Pedestrian Crossing on Shattuck Avenue and Delaware Street

1. Annetta Lipman
2. Wahid Amiri

Item #16: Amending BMC Section 9.04.165 -Tax Exemption for Research & Development Grants (*Continued from October 15, 2024*)

3. Lynn Sherrell

Item #18a: Resolution Opposing the Criminalization of Poverty and Homelessness

4. Erika Shore (2)
5. Cassandra Turgman (2)

Council Emails

6. Ace Stratton

Safety Concerns

7. Jacques Watteyne
8. Ellen Archilla
9. Penny Barron

Middle East Conflict

10. Summer Brenner
11. Gail Shay
12. Kelly Hammargren
13. Sarah Rahimi
14. Ilana Pearlman

Missing Middle/Upzoning

15. Cordula Didier (2)
16. Steven M. Lipson
17. Victoria Kahn (2)
18. Claire Kahane
19. Mari Kalishock and Eric Bishop
20. David Rice
21. Mel Law (2)
22. Dr. A. Boersma
23. Rachel Bradley
24. Carol and Bruce Feldman
25. Susan Rook-Thomas
26. James Loza
27. Lincoln Smith

- 28. Stephen Born (2)
- 29. Marjorie Winter
- 30. Fred Krieger
- 31. Theo Posselt
- 32. Sarah Deeds
- 33. Paula Morgan
- 34. Vicki Sommer
- 35. Andrea Yankowski
- 36. Barbara Rydlander
- 37. Peter Samis
- 38. Melanie Lawrence and John Smail
- 39. Summer Brenner
- 40. Beryl Slevin
- 41. Jason Warriner
- 42. Chris Gilbert
- 43. Carol Hirth
- 44. Jenny Johnston
- 45. Dorothea Dorenz
- 46. Heike Helmer
- 47. Jack Kurzweil
- 48. Willie Phillips
- 49. Rena Rickles
- 50. Judy Bertelsen (4)
- 51. Kate H Consulting (2)
- 52. Michael K.

Parkside Drive

- 53. Carl Martineau

Parking Stickers

- 54. Elizabeth Arenas

Housing Situation Concern

- 55. Jonny Ruel

Ballot Concerns

- 56. Anonymous concerned voter
- 57. Dorothea Dorenz

Berkeley Public Eye

- 58. Bernard

First Year Free

- 59. June and Robert Safran
- 60. Betsy Bigelow-Teller
- 61. Marni Welch

California Energy Commission

62. Elsa M. Beljean

La Pena Cultural Center

63. Luis Medina

Injury Concern

64. Max Ventura

Encampment Concerns

65. Susan Schwartz (2)

66. Diana Bohn

Construction Permit Concern

67. Unknown

BrasArte

68. BrasArte Board Members

Tax Concern

69. Barbara Gilbert

Musical

70. Jamie Greenblatt

Newsletters

71. Vivian Warkentin (2)

URL's

72. Russbumper (2)

73. Josh Atwood (4)

74. Keith Bayne

Forwards of Current Events

75. Josh Atwood (3)

76. Eid (6)

Supplemental Communications and Reports 1

Urgent Item: Excused Absence for Councilmember Hahn

77. Mayor Jesse Arreguin

Item #5: Referral to the November FY 2025 AAO1 Budget Process for \$150,000 to Create a Five-Year Sustainable and Comprehensive Recovery Plan for the Arts and Culture Sector in Berkeley

78. Revised agenda material submitted by Vice Mayor Susan Wengraf

Supplemental Communications and Reports 2

Item #8: Budget Referral: One-Time \$50,000 Funding for a Traffic Study and Pedestrian Safety Operations at the Pedestrian Crossing on Shattuck Avenue and Delaware Street

79. Revised material submitted by Councilmember Igor Tregub

Item #9: Budget Referral: One-Time \$30,000 Funding to Install an Accessible Pedestrian Signal (APS) at the intersection of Sacramento Street and Allston Way

80. Revised material submitted by Councilmember Igor Tregub

Item #16: Amending BMC Section 9.04.165 -Tax Exemption for Research & Development Grants *(Continued from October 15, 2024)*

81. Janice Murota, Ruth White, Esther Lerman and Robert Kinosian

82. Janice Murota, Robert Kinosian, Ruth White, Marguerite Lee, Leslie Sakai, Joan King Angell, Mary Frank, Victoria Parraga, Ragna Boynton, Kamala Visweswaran, Linda Skory, Johanna Clark, Ann Goldman, Diane Kanegae and Lorraine Lerman

83. Kelly Hammargren

84. Beth Roessner

85. Chris Eiben, Perlumi (2)

86. Joshua Yang

87. Wesley M. Jackson, Valitor

88. Melanie Cohn, Biocom California

89. Amanda Stiles

90. Xander Shapiro

91. Beth Zotter

92. Jill Fuss, Activate

93. Rachel Bradley

94. Kitt Saginor

95. Mary Oram

96. Berkeley Neighborhoods Council

97. Nancy Rader

98. Donna DeDiemar

99. Ellen Barth

100. David Brandon

101. Christopher Kroll

102. Drew Lilley

103. Vincent Casalaina

Item #18a: Resolution Opposing the Criminalization of Poverty and Homelessness

104. James Brook

Supplemental Communications and Reports 3

**BERKELEY CITY COUNCIL
SPECIAL MEETING MINUTES
FRIDAY, NOVEMBER 15, 2024**

4:00 P.M.

REDWOOD ROOM – 2180 MILVIA STREET, BERKELEY, CA 94704

TELECONFERENCE LOCATION - 1619 EDITH STREET, BERKELEY, CA 94703

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

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Preliminary Matters

Roll Call: 4:11 p.m.

Present: Kesarwani, Taplin, Bartlett, Lunaparra, Humbert, Arreguin

Absent: Tregub, Hahn, Wengraf

Councilmember Tregub present at 4:33 p.m.

Councilmember Hahn present at 4:33 p.m.

Public Comment - Limited to items on this agenda only – 0 speakers

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

1. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Paul Buddenhagen, City Manager, LaTanya Bellow, Deputy City Manager, Anne Cardwell, Deputy City Manager, Aram Kouyoumdjian, Human Resources Director, Chaka Young, Employee Relations Manager, Jonathan Holtzman, Labor Negotiator, Burke Dunphy, Labor Negotiator

Employee Organizations: Berkeley Fire Fighters Association Local 1227 I.A.F.F., Berkeley Fire Fighters Association, Local 1227 I.A.F.F. / Berkeley Chief Fire Officers Association; Berkeley Police Association; SEIU 1021 Community Services and Part-time Recreation Activity Leaders, SEIU 1021 Maintenance and Clerical, Public Employee Union Local 1, Unrepresented Employees

Action: No reportable action taken.

OPEN SESSION:

No reportable action taken.

Adjournment

Action: M/S/C (Arreguin/Lunaparra) to adjourn the meeting.

Vote: Ayes – Kesarwani, Taplin, Bartlett, Tregub, Wengraf, Lunaparra, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Hahn.

Adjourned at 5:21 p.m.

I hereby certify that the foregoing is a true and correct record of the City Council closed session meeting held on November 15, 2024.

Mark Numainville, City Clerk

MINUTES SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

**Monday, November 18, 2024
6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

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*To access the meeting remotely use this URL: <https://cityofberkeley-info.zoomgov.com/j/1600846103>. To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter **Meeting ID: 160 084 6103**. To provide public comment, Press *9 and wait to be recognized by the Chair. To submit a written communication for the public record, email council@berkeleyca.gov.*

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Preliminary Matters

Roll Call: 6:09 p.m.

Present: Kesarwani, Taplin, Bartlett, Tregub, Hahn, Wengraf, Lunaparra, Humbert

Absent: Arreguin

Councilmember Hahn participated remotely pursuant to the just cause provisions of the Brown Act as amended by AB 2449.

Action Calendar

The public may comment on each item listed on the agenda for action. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again during the Action Calendar public comment period on the item.

The Presiding Officer will request that persons wishing to speak line up at the podium, or use the "raise hand" function in Zoom, to determine the number of persons interested in speaking at that time. If ten or fewer persons are interested in speaking on an individual agenda item, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

The Presiding Officer may open and close an additional comment period for Action items on this agenda (excluding any public hearings, appeals, and/or quasi-judicial matters), at the start of the Action Calendar. Those who speak on an item during this comment period may not speak a second time when the item is taken up by Council.

1. **Update on the Waterfront Specific Plan for the City of Berkeley Public Tidelands Area**

From: City Manager

Recommendation: Provide feedback and direction on how to proceed with the Waterfront Specific Plan process.

Financial Implications: None

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Action: 22 speakers. M/S/C (Taplin/Kesarwani) to provide direction to staff to 1) complete the parking study; 2) prepare a nature and recreation-based conceptual plan for Caesar Chavez Park; 3) proceed with the EIR with the highest development scenario; and 4) return to Council with the revised Specific Plan and certification of the EIR.

Vote: Ayes - Kesarwani, Taplin, Bartlett, Tregub, Hahn, Wengraf, Lunaparra, Humbert; Noes – None; Abstain – None; Absent – Arreguin.

Adjournment

Action: M/S/C (Kesarwani/Tregub) to adjourn the meeting.

Vote: Ayes - Kesarwani, Taplin, Bartlett, Tregub, Wengraf, Lunaparra, Humbert; Noes – None; Abstain – None; Absent – Hahn, Arreguin.

Adjourned at 8:25 p.m.

I hereby certify that the foregoing is a true and correct record of the City Council special meeting held on November 18, 2024.

Mark Numainville, City Clerk

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #1: Update on the Waterfront Specific Plan for the City of Berkeley Public Tidelands Area

1. Martin Nicolaus
2. Camille Antinori
3. Roger Miller, Parks, Recreation, and Waterfront Commission
4. Paul Kamen
5. Gordon Stout (3)
6. Rachel Bradley
7. Virginia Browning (2)
8. Sally Tobin

Supplemental Communications and Reports 3

Item #1: Update on the Waterfront Specific Plan for the City of Berkeley Public Tidelands Area

9. Presentation submitted by the Parks and Recreation Department
10. Doug Yamamoto
11. Heike Helmer

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, NOVEMBER 19, 2024

4:00 P.M.

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – CECILIA LUNAPARRA
DISTRICT 8 – MARK HUMBERT

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation.

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Preliminary Matters

Roll Call: 4:15 p.m.

Present: Taplin, Bartlett, Hahn, Wengraf, Lunaparra, Humbert, Arreguin

Absent: Kesarwani, Tregub

Councilmember Tregub present at 4:16 p.m.

Councilmember Kesarwani present at 4:22 p.m.

Public Comment - Limited to items on this agenda only – 11 speakers

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

1. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(2)

a. WCAB Matter #ADJ16181002 and Claim # BER2200087

Action: M/S/C (Arreguin/Tregub) to provide directions to outside counsel and approve a stipulated settlement of permanent disability with an Award of lifetime future medical care, or in the alternative, by Compromise and Release with a release of future medical care, as to a workers' compensation matter #BER2200087 and a WCAB Case Number ADJ16181002.

Vote: All Ayes.

2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(D)(1):

a. DS Properties 17 LP v. City of Berkeley, Alameda Superior Court, Case No. 23CV038353

Action: Item 2.a. removed from the agenda.

b. Prado, et al. v. City of Berkeley, USDC Case No. 3:23-cv-04537-EMD, in the US District Court for the Northern District of California.

Action: No reportable action taken.

3. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Paul Buddenhagen, City Manager, LaTanya Bellow, Deputy City Manager, Anne Cardwell, Deputy City Manager, Aram Kouyoumdjian, Human Resources Director, Chaka Young, Employee Relations Manager, Jonathan Holtzman, Labor Negotiator, Burke Dunphy, Labor Negotiator

Employee Organizations: Berkeley Fire Fighters Association Local 1227 I.A.F.F., Berkeley Fire Fighters Association, Local 1227 I.A.F.F. / Berkeley Chief Fire Officers Association; Berkeley Police Association; SEIU 1021 Community Services and Part-time Recreation Activity Leaders, SEIU 1021 Maintenance and Clerical, Public Employee Union Local 1, Unrepresented Employees

Action: No reportable action taken.

4. CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTIONS 54956.8:

Property Address: 3201 Adeline Street, Berkeley CA
Agency Negotiators: LaTanya Bellow, City Manager's Office; Dionne Early, Public Works
Negotiating Parties: City of Berkeley and the Black Repertory Group
Property Owner: City of Berkeley
Under Negotiation: Lease Price and Terms

Action: No reportable action taken.

OPEN SESSION:

The City Council met in closed session on November 19, 2024, Pursuant to Government Code Section 54956.9(d)(2) and provided directions to outside counsel and approved a stipulated settlement of permanent disability with an Award of lifetime future medical care, or in the alternative, by Compromise and Release with a release of future medical care, as to a workers' compensation matter #BER2200087 and a WCAB Case Number ADJ16181002.

Adjournment

Action: M/S/C (Arreguin/Tregub) to adjourn the meeting.

Vote: All Ayes.

Adjourned at 7:01 p.m.

I hereby certify that the foregoing is a true and correct record of the closed session meeting held on November 19, 2024.

Mark Numainville, City Clerk

MINUTES
BERKELEY CITY COUNCIL MEETING
Tuesday, November 19, 2024
6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
 DISTRICT 2 – TERRY TAPLIN
 DISTRICT 3 – BEN BARTLETT
 DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SOPHIE HAHN
 DISTRICT 6 – SUSAN WENGRAF
 DISTRICT 7 – CECILIA LUNAPARRA
 DISTRICT 8 – MARK HUMBERT

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Preliminary Matters

Roll Call: 7:07 p.m.

Present: Kesarwani, Taplin, Bartlett, Tregub, Hahn, Wengraf, Lunaparra, Humbert, Arreguin

Absent: None

Report from Closed Session:

The City Council met in closed session on November 19, 2024, Pursuant to Government Code Section 54956.9(d)(2) and provided directions to outside counsel and approved a stipulated settlement of permanent disability with an Award of lifetime future medical care, or in the alternative, by Compromise and Release with a release of future medical care, as to a workers' compensation matter #BER2200087 and a WCAB Case Number ADJ16181002.

Land Acknowledgement Statement: *The City of Berkeley recognizes that the community we live in was built on the territory of xučyun (Huchiun (Hooch-yoon)), the ancestral and unceded land of the Chochenyo (Cho-chen-yo)-speaking Ohlone (Oh-low-nee) people, the ancestors and descendants of the sovereign Verona Band of Alameda County. This land was and continues to be of great importance to all of the Ohlone Tribes and descendants of the Verona Band. As we begin our meeting tonight, we acknowledge and honor the original inhabitants of Berkeley, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, and the Ohlone people who continue to reside in the East Bay. We recognize that Berkeley's residents have and continue to benefit from the use and occupation of this unceded stolen land since the City of Berkeley's incorporation in 1878. As stewards of the laws regulating the City of Berkeley, it is not only vital that we recognize the history of this land, but also recognize that the Ohlone people are present members of Berkeley and other East Bay communities today. The City of Berkeley will continue to build relationships with the Lisjan Tribe and to create meaningful actions that uphold the intention of this land acknowledgement.*

Ceremonial Matters:

1. Adjourned in Memory of Ben Brown, Berkeley Resident
2. Recognition of Outgoing Mayor Jesse Arreguin and Vice-Mayor Susan Wengraf

City Auditor Comments:

The City Auditor recognized Mayor Arreguin and Vice-Mayor Wengraf for their many years of service to the City of Berkeley.

City Manager Comments: None

Public Comment on Non-Agenda Matters: 10 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 21 speakers.

Action: M/S/C (Arreguin/Humbert) to adopt the Consent Calendar in one motion except as indicated.

Vote: All Ayes.

1. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of October 1, 2024 (regular), October 15, 2024 (regular), October 21, 2024 (closed), October 29, 2024 (special and regular).

Financial Implications: None

Contact: Mark Numainville, City Clerk, (510) 981-6900

Action: Approved the minutes as submitted.

2. 2024 Annual Commission Attendance and Meeting Frequency Report

From: City Manager

Recommendation: In accordance with Resolution No. 71,109-N.S., review and accept the 2024 Annual Commission Attendance and Meeting Frequency Report.

Financial Implications: None

Contact: Mark Numainville, City Clerk, (510) 981-6900

Action: Approved recommendation.

3. Contract: Dorothy Day House to Operate Interim Housing at the Howard Johnson Motel

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and all necessary amendments with Dorothy Day House to operate an interim housing program at the Howard Johnson Motel (1619 University Ave.) in an amount not to exceed \$5,313,826.28 for the period of November 12, 2024 to December 31, 2028.

Financial Implications: See report

Contact: Peter Radu, City Manager's Office, (510) 981-7000

Action: Adopted Resolution No. 71,564–N.S.

4. Encampment Resolution Funding Round 3 Grant Award

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to receive a \$5,395,637.04 Encampment Resolution Funding Round 3 grant award from the State of California, and to enter into contract and all necessary amendments with the State of California resulting from this funding.

Financial Implications: See report

Contact: Peter Radu, City Manager's Office, (510) 981-7000

Action: Adopted Resolution No. 71,565–N.S.

Consent Calendar

5. **Urgency Ordinance for Leasing the Real Property at 1512 University Avenue**
From: City Manager
Recommendation: Adopt an Urgency Ordinance to enter into a lease for the real property located at 1512 University Avenue, Berkeley for a term of 48 months.
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000
Action: Adopted Urgency Ordinance No. 7,938–N.S.

6. **Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on November 19, 2024**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.
Financial Implications: See report
Contact: Henry Oyekanmi, Finance, (510) 981-7300
Action: Approved recommendation.

7. **Contract: Royal for Mental Health Ambulance Transport Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Royal Ambulance (Contractor) to provide the following mental health related transport services for the City from January 1, 2025 to December 31, 2027, in an amount up to \$6,000,000, with an option to extend for three additional years in one-year increments, for a total contract amount not to exceed \$12,000,000.
Financial Implications: See report
Contact: David Sprague, Fire, (510) 981-3473
Action: Adopted Resolution No. 71,566–N.S.

8. **Contract No. 32300144 Amendment: Resource Development Associates for Specialized Care Unit (SCU) Evaluation**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or his designee to amend Contract No. 32300144 with Resource Development Associates (RDA) to add \$40,000 for a not-to-exceed total contract amount of \$290,000.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,567–N.S.

Consent Calendar

- 9. Request for Proposals for Housing Trust Fund Rehabilitation Projects**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to release a Request for Proposals (RFP) for approximately \$6 million in Housing Trust Fund (HTF) program funds to support the rehabilitation of existing affordable rental housing developments in the City's HTF portfolio, to certify Community Housing Development Organizations (CHDO), and to award CHDO operating support.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,568–N.S.
- 10. Revenue Contract: 2025 Community Services Block Grant**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or his designee to accept the 2025 Community Services Block Grant (CSBG) to provide services for low-income people for the period January 1, 2025 to April 30, 2026.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5400
Action: Adopted Resolution No. 71,569–N.S.
- 11. Contract No. 112798-1 Amendment: Geographic Technologies Group for Geographic Information System (GIS) Strategic Workplan**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 112798-1 with Geographic Technologies Group (GTG) for Geographic Information System (GIS) professional services, for a total not to exceed \$50,000 and for a total contract value of \$549,411 from September 14, 2016 to June 30, 2026.
Financial Implications: See report
Contact: Kevin Fong, Information Technology, (510) 981-6500
Action: Adopted Resolution No. 71,570–N.S.
- 12. Exclusive Negotiating Agreement with TSA Holdings, LLC, for the Property at 199 Seawall Drive**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or his designee to execute an Exclusive Negotiating Agreement (ENA) with TSA Holdings, LLC (TSA) to develop a lease agreement for the lease of City property at 199 Seawall Drive.
Financial Implications: None
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 71,571–N.S.

Consent Calendar

- 13. Ashby BART Transit Oriented Development (TOD) Legal Agreements**
From: City Manager
Recommendation: Adopt first reading of an Ordinance that:
 1. Authorizes the City Manager to execute contractual agreements with San Francisco Bay Area Rapid Transit District (BART) in order to effectuate transit-oriented development in accordance with the nonbinding term sheet adopted by Council on September 16, 2024 (Resolution No. 71,514-N.S.) and executed by the City and BART on September 21, 2024; and
 2. Adopts the Addendum to the Ashby and North Berkeley BART Stations Transit Oriented Development (TOD) Zoning Project EIR and the Adeline Corridor Specific Plan EIR.
Financial Implications: See report
 Contact: Jordan Klein, Planning and Development, (510) 981-7400
Action: Adopted first reading of Ordinance No. 7,939–N.S. as revised in Supplemental Communications Packet #1 and #2 from the City Manager. Second reading scheduled for December 3, 2024.
- 14. Contract: Nema Construction for FY 2023 Street Light Maintenance Project**
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving plans and specifications for the Street Rehabilitation FY 2023 Project, Specification No. 24-11668-C; 2. Accepting the bid of the lowest, responsive and responsible bidder, Nema Construction; 3. Authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project, in accordance with the approved plans and specifications, in an amount not to exceed \$424,465.
Financial Implications: See report
 Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,572–N.S.
- 15. Contract: Sposeto Engineering, Inc. for Southwest Berkeley Bikeway and Bus Stop Improvements Project**
From: City Manager
Recommendation: Adopt a Resolution, as a condition of receiving grant funding from the State of California Affordable Housing and Sustainable Communities (AHSC) program: 1. Approving plans and specifications for the Southwest Berkeley Bikeway and Bus Stop Improvements Project (“Project”), Specification Nos. 24-11640-C & 24-11666-C; 2. Accepting the bid of Sposeto Engineering, Inc., the lowest responsive and responsible bidder; and 3. Authorizing the City Manager to execute a contract with Sposeto Engineering, Inc. and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved plans and specifications, in an amount not to exceed \$2,390,000, which includes a 10 percent contingency for unforeseen circumstances.
Financial Implications: See report
 Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,573–N.S.

Consent Calendar

16. **Contract: Telegraph-Channing Parking Garage Restroom Renovation & Elevator Improvements Project**
From: City Manager
Recommendation: Adopt a Resolution:1. Approving plans and specifications for Telegraph-Channing Parking Garage Restroom Renovation & Elevator Improvements Project (Project), Specification No. 22-11535-C; and 2. Accepting the bid of W.E. Lyons Construction Co. as the lowest, responsive and responsible bidder; and 3. Authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until the Project is completed in accordance with the approved plans and specifications for an amount not to exceed \$2,413,689, which includes a contingency of \$314,829.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,574–N.S.

17. **Contract No. 10413C Amendment: LAZ Parking LLC for Managing City-Owned Off-Street Parking Facilities**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10413C with LAZ Parking, LLC, a parking management company, to provide management services for the Telegraph Channing, Oxford, and Center Street garages, extending the term to December 31, 2026 and increasing the contract amount by \$6,073,974 for a total not-to-exceed amount of \$22,326,349.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,575–N.S.

18. **Contract No. 31900036 Amendment: On-Call Civil Engineering Services, Bellecci & Associates, Inc.**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900036 with Bellecci & Associates, Inc. for on-call civil engineering services, increasing the contract amount by \$750,000 for a total not-to-exceed the amount of \$1,750,000 and extending the term of the contract to June 30, 2026.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,576–N.S.

Consent Calendar

19. **Contract No. 31900162 Amendment: Pride Industries, Inc. Contract for Custodial Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 31900162 with Pride Industries, Inc. for citywide custodial services to: Approve additional appropriations related for performance of this contract and coverage of the Living Wage Ordinance in the amount of \$1,100,000 for a total not-to-exceed amount of \$6,225,735 which includes updated service rates for Year 6 of the agreement.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,577–N.S.

20. **Contract No. 32000179 Amendment: Allied Universal Security Service for Citywide Unarmed Security Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000179 with Allied Universal Security Service (formerly First Alarm Security & Patrol, Inc.) for citywide unarmed security services in the amount of \$900,000 for a new total not to exceed \$4,450,000 and extend the contract through February 28, 2026.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,578–N.S.

21. **Contract No. 32300177 Amendment: Baker Tilly for On-Call Professional Development Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32300177 with Baker Tilly, increasing the contract by \$100,000 for consulting services in a total amount not to exceed \$125,000, with a contract end date of December 31, 2027.
Financial Implications: See report
Contact: Terrance Davis, Public Works, (510) 981-6300
Action: Adopted Resolution No. 71,579–N.S.

Consent Calendar

- 22. Appointment of Maria Sol and Ashley (Jiahao) Gu to the Mental Health Commission**
From: Mental Health Commission
Recommendation: Adopt two Resolutions approving the recommendation for appointment of Maria Sol and Ashley (Jiahao) Gu to the Mental Health Commission both as representatives of the Special Interest Category, Consumer. Maria Sol's 3-year term will begin on November 20, 2024 and end on November 19, 2027. Ashley Gu's 3-year term will begin on November 20, 2024 and end on November 19, 2027.
Financial Implications: None
 Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400
Action: Adopted Resolution No. 71,580–N.S. (Appoint Maria Sol) and Resolution No. 71,581–N.S. (Appoint Ashley (Jiahao) Gu).

Council Consent Items

- 23. Exploring the Formation of Joint Powers Authority (JPA) or other entity to Publicly Finance the Development of a Hospital to Meet Regional Healthcare Needs**
From: Mayor Arreguin (Author), Councilmember Hahn (Author)
Recommendation: 1. Direct the City Manager and City Attorney to explore establishing legal and financial structures, such as a Joint Powers Authority (JPA) or Hospital District, with relevant East Bay jurisdictions, to facilitate public financing for a full service public acute and emergency care hospital serving Berkeley and the greater East Bay. 2. Authorize the City Manager and City Attorney to engage staff or consultants as needed, and submit further budget requests if additional resources are required.
Financial Implications: See report
 Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: Councilmembers Bartlett and Humbert added as co-sponsors. Item 23 referred to the Health, Life Enrichment, Equity & Community Committee for analysis.
- 24. Referral to City Manager: Equity for Black Berkeley (E4BB) Initiative**
From: Mayor Arreguin (Author)
Recommendation: Adopt a Resolution, recognizing the vision and goals of the Equity for Black Berkeley (E4BB, previously referred to as EBB), historicizing the work that has been completed to date, recognizing the current and past City staff and external stakeholders involved with E4BB, and maintaining E4BB as a priority of the City.
 Refer to the City Manager the following actions to be taken:
 1. Establish a representative for E4BB (the "E4BB Representative") with the following responsibilities: a. Represent the City's interests when relating to matters of the E4BB initiative; b. Liaise between City officials and external partners and parties associated with E4BB; c. Draft policies that advance the work aligned with vision and goals of E4BB in connection with the Mayor's Office and other legislators within the City and across jurisdictions and agencies, as needed; d. Oversee and coordinate the implementation of work related to E4BB across the City and with external

Council Consent Items

stakeholders, providing updates to the Mayor's Office, as appropriate; and e. Pursue internal and external resources and funding opportunities to advance the work of E4BB in the near- (1-2 years) and long-term (3+ years).

2. Determine the appropriate staffing and financial resources needed to monitor and communicate the implementation of the following existing and future projects and policies related to E4BB with the E4BB Representative: a. Implementation of Ashby BART TOD; b. Data collection and analysis of the impact of the Preference Policy; c. Implementation of Housing Element, with particular attention in identifying priorities sites for expanding the efficacy of the Preference Policy and what unmet needs may be invested in through the establishment of a non-governmental organization outside of the City; d. Improvements to establish cultural vibrancy and accessibility in South Berkeley, creating recommendations for what potential EIFD funds can be used towards; e. Growth opportunities to expand the economic viability of small businesses and commerce in the South Berkeley area, including support to sustain and grow the success of the Berkeley Flea Market; f. Facilitating the intersection of the African American Holistic Resource Center (AAHRC) with relevant work in South Berkeley, particularly the new Ashby TOD residents and EFID related projects; g. Management of financing, expenditures, and balance sheets received by the City related to E4BB including but not limited to grants, City investments from the General Fund, and an EIFD fund; h. Legal representation and support with negotiations, contracts, and MOUs with outside jurisdictions, external E4BB partners, and internal discussions of authority and governance; and i. Provide 1) supervision of an unpaid staff person offered by the Partnership for the Bay's Future (PBF) grant program (should the City of Berkeley become selected as a government host site) and 2) communication on the progress and connection of projects relating to E4BB including but not limited to the Ashby BART TOD, Black Arts and Cultural District, Small Sites, EIFD, Black Health Equity Zone, Berkeley Flea Market and AAHRC.

3. With assistance from the E4BB representative, create a template MOU to be drafted and circulated with outside groups engaged in E4BB, including, but not limited to: a. Berkeley Flea Market; b. Healthy Black Families; c. San Francisco Foundation; and d. External Consultants (Nddi Love, Randolph Belle aka Creative Development Partners, communications experts, etc).

4. Work with the E4BB Representative to pursue additional external and internal investments to help with creating a non-governmental organization to manage a community investment fund beyond 2026 and transition the work of E4BB to be managed within this entity.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action: Adopted Resolution No. 71,582–N.S. and approved recommendation.

Action Calendar – New Business

25. Amendment: FY 2025 Annual Appropriations Ordinance

From: City Manager

Recommendation: Adopt first reading of an Ordinance amending the FY 2025 Annual Appropriations Ordinance No. 7,926–N.S. for fiscal year 2025 based upon recommended re-appropriation of committed FY 2024 funding and other adjustments authorized since July 1, 2024.

Financial Implications: See report

Contact: Sharon Friedrichsen, Budget Manager, (510) 981-7000

Action: Moved to Consent Calendar. Adopted first reading of Ordinance No. 7,940–N.S. as revised in Supplemental Communications Packet #2 from the City Manager and further amended to add a \$150,000 allocation to create a park at the Parkside Drive terminus median. Second reading scheduled for December 3, 2024.

26. Amendments to BMC Chapter 22.16, Development Agreement Procedures

From: City Manager

Recommendation: Adopt first reading of an Ordinance amending BMC Chapter 22.16, “Development Agreement Procedures.”

Financial Implications: See report

Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action: Moved to Consent Calendar. Adopted first reading of Ordinance No. 7,941–N.S. Second reading scheduled for December 3, 2024.

Public Comment – Items Not Listed on the Agenda - 0 speakers.

Adjournment

Action: M/S/C (Arreguin/Hahn) to suspend the rules and adjourn the meeting.

Vote: All Ayes.

Adjourned at 9:29 p.m.

I hereby certify that the foregoing is a true and correct record of the City Council regular meeting held on November 19, 2024.

Mark Numainville, City Clerk

Communications

Item #4: Encampment Resolution Funding Round 3 Grant Award

1. Yesica Prado and Gordon Gilmore on behalf of the Berkeley Homeless Union

Cordornices Creek

2. Friends of Five Creeks

3. Peter Radu

Road Paving on Virginia St.

4. Tiana Robinson

Fair Contract

5. Gwen Weinreich
6. Sabina McMurtry
7. Larry Snyder
8. Kevin Sun

Safety Concerns

9. Leah Shelleda

Encampment Requests

10. Robb M. Walker

Middle East Conflict

11. Matt O'Brien

Traffic Study

12. Tim Hassler

Street Sweeping/Construction Conflict

13. Jesse Sheehan
14. UC Berkeley Capital Strategies
15. Scott Salas

Waterfront Concern

16. Louise Rafkin

Housing Concern

17. Ann Marie Davis (2)

Merchant Parking Costs

18. Evan McDonald

Parking Study

19. Gordon Stout

Upzoning

20. Vincent Casalaina
21. Vicki Sommer
22. Janice Schroeder
23. Carol Hirth
24. Mary Ann Gallagher
25. Chris Gilbert

- 26. Christopher Riess
- 27. Bernard Marszalek
- 28. John Rice
- 29. 44 Similarly worded form letters

URL's

- 30. Russbumper (2)
- 31. Josh Atwood
- 32. Keith Bayne (2)

Forwards of Current Events

- 33. Eid (3)
- 34. Russbumper
- 35. David L. Axelrod

Supplemental Communications and Reports 1

Item #13: Ashby BART Transit Oriented Development (TOD) Legal Agreements

- 36. Revised agenda material submitted by the Planning and Development Department

Supplemental Communications and Reports 2

Item #13: Ashby BART Transit Oriented Development (TOD) Legal Agreements

- 37. Revised agenda material submitted by the Planning and Development Department

Item #16: Contract: Telegraph-Channing Parking Garage Restroom Renovation & Elevator Improvements Project

- 38. Alex Knox

Item #25: Amendment: FY 2025 Annual Appropriations Ordinance

- 39. Revised agenda material submitted by the Budget Office

Supplemental Communications and Reports 3

Item #23: Exploring the Formation of Joint Powers Authority (JPA) or other entity to Publicly Finance the Development of a Hospital to Meet Regional Healthcare Needs

- 40. Andy Katz

Item #24: Referral to City Manager: Equity for Black Berkeley (E4BB) Initiative

- 41. Barbara Gilbert

Item #25: Amendment: FY 2025 Annual Appropriations Ordinance

- 42. Presentation submitted by the City Manager's Office

Item #26: Amendments to BMC Chapter 22.16, Development Agreement Procedures

- 43. Presentation submitted by the Planning Department

Referral to City Manager – Relocation Agreement with Becker Boards, LLC

- 44. Emily Seelenfreund
- 45. Michael Colbruno

46. Marcello Magana

Miscellaneous

47. Eid



Office of the City Manager

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Eleanor Hollander, Economic Development Manager

Subject: Contract: CVL Economics for a Study of the Economic Impact of the Arts in Berkeley

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with CVL Economics for an amount not to exceed \$119,300 for analysis of pandemic cultural arts recovery investments and the economic impact of the arts in Berkeley for two-year term.

FISCAL IMPACTS OF RECOMMENDATION

The \$119,300 contract will be funded with American Rescue Act Funds designated for the arts (Budget Code 354-21-208-252-0000-000-446-612990).

CURRENT SITUATION AND ITS EFFECTS

CVL Economics was selected through a competitive Request for Proposals (RFP) process to conduct an analysis of pandemic recovery investments and the economic impact of the arts generally in Berkeley. The selected consultant has a demonstrated record of success in providing economic analysis services and accessible impact reports to municipalities and CVL Economics has specific relevant expertise in economic analysis of the arts and culture sector. The contract scope of work includes conducting comprehensive economic analyses and presenting them in an engaging manner with the following four deliverables:

1. A written assessment of both the short-term and long-term impacts of the City of Berkeley's investment of both General Funds and American Rescue Plan Act (ARPA) funds in the Berkeley Arts Sector through the City of Berkeley's relief and recovery grant programs (April 2020 & February 2022).
2. A baseline study of the current economic impact of the arts in Berkeley. This study will assess the economic effects of and recovery from the pandemic to the present on the City of Berkeley's arts sector. This study will also provide data suitable for an update to the *Economic Impact of the Arts in Berkeley* report commissioned by the City of Berkeley in 2017.

3. The project will culminate in a comprehensive report of both the COVID-19 relief investment analysis, and the baseline economic impact study for public distribution.
4. The development of a set of standard arts and culture economic impact metrics and tools for future use by the City for the purpose of including arts and culture economic impact data in the Office of Economic Development's annual "Economic Dashboard" reports, allowing the City to track the sector's economic impact over time locally.

BACKGROUND

The City of Berkeley is home to over 150 active arts and culture nonprofits offering a diverse array of theater, music, festivals, dance, visual arts, and more. The nonprofits that make up Berkeley's arts sector are particularly diverse in terms of their size, educational offerings, and creative disciplines, and include numerous acclaimed theaters, music venues, galleries, dance studios, and maker spaces. Many organizations are nationally recognized, and the City is celebrated for its cultural vitality.

Complementing these cultural organizations, the City is also home to a wide range of independent artists and artisans, who operate on a smaller scale producing fine arts such as painting, sculpture, music, and crafts including but not limited to textiles, stained glass, and metalwork. The City of Berkeley has long recognized the importance of the arts and culture to the economic health, vitality, and diversity of Berkeley's local economy and its commercial districts. Local arts and cultural organizations generate revenue, create jobs, and improve the quality of life, which in turn generates businesses revenue and tourism to Berkeley. The City of Berkeley last conducted an analysis of the economic impact of the arts in 2017, which was incorporated into the City of Berkeley's *Arts & Culture Plan Update (2018 - 2027)*.

In response to the COVID-19 pandemic's economic impacts on the arts sector, the City of Berkeley made substantial funding allocations at two different times to provide emergency relief and recovery funding to arts organizations, festivals, and artists in Berkeley.

1. ***Emergency Business and Arts Continuity Grants*** – \$3M, April 2020
In April of 2020, the City awarded grants to businesses and arts organizations whose revenues were significantly impacted by the COVID-19 pandemic. The Business and Arts Organization Continuity Grant Programs were funded through a \$3M allocation of the City's catastrophic reserve fund on March 17, 2020. Of that funding, \$1 million was allocated to create the Arts Organization Continuity Grant Program.
2. ***Berkeley Arts Recovery Grants*** – \$2M, December 2021-February 2022
In December 2021, with one-time funding by Berkeley's City Council of \$2M in American Rescue Plan Act (ARPA) dollars, the Berkeley Arts Recovery Grants

for Organizations & Festivals were distributed to 63 organizations and 11 festivals to support Berkeley's arts sector recovery. This fund provided one-time grants of up to \$33,000 each to Berkeley-based nonprofit and fiscally sponsored arts organizations and festivals to help them sustainably recover from the negative economic impacts of the COVID-19 pandemic. The grants were awarded in February 2022.

Current Status of Berkeley's Arts Sector & Goal of Project

In 2024, Berkeley's arts and culture sector continues to experience increased costs and lower audience levels in the aftermath of the pandemic, with some nonprofits operating at a loss. Additional post-pandemic challenges include factors such as: inflation impacting costs for labor, materials, and talent; a reduction in season subscriptions sales; and audience reluctance to return to arts and culture venues due to ongoing COVID-19 concerns. A current impact study is fundamental to establishing a new baseline of data related to the economic impact of the arts and culture sector in Berkeley and to analyze the effect of the City's investments in the arts during the pandemic (detailed above). The results of this study will be used to guide Berkeley's investments and program design for artistic and cultural support over the years to come.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

CVL Economics possesses demonstrated expertise centered on a range of regional economic development matters, including fostering the creative economy and nonprofit sustainability, understanding the economics of arts and culture, conducting public policy analyses and presenting data in an engaging and accessible manner.

ALTERNATIVE ACTIONS CONSIDERED

The City received and evaluated twelve proposals in response to RFP Specification No. 24-11671-C which was posted on July 23, 2024. After proposal review, and team interviews, the CVL Economics proposal received the highest score of the twelve proposals.

CONTACT PERSON

Jennifer Lovvorn, Office of Economic Development, (510) 981-7533

Attachment:

1: Resolution

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

CONTRACT: CVL ECONOMICS FOR ANALYSIS OF PANDEMIC RECOVERY
INVESTMENTS AND THE ECONOMIC IMPACT OF THE ARTS IN BERKELEY

WHEREAS, the City of Berkeley has long recognized the importance of the arts and culture to the economic health, vitality, and diversity of Berkeley's local economy and its commercial districts; and

WHEREAS, the City of Berkeley made two major funding allocations in response to the COVID-19 pandemic's economic impacts on the arts sector to provide emergency relief and recovery funding to arts organizations, festivals, and artists in Berkeley; and

WHEREAS, Berkeley's arts and culture sector continues to experience lower audience levels, and increased costs in the aftermath of the pandemic, with some nonprofits operating at a loss; and

WHEREAS, an impact study is fundamental to establishing a new baseline of data related to the economic impact of the arts and culture sector in Berkeley and to analyze the effect of the City's investments in the arts during the pandemic; and

WHEREAS, the City released an RFP under Specification No. 24-11671-C for which twelve proposals were received, evaluated and scored, resulting in the selection of CVL Economics to conduct an analysis of pandemic recovery investments and the economic impact of the arts in Berkeley.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments thereto with CVL Economics for analysis of pandemic recovery investments and the economic impact of the arts in Berkeley, in an amount not to exceed \$119,300 for a term of two years. A record signature copy of said contract and any amendments are to be on file in the Office of the City Clerk.



Office of City Manager

CONSENT CALENDAR

December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Eleanor Hollander, Economic Development Manager

Subject: Contract: Kala Art Institute for Framed Artwork Purchase Plan for City Buildings

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with Kala Art Institute for an amount not to exceed \$50,000 to implement a framed artwork purchase plan for two city administration buildings located at 1947 Center Street and 2180 Milvia Street. The artworks are to be hung in public areas of civic buildings and will become part of the City's Civic Art Collection.

FISCAL IMPACTS OF RECOMMENDATION

The \$50,000 contract will be funded through the Cultural Trust Fund (Fund Code 150-21-208-252-0000-000-446-612990) in Fiscal Year 2025. Transportation and installation services, estimated to be \$10,000, will be rendered by Gizmo Art Productions (As Needed Contract #32500079). Installation and transportation costs are funded from Fund 150-21-208-252-0000-000-446-612990-.

CURRENT SITUATION AND ITS EFFECTS

The City is in the process of purchasing a limited number of two-dimensional artworks to fill in gaps within the existing collection of artworks on display in the public lobbies and hallways of 2180 Milvia Street and 1947 Center Street, two of the City's most prominent city-owned administration buildings. See locations and artworks selected in Attachment 1, *Exhibit A: Project Overview: Framed Artwork Purchase Plan for City Buildings*.

For many years, the Civic Arts program managed an annual contract with Berkeley's Kala Art Institute to produce a rotating Civic Center Exhibition in the City's buildings (2180 Milvia and 1947 Center). In 2018, many parts of the Civic Center buildings became secured and locked -- no longer accessible to the public. After much discussion, in 2019 the Civic Arts Commission's Public Art Subcommittee recommended discontinuing the exhibition because the public could no longer view it. The annual rotating exhibitions were replaced with curated purchased artwork from Kala Art Institute for permanent installation. These artworks are part of the city's substantial

Civic Art Collection which includes outdoor artworks located throughout the community as well as indoor artworks located within City buildings that have a high degree of public access and visibility.

In late 2020 (FY21) funding was granted to make additional permanent artwork purchases to supplement the existing public art collection for the remaining publicly accessible spaces in 1947 Center Street and 2180 Milvia Street.

Kala Art Institute, located at 2990 San Pablo Avenue, is serving as the curator in selecting the new artworks. Kala is a Berkeley community arts non-profit organization, founded in 1974, which hosts an artist residency, gives art classes, and serves as an art gallery. Their recommendations, which were approved by the Civic Arts Commission on October 30, 2024, are designed to complement pre-existing artwork environments while reflecting the artistic diversity that is the keystone to the City of Berkeley community. With these new additions of artwork - only in pre-existing empty spots from former displays – the aim is to visually balance the volume of artwork so that these amenities are evenly distributed throughout the city buildings and within each lobby and publicly accessible wing.

Civic Arts staff along with professional art handlers, will implement the Framed Artwork Purchase Plan for City Buildings, with installation set to occur in the spring of 2025 (March-May). Accompanying installation, Civic Arts Program staff will also provide updated wall labels for the artworks which will offer City staff and visitors an opportunity to learn more about the artists on display. These artworks will join the pre-existing works and will be thoughtfully spaced, positioned, and leveled on each wall where indicated.

BACKGROUND

For many years, the Civic Arts program managed an annual contract with Berkeley's Kala Art Institute to produce a rotating Civic Center Exhibition in the City's buildings (2180 Milvia and 1947 Center). In 2018, many parts of the Civic Center buildings became secured and locked -- no longer accessible to the public. After much discussion, in 2019 the Civic Arts Commission's Public Art Subcommittee recommended discontinuing the exhibition because the public could no longer view it. The annual rotating exhibitions were replaced with curated purchased artwork from Kala Art Institute for permanent installation. In late 2020 (FY21) funding was granted to make additional permanent artwork purchases to supplement the existing public art collection for the remaining publicly accessible spaces in 1947 Center Street and 2180 Milvia Street.

On October 30, 2024, the Civic Arts Commission discussed the *Framed Artwork Purchase Plan for City Buildings*, which called for the purchase, framing, and installation of the artworks detailed in Attachment 1. An adoption of a Resolution authorizing the City Manager to execute a contract and any necessary amendments with Kala Art Institute to support this project for an amount not to exceed \$50,000 is now needed.

Contract: Framed Artwork Purchase Plan for City Buildings

CONSENT CALENDAR
December 10, 2024

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The framed artwork purchase plan for city buildings was developed and selected based upon extensive input from the public art subcommittee of the Civic Arts Commission, and with the support of a professional curator.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Salinas, Office of Economic Development, (510) 981-7538

Attachments:

1: Resolution

Exhibit A: Project Overview: Framed Artwork Purchase Plan for City Buildings

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

CONTRACT: KALA ART INSTITUTE TO IMPLEMENT FRAMED ARTWORK
PURCHASE PLAN FOR CITY BUILDINGS

WHEREAS, the City of Berkeley's Arts and Culture Plan calls for the enhancement of Berkeley's environment by placing temporary and permanent public art in public spaces throughout the city; and

WHEREAS, the project goal is to purchase a limited number of framed artworks to fill in gaps within the existing collection of framed art hung in public areas of Civic Center buildings (lobbies and entry hallways); and

WHEREAS, historically the Civic Arts program managed an annual contract with Berkeley's Kala Art Institute to produce a rotating Civic Center Exhibition in the City's buildings (2180 Milvia and 1947 Center); and

WHEREAS, the annual rotating exhibitions were replaced with curated purchased artwork from Kala Art Institute for permanent installation and these artworks are part of the city's substantial Civic Art Collection; and

WHEREAS, funding was granted in FY21 to make additional permanent artwork purchases to supplement the existing public art collection for the remaining publicly accessible spaces in 1947 Center Street and 2180 Milvia Street; and

WHEREAS, funding for the framed artwork purchase plan is included in the budget for Cultural Trust Fund (Fund 150) for Fiscal Year 2025; and

WHEREAS, the Civic Arts Commission approved the purchase plan at its regularly scheduled commission meeting on October 30, 2024; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments thereto with Kala Art Institute to implement a Framed Artwork Purchase Plan for City Buildings for an amount not to exceed \$50,000. A record signature copy of said contract and any amendments are to be on file in the Office of the City Clerk.

Project Overview: Framed Artwork Purchase Plan for City Buildings

Project Goal:

- Purchase a limited number of framed artworks to fill in gaps within the existing collection of framed art hung in public areas of Civic Center buildings (lobbies and entry hallways). *See locations and artworks selected on pages 3-23 of this document.*

Background:

- For many years, the Civic Arts program managed an annual contract with Berkeley's [Kala Art Institute](#) to produce a rotating Civic Center Exhibition in the City's buildings (2180 Milvia and 1947 Center).
- In 2018, many parts of the Civic Center buildings became secured and locked -- no longer accessible to the public. After much discussion, the [Civic Arts Commission's Public Art Subcommittee](#) recommended discontinuing the exhibition because the public could no longer view it.
- The annual rotating exhibitions were replaced with curated purchased artwork from Kala Art Institute for permanent installation. These artworks are part of the city's substantial [Civic Art Collection](#).
- In late 2020 (FY21) funding was granted to make additional permanent artwork purchases to fill in the gaps within the existing collection for the remaining publicly accessible spaces in 1947 Center and 2180 Milvia.
- Civic Arts staff has worked with curators at the Kala Art Institute to select and purchase artworks and will implement the following plan (see pages 3-24). Installation will occur in late 2024 - early 2025.

2024 Contract with Kala Art Institute: New Purchases for Public Art Collection of the City of Berkeley

2180 Milvia Street (9 small, 11 medium = 20 artworks total)

1st floor North, City Clerk: 2 medium artworks

1st floor South, Human Resources: 1 small artwork; 1 medium artwork

2nd floor North, Health Housing and Community Services (HHCS): 1 small artwork; 1 medium artwork

4th Floor Lobby: 2 medium artworks, wall opposite elevator bank

4th Floor Lobby: 2 small artworks in wall recess

4th Floor North, City Attorney: 3 small artworks

4th Floor South, IT: 1 medium artwork

5th Floor Lobby: 2 medium artworks, wall opposite elevator bank, above bench

5th Floor North, Council Offices: 2 small artworks; 2 medium artworks

1947 Center Street (4 artworks total)

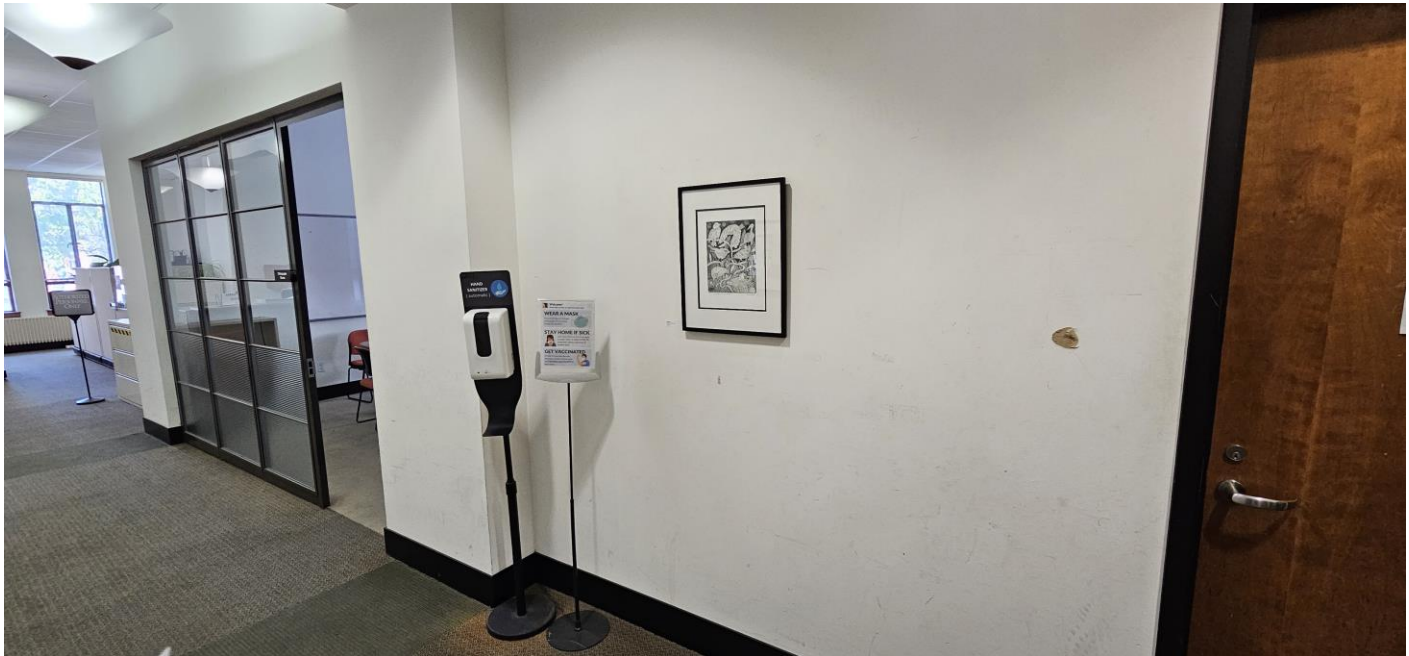
2nd Floor, Lobby: 2 medium artworks

5th Floor, Lobby: 2 medium artworks

2180 Milvia Street

*1st floor North, City Clerk: 2 medium artworks *requires re-adjustment of current artwork on wall(s)*

1st floor South, Human Resources: 1 small artwork; 1 medium artwork



1st floor north (City Clerk)

2



PANTEA KARIMI

The Oddities of Marbling Garden series, Rising Saffron, 2022

Marbling, watercolor and gold paint

30 x 22 inches

(Inv# 17189)

1st floor north (City Clerk)

3



RON MOULTRIE SAUNDERS

Freesia I, 2004

camera less technique (photogram),

Sepia Tone GSP

Image Size: 16x20

Paper Size: 16x20

3/7

(Inv# 5148)

1st floor North, City Clerk: 2 medium artworks *requires re-adjustment of current artwork on wall(s)

1st floor South, Human Resources: 1 small artwork; 1 medium artwork



1st floor south (HR)

4



CYNTHIA ONA INNIS

Front, 2016

Acrylic, ink, satin and velvet on paper

Image Dimensions: 8.25 x 10.5 inches

(Inv# 15462)

1st floor south (HR)

5



TORU SUGITA

i pod, 2008

etching and drypoint and aquatint

Image Size: 24x17.5

Paper Size: 30x22.5

3/20

(Inv# 6235)

2nd floor North, Environmental Health (HHCS): 1 small artwork; 1 medium artwork



2nd floor north (Environmental Health)

6



JANINE BROWN

Gandy, 2015

Acrylic and museum board

12 x 12 inches

Paper Dimensions: 12 x 12 inches

(Inv# 14709)

2nd floor north (Environmental Health)

7



SANAZ MAZINANI

Forever in the Sky (SOMA), 2013

Digital Print

Image Size: 19.75x19.75

Paper Size: 21x21

2/7

(Inv# 10816)

4th Floor Lobby: 2 medium artworks opposite elevators, bench to be moved below artworks

4th Floor Lobby: 2 small artworks in wall recess

4th Floor North, Attorney: 3 small artworks

4th Floor South, IT: 1 medium artwork



4th floor lobby above bench

8



KOTA EZAWA
LYAM 3D, 2009
color aquatint etching
20 x 27.5 inches
(Inv# 17784)

4th floor lobby above bench

9



T.W.FIVE
Sci-Fi Lounge, 2018
Hand cut vinyl tape
18"x24"
(Inv# Assigned61)

4th Floor Lobby: 2 medium artworks above bench

4th Floor Lobby: 2 small artworks in wall recess

4th Floor North, Attorney: 3 small artworks

4th Floor South, IT: 1 medium artwork



4th floor lobby

10



DAWLINE-JANE ONI-ESELEH

At Least Two Pairs, 2022

Acrylic and block print on wood panel

10 x 10 inches

(Inv# 17379)

4th floor lobby

11



DAWLINE-JANE ONI-ESELEH

That Was Then, 2021

Acrylic and block print on wood panel

10 x 10 inches

(Inv# 17380)

2180 Milvia Street

Page 17 of 28

4th Floor Lobby: 2 medium artworks above bench

4th Floor Lobby: 2 small artworks in wall recess

4th Floor North, Attorney: 3 small artworks **requires re-adjustment of current artwork on wall(s)*

4th Floor South, IT: 1 medium artwork



Page 71

4th floor north (Attorney)

12



JULIA DAVIS-LUCEY

Morning Glory Monster Cat, 2022

Mixed media collage (aquatint etching and acrylic)

12 x 16 inches

Frame: 12.5x16.5"

(Inv# 17390)

4th floor north (Attorney)

13



KELLY ORDING

Geotriangle (ink), 2012

Ink on dyed paper

22 x 14 inches

(Inv# 11334)

4th floor north (Attorney)

14



NIF HODGSON

Here & There #2b, 2013

multiple plate intaglio with screenprinted charcoal powder

11 x 24 inches

19 x 30 inches

1/1

(Inv# 14554)

2180 Milvia Street

Page 19 of 28

4th Floor Lobby: 2 medium artworks above bench

4th Floor Lobby: 2 small artworks in wall recess

4th Floor North, Attorney: 3 small artworks **requires re-adjustment of current artwork on wall(s)*

4th Floor South, IT: 1 medium artwork



4th floor south (IT)

15



SQUEAK CARNWATH (b 1947)

One Side, 2006

Intaglio

23.75 x 23.75

7 of 8 AP

(Inv# 7808)

5th Floor Lobby: 2 medium artworks above bench, opposite elevators

5th Floor North, Council: 2 small artworks; 2 medium artworks



5th floor lobby above bench

16



JORDAN CRAIG

Buckskin print; lazy stitch rows, 2019

Screen Print

22 x 14 inches

(Inv# 17817)

5th floor lobby above bench

17



JORDAN CRAIG

Criss Cross; olive over blue, 2019

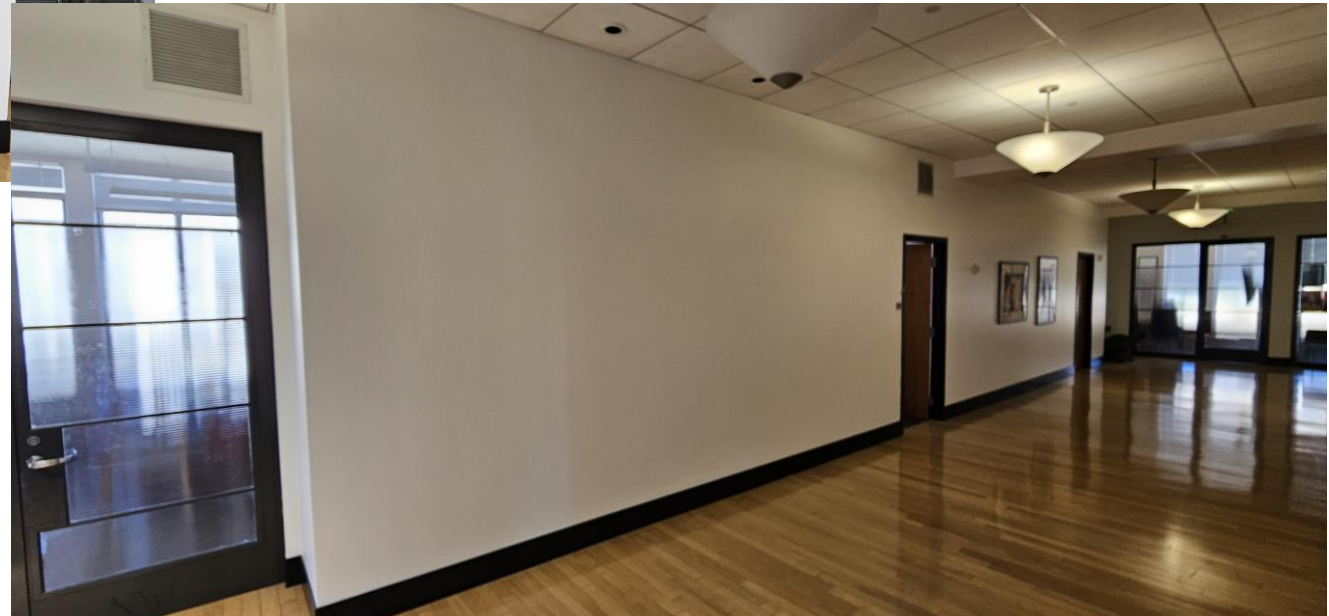
Screen Print

22 x 14 inches

(Inv# 17818)

5th Floor Lobby: 2 medium artworks above bench, opposite elevators

5th Floor North, Council Offices: 2 small artworks; 2 medium artworks **requires re-adjustment of current artwork on wall(s)*



5th floor north (Council)

18



MAX KELLENBERGER

Tree with Fennel, 2014/2010

Chine Colle Photogravure

Image Dimensions: 7 x 7 inches

Paper Dimensions: 16 x 20 inches

7/10 CP edition

(Inv# 12009)

5th floor north (Council)

19



ROBIN MCCLOSKEY

Low Tide, 2001

photopolymer etching, monotype

20 x 20 inches

(Inv# 17078)

5th floor north (Council)

20



SARAH KLEIN

Chain of Events, 2023

Monotype

22.5 x 15 inches

(Inv# 17798)

5th floor north (Council)

21



DONNA SHAREE

Lovely Grain, 2006

Monotype

40 x 29.5 inches

(Inv# 17686)

*2nd Floor, Lobby: 2 medium artworks *requires re-adjustment of current artwork on wall(s)*

5th Floor, Lobby: 2 medium artworks



1947 Center 2nd floor lobby

22



EDDIE LEE

Seeding, 2019

Monoprint with magnet plate

30 x 22 inches

Edition EV

(Inv# 16848.EV)

1947 Center 2nd floor lobby

23



EDDIE LEE

Cloud Hands

Monoprint with Magnet Plate

30 x 22 inches

EV

(Inv# 16851)

1947 Center Street

Page 27 of 28

2nd Floor, Lobby: 2 medium artworks **requires re-adjustment of current artwork on wall(s)*

5th Floor, Lobby: 2 medium artworks



1947 Center, 5th Floor Lobby
(2 medium)



CRISTINE BLANCO
Embedded Bricks III, 2022
Archival inkjet print
20 x 24 inches
Edition I of 5
(Inv# 18105.1)



TIFFANY CONWAY
Flower Shower, 2022
Oil on canvas
20 x 20 inches
(Inv# 18108)



Office of City Manager

CONSENT CALENDAR

December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Eleanor Hollander, Economic Development Manager

Subject: Contract: Masako Miki Public Artwork Commission for Aquatic Park Pathway Wall

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any necessary amendments with artist Masako Miki for an amount not to exceed \$87,000 for a public art commission of a ceramic tile mural on the 42'-long curved wall located along the San Francisco Bay Trail west of the intersection of Addison Street and Bolivar Drive in Aquatic Park.

FISCAL IMPACTS OF RECOMMENDATION

The \$87,000 contract will be funded through the Cultural Trust Fund (Fund Code 148-21-208-252-0000-000-446-612990) in Fiscal Year 2025.

CURRENT SITUATION AND ITS EFFECTS

Artist Masako Miki was selected through a competitive process to create a permanent artwork for the curved cement wall situated along the San Francisco Bay Trail on the north side of the Aquatic Park lagoon. The goal of the project is to enhance a visitor's experience of the park by beautifying its context, reflecting the multi-layered history of the site, and highlighting the ecological importance of the park.

Masako Miki's proposal *Contemplating the Universe* was inspired by Berkeley's tidal lagoon habitat, the history of the land and the local Ohlone people, as well as Japanese animistic folklore. The proposal's imagery features a parade of shapeshifting characters, including shorebirds, fish, acorns, a coyote, eagle, fox, and hummingbird.

Contemplating the Universe reflects the history and ecological importance of the land while celebrating the local diversities of cultures to offer a new context for meaningful connections in our community (Figure 1).



Figure 1: Artwork proposal by Masako Miki, *Contemplating the Universe*, tile mural for Aquatic Park (2023).

BACKGROUND

On July 27, 2022, the Civic Arts Commission approved the *Aquatic Park Public Art Project Plan*, which called for the commissioning of a tile mural artwork for the 42'-long curved wall located along the San Francisco Bay Trail in Aquatic Park, as follows:

M/S/C (Passmore/Anno) to approve the Aquatic Park Public Art Project Plan.
Vote: Ayes — Anno, Blecher, Covarrubias, Dhesi, Ozol, Passmore, Woo; Nays — None; Abstain — None; Absent — Bullwinkel.

A Request for Qualifications for this artwork commission was released on October 11, 2022 and was open through November 15, 2022. A selection panel, comprised of two arts professionals, a community representative, and one representative each from the Civic Arts Commission and the Parks, Recreation, and Waterfront Commission, reviewed the qualifications of the 53 applicants and recommended three finalists to develop detailed conceptual site-specific proposals. Once the proposals were received, staff conducted extensive community outreach to elicit the public's responses to the three detailed proposals. A "Berkeley Considers" survey that invited respondents to provide feedback on each of the proposals was hosted on the City's website from July 21 to August 4, 2023 and was widely distributed through a citywide community message (July 2023). In addition to the "Berkeley Considers" survey, staff also provided organizations that have a unique connection to Aquatic Park the opportunity to provide additional written input.

In August and September of 2023, the selection panel was reconvened to consider the finalists' proposals in an interview format and Masako Miki's proposal was selected and submitted to Civic Art Commission for final approval. At the September 27, 2023 Civic Arts Commission meeting, the commission unanimously approved the panel's recommendations with the following vote: M/S/C (Ibarra/Covarrubias) *Motion: to approve the Aquatic Park Public Art Selection Panel's Recommendation to implement the Aquatic Park Public Art Proposal by Masako Miki for the wall project.* Vote: Ayes — Anno, Blecher, Covarrubias, Dhesi, Ibarra, Ozol, Passmore, Woo; Nays — None; Abstain — None; Absent — Bullwinkel.

On February 13, 2024, City Council authorized a contract (Resolution 71,209-N.S) with artist Masako Miki for artwork final design and fabrication in an amount not to exceed \$69,000. *Prior to execution* of any contract authorized under Resolution 71,209-N.S., it was determined that the artist will be responsible for an additional scope of services that includes the installation of the artwork. An adoption of a new Resolution authorizing the City Manager to execute a contract and any necessary amendments with artist Masako Miki for an amount not to exceed \$87,000 is now needed and will supersede Resolution 71,209-N.S). The public art commission for Masako Miki entitled, *Contemplating the Universe* will now include final design, fabrication, *and installation* of a ceramic tile mural on the 42'-long curved wall located along the San Francisco Bay Trail west of the intersection of Addison Street and Bolivar Drive in Aquatic Park.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects, climate impacts, or sustainability opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The proposal by Masako Miki was selected based upon the following criteria: aesthetic quality; appropriateness of the proposed artwork for the site and project goals; demonstrated feasibility of the preliminary proposal and the proposal budget; and demonstrated maintainability and durability of the artworks design, materials, fabrication and proposed installation methods.

ALTERNATIVE ACTIONS CONSIDERED

The selection panel considered two other artistic proposals for the wall, but ultimately selected Masako Miki's proposal *Contemplating the Universe* for advancement.

CONTACT PERSON

Mark Salinas, Office of Economic Development, (510) 981-7538

Attachments:

1: Resolution

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

CONTRACT: MASAKO MIKI TO CREATE A PUBLIC ARTWORK ON THE AQUATIC PARK PATHWAY WALL

WHEREAS, the City of Berkeley's Arts and Culture Plan calls for the enhancement of Berkeley's environment by placing temporary and permanent public art in public spaces throughout the city; and

WHEREAS, the Civic Arts Commission approved the Aquatic Park Public Art Project Plan on July 27, 2022, which called for the commissioning of a tile mural artwork for the 42'-long curved wall located along the San Francisco Bay Trail in Aquatic Park; and

WHEREAS, funding for the artist contract for the tile mural at Aquatic Park is included in the budget for Cultural Trust Fund (Fund 148) for Fiscal Year 2025; and

WHEREAS, a Request for Qualifications from professional practicing artists was released on October 11, 2022 and 53 applicants were reviewed by a selection panel comprised of two arts professionals, a community representative and one representative each from the Civic Arts Commission and the Parks, Recreation, and Waterfront Commission; and

WHEREAS, three finalists were selected by the panel and invited to develop site-specific public art project proposals; and

WHEREAS, the selection panel reconvened to evaluate the three proposals and selected the proposal by Masako Miki for recommendation to the Civic Arts Commission; and

WHEREAS, the Civic Arts Commission approved Masako Miki for a public art commission of a ceramic tile mural for the Aquatic Park pathway wall at its regularly scheduled commission meeting on September 27, 2023; and

WHEREAS, on February 13, 2024, City Council authorized a contract (Resolution 71,209-N.S) with artist Masako Miki for artwork final design and fabrication in an amount not to exceed \$69,000; and

WHEREAS, *prior to execution* of any contract authorized under Resolution 71,209-N.S., it was determined that the artist should also be responsible for the additional scope of services to include installation of the artwork.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments thereto with Masako Miki for a public art commission including final design, fabrication, and installation of a ceramic tile mural on the Aquatic Park pathway wall for an amount not to exceed \$87,000. A record signature copy of said contract and any amendments are to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on December 10, 2024

RECOMMENDATION

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is **\$13,500,000**

<u>PROJECT</u>	<u>Fund</u>	<u>Source</u>	<u>Amount</u>
Sanitary Sewer Rehabilitation Project: Urgent Project at various locations	611	CAP-INFR-SANITARY SEWER	\$850,000
After Hours Answering Service	601 636 673 142 616 611 631 138 611 622 680	PROF SVCS MISC.	\$350,000
Martin Luther King Jr. Youth Services Center / Y.A.P. Seismic Retrofit and Renovation	138 340 501 511	PARKS TAX FUND FEMA CIP FUND MEASURE T PHASE 2	\$10,600,000
On Demand Curbside Chipping Service	164	FF-PUBSAFE	\$1,700,000
Total:			\$13,500,000

Formal Bid Solicitations and Request for Proposals
Scheduled for Possible Issuance After Council
Approval on December 10, 2024
December 10, 2024

CONSENT CALENDAR

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

RATIONALE FOR RECOMMENDATION

Need for the goods and/or services.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Clayton Stilwell, General Services Manager, Finance, 510-981-7329

Attachments:

1. **Sanitary Sewer Rehabilitation Project:** Urgent Project at various location
2. After Hours Answering Service
3. Martin Luther King Jr. Youth Services Center / Y.A.P. Seismic Retrofit and Renovation
4. On Demand Curbside Chipping Service

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
25-11693-C	Sanitary Sewer Rehabilitation Project: Urgent Project at various locations	12/11/2024	1/14/2025	Fulfill Sewer Consent Decree requirement. Sewer rehabilitation and replacement project to repair and replace old and deteriorated sewer lines.	\$850,000	611-54-623-676-0000-000-473-665130	Public Works - Engineering	Francisco Alonso 981-6405 Daniel Akagi 981-6394
25-11694-C	After Hours Answering Service	8/1/2024	9/1/2024	Answering services for multiple departments and divisions for the City. Provide professional telephone answering services after hours, weekend, holiday, emergency, as well as back-up services during normal business hours, and as needed. Services include but are not limited to answering a dedicated after-hours phone line, dispatching on-call staff appropriately beyond normal business hours. Taking messages and information, logging calls. Provide customer information and transferring information to the appropriate departments in a timely manner.	\$350,000.00 over three years, with option to extend by two years	601-54-621-654-0000-000-472-612990-\$7000 636-54-624-692-0000-000-472-612990-\$2500 673-54-624-692-0000-000-472-612990-\$3000 142-54-621-654-0000-000-426-612990-\$3500 616-54-621-654-0000-000-472-612990-\$1000 611-54-621-654-0000-000-472-612990-\$16000 631-54-621-654-0000-000-472-612990-\$3000 138-52-541-598-0000-000-461-612990-\$5500 611-51-502-511-2004-000-472-612990-\$1000 622-53-582-601-0000-000-474-632110-\$750 680-35-364-000-0000-000-472-612990-	Public Works Operations Support Parks, Recreation, and Waterfront Information Technology HHCS Planning - Toxics	Tucker Brofft 510-981-5375 Erika Barros 510-981-6462
Dept Total					\$ 1,200,000.00			
25-11695-C	Martin Luther King Jr. Youth Services Center / Y.A.P. Seismic Retrofit and Renovation	January-25	March-25	This project provides renovation to the existing Martin Luther King Jr. Youth Services Center/Y.A.P. building. As part of the City's Local Hazard Mitigation Plan and Resiliency Plans, the building will serve as a care and shelter program, providing resources, information, and shelter for those displaced by disasters. The renovation includes a seismic retrofit, accessibility upgrades, all-new MEP systems, and the addition of fire alarms and sprinklers. Additionally, the project aims to reconfigure program spaces and provide new finishes to create a more inviting environment for teen programming.	\$10,600,000	PRWT122001 Parks Tax Fund 138-52-545-000-0000-000-461-662110- FEMA 340-52-545-000-0000-000-461-662110- CIP Fund 501-52-545-000-0000-000-461-662110- Measure T1 Phase 2 511-52-545-000-0000-000-461-662110-	Park, Recreation, and Waterfront Department/CIP Division	Evelyn Chan T#: 510-981-6430 Canhui Li T#: 510-981-6432
Dept Total					\$10,600,000			
25-11696-C	On Demand Curbside Chipping Service	January-25	February-25	Vendor to provide curbside, on-demand [vegetation] chipping as part of the city's wildfire fuel reduction program	\$1,700,000	164-72-745-000-0000-000-422-612990-	Fire/WUI	David Sprague 847-8435
Dept Total					\$1,700,000			
TOTAL					\$13,500,000			



Office of the City Manager

CONSENT CALENDAR

December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Aram Kouyoumdjian, Director of Human Resources

Subject: Establish Classification and Salary – Senior Paralegal

RECOMMENDATION

Adopt a Resolution establishing the job class specification and salary of Senior Paralegal with an hourly salary range of \$47.4636 to \$57.6923, and an annual range of \$98,724.30 to \$120,000.00.

FISCAL IMPACT

The proposed pay range of \$47.4636 to \$57.6923 will have a fiscal impact of approximately \$98,724.30 to \$120,000.00 annually per full-time position, or \$179,974.40 to \$218,760.00 with added fringe benefits.

CURRENT SITUATION AND ITS EFFECTS

The classification of Senior Paralegal will serve as a lead and provide technical guidance to paralegals, bridging the highly technical aspects of litigation management, advice, and counsel between the attorneys and paralegals. The newly created job classification includes the knowledge, skills, and abilities that represent the current industry standards, and mirrors duties performed in surrounding municipalities. The pay range reflects a 10% increase above the Paralegal classification and is reflective of the mean among other agencies that utilize these classifications.

Step 1	Step 2	Step 3	Step 4	Step 5
\$47.4636	\$49.8368	\$52.3286	\$54.9451	\$57.6923

BACKGROUND

Paraprofessional legal work in the City Attorney's Office is currently performed by the Paralegal classification, but the department has identified a need for more complex duties and lead responsibilities.

The newly-proposed Senior Paralegal classification was submitted to the Personnel Board at its meeting of November 4, 2024 and approved by unanimous vote.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

This job class specification is being created to bridge the gap between the Paralegal job classification and the Deputy City Attorney job classifications that involve more complex paraprofessional duties and lead responsibilities.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

ATTACHMENTS

1: Resolution

Exhibit A: Senior Paralegal – Job Class Specifications and Salary Range

RESOLUTION NO. XX,XXX- N.S.

NEW JOB SPECIFICATIONS AND SALARY RANGE FOR SENIOR PARALEGAL

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, job specifications are foundational components of the City's Classification and Compensation plan; and

WHEREAS, the Human Resources Department developed job specifications for the Senior Paralegal classification with an hourly salary range of \$47.4636 to \$57.6923; and

WHEREAS, the Personnel Board recommended on November 4, 2024 to adopt the new job specifications and salary range for the Senior Paralegal class.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the classification for Senior Paralegal is established with a salary range and classification as shown in Exhibit A, effective December 10, 2024;

BE IT FURTHER RESOLVED that the Senior Paralegal classification have an hourly salary range of \$47.4636 to \$57.6923 over five (5) salary steps:

Step 1	Step 2	Step 3	Step 4	Step 5
\$47.4636	\$49.8368	\$52.3286	\$54.9451	\$57.6923

Exhibit A:

Senior Paralegal – Job Class Specifications and Salary Range

EXHIBIT A

CITY OF BERKELEY SENIOR PARALEGAL

Class Code
TBD

Pay
\$47.46 - \$57.69 Hourly
\$3,797.09 - \$4,615.38 Biweekly
\$8,227.02 - \$10,000.00 Monthly
\$98,724.30 - \$120,000.00 Annually

Established
December 10, 2024

Description

DEFINITION

Under general direction, assist attorneys in the preparation of complex and significant cases for trial and hearing matters. This class serves as the lead-level and is responsible for providing technical guidance to subordinate paralegals. They develop work processes, procedures, facilitate training programs, and serve as a resource for legal matters. Incumbents organize, monitor and schedule work while serving in the lead capacity. This class conducts extensive legal research and interprets pertinent case law, performs the more difficult and complex assignments and prepares exhibits and witnesses for trial, analyzes existing information regarding the case at hand, and develops the content of legal documents as required.

CLASS CHARACTERISTICS

The Senior Paralegal is the advanced journey-level classification. Positions allocated to this class report to an attorney and are assigned the most complex and difficult legal assignments that are performed under the direction, supervision, and technical review of an attorney. The work performed requires knowledge of legal concepts, principles, terminology and procedures, and the extensive use of legal reference materials. This position processes a wide variety of complex and difficult civil actions and litigation requiring a thorough knowledge of legal formats and mechanisms. The Senior Paralegal is distinguished from the Paralegal by its lead role in overseeing workloads and providing technical guidance, level of responsibility, accountability, complexity of duties, utilization of independent judgment on actions taken, and amount of time spent performing these duties.

EXAMPLES OF DUTIES

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification or is similar or closely related to another duty statement.

1. Serves as lead, to include assigning and monitoring work, training employees in work methods, and providing work direction to Paralegal or other clerical staff.

2. Provides input on work performance evaluations and assists with staff development.
3. Gathers evidence and performs legal research by collecting documents, materials, and reports from witnesses or various stakeholders, including research that is not available through routine sources and requires deviation from established procedures.
4. Provide administrative support for trials, including but not limited to, drafting and managing pleadings, drafting discovery, coordinating witnesses, managing exhibits, coordinating with court reporters, coordinating with court clerks, coordinating with outside counsel.
5. May have responsibilities for highly specialized and complex assignments requiring a high level of independence including the organization, preparation, and analysis of associated memoranda.
6. Assists attorneys in extensive preparation of highly sensitive and complex cases involving criminal, civil or administrative cases at all phases of case preparation.
7. Conducts and reviews client and witness interviews in fact-finding or litigation; reviews information to ensure sufficiency and accuracy and identifies additional information required.
8. Locates statutes and relevant case citations; reviews documents to determine compliance with statutes, court decisions, and other applicable laws.
9. Prepares complex correspondence, reports, memoranda, and file legal documents with court.
10. Analyzes elements of cases to identify legal questions.
11. Directs preparation of subpoenas and assures witness compliance.
12. Attends court and directs preparation of court orders by paralegals.
13. Assists with Budget-related tasks.
14. May develop, conduct, and/or facilitate Paralegal training programs.
15. Performs related duties as assigned.

KNOWLEDGE AND ABILITIES

Note: The level and scope of the knowledge and skills listed below are related to the job duties as defined under Class Characteristics.

Knowledge of:

1. Principles, concepts and methodology of complex legal research, discovery and fact investigation.
2. Principles and techniques of training of civil and/or criminal legal processes.
3. Law office procedures, legal research, trial procedures, municipal law, and civil procedures.
4. Legal principles and practices.
5. Legal terminology.
6. Principles of legal writing.
7. Content and language requirements of legal documents.
8. Rules of evidence and the conduct of court proceedings.
9. Investigative interviewing techniques.
10. Ethics and legal practice.
11. Preparation of points, authorities, and memoranda.
12. English grammar, spelling, punctuation, and language mechanics.
13. Supervisory principles and practices, including performance evaluation and assessment.
14. Budgetary principles and practices and the development and implementation of goals and objectives.

Ability to:

1. Plan, organize, assign, direct, review, and evaluate the work of professional, technical, and office support staff and manage employees; provide feedback on performance; evaluate progress; determine work priorities; assign work and ensure proper completion of assignments.
2. Perform advanced legal research.
3. Analyze complex legal problems.
4. Interpret and analyze applicable state and federal codes.
5. Extract and organize information from diverse, complex, and obscure sources.
6. Present statements of fact and law and argue clearly and logically in written and oral form.
7. Establish and maintain effective working relationships with members of the legal profession, public officials, and the public.
8. Effectively communicate with a variety of individuals representing diverse cultures and backgrounds and function calmly in stressful situations, which will require a high degree of sensitivity, tact and diplomacy.
9. Produce clear and concise documents.
10. Interpret applicable state and federal codes, laws, and statutes.
11. Exercise appropriate judgment in answering questions and releasing information.
12. Negotiate and resolve administrative issues.
13. Prioritize caseload to meet deadlines.

Minimum Qualifications

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Possession of one of the following at time of application:

1. Certificate of completion of a paralegal program approved by the American Bar Association.
2. Certificate of completion of a paralegal program at, or a degree from, a postsecondary institution that requires the successful completion of a minimum of 24 semester, or equivalent, units in law-related courses and that has been accredited by a national or regional accrediting organization or approved by the Bureau for Private Postsecondary and Vocational Education.
3. Baccalaureate degree or an advanced degree in any subject, a minimum of **two years** of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.
4. High school diploma or general equivalency diploma, a minimum of **five years** of law-related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least the preceding three years or who has practiced in the federal courts of this state for at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

LICENSE/CERTIFICATION

Certificate of completion from a paralegal program approved by the American Bar Association (ABA) at time of application.

Every two years, Senior Paralegal must certify completion of four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. All continuing legal education courses shall meet the requirements of California Code, Business and Professions Code - BPC § 6070. Certification of these continuing education requirements shall be made with the paralegal's supervising attorney. The paralegal shall be responsible for keeping record of the paralegal's certifications.

OTHER REQUIREMENTS

Must be able to travel to various locations within and outside the City of Berkeley to fulfill the job responsibilities. When driving on City business, the incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.

TOOLS AND EQUIPMENT

Personal computer, including various software; phone; calculator; copy and facsimile machine.

PHYSICAL AND MENTAL REQUIREMENTS

Frequent walking, standing, sitting, kneeling, squatting, and twisting and bending at the waist. Ability to speak and hear well enough to communicate and take direction in person, over the telephone, and in the courtroom. Ability to read standard text, fine print, various handwritings, view a computer monitor, and to drive. May be required to lift up to 25 pounds. Manual dexterity to handwrite and/or use a computer keyboard. Ability to perform daily tasks with independent body mobility, agility, and stamina sufficient to stand, or sit, walk, stoop, and bend routinely for prolonged periods. Ability to operate office equipment requiring repetitive hand movement and fine coordination, including use of a computer keyboard. Ability to independently reason and analyze data, and to reach objective conclusions. Ability to work under stressful conditions, deadlines, and competing priorities. Ability to work with other individuals successfully and collaboratively.

WORKING CONDITIONS

Work is performed in a typical temperature-controlled office environment subject to typical office noise and environment. Positions may be required to work outside of normal business including evenings and weekends.

CLASSIFICATION HISTORY

Classification Code: TBD
Classification Established: TBD
FLSA Status: Non-Exempt (Overtime)
Representation Unit: Unrepresented
Probationary Period: One Year
Workers' Comp Code: 8810



Office of the City Manager

CONSENT CALENDAR

December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Aram Kouyoumdjian, Director of Human Resources

Subject: Revise Job Class Specifications – Communications Specialist

RECOMMENDATION

Adopt a Resolution (1) revising the Communications Specialist job class specifications to allow Charter departments and offices to utilize the classification and (2) providing a 5% differential to Communication Specialists assigned to the City Manager's Office.

FISCAL IMPACT

The modification will add a 5% differential to the base pay of Communications Specialists assigned to the City Manager's Office.

CURRENT SITUATION AND ITS EFFECTS

Communications Specialists – who are housed in the City Manager's Office and report to the Communications Director – perform professional communication duties to facilitate dissemination of information to the public and media. Charter departments and offices, including the Office of the Director of Police Accountability, Library, and Rent Board, have also identified a need for professional public communication support. Expanding the job class to include Charter departments and offices would allow them to hire and oversee employees who perform this work. Adding a 5% differential for Communications Specialists assigned to the City Manager's Office would recognize the Citywide breadth of their duties, as opposed to department-specific communications.

BACKGROUND

The proposed modifications to the class specifications were unanimously approved by the Personnel Board.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

These changes will ensure that Charter departments and offices are able to utilize the Communications Specialist classification for their communications and public information-related needs, and that Communications Specialists assigned to the City Manager's Office are recognized for the Citywide breadth of their work.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

ATTACHMENTS

1: Resolution

Exhibit A: Communications Specialist – Revised Job Class Specifications

RESOLUTION NO. XX,XXX- N.S.

REVISE JOB CLASS SPECIFICATIONS – COMMUNICATIONS SPECIALIST

WHEREAS, the Human Resources Department maintains the Classification and Compensation plan for the City of Berkeley; and

WHEREAS, job specifications are foundational components of the City's Classification and Compensation plan; and

WHEREAS, Communications Specialists are currently housed in the City Manager's Office, report to the Communications Director, and perform professional communication duties to facilitate dissemination of information to the public and media; and

WHEREAS, Charter departments and offices, including the Office of the Director of Police Accountability, Library, and Rent Board, have also identified a need for professional public communication support; and

WHEREAS, expanding the job class specifications to include Charter departments and offices would allow them to hire and oversee employees who perform this work; and

WHEREAS, adding a 5% differential for Communications Specialists assigned to the City Manager's Office would recognize the Citywide breadth of their duties, as opposed to department-specific communications.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the job specifications for the Communications Specialist classification are revised to allow utilization of the classification by Charter departments and offices, as shown in Exhibit A, effective December 10, 2024;

BE IT FURTHER RESOLVED that the Unrepresented Employee Manual be revised to add a 5% differential for Communications Specialists assigned to the City Manager's Office.

Exhibit A:

Communications Specialist – Revised Job Class Specifications

EXHIBIT A

COMMUNICATIONS SPECIALIST

CLASS CODE

9011

SALARY

\$49.24 - \$58.41 Hourly
\$3,938.99 - \$4,673.03 Biweekly
\$8,534.48 - \$10,124.89 Monthly
\$102,413.79 - \$121,498.72 Annually

ESTABLISHED DATE

September 14, 2021

REVISION DATE

June 3, 2024

Description

DEFINITION

Under general supervision, performs professional public communication duties to facilitate Citywide initiatives that include the coordination and dissemination of information to the public and media; develops methods and techniques for accomplishing improved communication between the general community, special targeted audiences, the media and the City; and provides professional level support to the Communications Director/Assistant to the City Manager; or the director of a charter department/office.

CLASS CHARACTERISTICS

This is the journey level class, fully competent to perform responsible and difficult communications duties in support of various departments. Incumbents are expected to exercise independent judgment in the development and implementation of communications strategies.

Example of Duties

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Coordinates and performs professional public service communication duties involving the coordination and dissemination of information to the public and media; develops methods and techniques for accomplishing improved communication between the City and general community;

2. Collaborates with City staff to develop a comprehensive communication plan; outlines the City's communication objectives, identifies tools and activities to implement those objectives; improves public access to timely, accurate, helpful information about the City and its services; provides the public with a variety of easy and accessible ways to engage with the City;
3. Develops and utilizes communication strategies to inform and promote City activities, both internally and externally, through written and visual communications with distribution through a variety of channels, including digital platforms such as the web and social media, and print; creates and writes daily content regarding City news and events;
4. Serves as back up to the Communications Director or the director of a charter department/office in crisis communications efforts in emergency situations; under the Incident Command System, would serve as lead PIO;
5. Develops, implements and coordinates outreach programs for community engagement; strengthens social media outreach; proactively addresses issues and misinformation through communication;
6. Analyzes the effectiveness of communications and outreach efforts via digital analytics and quantitative and qualitative data;
7. Coordinates the creation and dissemination of assets and resources designed to serve the public through information; writes and creates news and informational content via print, digital and multimedia platforms;
8. Responds to public, radio, television, print media and other electronic media and forums with Information about programs and services as well as unusual circumstances/situations of immediate public interest; will act as a City media representative and spokesperson;
9. Coordinates with departments to ensure information to the community is clear, accurate and Comprehensive; works with staff to plan, organize and launch programs; writes copy for materials of public interest;
10. Develops positive relationships with media by proactively reaching out to them with City news and information and preparing news releases; researches and organizes information and material and writes copy; be available to the media to ensure information is being provided in an effective and efficient manner;
11. Provides technical assistance to City management and staff on digital communications software, how to effectively talk with the news media, and social media best practices;
12. Builds and maintains positive working relationships with co-workers, other employees and the public using principles of good customer service;
13. Performs related duties as assigned.

Knowledge and Abilities

Note: The level and scope of the knowledges and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Principles, best practices and modern techniques of public information, dissemination, communication program development, media relations, crisis communication, and content-marketing;
2. Techniques of effective interviewing, writing, layout, editing, and multimedia production;
3. Methods and procedures to utilize computer applications and technology related to the work, including but not limited to, web design and maintenance, photography, video production, presentation software, and image editing software;
4. Information dissemination techniques and method;
5. Methods and techniques of clear, concise and accurate oral and written communications.

Ability to:

1. Develop and manage complex communication projects in support of City operations;
2. Effectively prepare and deliver oral presentations and compose clear and organized correspondence, reports, press releases, proclamations, speeches, articles and other written materials;
3. Effectively represent the City with governmental agencies, news media, community groups, employee groups, and various business and professional organizations;
4. Communicate technical information including complex rules, regulations, legislation, and laws in a manner that is appropriate for the intended audience;
5. Use sound judgment in recognizing scope of authority;
6. Operate and use modern office equipment including computers and applicable software;
7. Establish and maintain effective working relationships with those contacted in the course of work;
8. Communicate clearly and concisely, both orally and in writing;
9. Work nights and weekends.

Minimum Qualifications

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to a Bachelor's degree from an accredited college or university with major coursework in journalism, communications, public relations, or a related field and four years of responsible professional public communications, media relations, public relations or content-development experience including the development and implementation of communication programs.

OTHER REQUIREMENTS:

Revise Job Class Specifications – Communications Specialist

Consent Calendar
December 10, 2024

Must be able to travel to various locations within and outside the City of Berkeley to meet program needs and to fulfill the job responsibilities. When driving on City business, the incumbent is required to maintain a valid California driver's license as well as a satisfactory driving record.

Classification History

Established: 09/2021

Revised: 06/2024 – Add charter departments and offices



Office of the City Manager

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Aram Kouyoumdjian, Director of Human Resources

Subject: Personnel Rule 9.03 Revision: Promotion Through a Non-Competitive Process

RECOMMENDATION

Adopt a Resolution amending Section 9.03 of the City's Personnel Rules and Regulations, "Promotion Through a Non-Competitive Personnel Action," to add classifications including Deputy City Attorney I, II, III, and IV; Police Officer Recruit and Police Officer; Public Safety Dispatcher I and Public Safety Dispatcher II; Hazardous Materials Specialist I and Hazardous Materials Specialist II; and Housing Inspector I (Certified) and Housing Inspector II (Certified).

FISCAL IMPACTS OF RECOMMENDATION

Departments will absorb fiscal impacts of promotional advancement.

CURRENT SITUATION AND ITS EFFECTS

Section 9.03 of the City's Personnel Rules and Regulations provides an administrative mechanism for internal promotion through a non-competitive process in certain classification series (e.g., Behavioral Health Clinician I to Behavioral Health Clinician II). Proposed modifications to Section 9.03 seek to update the language of the rule and to add the following classifications to the list of job series eligible for internal promotion without a competitive process:

- Hazardous Materials Specialist I to Hazardous Materials Specialist II
- Housing Inspector I (Certified) to Housing Inspector II (Certified)
- Public Safety Dispatcher I to Public Safety Dispatcher II
- Police Officer Recruit to Police Officer
- Deputy City Attorney Series (I, II, III, and IV)

BACKGROUND

Proposed modifications to Section 9.03 were considered by the Personnel Board at its meeting of November 4, 2024 and approved by unanimous vote.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The recommendation is to improve the efficiency of an internal administrative mechanism to allow for flexibly-staffed classifications and permit employees to advance to the higher classification when an employee attains licensure, certification or experience, as an alternative to conducting a prolonged recruitment and establishing a promotional eligibility list.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

Attachments:

1: Resolution

Exhibit A: Section 9.03 of Personnel Rules and Regulations (Tracked Revisions)

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

PERSONNEL RULE 9.03 REVISION: PROMOTION THROUGH A NON-COMPETITIVE PERSONNEL ACTION

WHEREAS, the Human Resources Department is entrusted with the City's classification and compensation ("class and comp") function;

WHEREAS, Section 9.03 of the City's Personnel Rules and Regulations provides an administrative mechanism for internal promotion through a non-competitive process in certain classification series (e.g., Behavioral Health Clinician I to Behavioral Health Clinician II);

WHEREAS, proposed revisions to Section 9.03 to update the language of the rule and to add eligible classifications would enhance efficiencies in promotional hiring and would boost workforce retention;

WHEREAS, the proposed revisions were considered by the Personnel Board at its meeting of November 4, 2024 and approved by unanimous vote.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Section 9.03 of the City's Personnel Rules and Regulations be revised in the manner set forth in Exhibit A and that the following classifications be added to the list of job series eligible for internal promotion through a non-competitive process: Hazardous Materials Specialist I to Hazardous Materials Specialist II; Housing Inspector I (Certified) to Housing Inspector II (Certified); Public Safety Dispatcher I to Public Safety Dispatcher II; Police Officer Recruit to Police Officer; Deputy City Attorney Series (I, II, III, and IV).

Attachment:

Exhibit A: Section 9.03 of Personnel Rules and Regulations (Tracked Revisions)

EXHIBIT A

9.03 PROMOTION THROUGH A NON-COMPETITIVE PERSONNEL ACTION

Classifications that require professional licensure, certification or registration; or specific professional experience as a prerequisite at the journey level may be underfilled at the unlicensed or ~~inexperienced~~ entry level, pending qualification for the required license or experience based on the needs of the City. The City Manager or ~~his~~ their designated representative, ~~or for positions in the City Attorney's Office, the City Attorney -~~ may consider an employee for promotion to a higher class through a non-competitive personnel action if the employee meets all of the following criteria and has documented satisfactory performance in the ~~lower-level~~ lower-level classification:

- The higher classification licensed, or journey level position has been authorized for filling and the department has elected to fill it at the unlicensed or ~~inexperienced~~ entry-level classification; and
- The employee has obtained the essential qualifications of the journey level classification, as outlined in the classification specification (i.e., experience and education qualifications, the demonstrated knowledge, skills and abilities, etc.); and
- The employee has obtained the required California State license, professional registration or certification; or has obtained the required professional experience as identified in the job specification.

Certification or Licensed Classifications	
<i>Unlicensed Classification</i>	<i>Licensed Classification</i>
Behavioral Health Clinician I	Behavioral Health Clinician II
Assistant Environmental Health Specialist	Registered Environmental Health Specialist
Assistant Public Works Engineer	Assistant Civil Engineer
Psychiatrist I	Psychiatrist II
Psychiatrist II	Psychiatrist III
Public Health Physician	Public Health Physician (Certified)
Traffic Engineering Assistant	Assistant Traffic Engineer

Experienced and Certified Classifications	
<i>~~Inexperienced~~ Entry-Level and/or Uncertified Classification</i>	<i>~~Experienced~~ Journey-Level and/or Certified Classification</i>
Building Inspector I (Certified)	Building Inspector II (Certified)
~~Hazardous Materials Specialist I~~	~~Hazardous Materials Specialist II~~
~~Housing Inspector I (Certified)~~	~~Housing Inspector II (Certified)~~



Experienced Entry to Journey-Level Classifications	
<i>~~Inexperienced~~ Trainee or Entry-Level Classification</i>	<i>~~Experienced~~ Journey-Level or Experienced Classification</i>
Librarian I	Librarian II
Public Safety Dispatcher I	Public Safety Dispatcher II
Police Officer Recruit	Police Officer
Deputy City Attorney I	Deputy City Attorney II
Deputy City Attorney II	Deputy City Attorney III
Deputy City Attorney III	Deputy City Attorney IV

If the department head determines that the employee meets the criteria outlined above, the department head ~~then~~ submits an ~~Employee Transaction Form~~ written request to the ~~Department Director~~ of Human Resources recommending promotion of the employee to the licensed or experienced journey-level classification, without requirement that an eligible list for the journey-level classification be established or certified for this appointment, with a copy of the required license. Upon determination that the criteria have been met, the employee will be advanced to the journey-level classification subject to the requirement to serve the appropriate probationary period, as outlined in the applicable ~~memorandum of agreement~~ collective bargaining agreement or employee manual.



Office of the City Manager

09

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Aram Kouyoumdjian, Director of Human Resources

Subject: Contract No. 32400151 Amendment: SDR Consulting for Classification and Compensation Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32400151 with SDR Consulting for classification and compensation services to cover the period of February 26, 2023 through June 30, 2026, for a total cost not to exceed \$150,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the contract is budgeted in the Human Resources Department through its contractual services allocations.

CURRENT SITUATION AND ITS EFFECTS

Human Resources Analysts in the HR Department are a small cadre entrusted with assignments spanning recruitment, exams, employee transactions, benefits, and workers' compensation, leaving little capacity for tasks related to classification and compensation ("class and comp"), which entails creating new job classifications (or updating them whenever necessary), performing salary surveys, and conducting desk audits.

As such, the HR Department collaborates with independent consultant Shelly Del Rosario (SDR Consulting) to expand its bandwidth and to provide these services to client departments in an efficient and objective manner. SDR Consulting has consistently delivered a high-caliber work product to the City.

BACKGROUND

As part of its reorganization over the last two years, the HR Department has engaged a pair of independent consultants – one of them being SDR Consulting – to ensure timely delivery of the City's "class and comp" needs.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Limited staffing in the HR Department's analyst rank and the City's ongoing needs for classification and compensation services necessitate the engagement of external consultants. Extension of a contract with SDR Consulting would bolster timely performance of classification and compensation studies that City departments need.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

Attachments:

1: Resolution

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

CONTRACT NO. 32400151 AMENDMENT: SDR CONSULTING FOR
CLASSIFICATION AND COMPENSATION SERVICES

WHEREAS, the Human Resources Department is entrusted with the City's classification and compensation ("class and comp") function;

WHEREAS, limited staffing in the HR Department requires engagement of independent contractors to perform class and comp work – creating new job classifications (or updating them), performing salary surveys, and conducting desk audits – in an efficient and timely manner;

WHEREAS, independent consultant Shelly Del Rosario, providing services as SDR Consulting, has been performing such classification and compensation work for the City and consistently delivering high-caliber product;

WHEREAS, extension of the SDR Contract would facilitate timely delivery of class and comp work needed by City departments.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32400151 with SDR Consulting for an amount not to exceed \$150,000 for the period covering February 23, 2023 through June 30, 2026; and

BE IT FURTHER RESOLVED that a record signature copy of said contract and any amendments be on file in the Office of the City Clerk.



Office of the City Manager

10

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Accept Grant Funds from the U.S. Department of Energy's Zero Codes Award and contract with City and County of San Francisco to develop, implement, and enforce Building Performance Standards

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or their designee to accept the U.S. Department of Energy's Assistance for adoption of the "Latest and Zero Building Energy Codes" in the amount of \$5,729,943, and negotiate and execute a contract and any amendments, extensions, or change orders with City and County of San Francisco, to develop Building Performance Standards, for the duration of January 1, 2025 through December 31, 2033.

FISCAL IMPACTS OF RECOMMENDATION

There is no match requirement or leveraging of other funds required to receive this grant award. The total funding available for this project is \$5,729,943, which will be deposited into Fund 336 (One-Time-Grant). The grant will fund City staffing, including a new Community Services Specialist III position, to manage Building Performance Standards (BPS) development and implementation, consultant fees for technical assistance and equitable development of BPS with the community, software improvements, supportive programs to help equity priority buildings comply with the new BPS requirements, and other eligible expenses.

CURRENT SITUATION AND ITS EFFECTS

The U.S. Department of Energy (DOE) has jointly awarded the City of Berkeley and the City and County of San Francisco \$19.9 million over nine years to develop, implement, and enforce BPS for large multifamily and commercial buildings. Of the total amount, the City of Berkeley will receive \$5,729,944 over the grant period. The City and County of San Francisco will serve as the prime recipient for this funding opportunity, and the City of Berkeley will be a subrecipient to the City and County of San Francisco.

The DOE's Latest and Zero Building Energy Codes award¹, a program created under the Inflation Reduction Act, provides funding to cities and states to develop, implement, and enforce the latest building energy codes, zero energy building codes, or equivalents. These include Building Performance Standards, which are policies that require existing buildings to meet certain performance levels over time. They provide building owners with discrete energy and/or greenhouse gas emissions reduction targets that align with a jurisdiction's climate action goals, allowing building owners to plan and incorporate upgrades within their building's life cycle. The DOE's Zero Codes funding will support Berkeley's efforts to develop a local BPS to help reach climate action goals and equitably decarbonize existing buildings. The grant would require Berkeley to develop and adopt a BPS policy by the end of 2027.

The primary goals of the award are:

1. Adopt, implement, and enforce BPS in Berkeley and San Francisco
2. Work with community partners to ensure equity priority building compliance with the BPS requirements
3. Collaboratively develop a model BPS based on San Francisco and Berkeley's efforts that could be adopted by cities across the Bay Area
4. Leverage existing regional expertise and infrastructure to support region-wide readiness for BPS adoption

This grant provides funding to conduct robust community engagement around the development of the BPS requirements and establish new supportive programs to ensure equity priority buildings have the necessary support to achieve future adopted BPS requirements. Equity priority buildings are likely to include building owners with less access to capital and less advanced building energy management systems, such as affordable housing, non-profits, religious worship, and public assembly buildings.

The grant will also support the development of a model BPS policy and new BPS resources, including case studies, retrofit guides, example building stock analyses, software configuration templates, and/or shared software resources, that could enable other Bay Area cities to work toward BPS adoption.

The work that will be completed under this grant is a Strategic Plan Priority Project, advancing the City's goals to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

BACKGROUND

In 2019, the Berkeley City Council declared a Climate Emergency and proposed a goal of becoming Fossil Fuel-Free City. In 2021, the Council adopted a resolution to join the

¹ <https://www.energy.gov/articles/biden-harris-administration-announces-530-million-building-energy-efficiency-and>

Cities Race to Zero Campaign, committing to reduce emissions 60.5% from 2018 levels by 2030. To reach these goals, further emissions reduction is needed from Berkeley's building sector, which accounts for 43% of Berkeley's greenhouse gas emissions.

In 2020, Berkeley City Council amended Berkeley's Building Emissions Saving Ordinance (BESO), directing staff to develop energy upgrade requirements, such as Building Performance Standards, for Council's consideration. Additionally, Berkeley's Existing Building Electrification Strategy (BEBES) identified Building Performance Standards as a primary policy strategy to equitably decarbonize Berkeley's existing buildings.

In early 2023, Berkeley joined the National Building Performance Standard Coalition to accelerate an equitable transition off fossil fuels. By joining the Coalition, Berkeley committed to inclusively design and implement equitable Building Performance Standards. The State of California also joined the National BPS coalition and, through Senate Bill 48, the California Energy Commission will develop a BPS strategy by July, 1 2026. Similar to the State's energy benchmarking program, local BPS policies would be exempt from the State's BPS requirements.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Building Performance Standards will support Berkeley's efforts to ensure a just transition and achieve its climate action goals by developing equitable energy and/or greenhouse emissions reduction targets for Berkeley's large buildings with the community. These targets allow building owners to plan and incorporate upgrades within their building's lifecycle. BPS requirements will also help Berkeley become a fossil fuel free city and community by transitioning Berkeley's large buildings away from fossil fuels to clean, renewable electricity.

RATIONALE FOR RECOMMENDATION

Accepting this grant funding would allow the City to advance necessary work to implement Berkeley's Existing Building Electrification Strategy by creating Building Performance Standards for Berkeley's large buildings. This grant would also provide funding to support equity priority buildings in achieving the new requirements.

Acceptance of this grant funding would not commit the City to any specific policy outcome; it commits the City to develop BPS consistent with the City's goal to be net zero emissions by 2045, without dictating the specific content of the standards themselves. The BPS would be a product of robust community engagement and would require future adoption by City Council.

ALTERNATIVE ACTIONS CONSIDERED

None.

Accept Grant Funds from U.S. Department of Energy's Zero Codes Award
and contract with the City and County of San Francisco

CONSENT CALENDAR
December 10, 2024

CONTACT PERSON

Jordan Klein, Director, Planning and Development Department, (510) 981-7534

Attachments:

1: Resolution

2: Press release – San Francisco Office of the Mayor - September 13, 2024

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

RESOLUTION TO ACCEPT GRANT FUNDS FROM THE U.S. DEPARTMENT OF ENERGY'S ZERO CODES AWARD AND CONTRACT WITH THE CITY AND COUNTY OF SAN FRANCISCO TO DEVELOP, IMPLEMENT, AND ENFORCE BUILDING PERFORMANCE STANDARDS

WHEREAS, on June 2, 2009, the Berkeley City Council adopted the Berkeley Climate Action Plan to reduce greenhouse gas emissions by 80% of Berkeley's 2000 emissions level; and

WHEREAS, on June 12, 2018, the Berkeley City Council declared a Climate Emergency and proposed a goal of becoming Fossil Fuel-Free City; and

WHEREAS, on December 1, 2020, Berkeley City Council amended the Building Emissions Saving Ordinance (BMC Chapter 19.81), directing staff to develop energy upgrade requirements for Council's consideration; and

WHEREAS, on November 30, 2021, Berkeley City Council adopted a resolution for the Cities Race to Zero Campaign to establish a 2030 emissions reduction target that reflects Berkeley's fair share of the 50% global reduction in CO₂e, committing to reduce emissions 60.5% from 2018 levels by 2030; and

WHEREAS, on April 30, 2024, the City of San Francisco, in partnership with the City of Berkeley as a co-applicant, submitted a joint proposal in response to the DOE's Latest and Zero Building Energy Codes Round 1 opportunity to fund the development, implementation, and enforcement of Building Performance Standards; and

WHEREAS, on August 26, 2024, the U.S. Department of Energy announced that the City of San Francisco and City of Berkeley's proposal was one of nineteen winners of the Zero Codes Round 1 funding; and

WHEREAS, the grant funding will lead to the adoption of Building Performance Standards for Berkeley's large buildings, develop new supportive programs for equity priority buildings, and support region-wide readiness for Building Performance Standards.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or their designee is authorized to accept the U.S. Department of Energy Assistance for the adoption of the "Latest and Zero Energy Building Codes" in the amount of \$5,729,943 and negotiate and execute a contract, amendments, extensions, or change orders with City and County of San Francisco for the duration of January 1, 2025 through December 31, 2033.

News

San Francisco Awarded \$14 Million Federal Grant to Advance Building Electrification Projects

San Francisco, in partnership with the City of Berkeley, receives funds to modernize and cut carbon emissions in large buildings as part of the historic Biden-Harris historic Inflation Reduction Act

September 13, 2024

San Francisco, CA – San Francisco and the City of Berkeley have been awarded a grant from the US Department of Energy \$19.9 million grant from the U.S. Department of Energy (DOE) to transform and modernize large buildings, including commercial and multi-family buildings. The regional grant, \$14.3 million of which will go to San Francisco, will help develop and implement equitable building performance standards (BPS) that will electrify buildings and eliminate emissions, and help move the Bay Area to a more resilient and equitable all-electric future.

Mayor London N. Breed has worked to expand access to clean and affordable electricity for residents across San Francisco. Under her leadership, the City has advanced programs that reduce carbon emissions and promote equitable access to clean energy, including discounts for 100% renewable energy for low-income customers and rebates to replace fossil fuel-powered appliances. This grant will help San Francisco achieve Mayor Breed's goal of eliminating emissions from all buildings by 2040.

"San Francisco has been a leader in pioneering bold climate solutions, reducing emissions by nearly 50% since 1990," said **San Francisco Mayor London N. Breed**. "Our Climate Action Plan sets out the path to continue to this work, and this grant will set the stage for electrifying San Francisco, Berkeley, and cities across the Bay Area, bringing us closer to a net zero emissions future. I want to thank President Biden

and Vice President Harris for their continued investment towards a stronger, better future for San Francisco.”

Building Performance Standards (BPS) are designed to reduce the carbon impact of communities by requiring existing buildings to meet energy and/or greenhouse gas emissions-based performance targets. San Francisco and Berkeley are one of 19 state and local governments awarded the grant to implement BPS, modernizing buildings to reduce emissions, improve health outcomes, and enhance climate resilience. The award and amount from the DOE is preliminary, subject to negotiations and final approval by the federal government. Once complete, the grant will run for a total of nine years.

“We’re thrilled to be awarded this grant opportunity from the U.S. Department of Energy to develop building performance standards with our community and help move our large buildings to a more climate friendly future,” said **City of Berkeley Mayor Jesse Arreguín**. “In early 2023, Berkeley joined the National Building Performance Standard Coalition to accelerate an equitable transition off fossil fuels. Alongside San Francisco, we look forward to creating a model policy that could be scaled throughout the region.”

The cities of San Francisco and Berkeley will collaborate with community partners to help Equity Priority Buildings in disadvantaged communities meet BPS outcomes without undue economic burden. As part of this effort, they will work with smaller Bay Area jurisdictions to establish a region-wide roadmap for BPS adoption and building decarbonization.

“I am grateful to see our shared vision for greenhouse gas reductions and equitable climate action affirmed by the Department of Energy with their grant award to San Francisco and Berkeley,” said **District 8 Supervisor Rafael Mandelman**. “San Francisco already has a long history of enacting cleaner building code and building operation requirements than those outlined by the State. These Building Performance Standards will continue to ensure San Francisco is a model for its dedication to innovation, modernization, and equitable climate action.”

San Francisco has long been recognized as a global sustainability leader, with the City recently being recognized as the top U.S. city by the American Council for an Energy Efficient Economy (ACEEE) in their 2024 [City Clean Energy Scorecard](#). Through Mayor Breed’s 2021 Climate Action Plan, the San Francisco Environment Department has continued to advance bold building policies and strategies that were informed by their Zero Emission Buildings Task Force—a broad group of labor, tenant, environmental, ownership, technical and municipal stakeholders.

“Reducing pollution from San Francisco’s oldest and largest buildings is a complex challenge that requires broad collaboration. This grant will not only cut emissions locally but also create a blueprint for cities across the nation. Our work will help millions tackle the climate crisis while improving the health outcomes and quality of life for communities nationwide,” said **Tyrone Jue, Director of the San Francisco Environment Department**.



Office of the City Manager

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Contract No. 112219-1 Amendment: Siemens Industry, Inc. for Fire and Life Safety Systems Maintenance

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 112219-1 with Siemens Industry, Inc. for Fire and Life Safety Systems Maintenance, increasing the current contract amount of \$100,000 for a total not to exceed amount of \$700,000 and extending the contract term through December 31, 2025.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this contract amendment is available in the FY2025 baseline Building Management Fund 636, General Fund 011, and Off-Street Parking Fund 627. Annual funding for subsequent fiscal years will be subject to appropriation.

CURRENT SITUATION AND ITS EFFECTS

The City's current contract with Siemens supports compliance with the maintenance of the City's fire and life safety systems, along with monitoring equipment. Siemens also performs required inspections and testing of fire alarm and sprinkler systems. These systems are essential for protecting both City staff and residents. Siemens also provides on-call assistance and repairs as needed.

Amending the existing contract supports the Strategic Plan Priority of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

On September 17, 2015, Public Works released a Request for Proposal (Specification No. 16-10976-c) for fire alarm and safety systems. Three proposals were received and Public Works staff determined that Siemens was the most responsive and responsible bidder that met the specifications. On the authority of Resolution Number 67,343-N.S., the City contracted with Siemens Industry, Inc. for fire and life safety system maintenance.

On November 30, 2021, City Council authorized the City Manager to execute a Contract Amendment to increase the contract's not to exceed amount to \$600,000 and to extend the contract term through December 31, 2024.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental sustainability or climate impacts associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Contracted services are required as the City does not have the personnel or expertise to ensure compliance with testing and monitoring of the fire alarm and life safety systems in City buildings.

ALTERNATIVE ACTIONS CONSIDERED

None. The City must ensure that its fire alarm and life safety equipment is operational in City facilities to protect both staff and residents. If the City decides to not amend this agreement, the City will potentially need to look into procuring these services with another vendor, which could cause delays in service and increased costs. Public Works is planning to release an RFP for this service in 2025, so this amendment will give the department the necessary time to complete this solicitation.

CONTACT PERSON

Joy Brown, Operations Manager, Public Works, (510) 981-6629
Aaron Baker, Facilities Superintendent, Public Works, (510) 981-6452
Peni Basalusalu, Deputy Director, Public Works, (510) 981-6485
Tucker Brofft, Senior Management Analyst, Public Works, (510) 981-5375

Attachments:

1: Resolution

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

CONTRACT NO. 112219-1 AMENDMENT: SIEMENS INDUSTRY, INC. FOR FIRE
AND LIFE SAFETY SYSTEMS MAINTENANCE

WHEREAS, the City buildings require monitoring and testing of installed Fire and Life Safety Systems; and

WHEREAS, the City does not have the specialized training or staff to perform this work; and

WHEREAS, on September 17, 2015, Public Works released a Request for Proposal (Specification No. 16-10976-c) for fire alarm and safety systems; and

WHEREAS, three proposals were received and Public Works staff determined that Siemens was the most responsive and responsible bidder that met the specifications; and

WHEREAS on January 19, 2016, City Council authorized the award of the contract to Siemens Industry Inc., Resolution 67,343 -N.S.; and

WHEREAS, on November 30, 2021, City Council authorized the City Manager to execute a Contract Amendment to increase the Contract's not to exceed amount to \$600,000 and to extend the Contract through December 31, 2024; and

WHEREAS, funding is available in the FY2025 baseline Building Management Fund 636, General Fund 011, Off-Street Parking Fund 627 and annual funding for subsequent fiscal years will be subject to appropriation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute an amendment to Contract No. 112219-1 with Siemens Industry, Inc for fire and life safety testing, monitoring and service, increasing the contract's total not to exceed \$700,000 and extending the contract term through December 31, 2025.



Office of the City Manager

CONSENT CALENDAR

December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Contract: Terocons Inc. for Sacramento Street Pedestrian Safety Project

RECOMMENDATION

Adopt a Resolution:

1. Approving plans and specifications for the Sacramento Street Pedestrian Safety Project ("Project"), Specification No. 24-11643-C;
2. Accepting the bid of Terocons Inc., the lowest responsive and responsible bidder; and
3. Authorizing the City Manager to execute a contract with Terocons Inc. and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved plans and specifications, in an amount not to exceed \$973,638, which includes a 15% contingency for unforeseen circumstances.

FISCAL IMPACTS OF RECOMMENDATION

The construction budget for the Sacramento Street Pedestrian Safety Project is \$880,000, which includes a 10% contingency. Funding is available in the FY2025 budget from the funding sources indicated below:

Construction Funding for Sacramento Street Pedestrian Safety Project

State Grants (Fund 306 – Highway Safety Improvement Program).....	\$250,000
Alameda County Measure BB (Fund 135 – Bike and Pedestrian).....	\$239,689
Alameda County Measure B (Fund 130 – Local Streets & Roads).....	\$483,949
Total Project Funding	\$973,638

Low Bid by Terocons Inc.	\$846,642
<u>15% Contingency</u>	<u>\$126,996</u>
Total Not-To-Exceed Construction Cost	\$973,638

CURRENT SITUATION AND ITS EFFECTS

The primary purpose of the Sacramento Street Pedestrian Safety Project is to improve safety for pedestrians and bicyclists crossing Sacramento Street in south Berkeley, in

accordance with the City's Vision Zero Action Plan which establishes a strategy to eliminate all traffic fatalities and severe injuries by 2028 while increasing safe, healthy, and equitable mobility for all. The Sacramento Street Pedestrian Safety Project is intended to reduce collisions caused by driver violation of the pedestrian right of way by making pedestrians more visible as they cross the street and reducing the speed of turning vehicles at crosswalks. Sacramento Street is identified as a high-injury street in the Vision Zero Action Plan and 2020 Pedestrian Plan.

The project parameters include the Sacramento Street corridor from Fairview Street to Oregon Street. The Project will construct the following elements on Sacramento Street:

- Median modifications, including pedestrian refuge islands at Oregon Street, Julia Street, Prince Street, and Fairview Street;
- Curb ramps at Oregon Street;
- Solar-powered Rectangular Rapid Flashing Beacon (RRFB) installation, including pedestrian push buttons near curb ramps and bicyclist push buttons near curbs, for crossing Sacramento Street at Oregon Street, Prince Street, and Fairview Street; and
- Slurry seal and new pavement striping along approximately ½-mile of Sacramento Street, from Fairview Street to Oregon Street.

On October 3, 2024 seven bids were received and opened for construction of the Project, in amounts ranging from \$846,642 to \$1,539,426. The determination of the low bidder was based on the total price of all bid items, as described in the bid documents. The low bidder is Terocons Inc., with a bid of \$846,642, or \$46,642 above the engineer's estimate of \$800,000. Staff have verified that Terocons Inc. is the lowest, responsive and responsible bidder in accordance with the Public Contract Code.

The Living Wage Ordinance does not apply to this project as the Public Works Department's construction contracts are, pursuant to City policy, subject to State prevailing wage laws. Terocons Inc. has submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement applies to this project because the estimated construction cost exceeds \$500,000. As a result, the successful bidder and all subcontractors will be required to sign an agreement to be bound by the terms of the Community Workforce Agreement.

Sacramento Street Pedestrian Safety Project is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

BACKGROUND

On July 28, 2020, City Council adopted resolution no. 69,525-N.S. authorizing the City Manager to submit a grant application to the California Highway Safety Improvement Program (HSIP) for the amount of up to \$250,000, accept the grants awarded, and execute any resultant agreements and amendments. On December 1, 2020 City

Council adopted resolution no. 69,634-N.S., which updated resolution no. 69,525-N.S by identifying local matching funds.

An agreement between the City and Caltrans was executed on August 12, 2021 under contract no 42200002, providing administrative provisions for future Caltrans grants using State funds. \$250,000 in HSIP construction funds were allocated to the City on December 21, 2023. A Program Supplemental Agreement (PSA) was executed on May 6, 2024 as contract no. 42200002-1 formalizing this funding.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The purpose of the Project is to provide safer crossings for pedestrians and bicyclists on Sacramento Street, which will encourage these sustainable modes of transportation. Increasing walking and biking would help the City comply with the 2009 Berkeley Climate Action Plan Policy 5.a that calls for expanding and improving Berkeley's pedestrian and bicycle infrastructure. The Climate Action Plan further states that transportation modes such as public transit, walking, and bicycling must become the primary means of fulfilling the City's mobility needs in order to meet these targets.

RATIONALE FOR RECOMMENDATION

The proposed Project components were designed to address pedestrian and bicycle crossing safety needs along Sacramento Street, in accordance with the 2020 Pedestrian Plan and the Vision Zero Action Plan. Furthermore, the Vision Zero Action Plan classifies Sacramento Street as a High-Injury Street in an Equity Priority Area. An Equity Priority Area considers historic data in prioritizing infrastructure projects that remedy systemic inequality. As a whole, the work of this Project is a significant step forward to improve safety at intersection crossings and for people of all ages and abilities to traverse the Sacramento Street corridor more safely by walking or biking.

Approval of the plans and specifications, accepting the bid of Terocons Inc. as the lowest responsive and responsible bidder, and authorizing the City Manager to execute a contract with Terocons Inc. will keep the Project on schedule in accordance with the grant funding agreement.

ALTERNATIVE ACTIONS CONSIDERED

Council could opt not to take the proposed actions at this time and instead defer this item to a future Council agenda. Such a decision would delay the construction of the Project. Delays to the onset of construction could jeopardize successful project delivery as the City currently has the funding to complete the work and a design team on board that can provide continuity through the construction process. Delayed construction may also contribute to increased construction costs due to inflation and the need to revisit design documents to address unforeseen future construction activity or design policy changes.

CONTACT PERSON

Wahid Amiri, Deputy Director of Public Works, Public Works, 510-981-6396
Kenneth Jung, Supervising Civil Engineer, Public Works, 510-981-7028
Jesse Peoples, Associate Civil Engineer, Public Works, 510-981-6449

Contract: Terocons Inc.
for Sacramento Street Pedestrian Safety Project

CONSENT CALENDAR
December 10, 2024

Attachments:

- 1: Resolution
- 2: Site Map
- 3: Abstract of Bids

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

CONTRACT: TEROCONS INC. FOR SACRAMENTO STREET PEDESTRIAN SAFETY PROJECT

WHEREAS, the design of the Sacramento Street Pedestrian Safety Project (Specification No. 24-11643-C) consists of pedestrian and bicycle safety improvements across Sacramento Street at Oregon Street, Julia Street, Tyler Street, Prince Street, Woolsey Street, and Fairview Street; and

WHEREAS, the Project is identified as a priority project in the City's 2020 Pedestrian Plan; and

WHEREAS, funds are available in FY 2025 budget in the Capital Grants – State Fund (Fund 306), the Alameda County Measure BB Bike and Pedestrian Fund (Fund 135), and the Alameda County Measure B Local Streets and Roads Fund (Fund 130); and

WHEREAS, no other funding is required, and no other project will be delayed due to this expenditure; and

WHEREAS, City Council adopted resolutions no. 69,525-N.S. and 69,634-N.S. which authorized the City Manager to submit a grant application to the California Highway Safety Improvement Program (HSIP) for the amount of up to \$250,000, accept the grants awarded, and execute any resultant agreements and amendments; and

WHEREAS, the City applied for and received HSIP grant funding in the amount of \$250,000 for construction of improvements on Sacramento Street; and

WHEREAS, the HSIP construction funds were allocated to the City on December 21, 2023; and

WHEREAS, on August 30, 2024 the City released an Invitation for Bids for the work of this Project; and

WHEREAS, Terocons Inc. was found to be the lowest responsive and responsible bidder; and

WHEREAS, the City has neither the staff nor the equipment needed to undertake construction of this Project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specifications for the Sacramento Pedestrian Safety Project (Specification No. 24-11643-C) are approved.

December 10, 2024

BE IT FURTHER RESOLVED that the Council of the City of Berkeley accepts the bid of Terocons Inc. as the lowest responsive and responsible bidder.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved Plans and Specifications with Terocons Inc. for an amount not to exceed \$973,638, which includes a 15 percent construction contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments will be on file in the Office of the City Clerk.

Attachment 2

Sacramento Street Pedestrian Safety Project (Specification No. 24-11643-C)



 - Approximate location of project work



**City of Berkeley
Abstract of Bid Worksheet**

Finance Department
General Services Division

Spec No. 24-11643-C

Bid Date: 10/3/2024

FOR: [Sacramento Pedestrian Safety Project](#)

required w/ bid

	Bidders	Base Bid	Bid Bond	Addendum (1-2)	Experience - Fin. Qual.	Taxpayer ID	Opp.States	Nuclear Free	EBO	Sanctuary City
1	Mark Lee & Yong	\$1,539,426.00	X	X	X	X	X	X	X	X
2	Terocons Inc	\$846,642.00	X	X	X	X	X	X	X	X
3	Sposeto	\$1,053,926.50	X	X	X	X	X	X	X	X
4	Rapid Grading Services	\$915,225.34	X	X	X	X	X	X	X	X
5	Kerex Engineering	\$979,640.00	X	X	X	X	X	X	X	X
6	Zara Construction	\$1,066,347.00	X	X	X	X	X	X	X	X
7	Koios Engineering	\$1,346,258.00	X	X	X	X	X	X	X	X

Bid Recorder: Roop Soorma

R Soorma

Date Oct 24, 2024

Bid Opener: Clay Stilwell

Clay Stilwell

Date **Oct 24, 2024**

Project Manager: Jesse Peoples

Jesse Peoples

Date Oct 24, 2024

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7320 TDD: 510.981.6903 Fax: 510.981.7390
E-mail: finance@ci.berkeley.ca.us

24-11643-C - Abstract (1)

Final Audit Report

2024-10-24

Created:	2024-10-24
By:	Talia Stewart (TStewart@berkeleyca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAABQrrLQIWmeKm-xJLn052uW1yAGFpq2C

"24-11643-C - Abstract (1)" History

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-  Document e-signed by Roopreet Soorma (RSoorma@berkeleyca.gov)
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-  Agreement completed.
2024-10-24 - 9:50:27 PM GMT



Office of the City Manager

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Contract No. 32000078 Amendment: DC Electric Group, Inc for On-Call Electrical Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 32000078 between the City and DC Electric Group, Inc. for supplemental On-Call electrical services to support the Public Works Electrical Unit, increasing the current contract spending authority by \$250,000 for a new total not to exceed amount of \$725,000.

FISCAL IMPACTS OF RECOMMENDATION

This is an On-Call Contract; costs are incurred when services are performed. Initial funding is available in FY25 Fund 134 and FY25 Fund 142. Additional funding will be appropriated as part of the FY25 Second Annual Appropriations Ordinance and in future fiscal years as needed.

CURRENT SITUATION AND ITS EFFECTS

The Public Works' Electrical Unit supports the City's electrical needs by installing, repairing and replacing electrical wiring and components in City facilities and maintains City assets which rely on electric energy to operate; assets such as Traffic Signals, Pedestrian Crossing Signals, Street Lights, Marina Pier Lights, and Park Lights. Public Works' Electrical Unit has been utilizing the on-call services of DC Electric Group to help resolve a back log of damaged Traffic Signals and Street Lights as well as to support the Unit with ongoing need for the repair of Traffic Signals and Street Lights damaged by vehicles. Increased contract spending authority is needed to be able to continue repairing damaged assets while also performing preventive maintenance on working assets to ensure community safety.

Amending the DC Electric Contract supports the City's Strategic Plan Priority of providing state-of-the art, well maintained infrastructure, amenities, and facilities.

BACKGROUND

On November 3, 2016, Public Works issued a Request for Proposals for On-Call Electrical Services to support the Public Works Facilities Electrical Unit (Specification

No. 16-11076-C.) Four proposals were submitted and two vendors were selected: DC Electric Group and Colombia Electric. On the authority of Resolution Number 68,007-N.S., the City contracted with DC Electric Group on June 1, 2017 and continues to utilize their on-call services to supplement the work of the City's Electrical Unit.

On July 26, 2022, City Council approved an amendment for a revised not to exceed amount of \$175,000 and to extend the contract through June 30, 2025.

On September 19, 2023, City Council approved an amendment for a revised not to exceed amount of \$475,000 and to extend the contract through June 30, 2026.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identified environmental or climate impacts associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

DC Electric Group continues to on-call services for the City to support the City's in-house Electrical Unit in maintaining the City's critical electrical assets and infrastructure. Without DC's services, needed maintenance and repairs would face delays.

Public Works is planning to release a solicitation for Electric Services in 2025, so this amendment gives the department time to complete the RFP process without causing delays or interruptions in service. In addition, the Electrical Unit is in the process of extending offers to hire two electricians to backfill long term vacancies.

ALTERNATIVE ACTIONS CONSIDERED

None. Public Works Electrical Unit does not have adequate resources to keep up with the ongoing maintenance and repairs of deployed electrical assets. It also does not have the capacity to provide services to install electrical wiring and components in new or renovated City facilities. Therefore, no alternative actions were considered.

CONTACT PERSON

Joy Brown, Operations Manager, Public Works, (510) 981-6629
Aaron Baker, Facilities Superintendent, Public Works, (510) 981-6452
Peni Basalusalu, Deputy Director, Public Works, (510) 981-6485
Tucker Brofft, Senior Management Analyst, Public Works, (510) 981-5375

Attachment:

1: Resolution

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

CONTRACT NO. 32000078 AMENDMENT: DC ELECTRICAL GROUP FOR ON-CALL ELECTRICAL SERVICES

WHEREAS, the City requires supplemental emergency and non-emergency on-call electrical services for the repair, maintenance and replacement of multiple types of electrical assets and for the maintenance and installation of electrical infrastructure in City facilities; and

WHEREAS, the City does not have sufficient resources to provide the required maintenance and repair of the City's electrical assets in a timely or cost-effective manner; and

WHEREAS, the City issued a Request for Proposal (RFP) Specification No. 16-11076-C for on-call electrical services on November 3, 2016, four contractors responded to the RFP on December 8, 2016; two contractors met all requirements and conditions of the RFP; and

WHEREAS, staff reviewed and evaluated all proposals submitted and on authority of Council Resolution No. 68,007-N.S., contracted with DC Electric Group on June 1, 2016; and

WHEREAS, on July 26, 2022, City Council authorized the City Manager to execute a Contract Amendment to increase the Contract's spending authority by \$100,000 for a new not to exceed amount of \$175,000 and to extend the Contract through June 30, 2025; and

WHEREAS, on September 19, 2023, City Council authorized the City Manager to execute a Contract Amendment to increase the Contract's spending authority by \$300,000 for a new not to exceed amount of \$475,000 and to extend the Contract through June 30, 2026; and

WHEREAS, this Contract is for on-call services only; no costs will be incurred until applicable City projects or emergency needs are identified and Contractor services are requested; and

WHEREAS, funding is available in the Street Light Assessment District Fund 142 and Measure BB – Local Streets and Road Fund 134 and additional funding will be appropriated as part of the FY25 Second Annual Appropriations Ordinance and in future fiscal years as needed.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an Amendment to Contract No. 32000078 with DC Electric Group for On-Call Electrical Services to increase the Contract's spending authority by \$250,000 for a new total not to exceed amount of \$725,000.



Office of the City Manager

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works, Director

Subject: Contract: Stommel Inc., dba Lehr for Hybrid Police Patrol Vehicles Supplies, Equipment, and Installation Services

RECOMMENDATION

Adopt a Resolution satisfying bid requirements of the City allowing the City to participate in competitively bid contracts, authorizing the City Manager to enter into contract with Stommel Inc. dba Lehr, for Hybrid Police Patrol vehicle supplies, equipment, and installation services with a contract term from December 15, 2024 to December 15, 2026 for an amount not to exceed \$400,000.00.

FISCAL IMPACTS OF RECOMMENDATION

Funding in the amount of \$400,000.00 will be available for FY 2025 in the baseline Public Works Equipment Replacement Fund. Additional funding will be made available and appropriated as needed in future fiscal year budgets.

CURRENT SITUATION AND ITS EFFECTS

The Police Department replaces patrol vehicles on a routine basis. Police Patrol vehicles require specialized equipment and installation. The contract with Stommel Inc. dba Lehr will provide supplies, equipment, and installation services for twenty-one (21) vehicles that have been previously purchased by the City. The City's competitive bidding requirements for contracting will be met utilizing the County of Orange contract No. MA-080-23011506.

These replacement vehicles are needed by the City's Police Department Patrol Division in their work to provide public safety services in Berkeley. This contract will support the City's Strategic Plan Priority Project, advancing our goal to create a resilient, safe, connected, and prepared city.

BACKGROUND

City Charter Article XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City utilizes pricing obtained by another entity through a competitive process. On January 16, 2024, the County of Orange entered into a contract for Patrol Vehicle Equipment, Supplies, and Equipment

Installation Services, contract No MA-080-23011506. Attachment A, Section 15 states that this contract will be extended to other California local and state governmental entities wishing to use the pre-negotiated prices and terms of this contract.

Throughout the year, the Department of Public Works purchases vehicles and equipment for the City's operating departments. These vehicles require specialized supplies/equipment and installation. This is paid for through the Equipment Replacement fund. If a purchase will exceed \$50,000, the Department of Finance, General Services Division solicits bids or "piggybacks" off competitively bid contacts to ensure the City's departments receive the best pricing.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Public Works Equipment Maintenance endeavors to procure the most fuel-efficient vehicles and equipment that are suitable for the required tasks. Equipment Maintenance also researches the feasibility and availability of fully electric vehicles and hybrid-electric powertrains to support the City's transition away from fossil fuels toward an all-electric fleet, where technically feasible.

RATIONALE FOR RECOMMENDATION

Hybrid Police patrol vehicles have been overdue for replacement and have been previously purchased. The majority of current police patrol vehicles chosen for replacement is over eight (8) years old and the oldest vehicle is fifteen (15) years old. The majority of these vehicles were purchased in 2016 with the replacement vehicles been purchased in 2023. Due to manufacturing delays, the replacement vehicles have been only recently available for delivery.

These vehicles require specialized supplies, equipment, and installation to ensure that they meet public safety and operational requirements. A contract is needed to secure additional supplies and installation services for these vehicles for the City. Piggybacking on pricing obtained through another public agency's competitive bidding process ensures that the City is receiving the most competitive pricing.

ALTERNATIVE ACTIONS CONSIDERED

None. The previously purchased vehicles require specialized supplies, equipment, and installation to meet operational requirements. City staff do not have the capacity for the upfitting of twenty-one vehicles.

CONTACT PERSON

Joy Brown, Operational Manager, (510) 981-6629
Sara Rubio, Associate Management Analyst, (510) 981-5372
Marcus Dinkins, Police Annuitant, (510) 981- 5871

Attachment:
1: Resolution

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

CONTRACT: STOMMEL INC, DBA LEHR, HYBRID POLICE PATROL VEHICLE
SUPPLIES/EQUIPMENT INSTALLATION SERVICES

WHEREAS, vehicle supplies/equipment and installation services are needed by the City Police Department in their work to provide public safety services in Berkeley; and

WHEREAS, twenty-one (21) hybrid Police patrol vehicles that have been previously purchased need specialized supplies/equipment and installation services to meet public safety and operational requirements; and

WHEREAS, City Charter XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive bid process; and

WHEREAS, County of Orange contract bid procedures satisfy the procurement requirements of the City of Berkeley; and

WHEREAS, On January 16, 2024, the County of Orange entered into a contract for Patrol Vehicle Equipment, Supplies, and Equipment Installation Services, contract No MA-080-23011506. Attachment A, Section 15 states that this contract will be extended to other California local and state governmental entities wishing to use the pre-negotiated prices and terms of this contract; and

WHEREAS, funds are available in the FY 2025 Equipment Replacement baseline budget and will be appropriated in future fiscal years.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorize to execute a contract for Hybrid Police Patrol vehicle supplies, equipment and installation services with Stommel Inc. dba Lehr for a contract term from December 15, 2024 to December 15, 2026 in the amount not to exceed \$400,000.00.



Office of the City Manager

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Purchase Order: Braun Northwest Inc. for Two (2) 2025 Ford F-450 North Star Engine Remount of Ambulance Bodies to New Chassis

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter allowing the City of Berkeley ("City") to participate in HGACBuy contract bid procedures and authorizing the City Manager to purchase two (2) 2025 Ford F-450 North Star Ambulance chassis with Braun Northwest, Inc. in an amount not to exceed \$430,000.00.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of two (2) 2025 Ford F-450 North Star ambulance chassis will not exceed \$430,000.00. This purchase total includes document fees, California tire fees and delivery charges. Funding for this purchase is available in the FY 2025 baseline Equipment Replacement Fund 671.

CURRENT SITUATION AND ITS EFFECTS

This purchase will replace the chassis of two (2) ambulances Equipment ID 19001 and 19003 that are nearing the end of useful service life as front line, initial response vehicles. Both vehicles were put in service in 2020 and are planned for replacement in July 2026. The average time to remount and upfit an ambulance is 12 plus months which is why the purchase is being requested at this time.

The existing ambulance bodies are customized for optimal use, are in good repair and will be remounted on new chassis. The practice of remounting ambulance bodies on new chassis rather than purchasing new ambulances is an effective cost saving measure as it will save over \$100,000.

These vehicles are used 24/7 by the City's Emergency Medical Services (EMS) Division in the course of their job duties.

This purchase agreement will support the City's Strategic Plan Goal of creating a resilient, safe, connected, and prepared City.

BACKGROUND

If a purchase request exceeds \$100,000.00, the Department of Finance, General Services Division solicits bids or “piggybacks” off competitively bid contracts to ensure the City’s departments are receiving the best pricing.

The City of Berkeley has been a no-cost member of the Houston-Galveston Area Council (HGACBuy), a Cooperative Purchasing Program that has offered inter-local purchasing since 2008. HGACBuy provides procurement services that make the government procurement process more efficient by establishing competitively priced contracts for goods and services made available to local governments nationwide.

All products and services offered through HGACBuy have been subjected to a public competitive bid process. On June 9, 2023, HGACBuy released a Request for Proposal No. AM 10-23 for Ambulances, EMS and Other Special Service Vehicles. The solicitation was nationally advertised for forty-eight days (48). On August 10, 2023, twenty-three (23) proposals were submitted and reviewed. On October 1, 2023, Houston-Galveston Area Council selected Braun Northwest, Inc. as the best responsive and responsible proposers to meet the specifications, thusly awarding Contract No. AM10-23

HGACBuy charges an order processing charge for each sale successfully completed through their contract. For this purchase a flat fee of \$4,000.00 will be paid directly to HGACBuy by Braun Northwest, Inc.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

For fleet purchases, Public Works staff researches the feasibility and availability of fully electric vehicles and hybrid-electric powertrains to support the City’s transition off fossil fuels. Staff research found that there are no viable electric or hybrid electric ambulance chassis for consideration. The Fire Department would like to transition its fleet of front-line EMS vehicles to electric. This is likely to not be financially feasible until all firehouses are remodeled/rebuilt to include the appropriate infrastructure and/or the price of electric ambulance vehicles decrease or additional revenue is identified.

RATIONALE FOR RECOMMENDATION

The vehicles are in-service now and the chassis are past their useful life. These vehicle bodies are in good repair and can be remounted on new chassis. A purchase order is needed to purchase new chassis and transfer the current ambulance bodies. Ambulances in good working condition are essential to respond, provide treatment and transport for members of our community that experience medical emergencies.

ALTERNATIVE ACTIONS CONSIDERED

None. The purchase of new ambulances is cost prohibitive.

Purchase Agreement with Braun Northwest, Inc. For
Two (2) 2025 North Star Engine Remount

CONSENT CALENDAR
December 10, 2025

CONTACT PERSON

Joy Brown, Operations Manager, (510) 981-6629

Don Colbert, Sr. Equipment Maintenance Supervisor, (510) 981-6467

David Sprague, Fire Chief (510) 981-3473

Attachment:

1: Resolution

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

PURCHASE ORDER WITH BRAUN NORTHWEST, INC FOR TWO (2) 2025 FORD F-450 NORTH START ENGINE REMOUNTS OF AMBULANCE BODIES TO NEW CHASSIS

WHEREAS, this purchase will replace engine chassis that are nearing the end of their useful service life as front line, initial response vehicles. Ambulances in good repair are needed by the City of Berkeley Fire Department to provide ambulatory services; and

WHEREAS, City Charter, by resolution, authorize the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive bid process; and

WHEREAS, On June 9, 2023, HGACBuy released a Request for Proposal No. AM 10-23 for Ambulances, EMS and Other Special Service Vehicles. The solicitation was nationally advertised for forty-eight days (48). On August 10, 2023, twenty-three (23) proposals were submitted and reviewed. On October 1, 2023, Houston-Galveston Area Council selected Braun Northwest, Inc. as the best responsive and responsible proposers to meet the specifications, thusly awarding Contract No. AM10-23; and

WHEREAS, funding in the amount of \$430,000.00 is available in the FY 2025 baseline budget in the Equipment Replacement Fund (671); and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for two (2) ambulance engine remounts to new chassis in the amount not to exceed \$430,000.00.



Office of the City Manager

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director of Public Works

Subject: Agreement Regarding Allocation of Costs for Railroad Crossing
Improvements for W-SW WBLS West Owner IX, L.P., a California limited
liability company and the City

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an agreement and any amendments with the W-SW WBLS West Owner IX, L.P., ("Developer") for payment for all improvements mitigating the impact of their Development (Project) at the Bancroft Way at-grade railroad crossing.

FISCAL IMPACTS OF RECOMMENDATION

Developer is responsible for all actual costs and expenses for the Union Pacific Railroad's (UPRR) performance of the safety improvement work at Bancroft Way crossing pertaining to their Project. One main purpose of this agreement is to document the process pursuant to which Developer shall assume responsibility for all such railroad costs.

The agreement further confirms that Developer and its contractor(s) are responsible for complying with all UPRR insurance and other requirements applicable to any work performed by the Developer with respect to Developer's portion of the Project Railroad Improvements.

Developer and City agree that Developer shall be responsible for making all payments to the UPRR. There is no fiscal impact to the City as a result of this agreement.

CURRENT SITUATION AND ITS EFFECTS

Within Project area there is an at-grade railroad crossing at Bancroft Way. The projected impacts of the Developer. The Development will require improvements to safely facilitate all road users through this intersection.

The City, Developer and UPRR have agreed on the Scope of Work for Developer's Work Associated with the Railroad Crossing at Bancroft Way, shown in Schedule 1 within Attachment 2.

BACKGROUND

The Developer is constructing a new Project at 747 Bancroft Way, which consists of a 159,143-square-foot, three-story building containing 124,539 square feet of research and development space and 34,604 square feet of light manufacturing space, and a surface parking lot containing 76 off-street parking spaces and five loading spaces.

Pursuant to Use Permit # ZP2021-0096, the Project is subject to certain conditions of approval that require Developer to coordinate with the UPRR, the California Public Utilities Commission (CPUC) and the City to improve the safety of all travelers at the Bancroft Way at-grade railroad crossing next to Project site.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Ensuring that the developer works with UPRR to make the Bancroft Way railroad crossing safe is critical to supporting biking and walking in Berkeley. Biking and walking are the most environmentally sustainable modes of transportation, and the City's Climate Action Plan seeks to make them the "primary means of transportation for Berkeley residents and visitors." Bancroft Way is a key connection in the biking and walking network, bringing people of all ages and abilities to and from Aquatic Park and the pedestrian and bicyclist bridge over I-80 to the waterfront. What's more, this development, and others nearby, will increase bike traffic, making it even more important to ensure safety for vulnerable road users.

RATIONALE FOR RECOMMENDATION

The UPRR does not enter into agreements with private entities. Therefore, the City will enter into an agreement with the UPRR on behalf of the Developer with the Developer is agreeing to pay all the associated UPRR costs.

ALTERNATIVE ACTIONS CONSIDERED

Since Union Pacific does not enter into agreements with private entities, the City is acting as the go-between between Developer and Union Pacific in order for the safety improvements to be implemented. If the City does not enter into this agreement, UPRR will not approve the project, therefore no alternatives are feasible.

CONTACT PERSON

Wahid Amiri, Deputy Director, (510) 981-6396

Hamid Mostowfi, Transportation Division Manager, (510) 981-6403

Attachments:

1. Resolution
2. C&M agreement with UPRR (Bancroft Way) DOT 751176H Berkeley CA
3. W-SW WBLS West Owner IX, L.P. Agreement re allocation of costs for railroad crossing

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

AGREEMENT: REIMBURSEMENT AGREEMENT WITH STEELWAVE
DEVELOPMENT FOR STEELWAVE'S CONSTRUCTION OF PUBLIC FACILITIES

WHEREAS, W-SW WBLS West Owner IX, L.P. is engaged in the development of certain real property located at 747 Bancroft Way in the City; and

WHEREAS, Within the development project area there is an at-grade railroad crossing at Bancroft; and

WHEREAS, The impacts of the W-SW WBLS West Owner IX, L.P. will require improvements to safely facilitate all road users through this intersection; and

WHEREAS, Development of the project under the use permit requires construction of certain traffic improvements, which consist of the portion of Union Pacific Railroad crossings safety improvements pertaining to the SteelWave project at Bancroft Way crossing, collectively "Public Facilities" in the project area that will serve W-SW WBLS West Owner IX, L.P. as well as the public; and

WHEREAS, Since Union Pacific does not enter into agreements with private entities the City will act as the go-between between Developer and Union Pacific in order for the safety improvements to be implemented; and

WHEREAS, Developer acknowledges responsibility and will pay for all actual costs and expenses for the UPRR parties performance of the safety improvement work pertaining to Developer's portion of the railroad improvements at the railroad crossing; and

WHEREAS, City of Berkeley will submit invoices for implementation of "Public Facilities" by Union Pacific to W-SW WBLS West Owner IX, L.P. for payment directly to Union Pacific.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a reimbursement agreement and any amendments with W-SW WBLS West Owner IX, L.P. for payment of implementation of Developer's portion of safety improvements by Union Pacific at railroad crossings at Bancroft Way is accepted. A record signature copy of said agreement and any amendments will be filed in the Office of the City Clerk.

**AGREEMENT RE ALLOCATION OF COSTS FOR RAILROAD CROSSING
IMPROVEMENTS FOR THE LAB BERKELEY**

This Agreement Regarding Allocation of Costs for Railroad Crossing Improvements for the LAB Berkeley (“Agreement”) is by and between W-SW WBLs West Owner IX, L.P., a Delaware limited partnership (“Developer”), and the City of Berkeley (“City”), and is effective this ___ day of _____, 2024.

RECITALS

- A.** Developer is developing a research and development campus at 2288 4th Street (fka 747 Bancroft Way), Berkeley known as the LAB Berkeley project consisting of a 159,143-square-foot, three-story building containing 124,539 square feet of research and development space and 34,604 square feet of light manufacturing space, and a surface parking lot containing 76 off-street parking spaces and five loading spaces. Developer (“Project”).
- B.** Developer is negotiating an agreement with the City regarding Developer undertaking certain off-site improvements (“Off-Site Work”), a small part of which Off-Site Work includes work which will take place on Union Pacific Railroad (UPRR) operating corridor within City of Berkeley. Developer has been coordinating with UPRR, the California Public Utilities Commission (“CPUC”), and the City to improve the safety of all travelers at the Bancroft Way at-grade railroad crossing near the Project site (“Crossing”). Developer, UPRR and the CPUC have agreed upon the nature and scope of the improvements which Developer will undertake on UPRR operating corridor all of which improvements are listed on Schedule 1 attached hereto (the improvements listed on Schedule 1 referred to hereinbelow collectively as the “Project Railroad Improvements”).
- C.** Because UPRR will not enter into an agreement with a private entity, the City and UPRR intend to enter into a Construction and Maintenance Agreement, in the form and substance attached hereto as **Exhibit A**, (“C&M Agreement”) pursuant to which City will agree to reimburse UPRR and/or UPRR’s third party consultants and contractors (collectively, the “UPRR Parties”) for actual costs incurred by the UPRR Parties for all project and construction management costs performed by the UPRR Parties during the construction activities in the railroad operating corridor for the Project Railroad Improvements (such UPRR estimated costs being referred to herein as “Railroad Costs”), on Exhibit C-1 of the C&M Agreement. For clarification, the C&M Agreement affects a larger scope of construction work, part of which will not be done by Developer. One main purpose of this Agreement is to document the process pursuant to which Developer shall assume responsibility for the actual Railroad Costs with respect to the Project Railroad Improvements, in recognition of the fact that, if Developer undertakes the Off-Site Work, the costs related to completion of the Project Railroad Improvements shall be Developer’s responsibility. Developer and City hereby acknowledge and agree that Developer will only be responsible for reimbursing UPRR for the costs related to the Project Railroad Improvements listed on **Schedule 1** attached hereto and not for any of the additional construction and/or improvements which are the subject of the C&M Agreement.
- D.** This Agreement is further intended to confirm that Developer and its contractor are responsible for complying with all UPRR insurance and other requirements expressly set forth in the C&M Agreement applicable to any work performed by Developer and/or its contractor with respect to the Project Railroad Improvements.

AGREEMENT

1. Under the C&M Agreement, City (as “Political Body”) will be responsible for one hundred percent (100%) of all actual costs and expenses for the UPRR Parties’ performance of the Project Railroad Improvements, as set forth on Schedule 1 attached hereto. Developer acknowledges that the Estimate, as such term is defined in the C&M Agreement, is only an estimate of the expected Railroad Costs, as further detailed and explained in the C&M Agreement. Developer and City hereby agree that Developer shall be responsible for making all payments to the UPRR Parties which City is obligated to make under the C&M Agreement but with respect only to the Project Railroad Improvements (and not any other improvements which are the subject of the C&M Agreement), on and subject to the terms of this Agreement; provided however, that the foregoing obligations to make payments shall not apply unless and until Developer has commenced construction of the Project Railroad Improvements. City covenants to promptly provide Developer with copies of all progressive billing and all final billing promptly upon receipt of the same from UPRR.

2. Prior to the execution of any C&M Agreement between the City and UPRR with respect to the Project Railroad Improvements, Developer shall furnish to City and UPRR reasonable evidence that Developer has procured the insurance required as described in **Exhibit B**.

3. Within five (5) days after receipt of any bill (progressive, final, or otherwise) from the UPRR Parties with respect to any portion of the Project Railroad Improvements, City shall deliver a copy of such bill by email to Developer at the email address(es) set forth in **Section 12** below, and shall simultaneously send a copy of such bill to Developer by regular mail at the street address(es) set forth in said **Section 12**. Developer agrees to reimburse UPRR or other UPRR Party within thirty (30) days after receipt of the emailed copy of each bill from City.

4. Developer acknowledges and agrees that Developer shall be responsible for performing, or causing its contractor to perform, the Project Railroad Improvements. Developer further agrees that any contractor retained by Developer to perform any portion of the Project Railroad Improvements carried out on UPRR operating corridor shall comply with the conditions on such work expressly required under the C&M Agreement. Without limiting the specificity of the foregoing, Developer shall require any contractor performing work on UPRR operating corridor to execute UPRR’s then-current form of Contractor’s Right of Entry Agreement (“CROE Agreement”) and comply with the requirements set forth therein on Exhibit D of the C&M Agreement.

5. Developer shall require any contractor entering onto UPRR operating corridor to maintain all insurance required by UPRR under the CROE Agreement, or to be covered by an Owner Controlled Insurance Program (“OCIP”) policy providing such coverage. City acknowledges and agrees that such insurance requirements satisfy and supersede any insurance requirements which City would otherwise impose on such contractor and its work, except that Developer shall require its contractor’s or OCIP insurance to be endorsed as follows:

(a) For the commercial general liability and automobile insurance, the City (including its elected officials, employees, and agents) shall be named as additional insured, and the policy shall be endorsed accordingly.

(b) The contractor’s or OCIP insurance shall be primary to any other insurance, self-insurance or joint self-insurance available to the City with respect to any claim

arising out of this Agreement. Any insurance, self-insurance or joint self-insurance maintained by the City shall be excess of the contractor's insurance and shall not contribute with it.

(c) The contractor's or OCIP insurance will not be cancelled, limited or allowed to expire until after thirty (30) days' written notice has been given to the City, except in the event of nonpayment for premium, in which case ten (10) days' advance notice shall be required. During the term of this Agreement, the contractor shall not materially alter any of the policies or reduce any of the levels of coverage afforded thereby.

6. The laws of the State of California shall govern this Agreement. The Parties agree that venue for any dispute shall be Alameda County, California.

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

8. Developer is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, contractors, or subcontractors, including any negligent acts or omissions. Developer is not City's agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Developer.

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

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

11. This Agreement shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties hereto.

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

13. All notices and other communications which are required or may be given under this Agreement or any Exhibits hereto shall be in writing and shall be deemed to have been duly given (i) when received if personally delivered; (ii) upon receipt if sent for next day delivery by recognized overnight delivery service (e.g., FedEx); (iii) upon receipt, if sent by certified or registered mail, return receipt requested; (iv) upon receipt, if sent by email, with recipient confirmation; and (v) upon receipt, if the communication consists of a bill sent by email as permitted by **Section 2** and the bill is also sent by regular mail as required by **Section 2**. In each case notice shall be sent to the respective Parties as follows:

To City: Hamid Mostowfi
Transportation Division Manager
City of Berkeley
1947 Center St., 4th Floor
Berkeley, CA 94704
Email: hmostowfi@berkeleyca.gov

To Developer: W-SW WBLS West Owner IX, L.P.
c/o Steelwave, LLC
Bridget Metz
999 Baker Way, Suite 200
San Mateo, CA 94404
Email: bmetz@steelwavellc.com

With copy to:

14. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument. An emailed or PDF or photocopy signature on this Agreement shall have the same legal effect as an original signature.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date set forth above.

Approved as to form:

CITY OF BERKELEY

Deputy City Attorney

By: _____
Name: _____
Title: _____

DEVELOPER

W-SW WBLS West Owner IX, L.P.,
a Delaware limited partnership ,
Owner

By: SteelWave CDS, LLC,
a Delaware limited liability company,
as construction manager and agent for Owner

By: _____

Name: _____

Its: _____

EXHIBIT A
C&M Agreement

UP Real Estate Project No.: 0783795

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

Bancroft Way
DOT 751176H
MP 5.92 – Martinez Subdivision
Berkeley, Alameda County, California

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CITY OF BERKELEY**, a municipal corporation or political subdivision of the State of California to be addressed at 1947 Center Street, 2nd Floor, Berkeley, California 94704 ("Political Body").

RECITALS:

Presently, the Political Body utilizes the Railroad's property for the existing at grade public road crossing over Bancroft Way, DOT Number 751176H at Railroad's Milepost 5.92 on Railroad's Martinez Subdivision at or near Berkeley, Alameda County, California.

The Political Body now desires to undertake as its project (the "Project") the reconstruction and widening of the existing at grade public road crossing to accommodate the reconstruction of sidewalks and installation of delineators as medians. The road crossing, as reconstructed and widened is hereinafter the "Roadway."

The Railroad right of way being utilized for the existing at grade public road crossing is not sufficient to allow for the reconstruction and widening of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the Political Body to facilitate the reconstruction and widening of the Roadway. The portion of Railroad's property that Political Body needs to use in connection with the Roadway (including the right of way being utilized for the existing at grade crossing) is shown on the Railroad's location print marked **Exhibit A** and the Political Body's type, size and location prints of the Project marked **Exhibit A-1**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

In support of its Project, the Political Body has requested the Railroad's cooperation in connection with upgrading grade crossing protection devices in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs"). Said work is to be performed at the sole expense of Political Body.

The Railroad and the Political Body are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. EXHIBIT B

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

For and in consideration of the sum of **THREE THOUSAND DOLLARS (\$3,000.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

Section 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Political Body confirms

that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UP Project No. 0783795

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

Section 5. FEDERAL AID POLICY GUIDE

If the Political Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimates dated May 31, 2023, and June 7, 2023, marked **Exhibit C**, and October 4, 2023 marked **Exhibit C-1**, with each exhibit being attached hereto and hereby made a part hereof (the "Estimates"). As set forth in the Estimates, the Railroad's estimated cost for the Railroad's work associated with the Project is One Million Four Thousand Five Hundred Forty Four Dollars (\$1,004,544.00).

B. The Railroad, if it so elects, may recalculate and update the Estimates submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimates.

C. The Political Body acknowledges that the Estimates may not include any estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. The Railroad's review and approval of the Plans will in no way relieve the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

Section 9. NON-RAILROAD IMPROVEMENTS

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Body in the event the Political Body does not

commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

Section 15. TERMINATION OF ORIGINAL AGREEMENT

Upon the completion of the Roadway, the original agreement either governing currently, or any agreement to be found in the future at the existing at-grade crossing, shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance and repair of the Roadway.

Section 16. ANNUAL SIGNAL MAINTENANCE FEE

A. Effective as of three years from effective date of this Agreement or the date of installation and/or the in-service date of the new and/or improved or existing Grade Crossing Signal System(s) ("Signal System"), the Political Body, in addition to maintaining at its sole cost and expense the portion of the Roadway described in Section 2 of **Exhibit B**, agrees to pay to Railroad the sum of Thirty Thousand Three Hundred Twenty Nine Dollars (\$30,329.00) per annum, payable annually in advance, as payment for Railroad's maintenance of the Signal System that is installed at the Roadway. The annual signal maintenance fee is calculated as shown on the attached **Exhibit F**, attached hereto and made a part hereof.

B. The above annual signal maintenance fee for Railroad's maintenance of the Signal System is based on the number of current signal units installed at the Roadway. If the Signal System is improved and/or altered in any way, the Political Body must notify the Railroad in writing and the annual signal maintenance fee will be increased at a rate based on the American Railway Engineering and Maintenance of Way Association (AREMA) signal unit cost index. If the Political Body fails to notify Railroad of any improvement or alteration to the Signal System, the Railroad may increase the annual

signal maintenance fee at a rate based on the AREMA signal unit cost index any time after the date of installation and/or improvement of the Signal System. The signal unit base for the annual signal maintenance fee may also be re-determined by the Railroad at any time subsequent to the expiration of five (5) years following the date on which the annual signal maintenance fee was last determined or established. Any such changes in the annual signal maintenance fee referenced in Article 2 may be made by means of automatic adjustment in billing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY

(Federal Tax ID #94-6001323)

By: _____
Printed Name: _____
Title: _____

CITY OF BERKELEY

By: _____
Printed Name: _____
Title: _____

**EXHIBIT A
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Crossing Area (see Recitals)

LEGEND:

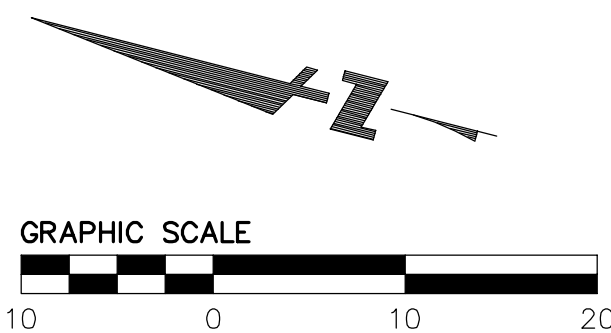
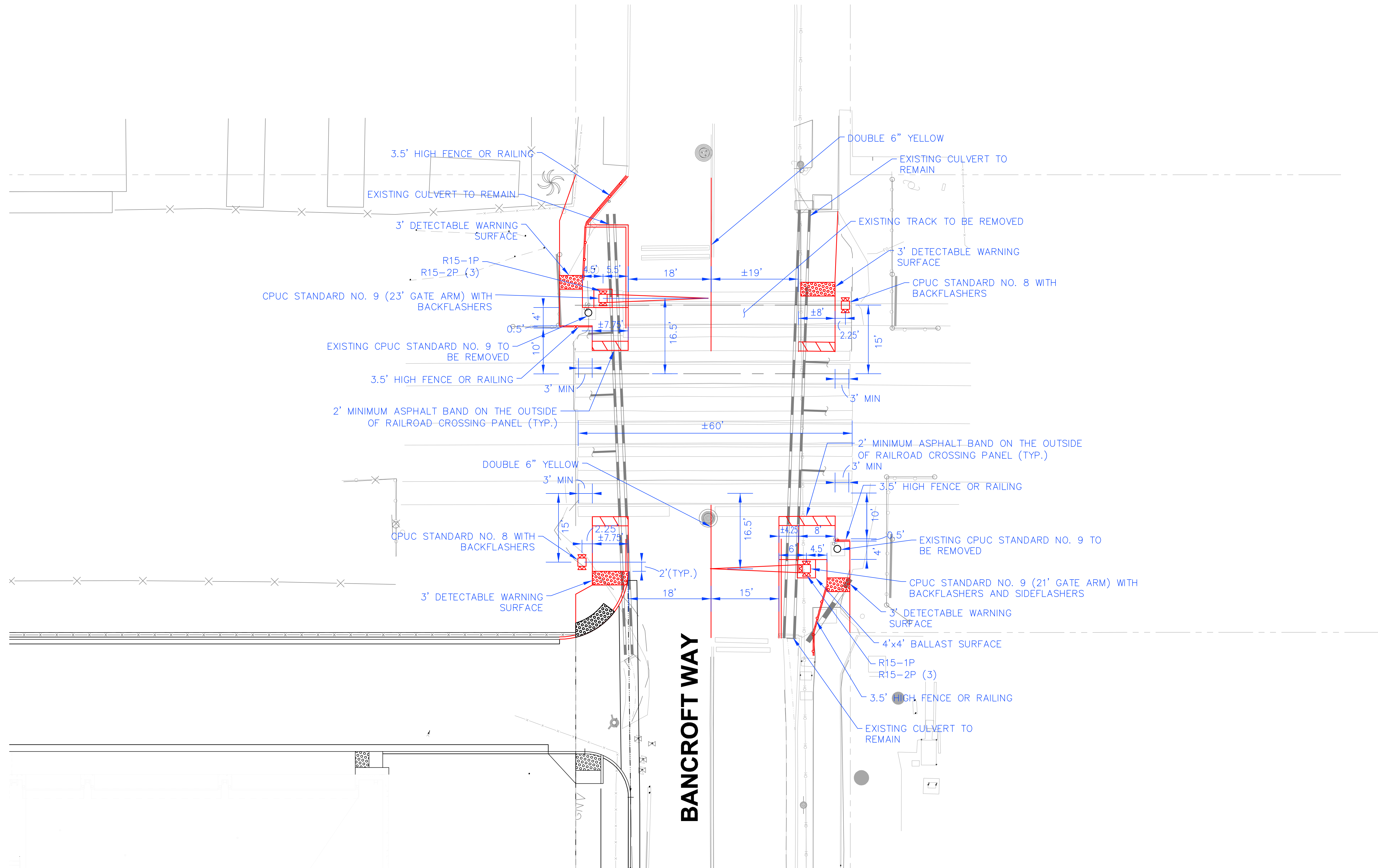
 PROPOSED IMPROVEMENTS



BANCROFT STREET RAILROAD CROSSING IMPROVEMENTS **BERKELEY COMMONS RAILROAD IMPROVEMENTS**

**EXHIBIT A-1
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

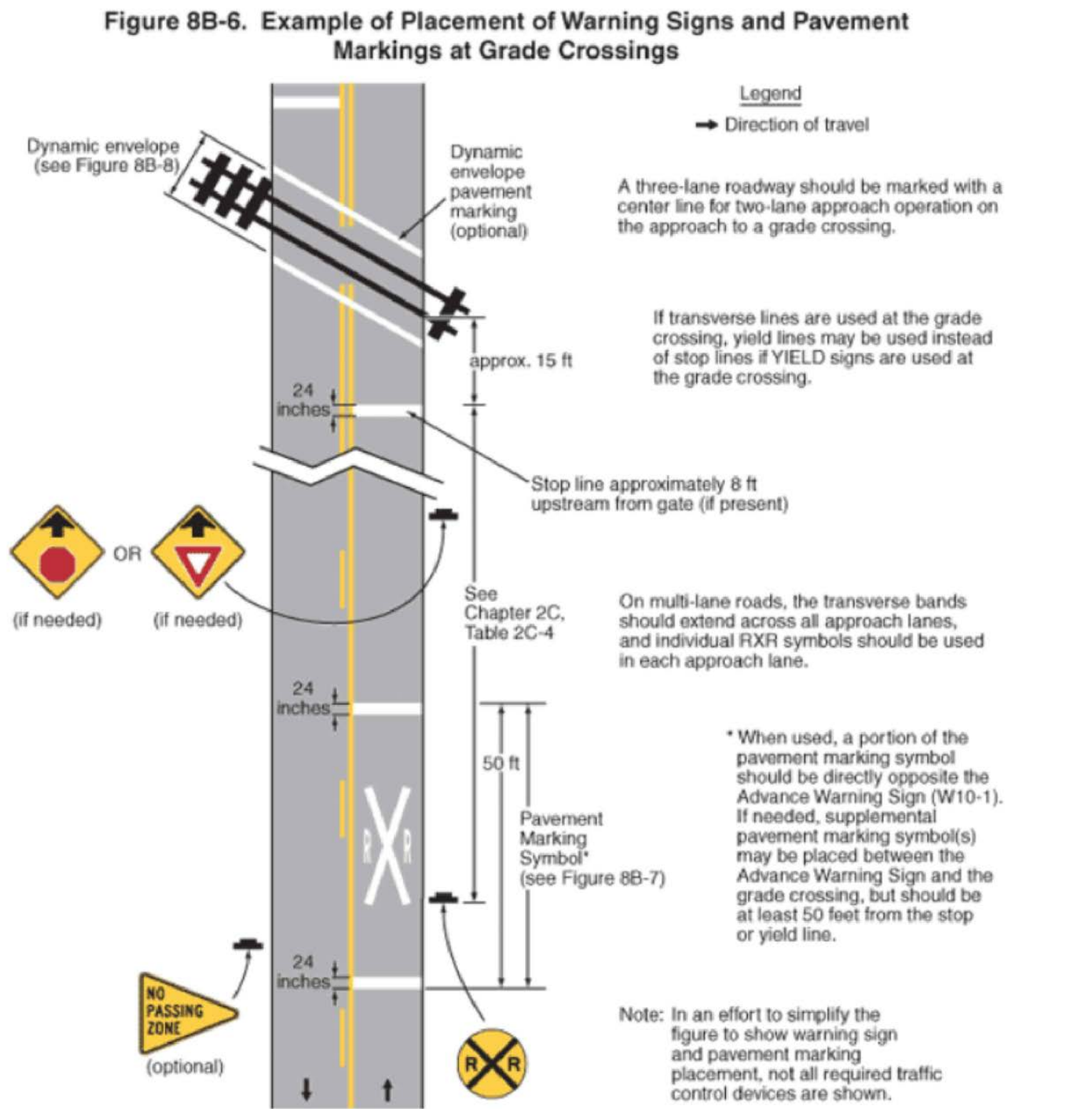
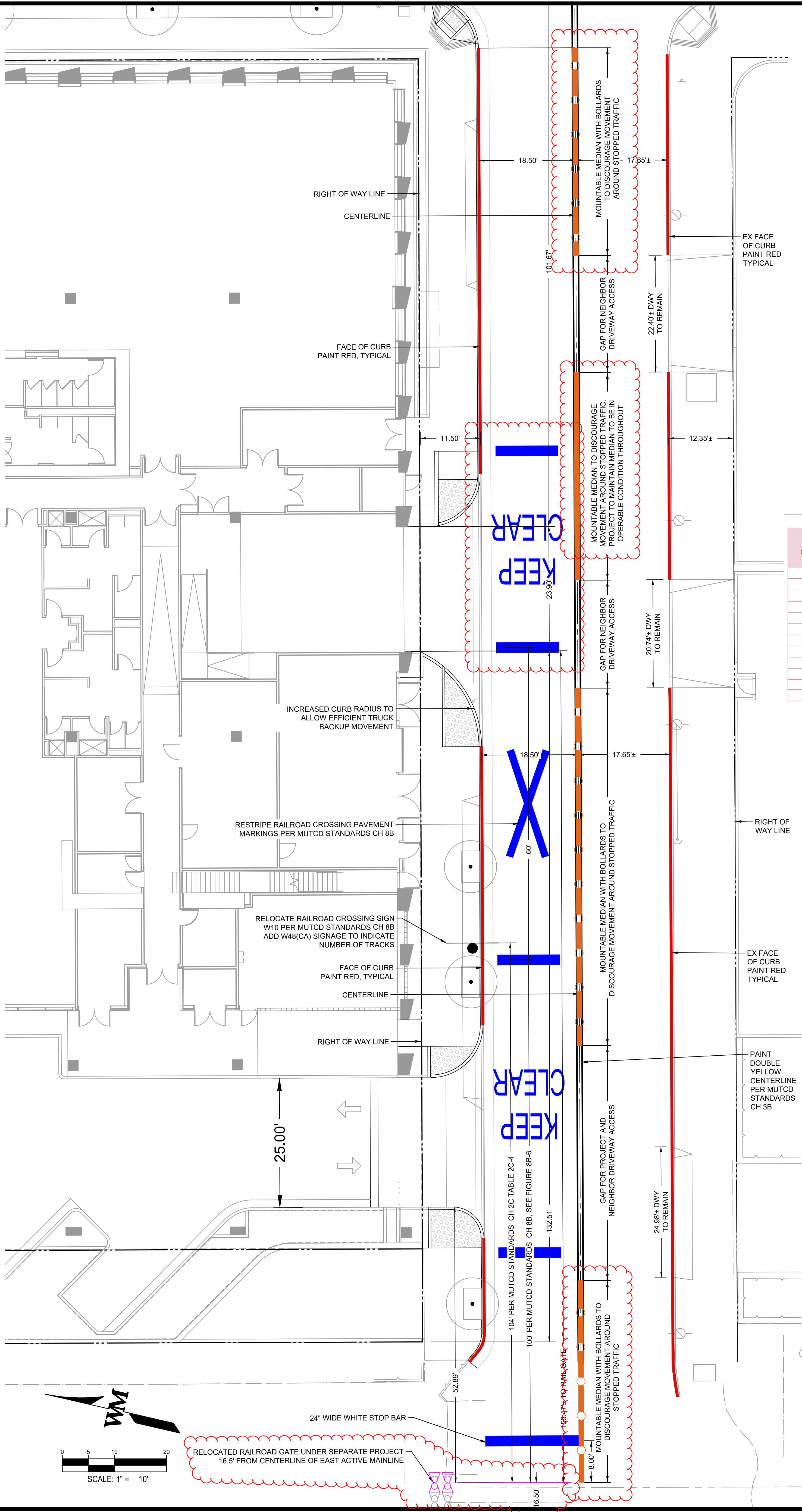
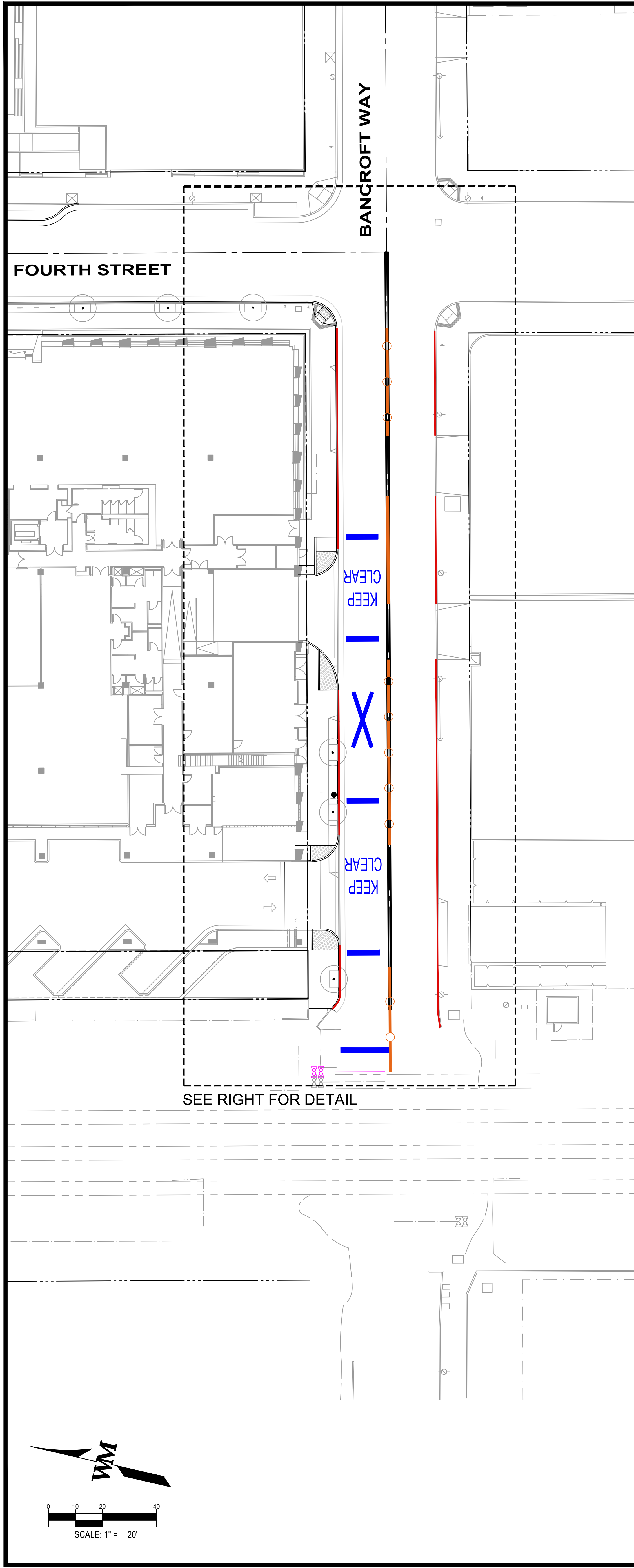
Exhibit A-1 will be the Political Body's type, size and location prints of the Project (see Recitals)



DRAWING NAME: BKF-210423-019-11-Berkeley Commons CORPENCE 244873-Bancroft Crossing-Berkeley Bancroft RR Substation
PLOT DATE: 08/08/22 PLOTTED BY: lsa

COPYRIGHT © 2021 BKF ENGINEERS

PRELIMINARY NOT FOR CONSTRUCTION	
DATE: 08/08/2022	
BKF ENGINEERS 255 SHORELINE DRIVE SUITE 200 REDWOOD CITY, CA 94065 (650) 482-6300 www.bkf.com	
BKF	
BERKELEY COMMONS RAILROAD IMPROVEMENTS BANCROFT WAY CITY OF BERKELEY, ALAMEDA COUNTY	
CPUC LAYOUT EXHIBIT	
Revisions	
No.	
Date: 8/8/2022	
Scale: AS SHOWN	
Design: JW	
Drawn: AJ	
Approved: JB	
Job No: 20191091	
Drawing Number:	
OF	



Posted or 85th-Percentile Speed	Advance Placement Distance ¹									
	Condition A: Speed reduction and lane changing in heavy traffic ²					Condition B: Deceleration to the listed advisory speed (mph) for the condition				
	0 ³	10 ⁴	20 ⁴	30 ⁴	40 ⁴	50 ⁴	60 ⁴	70 ⁴		
20 mph	225 ft	100 ft ⁵	N/A ⁵	—	—	—	—	—		
25 mph	325 ft	100 ft ⁵	N/A ⁵	—	—	—	—	—		
30 mph	460 ft	100 ft ⁵	N/A ⁵	N/A ⁵	—	—	—	—		
35 mph	565 ft	100 ft ⁵	N/A ⁵	N/A ⁵	—	—	—	—		
40 mph	670 ft	125 ft	100 ft ⁵	100 ft ⁵	N/A ⁵	—	—	—		
45 mph	775 ft	175 ft	125 ft	100 ft ⁵	100 ft ⁵	N/A ⁵	—	—		
50 mph	885 ft	250 ft	200 ft	175 ft	125 ft	100 ft ⁵	—	—		
55 mph	990 ft	325 ft	275 ft	225 ft	200 ft	125 ft	N/A ⁵	—		
60 mph	1,100 ft	400 ft	350 ft	325 ft	275 ft	200 ft	100 ft ⁴	—		
65 mph	1,200 ft	475 ft	400 ft	350 ft	300 ft	200 ft	100 ft ⁴	—		
70 mph	1,250 ft	550 ft	525 ft	500 ft	450 ft	375 ft	275 ft	150 ft	—	
75 mph	1,350 ft	650 ft	625 ft	600 ft	550 ft	475 ft	375 ft	250 ft	100 ft ⁴	

WARE MALCOMB
CIVIL ENGINEERING

4683 chabor dr
suite 300
pleasanton, ca 94588
p 925.244.9820
waremalcomb.com

FOR AND ON BEHALF
OF WARE MALCOMB

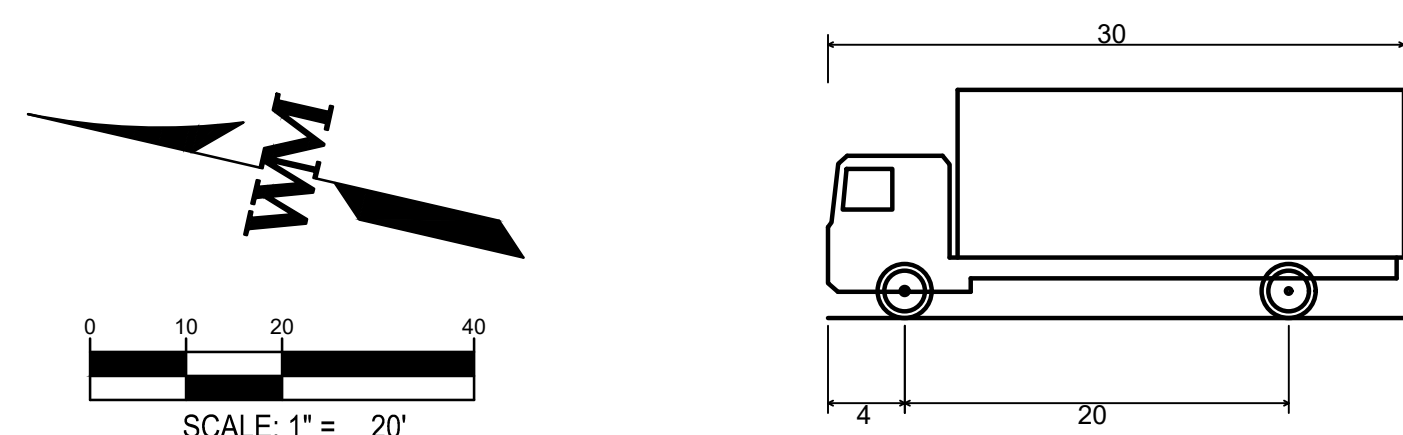
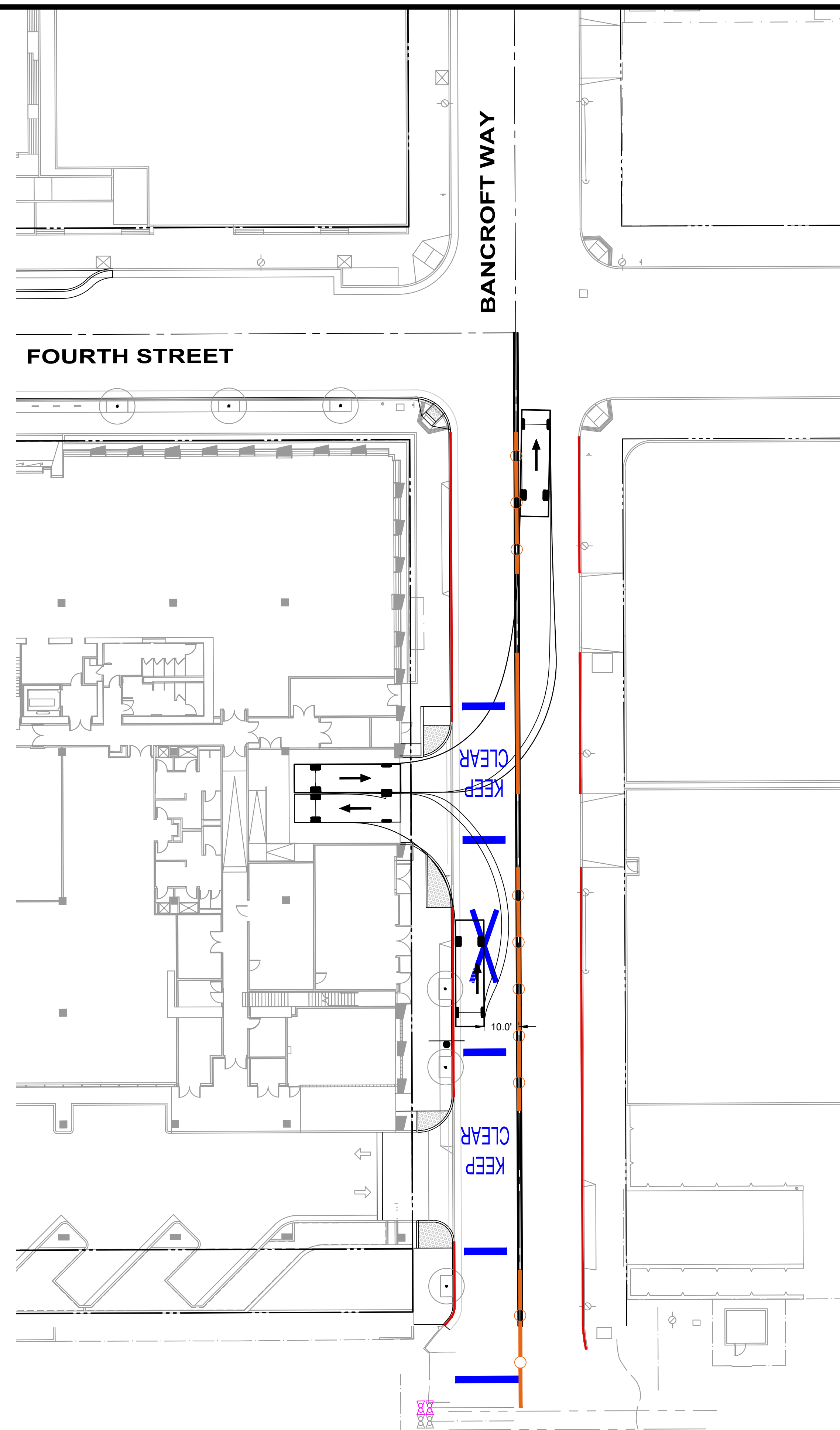
747 BANCROFT
BERKELEY, CALIFORNIA

OFFSITE IMPROVEMENTS
FOR RAILROAD AND CPUC REVIEW
NO. DATE
06.09.2023
REMARKS

JOB NO.: SNR21-4002
PA / PM: M. MURPHY
DESIGNED: STAFF
DATE: June 2023
PLOT DATE:

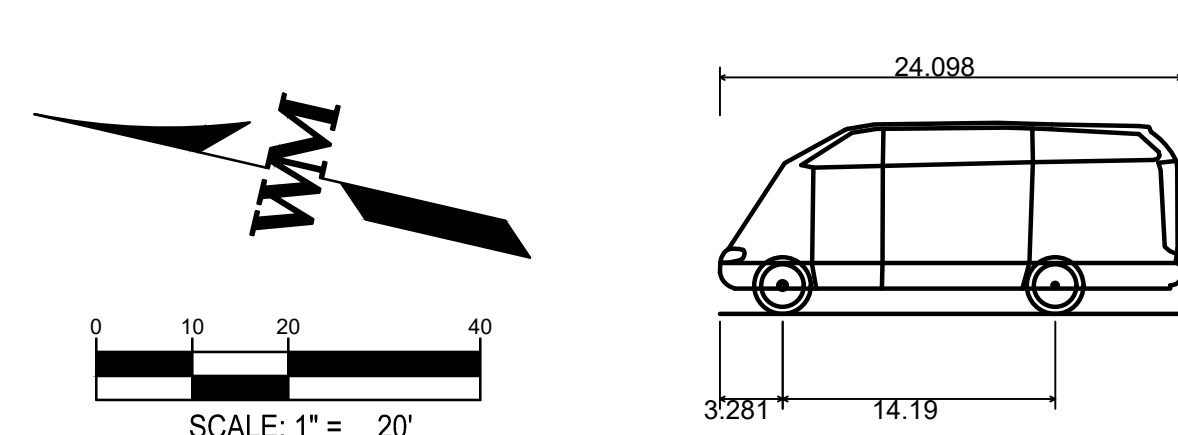
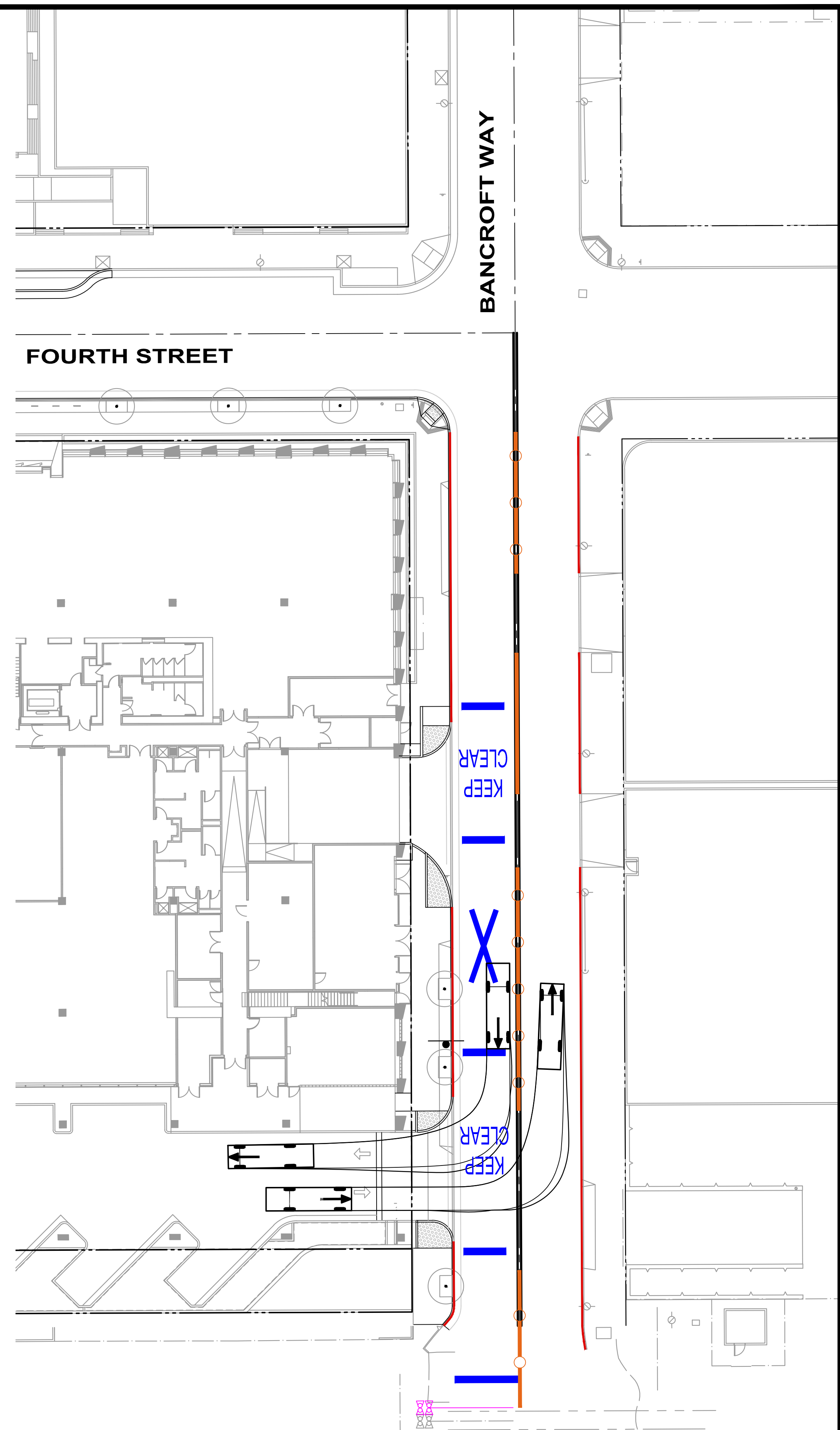
SHEET
EX-1
Sheet 1 of 1

Page 169



SU - Single Unit Truck	
Overall Length	30.000ft
Overall Width	8.000ft
Overall Body Height	11.881ft
Min Body Ground Clearance	1.367ft
Track Width	8.000ft
Lock-to-lock time	5.00s
Curb to Curb Turning Radius	42.000ft

DETAIL 2 - SU-30 TRUCK MOVEMENT AT LOADING DOCK



Mercedes Sprinter Panel Van 518CDI Extra Long Super High Roof	
Overall Length	24.08ft
Overall Width	6.539ft
Overall Body Height	9.942ft
Min Body Ground Clearance	1.312ft
Track Width	6.539ft
Lock-to-lock time	5.00s
Wall to Wall Turning Radius	25.591ft

DETAIL 1 - DELIVERY TRUCK MOVEMENT AT DRIVEWAY

[illegible]

**EXHIBIT B
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

A. The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of the Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the

Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by the Railroad at the Political Body's expense.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the

same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for

vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall visit up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

**EXHIBIT C
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit C (if applicable) will be Railroad's Material and Force Agreement Estimates.

Material And Force Account Estimate
Berkeley

Estimate Number: 144048 Version: 1

Standard Rates: Labor Additive = 70%
Estimate Good Until 05/31/24

Location: MARTINEZ SUB, NO 1, 5.9-5.94
Description of Work: 751176H Bancroft Way Berkeley CA 5.92 Martinez Sub
Prepared For: Berkeley
Buy America: No

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	UP %0	Agcy %100
ENGINEERING										
		Engineering	1	LS	23,942.00	23,942	0	23,942	0	23,942
		Bill Prep Fee - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Homeline Freight - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Foreign Line Freight - Track Surface RECOLLECT	1	LS	1,276.02	0	1,276	1,276	0	1,276
Sub-Total =						23,942	3,076	27,018	0	27,018
TRACK CONSTRUCTION - COMPANY										
		Mobilization: Company	1	DA	11,450.00	11,450	0	11,450	0	11,450
Sub-Total =						11,450	0	11,450	0	11,450
TRACK REMOVAL - COMPANY										
	RDXING	Remove road crossing - concrete	40	TF	56.82	2,273	0	2,273	0	2,273
	TRACK	Remove Track	40	TF	22.28	891	0	891	0	891
Sub-Total =						3,164	0	3,164	0	3,164
SITE WORK - CONTRACT										
		Asphalt	1	LS	37,000.00	0	37,000	37,000	0	37,000
Sub-Total =						0	37,000	37,000	0	37,000
EQUIPMENT RENTAL										
		Equipment Rental	1	LS	25,000.00	0	25,000	25,000	0	25,000
Sub-Total =						0	25,000	25,000	0	25,000
Total Wgt. in Tons =						Totals =	38,556	65,076	103,632	0 103,632

Grand Total = \$103,632

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, Berkeley will pay actual construction costs at the current rates effective thereof.

Material And Force Account Estimate
Lane Partners

Page 33 of 101

Estimate Creation Date: 6/6/2023 Number: 144206 Version: 1

Estimate Good Until 06/07/24

Location: MARTINEZ SUB, NO 1, 2.33-7
Buy America: No

Description of Work: Martinez Sub MP 5.92 Berkeley, CA Bancroft Way DOT#751176H WO#60487 PID#119334
100% Recollectable

COMMENTS	FACILITY	Description	SubDivision	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL
SIGNAL									
		Xing - 2 Trk CWE w/Gates	MARTINEZ SUB	1	EA	152,876.00	48,800	104,076	152,876
		Xing - Flasher/Ped (pair)		1	LS	57,560.00	16,000	41,560	57,560
		Xing - IJ		2	PR	9,000.00	8,996	9,004	18,000
		Xing - IXS Track Circuit		2	EA	14,951.00	11,072	18,830	29,902
PPEC Project MGMT		Xing - Misc.		1	LS	15,000.00	0	15,000	15,000
		Xing - Semi-Bi Coupler		4	EA	898.00	0	3,592	3,592
		Xing - Sidelight		1	EA	907.00	0	907	907
		Xing - Track Card (Main and Stand-by) New Cable		3	EA	12,889.00	18,000	20,667	38,667
		Xing - Track Filter/Battery Choke		8	EA	240.00	0	1,920	1,920
		Xing - Dax Cable 1000'		7	EA	6,440.00	28,000	17,080	45,080
		Gang Day - 5 Man		2	EA	5,500.00	11,000	0	11,000
Security Fencing		Xing - Misc.		1	LS	16,000.00	0	16,000	16,000
		Xing - Remove Location (Gates)		1	LS	2,000.00	2,000	0	2,000
		Xing - Engineering Design		1	LS	17,897.83	17,898	0	17,898
		Xing - Boring		1	LS	10,000.00	0	10,000	10,000
		Xing - Fill/Rock/Gravel		1	LS	60,000.00	0	60,000	60,000
Standard 224.45%		Xing - Labor Additive		1	LS	363,086.00	363,086	0	363,086
		Xing - Meter Service		1	LS	5,000.00	0	5,000	5,000
Sub-Total =							524,852	323,636	848,488

PROJECT LEVEL COST

5%	CONTINGENCIES	Contingency		5	%	8,484.88	26,243	16,182	42,424
Sub-Total =							26,243	16,182	42,424

Totals = 551,094 339,818 890,912

Grand Total = \$890,912

Disclaimer: This is a preliminary estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.

EXHIBIT C-1

**ESTIMATE OF FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD COMPANY**

DESCRIPTION OF WORK: Engineering and other related services for work to be performed within railroad right of way. This includes project and construction management during construction activities in railroad right of way. All necessary railroad services will be billed at actual cost.

DATE: 10/4/2023

LOCATION: Berkeley, CA DOT: 751176H	SUBDIVISION Martinez					STATE: CA	
DESCRIPTION	LABOR		MATERIAL		UP %0	Agency % 100	TOTAL
ENGINEERING							
Project Management	\$	4,000	\$	-	\$	-	\$ 4,000.00 \$ 4,000
Construction Management	\$	5,000	\$	-	\$	-	\$ 5,000.00 \$ 5,000
Final Inspection	\$	1,000	\$	-	\$	-	\$ 1,000.00 \$ 1,000
FLAGGING / INSPECTION SERVICES							
RATE (per day)	\$	1,500					
TOTAL PROJECT:	\$	10,000	\$	-	\$	-	\$ 10,000.00 \$10,000

TOTAL ESTIMATED COST: \$10,000

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION.
IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF
MATERIAL OR LABOR REQUIRED, THE RAILROAD WILL BILL FOR ACTUAL
COSTS AT THE CURRENT RATES EFFECTIVE THEREOF.

Flagging is NOT included in this estimate. Agencies are instructed to follow Union Pacific's Third Party Flagging Policy.

Please utilize the following link to Union Pacific's Third Party Flagging Policy:

https://www.up.com/real_estate/third-party-flagging/index.htm

EXHIBIT D
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ (the "Work") with all or a portion of such Work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision or Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which Work is the subject of a contract dated _____ between Railroad and _____.

Railroad is willing to permit Contractor to perform the Work described above at the location described above subject to the terms and conditions contained in this agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. For purposes of clarity, Contractor agrees that any CIC (defined below) hired by Contractor is a subcontractor of Contractor and therefore included in the defined term Contractor pursuant to the foregoing sentence.

ARTICLE 2 - RIGHT GRANTED: PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the Work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.

The terms and conditions contained in **Exhibit B** and **Exhibit C**, attached hereto, are hereby made a part of this agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR: RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any Work performed by Contractor (including without limitation any CIC), or any costs or expenses incurred by Railroad relating to this agreement.

B. Contractor shall coordinate all of its Work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. Contractor, at its own expense, shall adequately police and supervise all Work to be performed by Contractor and shall ensure that such Work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's Work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the Work, or by Railroad's collaboration in performance of any Work, or by the presence at the Work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of Work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this agreement and continue until this agreement is terminated as provided in this agreement or until the Contractor has completed all Work on Railroad's property.

ARTICLE 6 - TERM: TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its Work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its Work on Railroad's property.

B. This agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any Work and throughout the entire term of this Agreement, Contractor, at its expense, shall procure and maintain in full force and effect the types and minimum limits of insurance specified in **Exhibit C** of this agreement and require each of its subcontractors to include the insurance endorsements as required under Section 12 of **Exhibit B** of this agreement.

B. Not more frequently than once every two (2) years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Railroad, Contractor shall provide to Railroad a certificate issued by its insurance

Contractor's Right of Entry Public
Projects Form Approved 02/09/2022

carrier evidencing the insurance coverage required under **Exhibit B**.

D. Contractor understands and accepts that the terms of this Article are wholly separate from and independent of the terms of any indemnity provisions contained in this Agreement.

E. Upon request of Railroad, insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____

Project No. 0783795

ARTICLE 8 - PRECONSTRUCTION MEETING

If the Work to be performed by the Contractor will involve the Railroad providing any flagging protection (or if a CIC is approved to provide flagging protection pursuant to the terms set forth herein) and/or there is separate work to be performed by the Railroad, the Contractor confirms that no work shall commence until the Railroad and Contractor participate in a preconstruction meeting involving flagging procedures and coordination of work activities of the Contractor and the Railroad (and any CIC, as applicable.)

ARTICLE 9. DISMISSAL OF CONTRACTOR'S EMPLOYEE

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the Work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 10. ADMINISTRATIVE FEE

Upon the execution and delivery of this agreement, Contractor shall pay to Railroad One Thousand Twenty Five Dollars (\$1,025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

ARTICLE 11. CROSSINGS: COMPLIANCE WITH MUTCD AND FRA GUIDELINES

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

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ARTICLE 12.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

(Name of Contractor)

By: _____

Name: _____

Title: _____

Phone: _____

E-Mail: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Exhibit A will be a print showing the general location of the work site.

LEGEND:

PROPOSED IMPROVEMENTS



BANCROFT STREET RAILROAD CROSSING IMPROVEMENTS

BERKELEY COMMONS RAILROAD IMPROVEMENTS



2100 FRANKLIN STREET
SUITE #4C
OAKLAND, CA 94612
(510) 899-7300
www.bkf.com

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - RAILROAD FLAGGING - PRIVATE FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its Work and at least thirty (30) working days in advance of proposed performance of any Work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track.

B. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad approved flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures.

C. Contractor shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Contractor to utilize a CIC pursuant to the preceding sentence, Contractor shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Contractor shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this Section 1, Subsection C., in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

D. If any flagging or other special protective or safety measures are performed by employees of Railroad and/or any contractor of Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing.

E. If any flagging or other special protective or safety measures are performed by Railroad or a CIC, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this agreement.

F. The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: the rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with labor agreements and schedules in effect at the time the Work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the Work is performed. One and one-half times the current hourly rate is

paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges. If flagging is performed by Railroad, reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five-day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least twenty-five (25) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the Work to be performed by Contractor caused by such railroad operations and Work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any Work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the Work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such Work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such Work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall visit www.up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any Work until all such protection or relocation (if applicable) has been accomplished.

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD RAILROAD HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) ARISING OUT OF ANY ACT OR OMISSION OF CONTRACTOR, ITS AGENTS AND/OR EMPLOYEES, THAT CAUSES OR CONTRIBUTES TO (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON RAILROAD'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON RAILROAD'S PROPERTY. CONTRACTOR SHALL NOT HAVE OR SEEK RECOURSE AGAINST RAILROAD FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING RAILROAD'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON RAILROAD'S PROPERTY.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the Work covered by this agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the Work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of any Work on Railroad property performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the Work. Contractor shall, at a minimum, comply with Railroad's then current safety standards located at the below web address ("Railroad's Safety Standards") to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor

determines that any of Railroad's Safety Standards are contrary to good safety practices. Contractor shall furnish copies of Railroad's Safety Standards to each of its employees before they enter Railroad property.

http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any Work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the Work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this agreement shall control if there are any inconsistencies between this agreement and the Safety Plan.

Section 8. INDEMNITY.

A. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (INDIVIDUALLY AN "INDEMNIFIED PARTY" OR COLLECTIVELY "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, INJURY, LIABILITY, CLAIM, DEMAND, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S, CONSULTANT'S AND EXPERT'S FEES, AND COURT COSTS), FINE OR PENALTY (COLLECTIVELY, "LOSS") INCURRED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, ANY INDEMNIFIED PARTY, CONTRACTOR, OR ANY EMPLOYEE OF CONTRACTOR OR OF ANY INDEMNIFIED PARTY) ARISING OUT OF OR IN ANY MANNER CONNECTED WITH (I) ANY WORK PERFORMED BY CONTRACTOR, OR (II) ANY ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS OR EMPLOYEES, OR (III) ANY BREACH OF THIS AGREEMENT BY CONTRACTOR.

B. THE RIGHT TO INDEMNITY UNDER THIS SECTION 8 SHALL ACCRUE UPON OCCURRENCE OF THE EVENT GIVING RISE TO THE LOSS, AND SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNIFIED PARTY, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE ACTIVE NEGLIGENCE OF AN INDEMNIFIED PARTY AS ESTABLISHED BY THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION. THE SOLE ACTIVE NEGLIGENCE OF ANY INDEMNIFIED PARTY SHALL NOT BAR THE RECOVERY OF ANY OTHER INDEMNIFIED PARTY.

C. CONTRACTOR EXPRESSLY AND SPECIFICALLY ASSUMES POTENTIAL LIABILITY UNDER THIS SECTION 8 FOR CLAIMS OR ACTIONS BROUGHT BY CONTRACTOR'S OWN EMPLOYEES. CONTRACTOR WAIVES ANY IMMUNITY IT MAY HAVE UNDER WORKER'S COMPENSATION OR INDUSTRIAL INSURANCE ACTS TO INDEMNIFY THE INDEMNIFIED PARTIES UNDER THIS SECTION 8. CONTRACTOR ACKNOWLEDGES THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES HERETO.

D. NO COURT OR JURY FINDINGS IN ANY EMPLOYEE'S SUIT PURSUANT TO ANY

WORKER'S COMPENSATION ACT OR THE FEDERAL EMPLOYERS' LIABILITY ACT AGAINST A PARTY TO THIS AGREEMENT MAY BE RELIED UPON OR USED BY CONTRACTOR IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST ANY INDEMNIFIED PARTY.

E. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE COMPLETION OF ANY WORK PERFORMED BY CONTRACTOR OR THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. IN NO EVENT SHALL THIS SECTION 8 OR ANY OTHER PROVISION OF THIS AGREEMENT BE DEEMED TO LIMIT ANY LIABILITY CONTRACTOR MAY HAVE TO ANY INDEMNIFIED PARTY BY STATUTE OR UNDER COMMON LAW.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the Work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the Work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this agreement shall be effective unless made in writing and signed by Contractor and Railroad. This agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the Work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any Work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" on the subcontractor's Commercial General Liability policy and Umbrella or Excess policies (if applicable) with respect to all liabilities arising out of the subcontractor's performance of Work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Requirements For
Contractor's Right of Entry Agreement

During the entire term of this Agreement and course of the Project, and until all Project Work on Railroad's property has been completed and all equipment and materials have been removed from Railroad's property and Railroad's property has been clean and restored to Railroad's satisfaction, Contractor shall, at its sole cost and expense, procure and maintain the following insurance coverage:

- A. Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the Work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

- D. Railroad Protective Liability** insurance. Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence

and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Pollution Liability** insurance. Pollution liability coverage must be included when the scope of the Work as defined in the agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of Work as defined in this agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

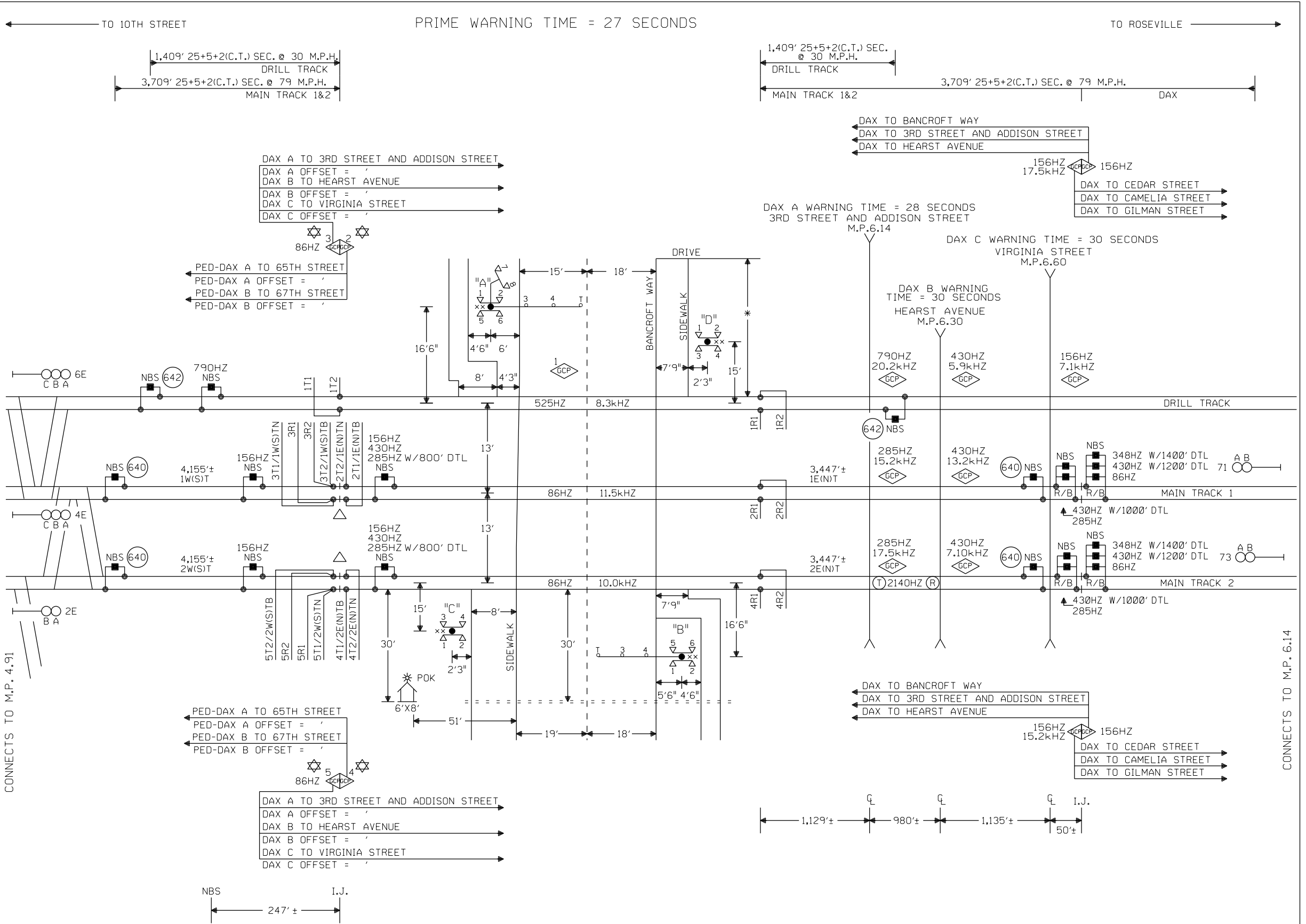
Other Requirements

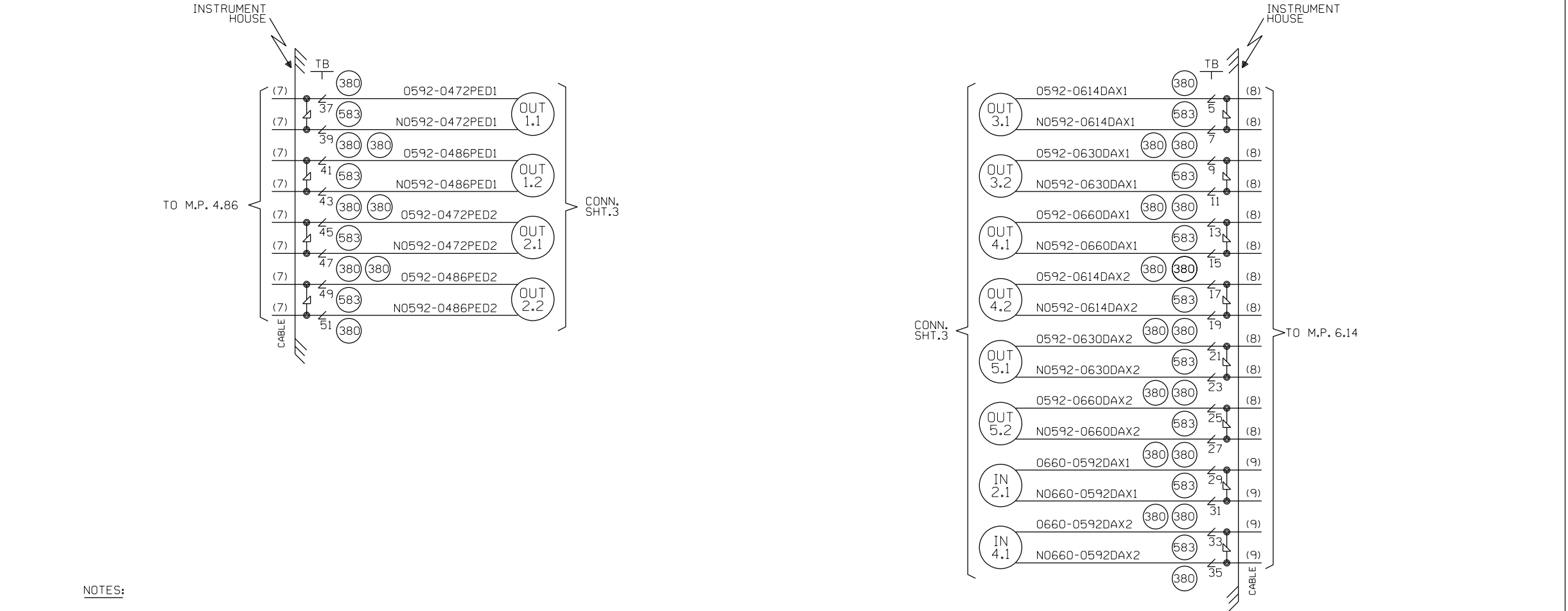
- G. All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Contractor's liability under the indemnity provisions of this agreement. BOTH CONTRACTOR AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where prohibited by law. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the Work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this agreement.

- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

**EXHIBIT E
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit E (if applicable) will be signal design schematic





NOTES:

- ⊗ = TWISTED WIRES
INSULATED 1 TWIST PER FT.
ALL TRACK WIRES 2C. #6
- TRANSMITTER AND RECEIVER LEADS
TO BE SEPARATED BY AT LEAST 12" IN TRENCH.
LENGTHS SHOULD NOT EXCEED MANUFACTURER'S
RECOMMENDATION.
- TOP OF FOUNDATION TO BE AT SAME ELEVATION
AS THE SURFACE OF THE TRAVELED WAY & NO
MORE THAN 4" ABOVE THE SURFACE OF THE GROUND.
- ALL BUNGALOW WIRING TO BE #16 AWG FLEX
UNLESS OTHERWISE SPECIFIED EXCEPT ALL GROUND
WIRE TO BE #6 AWG FLEX OR LARGER.
- ALL WIRING IN GATE MECHANISM TO BE #10 "AWG FLEX".
REFER TO UP STANDARD DWG FOR BUNGALOW GROUNDING.
- PORTABLE GENERATOR EXTENSION CORD
FOR 240V TO 240V IS PROVIDED AS WELL
AS A 120V TO 240V ADAPTER.
- ALL LIGHTS TO BE 12" ROUNDELS.
= = = = = 4" X 90' CONDUIT
- LIGHTS: LED LIGHTS
- xx = BELL
- ☆ = GCP TO OPERATE IN SEMI-BI
DIRECTIONAL MODE. USE TAB 627
COUPLER.
- △ = ENSURE TRACK POLARITY IS
TRANSPPOSED ACROSS ALL
INSULATED JOINTS.

TRK 1 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED

TRK 2 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED

TRK 4 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED

PREFERRED ISLAND WIRE CONNECTIONS
ARE A MINIMUM 50' FROM EDGE OF ROAD

OFFSET AND ISLAND DISTANCES
TO BE VERIFIED BY FIELD

MATERIAL NOTES; DELETE UPON "AC"

6X8 ALUMINUM CABIN
U.P. PART #520-0185

CONSTRUCTION NOTES:

- 1.) INSTALL AS A CORRIDOR PROJECT WITH 3RD STREET
AND ADDISON STREET M.P. 6.14 (WO#60469)
- 2.) ORDER THE FOLLOWING FOR THIS LOCATION:
(4) 86HZ TAB 729 TRACK FILTERS
(4) 156HZ TAB 729 TRACK FILTERS
- 3.) INSTALL (2) PAIR OF I.J.'S
- 4.) * = FIELD VERIFY DISTANCE

CABLE TABULATION

CABLE NO. 7 12C*14 U.G.B.T. HOUSE TO M.P. 4.86
CABLE NO. 8 12C*14 U.G.B.T. HOUSE TO M.P. 6.14
CABLE NO. 9 7C*14 U.G.B.T. HOUSE TO M.P. 6.14

NEW SHEET

					Designed: 09/12/22	MODIFICATION LEVEL		CIRCUIT MODIFICATIONS ARE NOT TO BE MADE WITHOUT AUTHORITY FROM THE OFFICE OF SIGNAL DESIGN	Date: 09/12/22	UNION PACIFIC RAILROAD		Sh.: 1A	
					INSTALL NEW HOUSE, GATES, FLASHERS AND CWT AT M.P. 5.92 CORRIDOR PROJECT WITH WO# 60469 WO# 60487 Res#s 15s / NST/ANM	O. A. LAST LEVEL CHECKED			DW	Des: NST	BERKELEY, CALIFORNIA		DOT 751176H
						LAST LEVEL MOD THIS TYPICAL			DW	Chk:	BANCROFT WAY		MP: 5.92
						LAST LEVEL BY DESIGNER			DW	AFE: 60487	MARTINEZ SUBDIVISION		ID: 09105921AX
						CHANGED FROM TYPICAL?			Y	Office of AVP Engineering - Signal Omaha, Nebraska			
						REV. 03.28.22 5K 2TKUGTYP.1			Page 100				

**EXHIBIT F
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit F (if applicable) will be the annual signal maintenance fee

Page 53 of 101
AREMA UNIT STATEMENT OF RAILROAD-HIGHWAY GRADE CROSSING SIGNALS
ESTIMATED MAINTENANCE COSTS



BUILDING AMERICA®

FOR PID # 119334
BY THE UNION PACIFIC RAILROAD

STREET	BANCROFT WAY
TOWN	BERKELEY, CALIFORNIA
MILEPOST	5.92
SUBDIVISION	MARTINEZ
AAR/DOT NO.	751176H
WORK ORDER#	60487

DESCRIPTION	VALUE	QUANTITY	UNITS
NON-CODED TRK. CIRCUIT (Standalone AFTAC or Ring 10)	2	0	0
SUPERIMPOSED CIRCUIT(AFTAC) / DETECTION LOOP	2	0	0
HIGHWAY GRADE CROSSING SIGNAL (FRONT LIGHTS)	2	5	10
ADDITIONAL PAIR OF LIGHTS (OTHER THAN FRONT LIGHTS)	1	4	4
GATE MECHANISM, AUTOMATIC WITH ARM UP TO 26 FT	8	2	16
GATE MECHANISM, AUTOMATIC WITH ARM OVER 26 FT	10	0	0
GCP/HXP (constant warning device, per track circuit)	15	5	75
EXIT GATE MANAGEMENT SYSTEM RACK*	10	0	0
MOVEMENT DETECTOR (PMD)	6	0	0
MOVEMENT DETECTOR (STANDBY UNIT)	3	0	0
RADIO DATA LINK, PER UNIT	1	0	0
PREEMPTION CIRCUIT	2	0	0
DATA RECORDER	1	0	0
REMOTE MONITORING DEVICE (SEAR, ETC)*	2	1	2
BONDED RAIL JOINTS (per mile, each rail, single bonded)	1	0	0
BATTERY AND CHARGER (per set)	1	2	2

TOTAL UNIT COUNT	109
PAVEMENT RESTORATION COSTS	(Actual)
Annual Maintenance Cost at \$278.25/Unit	\$30,329

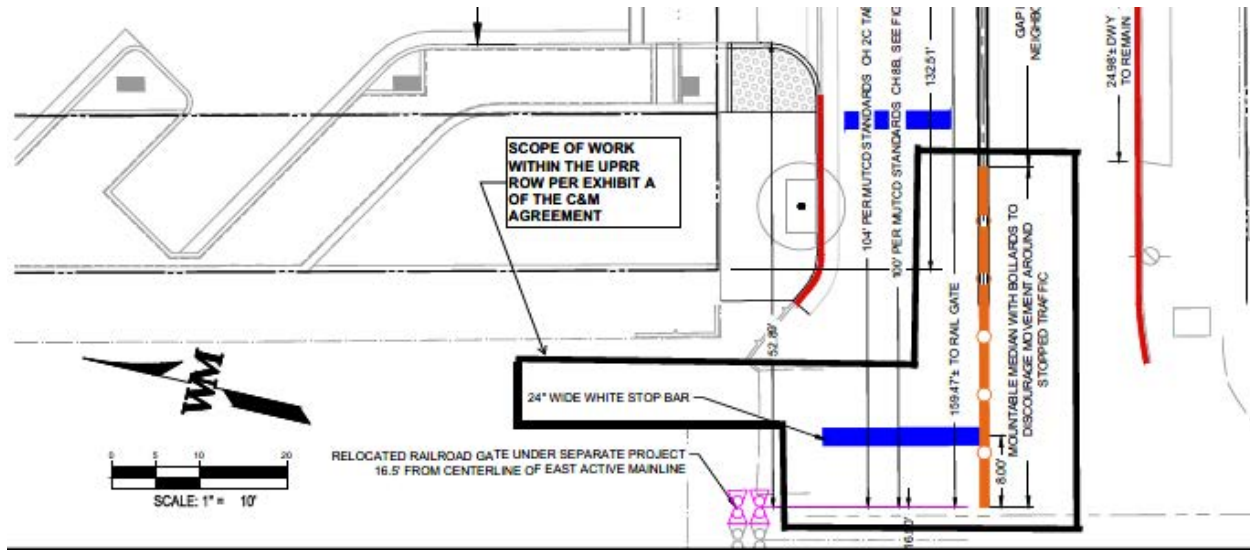
*UP supplied Unit Value

Exhibit B
Insurance Requirements

- 1.1 Prior to the execution of any C&M Agreement between the City and UPRR, Developer shall furnish to City satisfactory proof that Developer or any contractor intended to perform any Project work has insurance in accordance with the requirements of Section 5 of this Agreement.
- 1.2 Nothing herein contained shall be construed as limiting in any way the extent to which Developer or any of its contractors or subcontractors may be held responsible for payment of damages resulting from their operations.
- 1.3 If Developer or any contractor fails to maintain any required insurance, City may take out such insurance, and Developer agrees to reimburse City for any and all costs of obtaining such insurance.

SCHEDULE 1 DESCRIPTION OF IMPROVEMENTS UPON UPRR OPERATING CORRIDOR

Mountable median with bollards and striping of the 24' wide white stop bar within the 2,265 SF UPRR operating corridor as depicted on Exhibit A of the C&M Agreement, and further delineated below.



UP Real Estate Project No.: 0783795

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

Bancroft Way
DOT 751176H
MP 5.92 – Martinez Subdivision
Berkeley, Alameda County, California

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 20____ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CITY OF BERKELEY**, a municipal corporation or political subdivision of the State of California to be addressed at 1947 Center Street, 2nd Floor, Berkeley, California 94704 ("Political Body").

RECITALS:

Presently, the Political Body utilizes the Railroad's property for the existing at grade public road crossing over Bancroft Way, DOT Number 751176H at Railroad's Milepost 5.92 on Railroad's Martinez Subdivision at or near Berkeley, Alameda County, California.

The Political Body now desires to undertake as its project (the "Project") the reconstruction and widening of the existing at grade public road crossing to accommodate the reconstruction of sidewalks and installation of delineators as medians. The road crossing, as reconstructed and widened is hereinafter the "Roadway."

The Railroad right of way being utilized for the existing at grade public road crossing is not sufficient to allow for the reconstruction and widening of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the Political Body to facilitate the reconstruction and widening of the Roadway. The portion of Railroad's property that Political Body needs to use in connection with the Roadway (including the right of way being utilized for the existing at grade crossing) is shown on the Railroad's location print marked **Exhibit A** and the Political Body's type, size and location prints of the Project marked **Exhibit A-1**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

In support of its Project, the Political Body has requested the Railroad's cooperation in connection with upgrading grade crossing protection devices in accordance with the design schematic marked **Exhibit E**, hereto attached and hereby made a part hereof (the "Designs"). Said work is to be performed at the sole expense of Political Body.

The Railroad and the Political Body are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. EXHIBIT B

The general terms and conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

Section 2. RAILROAD GRANTS RIGHT

For and in consideration of the sum of **THREE THOUSAND DOLLARS (\$3,000.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

Section 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The Political Body confirms

that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UP Project No. 0783795

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

Section 5. FEDERAL AID POLICY GUIDE

If the Political Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimates dated May 31, 2023, and June 7, 2023, marked **Exhibit C**, and October 4, 2023 marked **Exhibit C-1**, with each exhibit being attached hereto and hereby made a part hereof (the "Estimates"). As set forth in the Estimates, the Railroad's estimated cost for the Railroad's work associated with the Project is One Million Four Thousand Five Hundred Forty Four Dollars (\$1,004,544.00).

B. The Railroad, if it so elects, may recalculate and update the Estimates submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimates.

C. The Political Body acknowledges that the Estimates may not include any estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

D. The Railroad shall send progressive billing to the Political Body during the Project and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

Section 8. PLANS

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. The Railroad's review and approval of the Plans will in no way relieve the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

Section 9. NON-RAILROAD IMPROVEMENTS

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Body in the event the Political Body does not

commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

Section 11. CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN COMMENCE WORK

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Political Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

Section 13. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

Section 14. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

Section 15. TERMINATION OF ORIGINAL AGREEMENT

Upon the completion of the Roadway, the original agreement either governing currently, or any agreement to be found in the future at the existing at-grade crossing, shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance and repair of the Roadway.

Section 16. ANNUAL SIGNAL MAINTENANCE FEE

A. Effective as of three years from effective date of this Agreement or the date of installation and/or the in-service date of the new and/or improved or existing Grade Crossing Signal System(s) ("Signal System"), the Political Body, in addition to maintaining at its sole cost and expense the portion of the Roadway described in Section 2 of **Exhibit B**, agrees to pay to Railroad the sum of Thirty Thousand Three Hundred Twenty Nine Dollars (\$30,329.00) per annum, payable annually in advance, as payment for Railroad's maintenance of the Signal System that is installed at the Roadway. The annual signal maintenance fee is calculated as shown on the attached **Exhibit F**, attached hereto and made a part hereof.

B. The above annual signal maintenance fee for Railroad's maintenance of the Signal System is based on the number of current signal units installed at the Roadway. If the Signal System is improved and/or altered in any way, the Political Body must notify the Railroad in writing and the annual signal maintenance fee will be increased at a rate based on the American Railway Engineering and Maintenance of Way Association (AREMA) signal unit cost index. If the Political Body fails to notify Railroad of any improvement or alteration to the Signal System, the Railroad may increase the annual

signal maintenance fee at a rate based on the AREMA signal unit cost index any time after the date of installation and/or improvement of the Signal System. The signal unit base for the annual signal maintenance fee may also be re-determined by the Railroad at any time subsequent to the expiration of five (5) years following the date on which the annual signal maintenance fee was last determined or established. Any such changes in the annual signal maintenance fee referenced in Article 2 may be made by means of automatic adjustment in billing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY

(Federal Tax ID #94-6001323)

By: _____
Printed Name: _____
Title: _____

CITY OF BERKELEY

By: _____
Printed Name: _____
Title: _____

**EXHIBIT A
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit A will be a print showing the Crossing Area (see Recitals)

LEGEND:

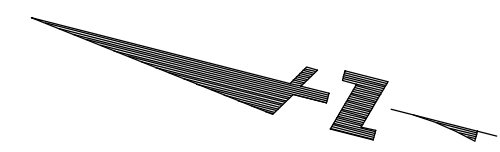
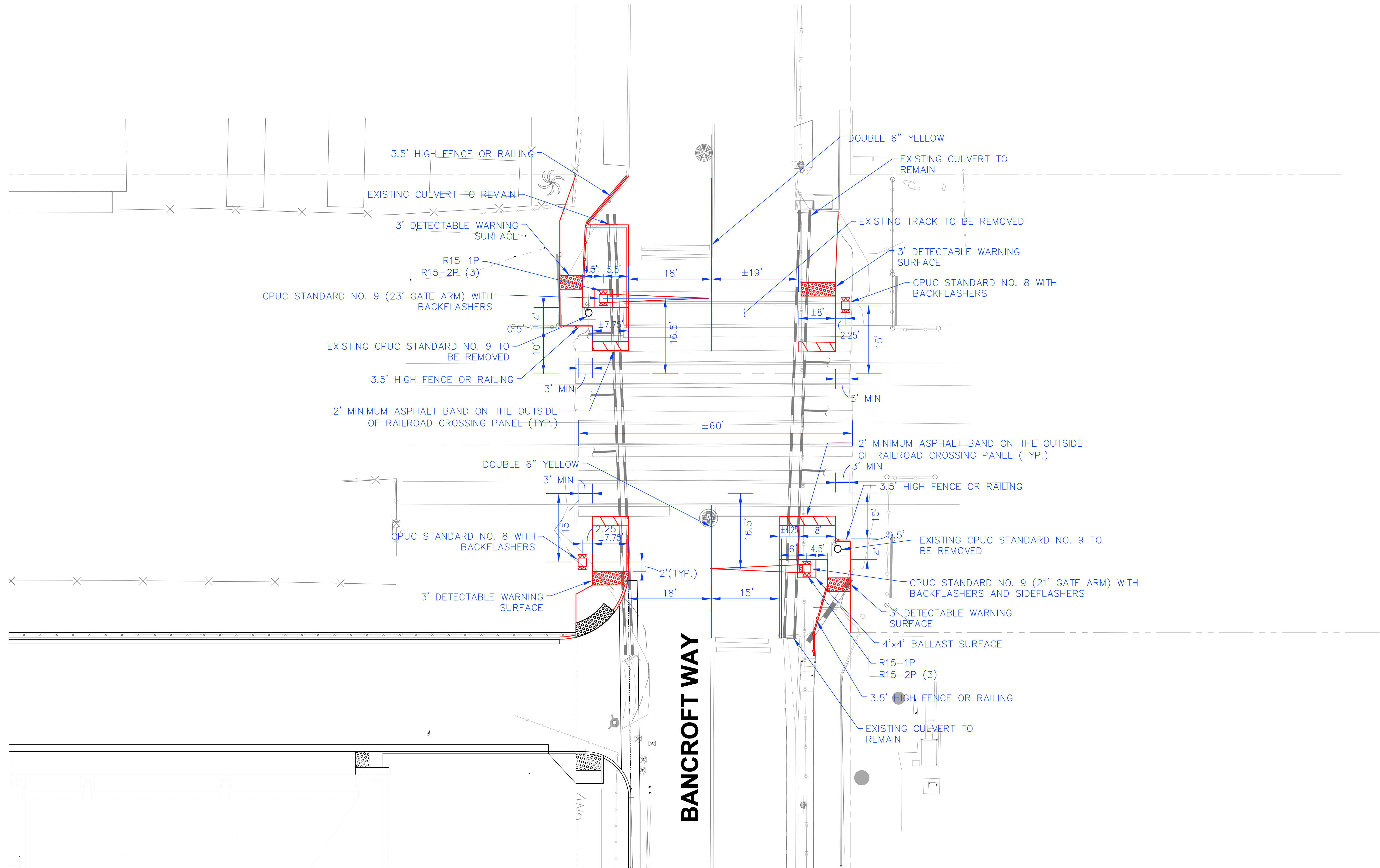
PROPOSED IMPROVEMENTS



BANCROFT STREET RAILROAD CROSSING IMPROVEMENTS
BERKELEY COMMONS RAILROAD IMPROVEMENTS

**EXHIBIT A-1
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

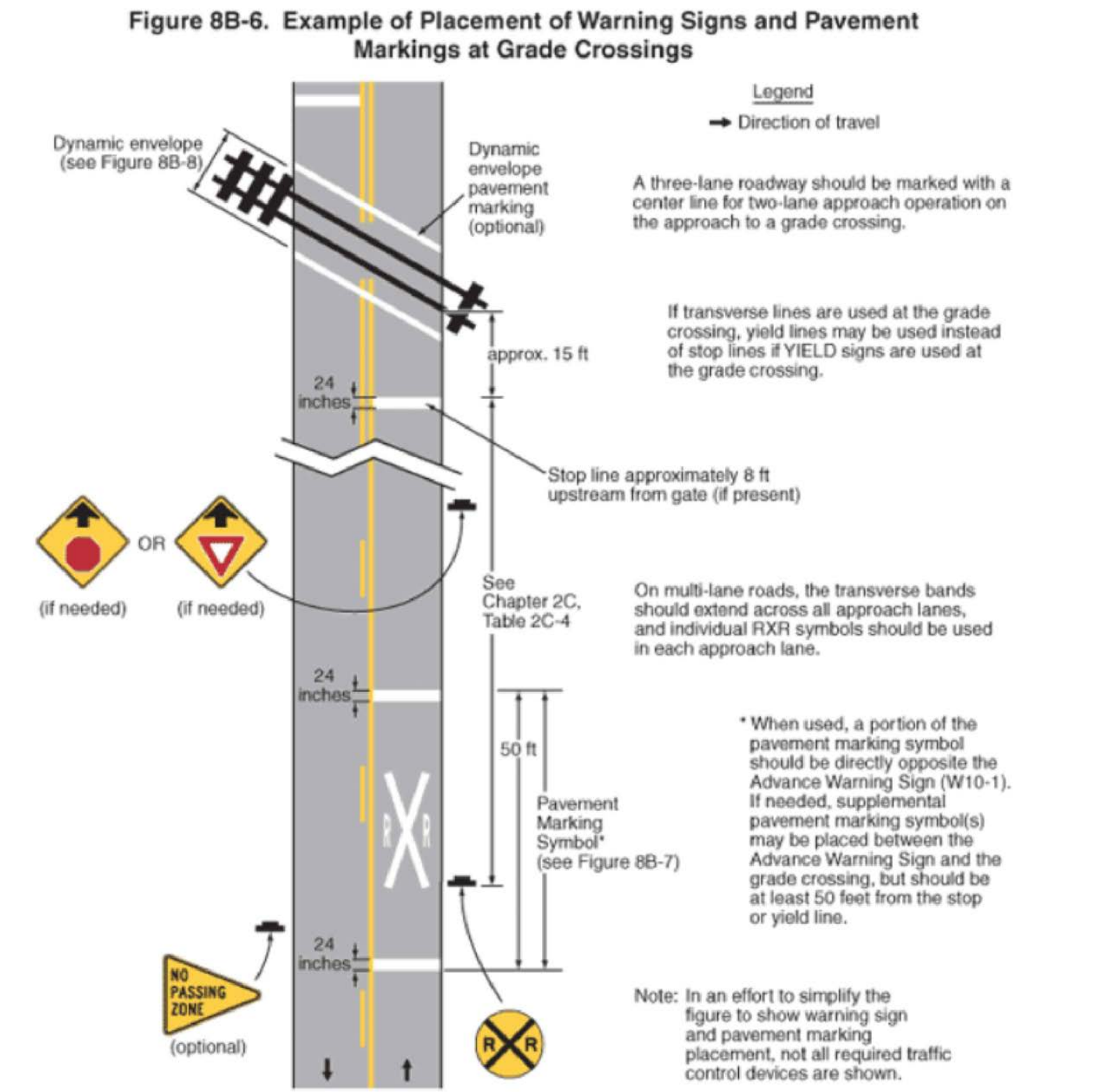
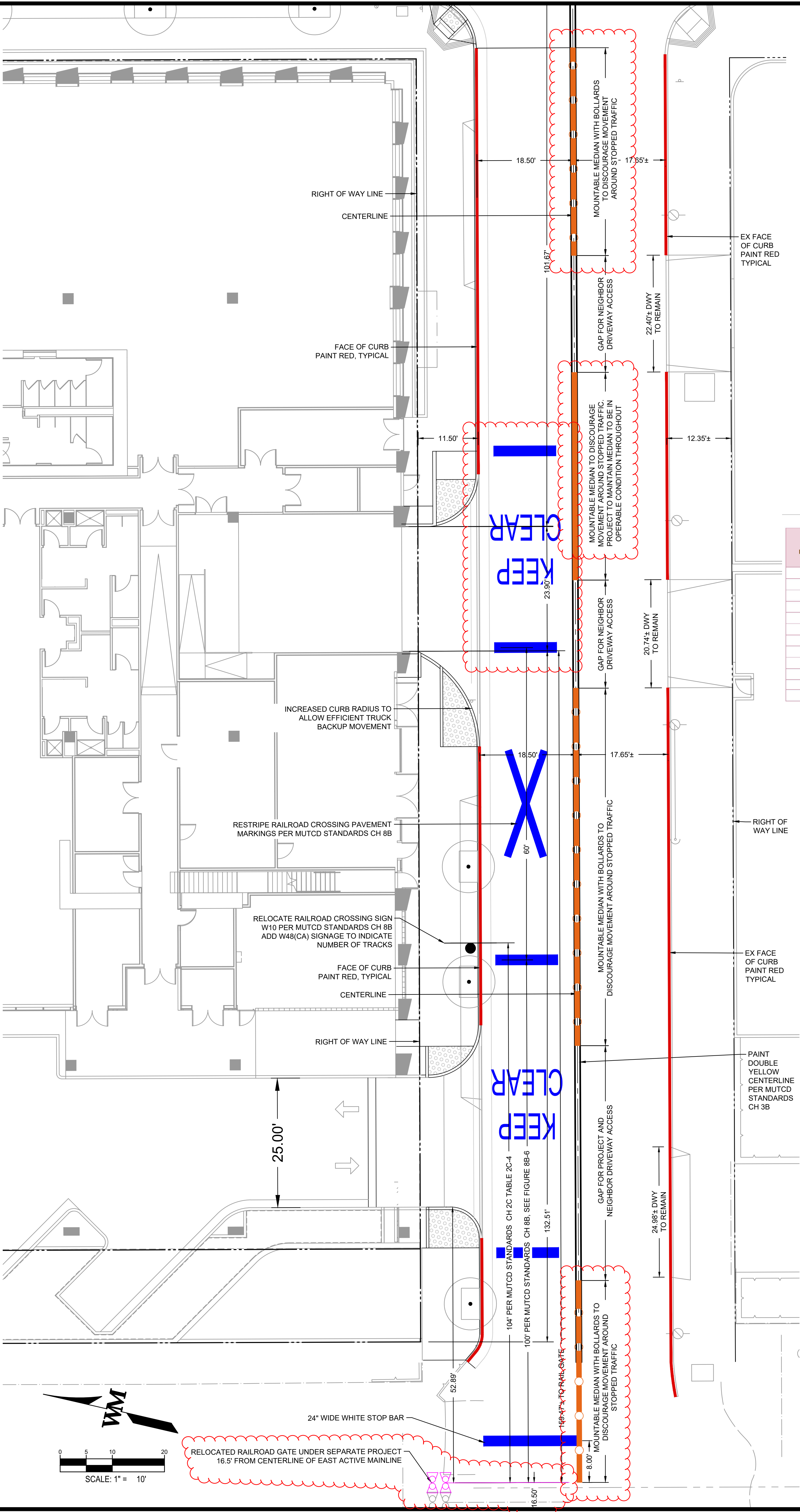
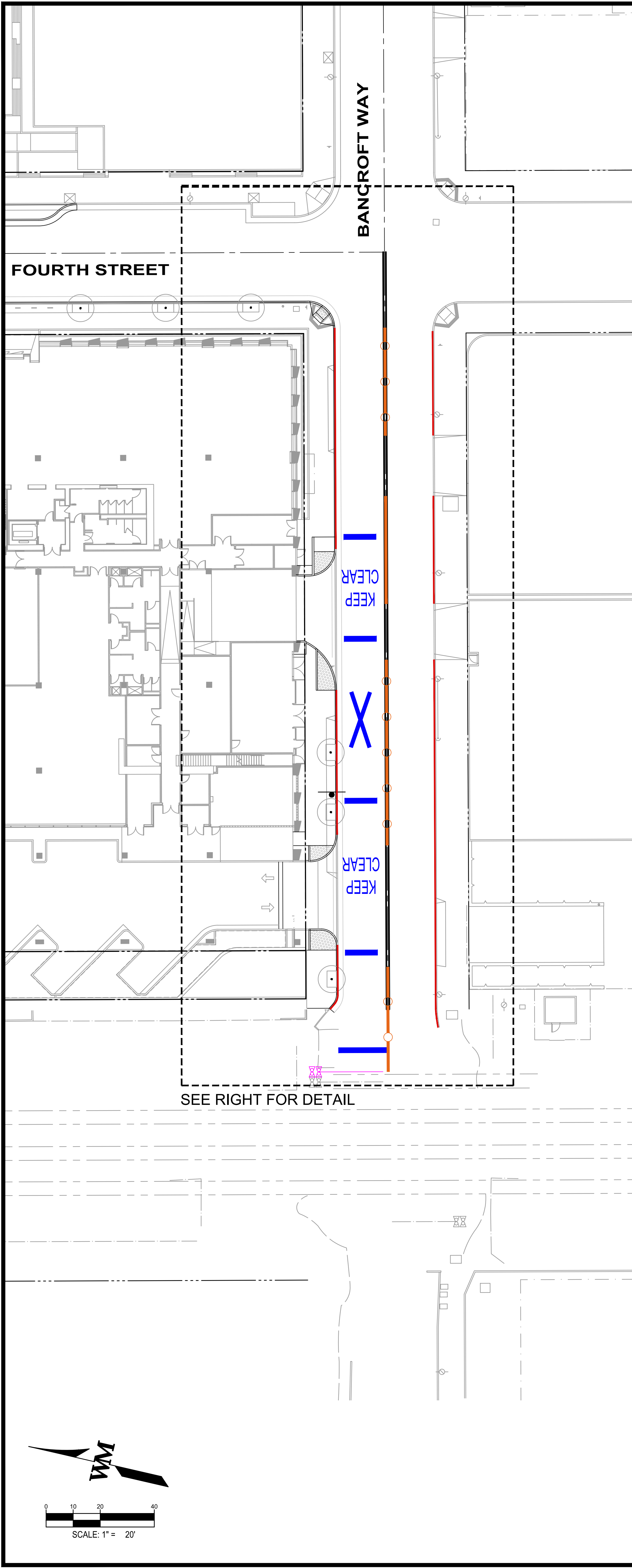
Exhibit A-1 will be the Political Body's type, size and location prints of the Project (see Recitals)



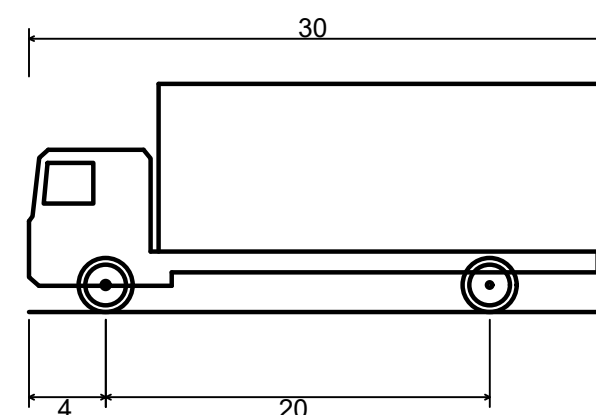
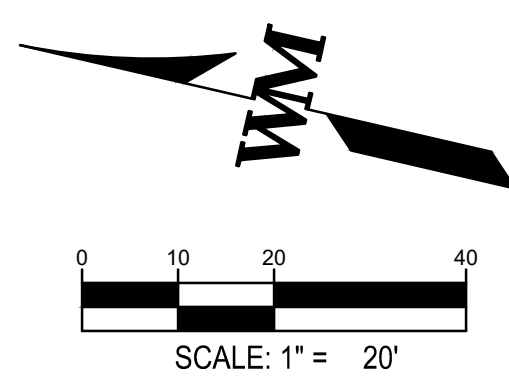
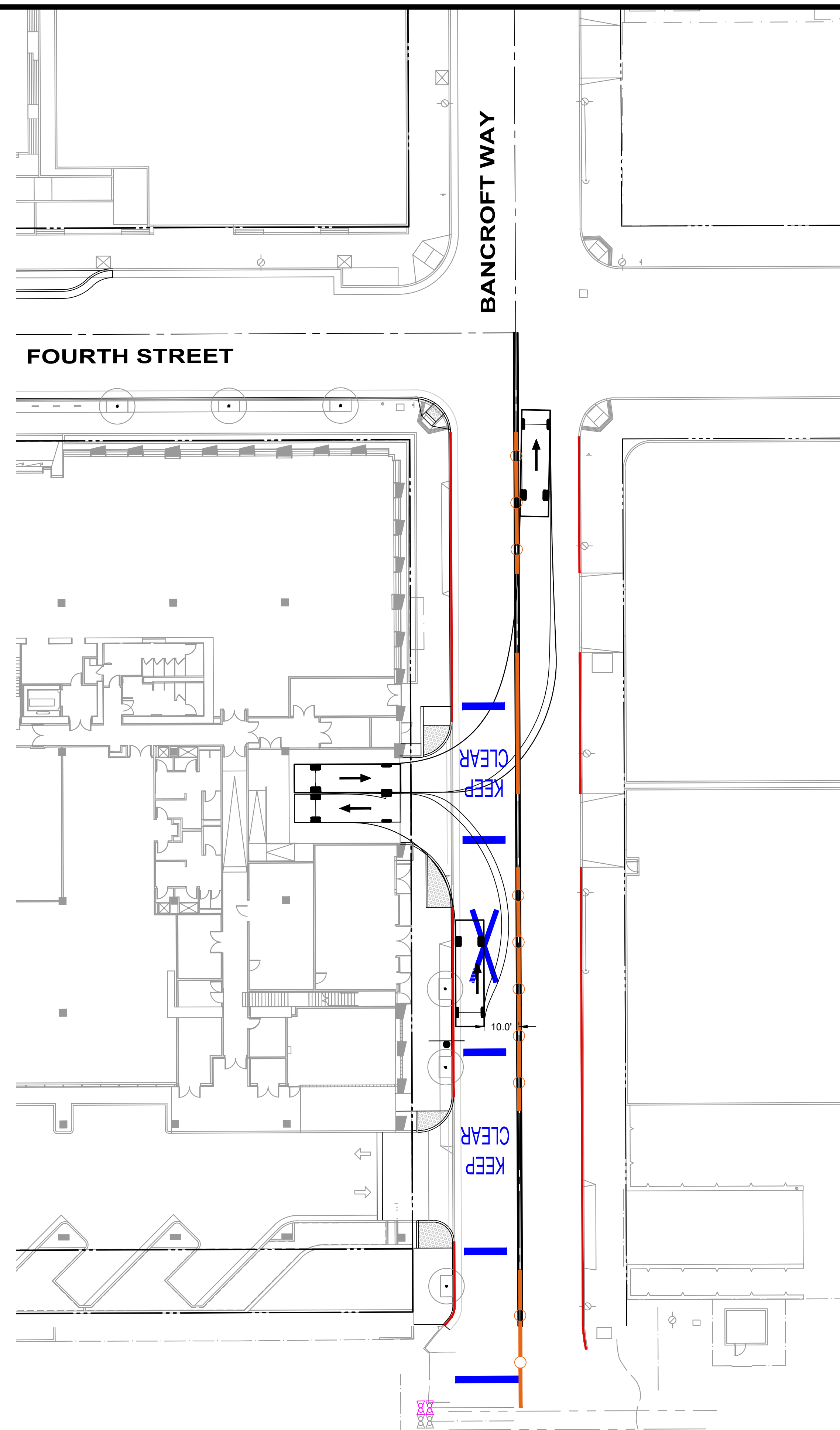
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PLOT DATE: 08/08/22 PLOTTED BY: lsa

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PRELIMINARY NOT FOR CONSTRUCTION	
DATE: 08/08/2022	
BKF ENGINEERS 255 SHORELINE DRIVE SUITE 200 REDWOOD CITY, CA 94065 (650) 482-6300 www.bkf.com	
BKF	
BERKELEY COMMONS RAILROAD IMPROVEMENTS BANCROFT WAY CITY OF BERKELEY, ALAMEDA COUNTY	
CPUC LAYOUT EXHIBIT	
Revisions	
No.	
Date: 8/8/2022	
Scale: AS SHOWN	
Design: JW	
Drawn: AJ	
Approved: JS	
Job No: 20191091	
Drawing Number:	
OF	

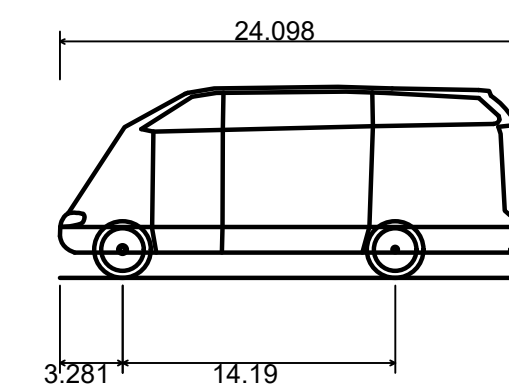
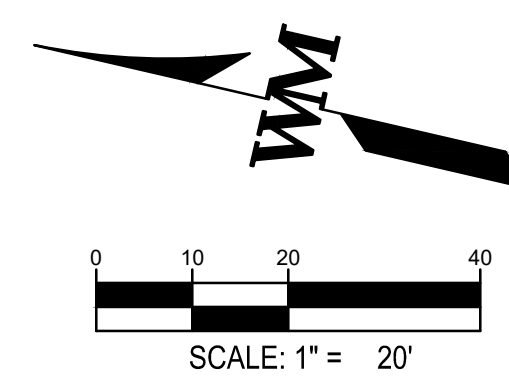
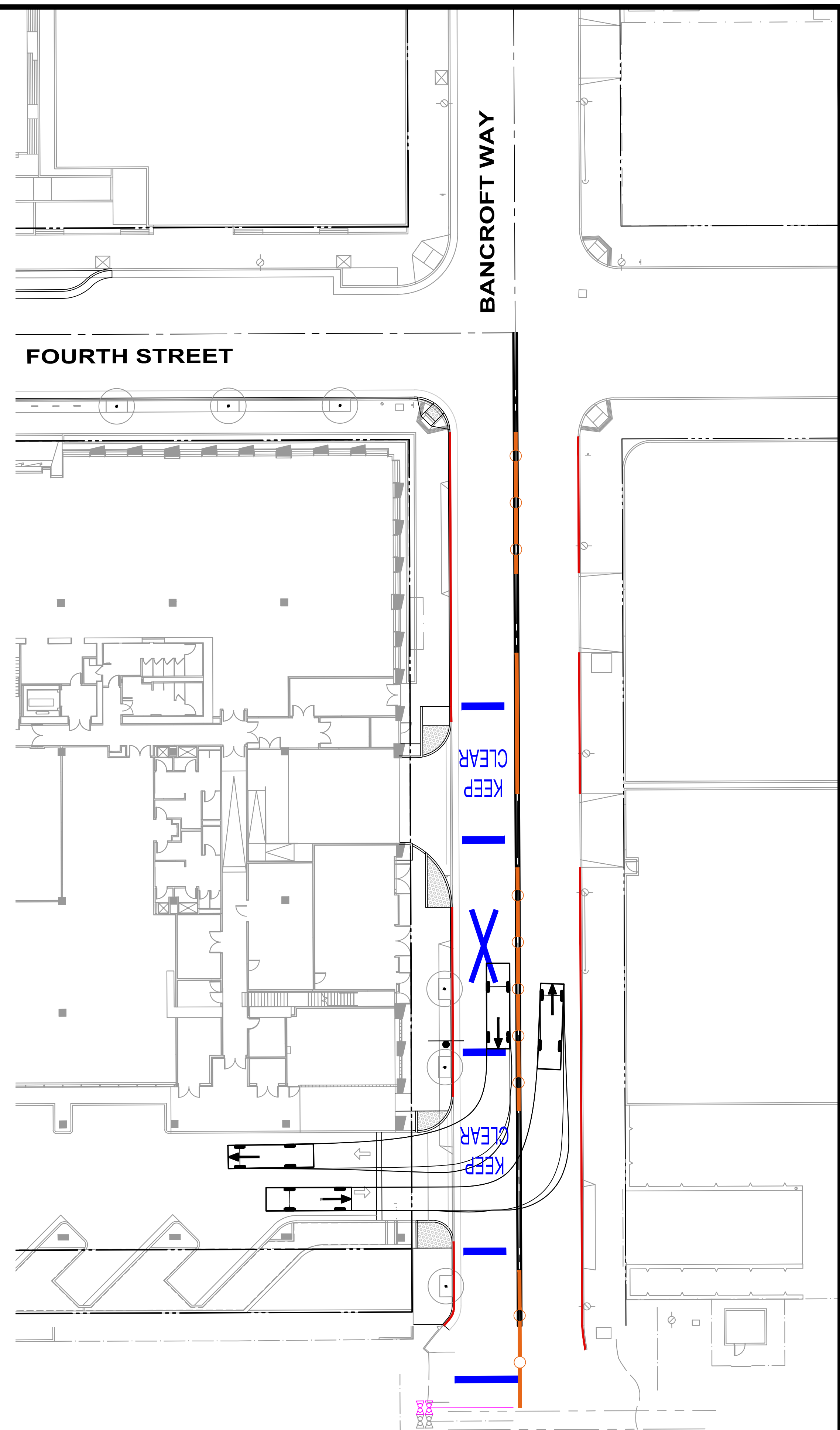


Posted or 85th-Percentile Speed	Advance Placement Distance ¹									
	Condition A: Speed reduction and lane changing in heavy traffic ²					Condition B: Deceleration to the listed advisory speed (mph) for the condition ³				
	0 ²	10 ⁴	20 ⁴	30 ⁴	40 ⁴	50 ⁴	60 ⁴	70 ⁴	80 ⁴	90 ⁴
20 mph	225 ft	100 ft ⁵	N/A ⁵	—	—	—	—	—	—	—
25 mph	325 ft	100 ft ⁵	N/A ⁵	—	—	—	—	—	—	—
30 mph	460 ft	100 ft ⁵	N/A ⁵	N/A ⁵	—	—	—	—	—	—
35 mph	565 ft	100 ft ⁵	N/A ⁵	N/A ⁵	—	—	—	—	—	—
40 mph	670 ft	125 ft	100 ft ⁵	100 ft ⁵	N/A ⁵	—	—	—	—	—
45 mph	775 ft	175 ft	125 ft	100 ft ⁵	100 ft ⁵	N/A ⁵	—	—	—	—
50 mph	885 ft	250 ft	200 ft	175 ft	125 ft	100 ft ⁵	—	—	—	—
55 mph	990 ft	325 ft	275 ft	225 ft	200 ft	125 ft	N/A ⁵	—	—	—
60 mph	1,100 ft	400 ft	350 ft	325 ft	275 ft	200 ft	100 ft ⁴	—	—	—
65 mph	1,200 ft	475 ft	400 ft	350 ft	300 ft	225 ft	100 ft ⁴	—	—	—
70 mph	1,250 ft	500 ft	450 ft	400 ft	375 ft	275 ft	150 ft	—	—	—
75 mph	1,350 ft	650 ft	625 ft	600 ft	550 ft	475 ft	375 ft	250 ft	100 ft ⁴	—



SU - Single Unit Truck	
Overall Length	30.000ft
Overall Width	8.000ft
Overall Body Height	11.881ft
Min Body Ground Clearance	1.367ft
Track Width	8.000ft
Lock-to-lock time	5.00s
Curb to Curb Turning Radius	42.000ft

DETAIL 2 - SU-30 TRUCK MOVEMENT AT LOADING DOCK



Mercedes Sprinter Panel Van 518CDI Extra Long Super High Roof	
Overall Length	24.098ft
Overall Width	6.539ft
Overall Body Height	9.942ft
Min Body Ground Clearance	1.312ft
Track Width	6.539ft
Lock-to-lock time	5.00s
Wall to Wall Turning Radius	25.591ft

DETAIL 1 - DELIVERY TRUCK MOVEMENT AT DRIVEWAY

[illegible]

EXHIBIT B
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

SECTION 1. CONDITIONS AND COVENANTS

A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Political Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.

E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

A. The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.

D. All construction work of the Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the

Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

A. The Political Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by the Railroad at the Political Body's expense.

B. If, in the future, the Political Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Political Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Political Body shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Political Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the

same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for

vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage.** The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice.** Before commencing any work, the Political Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall visit up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

**EXHIBIT C
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit C (if applicable) will be Railroad's Material and Force Agreement Estimates.

Material And Force Account Estimate
Berkeley

Estimate Number: 144048 Version: 1

Standard Rates: Labor Additive = 70%
Estimate Good Until 05/31/24

Location: MARTINEZ SUB, NO 1, 5.9-5.94
Description of Work: 751176H Bancroft Way Berkeley CA 5.92 Martinez Sub
Prepared For: Berkeley
Buy America: No

COMMENTS	FACILITY	Description	QTY	UOM	UCST	LABOR	MATERIAL	TOTAL	UP %0	Agcy %100
ENGINEERING										
		Engineering	1	LS	23,942.00	23,942	0	23,942	0	23,942
		Bill Prep Fee - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Homeline Freight - Track Surface RECOLLECT	1	LS	900.00	0	900	900	0	900
		Foreign Line Freight - Track Surface RECOLLECT	1	LS	1,276.02	0	1,276	1,276	0	1,276
Sub-Total =						23,942	3,076	27,018	0	27,018
TRACK CONSTRUCTION - COMPANY										
		Mobilization: Company	1	DA	11,450.00	11,450	0	11,450	0	11,450
Sub-Total =						11,450	0	11,450	0	11,450
TRACK REMOVAL - COMPANY										
	RDXING	Remove road crossing - concrete	40	TF	56.82	2,273	0	2,273	0	2,273
	TRACK	Remove Track	40	TF	22.28	891	0	891	0	891
Sub-Total =						3,164	0	3,164	0	3,164
SITE WORK - CONTRACT										
		Asphalt	1	LS	37,000.00	0	37,000	37,000	0	37,000
Sub-Total =						0	37,000	37,000	0	37,000
EQUIPMENT RENTAL										
		Equipment Rental	1	LS	25,000.00	0	25,000	25,000	0	25,000
Sub-Total =						0	25,000	25,000	0	25,000
Total Wgt. in Tons =						Totals =	38,556	65,076	103,632	0 103,632

Grand Total = \$103,632

Please Note: The above figures are estimates only and are subject to fluctuation. In the event of an increase or decrease in the cost or amount of material or labor required, Berkeley will pay actual construction costs at the current rates effective thereof.

Material And Force Account Estimate
Lane Partners

Estimate Creation Date: 6/6/2023 Number: 144206 Version: 1

Estimate Good Until 06/07/24

Location: MARTINEZ SUB, NO 1, 2.33-7
Buy America: No

Description of Work: Martinez Sub MP 5.92 Berkeley, CA Bancroft Way DOT#751176H WO#60487 PID#119334
100% Recollectable

COMMENTS	FACILITY	Description	SubDivision	QTY	UOM	Unit Cost	LABOR	MATERIAL	TOTAL
SIGNAL									
		Xing - 2 Trk CWE w/Gates	MARTINEZ SUB	1	EA	152,876.00	48,800	104,076	152,876
		Xing - Flasher/Ped (pair)		1	LS	57,560.00	16,000	41,560	57,560
		Xing - IJ		2	PR	9,000.00	8,996	9,004	18,000
		Xing - IXS Track Circuit		2	EA	14,951.00	11,072	18,830	29,902
PPEC Project MGMT		Xing - Misc.		1	LS	15,000.00	0	15,000	15,000
		Xing - Semi-Bi Coupler		4	EA	898.00	0	3,592	3,592
		Xing - Sidelight		1	EA	907.00	0	907	907
		Xing - Track Card (Main and Stand-by) New Cable		3	EA	12,889.00	18,000	20,667	38,667
		Xing - Track Filter/Battery Choke		8	EA	240.00	0	1,920	1,920
		Xing - Dax Cable 1000'		7	EA	6,440.00	28,000	17,080	45,080
		Gang Day - 5 Man		2	EA	5,500.00	11,000	0	11,000
Security Fencing		Xing - Misc.		1	LS	16,000.00	0	16,000	16,000
		Xing - Remove Location (Gates)		1	LS	2,000.00	2,000	0	2,000
		Xing - Engineering Design		1	LS	17,897.83	17,898	0	17,898
		Xing - Boring		1	LS	10,000.00	0	10,000	10,000
		Xing - Fill/Rock/Gravel		1	LS	60,000.00	0	60,000	60,000
Standard 224.45%		Xing - Labor Additive		1	LS	363,086.00	363,086	0	363,086
		Xing - Meter Service		1	LS	5,000.00	0	5,000	5,000
Sub-Total =							524,852	323,636	848,488

PROJECT LEVEL COST

5%	CONTINGENCIES	Contingency		5	%	8,484.88	26,243	16,182	42,424
Sub-Total =							26,243	16,182	42,424

Totals = 551,094 339,818 890,912

Grand Total = \$890,912

Disclaimer: This is a preliminary estimate, intended to provide a ballpark cost to determine whether a proposed project warrants further study. Quantities and costs are estimated using readily available information and experience with similar projects. Site conditions and changes in project scope and design may result in significant cost variance.

EXHIBIT C-1

**ESTIMATE OF FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD COMPANY**

DESCRIPTION OF WORK: Engineering and other related services for work to be performed within railroad right of way. This includes project and construction management during construction activities in railroad right of way. All necessary railroad services will be billed at actual cost.

DATE: 10/4/2023

LOCATION: Berkeley, CA DOT: 751176H	SUBDIVISION Martinez					STATE: CA	
DESCRIPTION	LABOR		MATERIAL		UP %0	Agency % 100	TOTAL
ENGINEERING							
Project Management	\$	4,000	\$	-	\$	-	\$ 4,000.00 \$ 4,000
Construction Management	\$	5,000	\$	-	\$	-	\$ 5,000.00 \$ 5,000
Final Inspection	\$	1,000	\$	-	\$	-	\$ 1,000.00 \$ 1,000
FLAGGING / INSPECTION SERVICES							
RATE (per day)	\$	1,500					
TOTAL PROJECT:	\$	10,000	\$	-	\$	-	\$ 10,000.00 \$10,000

TOTAL ESTIMATED COST: \$10,000

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION.
IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF
MATERIAL OR LABOR REQUIRED, THE RAILROAD WILL BILL FOR ACTUAL
COSTS AT THE CURRENT RATES EFFECTIVE THEREOF.

Flagging is NOT included in this estimate. Agencies are instructed to follow Union Pacific's Third Party Flagging Policy.

Please utilize the following link to Union Pacific's Third Party Flagging Policy:

https://www.up.com/real_estate/third-party-flagging/index.htm

EXHIBIT D
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____ (the "Work") with all or a portion of such Work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision or Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which Work is the subject of a contract dated _____ between Railroad and _____.

Railroad is willing to permit Contractor to perform the Work described above at the location described above subject to the terms and conditions contained in this agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. For purposes of clarity, Contractor agrees that any CIC (defined below) hired by Contractor is a subcontractor of Contractor and therefore included in the defined term Contractor pursuant to the foregoing sentence.

ARTICLE 2 - RIGHT GRANTED: PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the Work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.

The terms and conditions contained in **Exhibit B** and **Exhibit C**, attached hereto, are hereby made a part of this agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR: RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any Work performed by Contractor (including without limitation any CIC), or any costs or expenses incurred by Railroad relating to this agreement.

B. Contractor shall coordinate all of its Work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. Contractor, at its own expense, shall adequately police and supervise all Work to be performed by Contractor and shall ensure that such Work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's Work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the Work, or by Railroad's collaboration in performance of any Work, or by the presence at the Work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of Work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this agreement and continue until this agreement is terminated as provided in this agreement or until the Contractor has completed all Work on Railroad's property.

ARTICLE 6 - TERM: TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its Work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its Work on Railroad's property.

B. This agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any Work and throughout the entire term of this Agreement, Contractor, at its expense, shall procure and maintain in full force and effect the types and minimum limits of insurance specified in **Exhibit C** of this agreement and require each of its subcontractors to include the insurance endorsements as required under Section 12 of **Exhibit B** of this agreement.

B. Not more frequently than once every two (2) years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Railroad, Contractor shall provide to Railroad a certificate issued by its insurance

Contractor's Right of Entry Public
Projects Form Approved 02/09/2022

carrier evidencing the insurance coverage required under **Exhibit B**.

D. Contractor understands and accepts that the terms of this Article are wholly separate from and independent of the terms of any indemnity provisions contained in this Agreement.

E. Upon request of Railroad, insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____
Project No. 0783795

ARTICLE 8 - PRECONSTRUCTION MEETING

If the Work to be performed by the Contractor will involve the Railroad providing any flagging protection (or if a CIC is approved to provide flagging protection pursuant to the terms set forth herein) and/or there is separate work to be performed by the Railroad, the Contractor confirms that no work shall commence until the Railroad and Contractor participate in a preconstruction meeting involving flagging procedures and coordination of work activities of the Contractor and the Railroad (and any CIC, as applicable.)

ARTICLE 9. DISMISSAL OF CONTRACTOR'S EMPLOYEE

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the Work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 10. ADMINISTRATIVE FEE

Upon the execution and delivery of this agreement, Contractor shall pay to Railroad One Thousand Twenty Five Dollars (\$1,025.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

ARTICLE 11. CROSSINGS: COMPLIANCE WITH MUTCD AND FRA GUIDELINES

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

Contractor's Right of Entry Public
Projects Form Approved 02/09/2022

ARTICLE 12.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

(Name of Contractor)

By: _____

Name: _____

Title: _____

Phone: _____

E-Mail: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Exhibit A will be a print showing the general location of the work site.

LEGEND:

PROPOSED IMPROVEMENTS



BANCROFT STREET RAILROAD CROSSING IMPROVEMENTS

BERKELEY COMMONS RAILROAD IMPROVEMENTS

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - RAILROAD FLAGGING - PRIVATE FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its Work and at least thirty (30) working days in advance of proposed performance of any Work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track.

B. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad approved flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures.

C. Contractor shall be permitted to hire a private contractor to perform flagging or other special protective or safety measures (such private contractor being commonly known in the railroad industry as a contractor-in-charge ("CIC")) in lieu of Railroad providing such services or in concert with Railroad providing such services, subject to prior written approval by Railroad, which approval shall be in Railroad's sole and absolute discretion. If Railroad agrees to permit Contractor to utilize a CIC pursuant to the preceding sentence, Contractor shall obtain Railroad's prior approval in writing for each of the following items, as determined in all respects in Railroad's sole and absolute discretion: (i) the identity of the third-party performing the role of CIC; (ii) the scope of the services to be performed for the project by the approved CIC; and (iii) any other terms and conditions governing such services to be provided by the CIC. If flagging or other special protective or safety measures are performed by an approved CIC, Contractor shall be solely responsible for (and shall timely pay such CIC for) its services. Railroad reserves the right to rescind any approval pursuant to this Section 1, Subsection C., in whole or in part, at any time, as determined in Railroad's sole and absolute discretion.

D. If any flagging or other special protective or safety measures are performed by employees of Railroad and/or any contractor of Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing.

E. If any flagging or other special protective or safety measures are performed by Railroad or a CIC, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this agreement.

F. The provisions set forth in this subsection are only applicable for Flagging Services performed by employees of Railroad: the rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with labor agreements and schedules in effect at the time the Work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the Work is performed. One and one-half times the current hourly rate is

paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges. If flagging is performed by Railroad, reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five-day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least twenty-five (25) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the Work to be performed by Contractor caused by such railroad operations and Work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any Work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the Work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such Work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such Work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall visit www.up.com/CBUD to complete and submit the required form to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any Work until all such protection or relocation (if applicable) has been accomplished.

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD RAILROAD HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) ARISING OUT OF ANY ACT OR OMISSION OF CONTRACTOR, ITS AGENTS AND/OR EMPLOYEES, THAT CAUSES OR CONTRIBUTES TO (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON RAILROAD'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON RAILROAD'S PROPERTY. CONTRACTOR SHALL NOT HAVE OR SEEK RECOURSE AGAINST RAILROAD FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING RAILROAD'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON RAILROAD'S PROPERTY.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the Work covered by this agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the Work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of any Work on Railroad property performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the Work. Contractor shall, at a minimum, comply with Railroad's then current safety standards located at the below web address ("Railroad's Safety Standards") to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor

determines that any of Railroad's Safety Standards are contrary to good safety practices. Contractor shall furnish copies of Railroad's Safety Standards to each of its employees before they enter Railroad property.

http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any Work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the Work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this agreement shall control if there are any inconsistencies between this agreement and the Safety Plan.

Section 8. INDEMNITY.

A. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD, ITS AFFILIATES, AND ITS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (INDIVIDUALLY AN "INDEMNIFIED PARTY" OR COLLECTIVELY "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LOSS, DAMAGE, INJURY, LIABILITY, CLAIM, DEMAND, COST OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S, CONSULTANT'S AND EXPERT'S FEES, AND COURT COSTS), FINE OR PENALTY (COLLECTIVELY, "LOSS") INCURRED BY ANY PERSON (INCLUDING, WITHOUT LIMITATION, ANY INDEMNIFIED PARTY, CONTRACTOR, OR ANY EMPLOYEE OF CONTRACTOR OR OF ANY INDEMNIFIED PARTY) ARISING OUT OF OR IN ANY MANNER CONNECTED WITH (I) ANY WORK PERFORMED BY CONTRACTOR, OR (II) ANY ACT OR OMISSION OF CONTRACTOR, ITS OFFICERS, AGENTS OR EMPLOYEES, OR (III) ANY BREACH OF THIS AGREEMENT BY CONTRACTOR.

B. THE RIGHT TO INDEMNITY UNDER THIS SECTION 8 SHALL ACCRUE UPON OCCURRENCE OF THE EVENT GIVING RISE TO THE LOSS, AND SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF ANY INDEMNIFIED PARTY, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE ACTIVE NEGLIGENCE OF AN INDEMNIFIED PARTY AS ESTABLISHED BY THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION. THE SOLE ACTIVE NEGLIGENCE OF ANY INDEMNIFIED PARTY SHALL NOT BAR THE RECOVERY OF ANY OTHER INDEMNIFIED PARTY.

C. CONTRACTOR EXPRESSLY AND SPECIFICALLY ASSUMES POTENTIAL LIABILITY UNDER THIS SECTION 8 FOR CLAIMS OR ACTIONS BROUGHT BY CONTRACTOR'S OWN EMPLOYEES. CONTRACTOR WAIVES ANY IMMUNITY IT MAY HAVE UNDER WORKER'S COMPENSATION OR INDUSTRIAL INSURANCE ACTS TO INDEMNIFY THE INDEMNIFIED PARTIES UNDER THIS SECTION 8. CONTRACTOR ACKNOWLEDGES THAT THIS WAIVER WAS MUTUALLY NEGOTIATED BY THE PARTIES HERETO.

D. NO COURT OR JURY FINDINGS IN ANY EMPLOYEE'S SUIT PURSUANT TO ANY

WORKER'S COMPENSATION ACT OR THE FEDERAL EMPLOYERS' LIABILITY ACT AGAINST A PARTY TO THIS AGREEMENT MAY BE RELIED UPON OR USED BY CONTRACTOR IN ANY ATTEMPT TO ASSERT LIABILITY AGAINST ANY INDEMNIFIED PARTY.

E. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE COMPLETION OF ANY WORK PERFORMED BY CONTRACTOR OR THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. IN NO EVENT SHALL THIS SECTION 8 OR ANY OTHER PROVISION OF THIS AGREEMENT BE DEEMED TO LIMIT ANY LIABILITY CONTRACTOR MAY HAVE TO ANY INDEMNIFIED PARTY BY STATUTE OR UNDER COMMON LAW.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the Work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the Work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this agreement shall be effective unless made in writing and signed by Contractor and Railroad. This agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the Work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any Work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" on the subcontractor's Commercial General Liability policy and Umbrella or Excess policies (if applicable) with respect to all liabilities arising out of the subcontractor's performance of Work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Requirements For
Contractor's Right of Entry Agreement

During the entire term of this Agreement and course of the Project, and until all Project Work on Railroad's property has been completed and all equipment and materials have been removed from Railroad's property and Railroad's property has been clean and restored to Railroad's satisfaction, Contractor shall, at its sole cost and expense, procure and maintain the following insurance coverage:

- A. Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the Work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

- D. Railroad Protective Liability** insurance. Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence

and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Pollution Liability** insurance. Pollution liability coverage must be included when the scope of the Work as defined in the agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of Work as defined in this agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

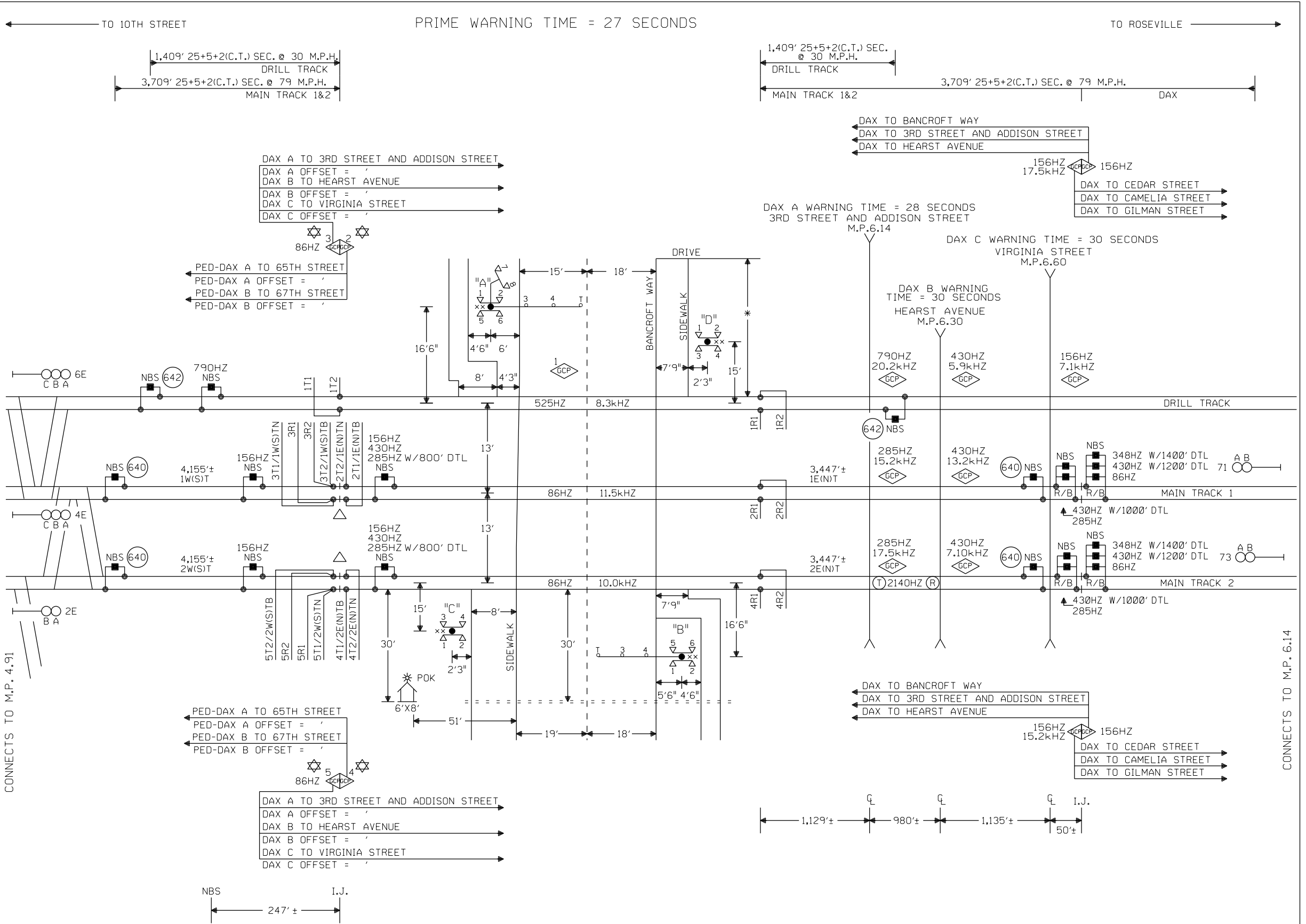
Other Requirements

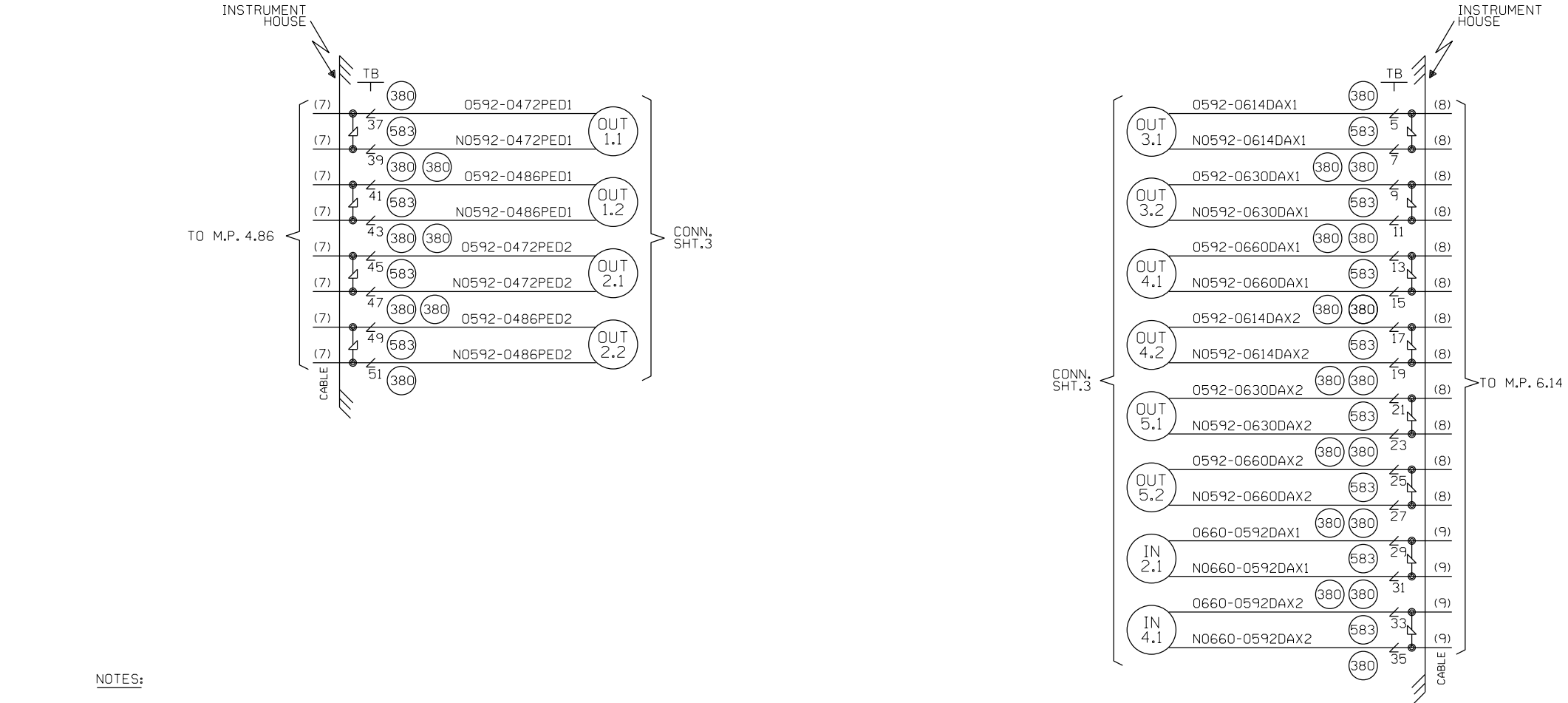
- G. All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Contractor's liability under the indemnity provisions of this agreement. BOTH CONTRACTOR AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Contractor required in this agreement where prohibited by law. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the Work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this agreement.

- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

**EXHIBIT E
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit E (if applicable) will be signal design schematic





NOTES:

- ⊗ = TWISTED WIRES
INSULATED 1 TWIST PER FT.
ALL TRACK WIRES 2C. #6
- TRANSMITTER AND RECEIVER LEADS
TO BE SEPARATED BY AT LEAST 12" IN TRENCH.
LENGTHS SHOULD NOT EXCEED MANUFACTURER'S
RECOMMENDATION.
- TOP OF FOUNDATION TO BE AT SAME ELEVATION
AS THE SURFACE OF THE TRAVELED WAY & NO
MORE THAN 4" ABOVE THE SURFACE OF THE GROUND.
- ALL BUNGALOW WIRING TO BE #16 AWG FLEX
UNLESS OTHERWISE SPECIFIED EXCEPT ALL GROUND
WIRE TO BE #6 AWG FLEX OR LARGER.
- ALL WIRING IN GATE MECHANISM TO BE #10 "AWG FLEX".
REFER TO UP STANDARD DWG FOR BUNGALOW GROUNDING.
- PORTABLE GENERATOR EXTENSION CORD
FOR 240V TO 240V IS PROVIDED AS WELL
AS A 120V TO 240V ADAPTER.
- ALL LIGHTS TO BE 12" ROUNDELS.
= = = = = 4" X 90' CONDUIT
- LIGHTS: LED LIGHTS
- xx = BELL
- ☆ = GCP TO OPERATE IN SEMI-BI
DIRECTIONAL MODE. USE TAB 627
COUPLER.
- △ = ENSURE TRACK POLARITY IS
TRANSPPOSED ACROSS ALL
INSULATED JOINTS.

TRK 1 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED
TRK 2 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED
TRK 4 ISLAND DISTANCE 153' MINIMUM 120' REQUIRED
PREFERRED ISLAND WIRE CONNECTIONS
ARE A MINIMUM 50' FROM EDGE OF ROAD

OFFSET AND ISLAND DISTANCES
TO BE VERIFIED BY FIELD

MATERIAL NOTES; DELETE UPON "AC"

6X8 ALUMINUM CABIN
U.P. PART #520-0185

CONSTRUCTION NOTES:

- 1.) INSTALL AS A CORRIDOR PROJECT WITH 3RD STREET
AND ADDISON STREET M.P. 6.14 (WO#60469)
- 2.) ORDER THE FOLLOWING FOR THIS LOCATION:
(4) 86HZ TAB 729 TRACK FILTERS
(4) 156HZ TAB 729 TRACK FILTERS
- 3.) INSTALL (2) PAIR OF I.J.'S
- 4.) * = FIELD VERIFY DISTANCE

CABLE TABULATION

CABLE NO. 7 12C*14 U.G.B.T. HOUSE TO M.P. 4.86
CABLE NO. 8 12C*14 U.G.B.T. HOUSE TO M.P. 6.14
CABLE NO. 9 7C*14 U.G.B.T. HOUSE TO M.P. 6.14

NEW SHEET

					Designed: 09/12/22 INSTALL NEW HOUSE, GATES, FLASHERS AND CWT AT M.P. 5.92 CORRIDOR PROJECT WITH WO# 60469 Res#s: WO# 60487 15s: /NST/ANM	MODIFICATION LEVEL		CIRCUIT MODIFICATIONS ARE NOT TO BE MADE WITHOUT AUTHORITY FROM THE OFFICE OF SIGNAL DESIGN	Date: 09/12/22	UNION PACIFIC RAILROAD		Sh.: 1A
						O. A. LAST LEVEL CHECKED	DW		Des: NST	BERKELEY, CALIFORNIA		DOT 751176H
						LAST LEVEL MOD THIS TYPICAL	DW		Chk:	BANCROFT WAY		MP: 5.92
						LAST LEVEL BY DESIGNER	DW		AFE: 60487	MARTINEZ SUBDIVISION		ID: 0910592JAX
						CHANGED FROM TYPICAL?	Y			Office of AVP Engineering - Signal		Omaha, Nebraska

**EXHIBIT F
TO
PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT**

Exhibit F (if applicable) will be the annual signal maintenance fee

Page 101 of 101
AREMA UNIT STATEMENT OF RAILROAD-HIGHWAY GRADE CROSSING SIGNALS
ESTIMATED MAINTENANCE COSTS



BUILDING AMERICA®

FOR PID # 119334
BY THE UNION PACIFIC RAILROAD

STREET	<u>BANCROFT WAY</u>
TOWN	<u>BERKELEY, CALIFORNIA</u>
MILEPOST	<u>5.92</u>
SUBDIVISION	<u>MARTINEZ</u>
AAR/DOT NO.	<u>751176H</u>
WORK ORDER#	<u>60487</u>

DESCRIPTION	VALUE	QUANTITY	UNITS
NON-CODED TRK. CIRCUIT (Standalone AFTAC or Ring 10)	2	0	0
SUPERIMPOSED CIRCUIT(AFTAC) / DETECTION LOOP	2	0	0
HIGHWAY GRADE CROSSING SIGNAL (FRONT LIGHTS)	2	5	10
ADDITIONAL PAIR OF LIGHTS (OTHER THAN FRONT LIGHTS)	1	4	4
GATE MECHANISM, AUTOMATIC WITH ARM UP TO 26 FT	8	2	16
GATE MECHANISM, AUTOMATIC WITH ARM OVER 26 FT	10	0	0
GCP/HXP (constant warning device, per track circuit)	15	5	75
EXIT GATE MANAGEMENT SYSTEM RACK*	10	0	0
MOVEMENT DETECTOR (PMD)	6	0	0
MOVEMENT DETECTOR (STANDBY UNIT)	3	0	0
RADIO DATA LINK, PER UNIT	1	0	0
PREEMPTION CIRCUIT	2	0	0
DATA RECORDER	1	0	0
REMOTE MONITORING DEVICE (SEAR, ETC)*	2	1	2
BONDED RAIL JOINTS (per mile, each rail, single bonded)	1	0	0
BATTERY AND CHARGER (per set)	1	2	2

TOTAL UNIT COUNT	109
PAVEMENT RESTORATION COSTS	(Actual)
Annual Maintenance Cost at \$278.25/Unit	\$30,329

*UP supplied Unit Value



Office of the City Manager

CONSENT CALENDAR

December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Grant Applications: Metropolitan Transportation Commission Housing Incentive Pool

RECOMMENDATION

Adopt two Resolutions certifying the City's compliance with State Housing Laws and authorizing the City Manager to submit grant applications to the Metropolitan Transportation Commission (MTC) Housing Incentive Pool (HIP) for the following projects: San Pablo Avenue/Ashby Avenue Intersection Improvements Project for up to \$1.9 million; Adeline Street Quick-Build for up to \$1.05 million; and 7th Street/Anthony Street Complete Intersections Project for up to \$2 million; accept the grants if awarded, and execute any resulting agreements and amendments.

FISCAL IMPACTS OF RECOMMENDATION

The City has been allocated a minimum of \$1,508,000 through the HIP. The HIP program requires that multiple projects be submitted for consideration for funding to MTC by local jurisdictions. If the City wins these grant awards, depending on funding availability, MTC will provide a total of up to \$4,869,814 to the City for improvements to several major corridors and local streets. The HIP funding requests are as follows, in priority order:

- \$1,856,900 for the San Pablo Ave. and Ashby Ave. Intersection Improvements;
- \$1,971,914 for the 7th St and Anthony St. Complete Intersections project; and
- \$1,041,000 for the Adeline Street Quick-Build.

The program requires that applicants ensure eligibility for Federal Surface Transportation Block Grant (STP) and/or Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds by providing matching funds equal to 11.47% of the total project cost. Matching funds in the amount of up to \$558,566 are available starting in fiscal year 2025 from Alameda County Transportation Sales Tax Measure BB direct local distribution Fund 134. Final matching funds required will depend on the amount of grant funding awarded to the City.

Housing Incentive Pool Grant Funding Requests and Matching Funds

San Pablo Ave. and Ashby Ave. Project Funding Request	\$1,856,900
Matching Funds for San Pablo Ave. and Ashby Ave. Project	\$212,987
7 th St. and Anthony St. Project Funding Request	\$1,971,914
Matching Funds for 7 th St. & Anthony St. Project	\$226,179
Adeline St. Quick-Build Project Funding Request	\$1,041,000
Matching Funds for Adeline St. Quick-Build Project	\$119,400
Total Housing Incentive Pool Grant Funding Request	\$4,869,814
City Matching Funds Available	\$558,566
TOTAL Housing Incentive Pool Grant and City Match	\$5,428,380

CURRENT SITUATION AND ITS EFFECTS

The safety countermeasures and traffic calming improvements in these projects were identified in the following Council approved plans:

- 2017 Bicycle Plan (Resolution No. 67,945-N.S.),
- 2019 Vision Zero Action Plan (Resolution No. 69,324-N.S.) and
- 2020 Pedestrian Plan (Resolution No. 69,711–N.S.).

These plans were the result of robust public engagement processes involving members of the public, Transportation Commissioners and numerous stakeholders throughout the City.

San Pablo Avenue and Ashby Avenue Intersection Improvements Project

Both San Pablo Ave and Ashby Ave are identified as high injury streets in the 2020 Vision Zero Plan, underscoring the critical need for these improvements. The San Pablo Avenue and Ashby Avenue Intersection Improvements Project brings several significant safety and accessibility enhancements to the intersection. In addition to installing protected left turn signals and modified curb ramps, the widening of the northeast and southeast roadway sections of Ashby Ave at San Pablo Ave will better accommodate vehicle flow and pedestrian movement. The accessible pedestrian signal push buttons further improve crossing conditions, especially for individuals with disabilities. As part of the 2020 Berkeley Pedestrian Plan, Ashby Ave's designation as a high injury corridor places a strong focus on pedestrian safety. The inclusion of curb ramps that align with the crosswalk and the addition of protected left turn phasing align directly with the plan's goals to enhance pedestrian safety and accessibility. Given the intersection's history of fatal, severe, and other injurious collisions, these targeted improvements will significantly reduce the risk of crashes and improve safety for all road users, from pedestrians and cyclists to motorists.

7th St and Anthony St. Complete Intersections Project

The 7th and Anthony Street Intersections Project improvements will help transit riders safely access the AC Transit bus stops located on the northwest and southeast corners of the 7th St and Anthony St intersection, consistent with the citywide recommendations of the Berkeley City Council adopted 2023 Transit-First Policy Implementation Plan and 2020 Pedestrian Plan. This project will remove and replace the traffic signal at 7th and Potter St. with a new signal at 7th and Anthony St. While 7th Street is not categorized as a Vision Zero High Injury Street, the close proximity of the 7th/Potter signal to the busy intersection at 7th/Ashy Ave (State Route 13) has been observed to create frequent confusion and conflicts among road users. The project installs four high visibility crosswalks at 7th St. and Anthony St. and three high visibility crosswalks at 7th St and Potter St. A rectangular rapid flashing beacon (RRFB) and two-way stop will be implemented on Potter St. with right-turns only onto 7th St. Relocating the traffic signal further from Ashby Avenue (SR13) is intended to reduce confusion and conflicts with the heavy volumes of traffic accessing the state highway and the nearby I-80/I-580 interchange.

Adeline Quick-Build Project

Adeline St. has been identified as a High Injury Street in the 2020 Vision Zero Action Plan, with a pattern of drivers, cyclists, and pedestrians suffering severe injuries and at least one pedestrian fatality. This project runs on Adeline Street from Ashby Avenue to the Berkeley city limit at Martin Luther King Jr Way. There are currently six lanes of traffic on Adeline Street (three lanes in each direction). This project reduces the number of through lanes from six to four lanes and accommodates construction of a one-way protected bike lane ("cycle track") on each side of Adeline Street in response to documented bicycle safety issues and to improve bicycling comfort. This gap closure project uses a quick-build approach, which allows a cost-effective means of constructing safe infrastructure while offering Public Works design flexibility to respond to community input. The project also supports improved transit operations by providing bus boarding islands at several stops on Adeline Street, and improves pedestrian crossing safety by upgrading medians at several pedestrian crosswalks. The project complements the City of Oakland's proposed protected bikeway on Martin Luther King Jr. Way, currently at 35% design, to be installed as part of OakDOT's 2026 repaving program. The Oakland project would connect directly to the proposed Berkeley project at the Berkeley/Oakland border, thus creating a seamless protected bikeway connection through South Berkeley and North Oakland. City and Oakland staff are closely coordinating the two efforts.

These projects advance the Strategic Plan goals of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities; and creating a resilient, safe, connected, and prepared city.

BACKGROUND

The Housing Incentive Pool (HIP) is a program administered by MTC that provides \$71M total in federal transportation funding to local jurisdictions for 2024. The HIP funds transportation improvement projects to the region's top fifteen jurisdictions that produced and preserved the most qualifying affordable housing units on a per-unit basis. The City has been awarded a minimum of \$ 1,508,000 through this program. The HIP program requires that multiple projects be submitted for consideration for funding to MTC by local jurisdictions. This program is funded through \$58 million in flexible federal funds through the second round of the One Bay Area Grant (OBAG 2) program and \$18 million in local funds.

In order to be eligible for HIP funding per MTC requirements, the City must adopt a Resolution of Local Compliance with State Housing Law. The City demonstrates compliance with State Housing Laws by referencing Ch. 23.306 Accessory Dwelling Units, and Ch. 23.330 Density Bonus of the Berkeley Municipal Code, and Resolution 71,401-N.S. Prioritizing Affordable Housing on City-Owned Land.

There is an urgent need to coordinate the delivery of a protected bike lane project on Adeline Street in the City with the 2026 OakDOT repaving project which will install a protected bike lane on Martin Luther King Jr. Way in neighboring Oakland. For this reason, City staff are pursuing multiple grant funding opportunities for the Adeline Quick Build, including California Active Transportation Program Cycle 7 and Regional Measure 3 Safe Routes to Transit and Bay Trail funding, in addition to this MTC HIP funding request.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

These projects are designed to promote sustainable transportation and climate resilience by improving traffic safety for pedestrians and bicyclists. This is consistent with the 2009 Climate Action Plan (Plan) Policy 5.A, which calls for expanding and improving the City's bicycle and pedestrian infrastructure. The Plan's target is to reduce transportation emissions 80% below year 2000 levels by 2050. The Plan further states that transportation modes, such as public transit, walking and bicycling, must become the primary means of fulfilling the City's mobility needs in order to meet these targets.

RATIONALE FOR RECOMMENDATION

The HIP funding allows the City to address traffic safety issues along major transportation corridors and promote environmentally-friendly mobility. The need for the projects in these applications has been identified in the following Council-approved plans:

- 2017 Bicycle Plan (Resolution No. 67,945-N.S.),
- 2019 Vision Zero Action Plan (Resolution No. 69,324-N.S.) and
- 2020 Pedestrian Plan (Resolution No. 69,711-N.S.).

Not applying would mean foregoing up to \$4,869,814 in potential grant funding and leaving traffic safety issues on these streets unaddressed.

ALTERNATIVE ACTIONS CONSIDERED

The City could choose not to apply for these funds. However, no alternative funding source has been identified to complete these key traffic safety and sustainability projects.

CONTACT PERSON

Wahid Amiri, Deputy Director, 510-981-6396

Eric Anderson, Principal Planner, 510-981-7062

Attachments:

- 1: Resolution of Local Support
- 2: Resolution of Local Compliance with State Housing Law
 - Exhibit A: Resolution No. 71-401: Prioritizing Affordable Housing on City-Owned Land
 - Exhibit B: Berkeley Municipal Code, Chapter 23.306, Accessory Dwelling Units
 - Exhibit C: Berkeley Municipal Code, Chapter 23.330, Density Bonus

Resolution of Local Support
RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE FILING OF AN APPLICATION FOR FUNDING ASSIGNED TO MTC AND COMMITTING ANY NECESSARY MATCHING FUNDS AND STATING ASSURANCE TO COMPLETE THE PROJECT

WHEREAS, City of Berkeley (herein referred to as APPLICANT) is submitting an application to the Metropolitan Transportation Commission (MTC) for up to \$4,869,814 in funding assigned to MTC for programming discretion, which includes federal funding administered by the Federal Highway Administration (FHWA) and federal or state funding administered by the California Transportation Commission (CTC) such as Surface Transportation Block Grant Program (STP) funding, Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding, Carbon Reduction Program (CRP) funding, Transportation Alternatives (TA) set-aside/Active Transportation Program (ATP) funding, and Regional Transportation Improvement Program (RTIP) funding (herein collectively referred to as REGIONAL DISCRETIONARY FUNDING) for the San Pablo Avenue and Ashby Avenue Intersection Improvements Project, Adeline Quick-Build Project, and 7th St and Anthony St. Complete Intersections Project. (herein referred to as PROJECT) for the Housing Incentive Pool (herein referred to as PROGRAM); and

WHEREAS, the United States Congress from time to time enacts and amends legislation to provide funding for various transportation needs and programs, (collectively, the FEDERAL TRANSPORTATION ACT) including, but not limited to the Surface Transportation Block Grant Program (STP) (23 U.S.C. § 133), the Congestion Mitigation and Air Quality Improvement Program (CMAQ) (23 U.S.C. § 149), the Carbon Reduction Program (CRP) (23 U.S.C. § 175), and the Transportation Alternatives (TA) set-aside (23 U.S.C. § 133); and

WHEREAS, state statutes, including California Streets and Highways Code §182.6, §182.7, and §2381(a)(1), and California Government Code §14527, provide various funding programs for the programming discretion of the Metropolitan Planning Organization (MPO) and the Regional Transportation Planning Agency (RTPA); and WHEREAS, pursuant to the FEDERAL TRANSPORTATION ACT, and any regulations promulgated thereunder, eligible project sponsors wishing to receive federal or state funds for a regionally-significant project shall submit an application first with the appropriate MPO, or RTPA, as applicable, for review and inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC is the MPO and RTPA for the nine counties of the San Francisco Bay region; and

WHEREAS, MTC has adopted a Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) that sets out procedures governing the application and use of REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, APPLICANT is an eligible sponsor for REGIONAL DISCRETIONARY FUNDING; and

WHEREAS, as part of the application for REGIONAL DISCRETIONARY FUNDING, MTC requires a resolution adopted by the responsible implementing agency stating the following:

- the commitment of any required matching funds; and
- that the sponsor understands that the REGIONAL DISCRETIONARY FUNDING is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with additional REGIONAL DISCRETIONARY FUNDING; and
- that the PROJECT will comply with the procedures, delivery milestones and funding deadlines specified in the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised); and
- the assurance of the sponsor to complete the PROJECT as described in the application, subject to environmental clearance, and if approved, as included in MTC's federal Transportation Improvement Program (TIP); and
- that the PROJECT will have adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and that the PROJECT will comply with all project-specific requirements as set forth in the PROGRAM; and
- that APPLICANT has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective County Transportation Agency (CTA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC-funded transportation and transit projects implemented by APPLICANT; and
- in the case of a transit project, the PROJECT will comply with MTC Resolution No. 3866, revised, which sets forth the requirements of MTC's Transit Coordination Implementation Plan to more efficiently deliver transit projects in the region; and
- in the case of a highway project, the PROJECT will comply with MTC Resolution No. 4104, which sets forth MTC's Traffic Operations System (TOS) Policy to install and activate TOS elements on new major freeway projects; and
- in the case of an RTIP project, state law requires PROJECT be included in a local congestion management plan, or be consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the County Transportation Agency (CTA); and

WHEREAS, that APPLICANT is authorized to submit an application for REGIONAL

DISCRETIONARY FUNDING for the PROJECT; and

WHEREAS, there is no legal impediment to APPLICANT making applications for the funds; and

WHEREAS, there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

WHEREAS, APPLICANT authorizes its Executive Director, General Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

WHEREAS, MTC requires that a copy of this resolution be transmitted to the MTC in conjunction with the filing of the application.

NOW, THEREFORE, BE IT RESOLVED that the APPLICANT is authorized to execute and file an application for funding for the PROJECT for REGIONAL DISCRETIONARY FUNDING under the FEDERAL TRANSPORTATION ACT or continued funding; and

BE IT FURTHER RESOLVED that APPLICANT will provide any required matching funds; and

BE IT FURTHER RESOLVED that APPLICANT understands that the REGIONAL DISCRETIONARY FUNDING for the project is fixed at the MTC approved programmed amount, and that any cost increases must be funded by the APPLICANT from other funds, and that APPLICANT does not expect any cost increases to be funded with additional REGIONAL DISCRETIONARY FUNDING; and

BE IT FURTHER RESOLVED that APPLICANT understands the funding deadlines associated with these funds and will comply with the provisions and requirements of the Regional Project Funding Delivery Policy (MTC Resolution No. 3606, revised) and APPLICANT has, and will retain the expertise, knowledge and resources necessary to deliver federally-funded transportation and transit projects, and has assigned, and will maintain a single point of contact for all FHWA- and CTC-funded transportation projects to coordinate within the agency and with the respective County Transportation Agency (CTA), MTC, Caltrans, FHWA, and CTC on all communications, inquires or issues that may arise during the federal programming and delivery process for all FHWA- and CTC funded transportation and transit projects implemented by APPLICANT; and

BE IT FURTHER RESOLVED that PROJECT will be implemented as described in the complete application and in this resolution, subject to environmental clearance, and, if approved, for the amount approved by MTC and programmed in the federal TIP; and BE

IT FURTHER RESOLVED that APPLICANT has reviewed the PROJECT and has adequate staffing resources to deliver and complete the PROJECT within the schedule submitted with the project application; and

BE IT FURTHER RESOLVED that PROJECT will comply with the requirements as set forth in MTC programming guidelines and project selection procedures for the PROGRAM; and

BE IT FURTHER RESOLVED that, in the case of a transit project, APPLICANT agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution No. 3866, revised; and

BE IT FURTHER RESOLVED that, in the case of a highway project, APPLICANT agrees to comply with the requirements of MTC's Traffic Operations System (TOS) Policy as set forth in MTC Resolution No. 4104; and

BE IT FURTHER RESOLVED that, in the case of an RTIP project, PROJECT is included in a local congestion management plan, or is consistent with the capital improvement program adopted pursuant to MTC's funding agreement with the County Transportation Agency (CTA); and

BE IT FURTHER RESOLVED that APPLICANT is an eligible sponsor of REGIONAL DISCRETIONARY FUNDING funded projects; and

BE IT FURTHER RESOLVED that APPLICANT is authorized to submit an application for REGIONAL DISCRETIONARY FUNDING for the PROJECT; and

BE IT FURTHER RESOLVED that there is no legal impediment to APPLICANT making applications for the funds; and

BE IT FURTHER RESOLVED that there is no pending or threatened litigation that might in any way adversely affect the proposed PROJECT, or the ability of APPLICANT to deliver such PROJECT; and

BE IT FURTHER RESOLVED that APPLICANT authorizes its Executive Director, General Manager, City Manager, or designee to execute and file an application with MTC for REGIONAL DISCRETIONARY FUNDING for the PROJECT as referenced in this resolution; and

BE IT FURTHER RESOLVED that a copy of this resolution will be transmitted to the MTC in conjunction with the filing of the application; and BE IT FURTHER RESOLVED that the MTC is requested to support the application for the PROJECT described in the resolution,

and if approved, to include the PROJECT in MTC's federal TIP upon submittal by the project sponsor for TIP programming.

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

COMPLIANCE WITH STATE HOUSING LAWS

WHEREAS, the San Francisco region has the highest housing costs in the United States; and

WHEREAS, the Bay Area produced less than 30% of the need for low- and moderate-income housing units from 2007-2014, and is on track to similarly underproduce low income units during the 2015-2023 time period; and

WHEREAS, there are limited funding sources available to secure land for the construction of low- and moderate-income housing; and

WHEREAS, public lands can play a critical role in increasing the supply of land for affordable housing; and

WHEREAS, accessory dwelling units (ADUs) and junior accessory dwelling units (Junior ADUs) provide an important option to increase the availability and affordability of housing, especially in existing, lower density neighborhoods; and

WHEREAS, density bonuses are an effective tool to increase the financial feasibility of housing and incentivize the creation of affordable housing; and

WHEREAS, the Metropolitan Transportation Commission adopted Resolution No. 4505, outlining the programming policy and project selection criteria for the One Bay Area Grant Program (OBAG 3), including certain requirements to access these funds.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley agrees to comply with the terms of Surplus Land Act (California Government Code § 54220 et seq.), as exists now or may be amended in the future, including, but not limited to, AB 1255 (Rivas, 2019), which requires jurisdictions to compile and report annually an inventory of surplus lands to the California Department of Housing and Community Development.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to comply with state laws related to ADUs and Junior ADUs, as it exists now or may be amended in the future, including, but not limited to California Government Code §§ 66310 - 66342 and California Health & Safety Code §§ 17980.12.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to comply with the state Density Bonus Law (California Government Code § 65915 et seq.), as exists now or may be amended in the future.

BE IT FURTHER RESOLVED that the City of Berkeley warrant and represents that is in compliance with the aforementioned state housing laws and that there are no claims, actions, suits, or proceedings pending to the best of the City of Berkeley's knowledge, alleging violations of the state housing laws by the City of Berkeley.

Exhibits

A: Resolution No. 71-401: Prioritizing Affordable Housing on City-Owned Land

B: Berkeley Municipal Code, Chapter 23.306, Accessory Dwelling Units

C: Berkeley Municipal Code, Chapter 23.330, Density Bonus

RESOLUTION NO. 71,401-N.S.

PRIORITIZING AFFORDABLE HOUSING ON CITY-OWNED LAND

WHEREAS, public land is a public asset and should be used for the public good; and

WHEREAS, 70% of households below 80% of Area Median Income (AMI) in Berkeley occupy units that are unaffordable to them; and

WHEREAS, the City of Berkeley's 2023-2031 Regional Housing Needs Allocation (RHNA) goal for extremely low-income, very low-income, and low-income housing is a combined 3,854 units; and

WHEREAS, the City Council is committed to supporting affordable housing development on public land within City limits; and

WHEREAS, the Surplus Land Act (SLA) is a "right of first refusal" law that requires all local agencies to offer surplus land for sale or lease to affordable home developers and certain other entities before selling or leasing the land to any other individual or entity; and

WHEREAS, The City of Berkeley submitted a Prohousing Designation Application in August 2023 to the California Department of Housing and Community Development affirming its commitment to make City-owned land available for redevelopment into affordable housing; and

WHEREAS, Program H-15 in the 2023-2023 Housing Element states that the City will "encourage use of publicly-owned or controlled sites for affordable housing and/or mixed-use residential projects with a substantial portion of affordable units"; and

WHEREAS, The City of Berkeley will commit to making surplus publicly owned land available for affordable housing, or for multifamily housing projects with the highest feasible percentage of units affordable to lower income households; and

WHEREAS, The City of Berkeley will commit to using mechanisms including but not limited to land donations, land sales with significant write-downs, or below-market land leases to support affordable housing development on publicly owned land.

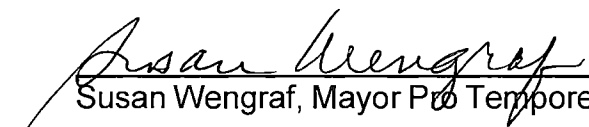
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley commits to follow the Surplus Land Act and prioritize all City-owned land no longer needed for public use available for affordable housing.

The foregoing Resolution was adopted by the Berkeley City Council on June 25, 2024 by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, Wengraf, and Arreguin.

Noes: None.

Absent: None.


Susan Wengraf, Mayor Pro Tempore

Attest: 
Mark Numainville, City Clerk

Chapter 23.306

ACCESSORY DWELLING UNITS

Sections:

- 23.306.010 Purpose.**
- 23.306.020 Applicability.**
- 23.306.030 Development Standards.**
- 23.306.040 Permit Procedures.**

23.306.010 Purpose.

This Chapter establishes accessory dwelling unit (ADU) and junior accessory dwelling unit (Junior ADU) standards that:

- A. Implement California Government Code Section [65852.1](#), [65852.2](#) and [65852.22](#).
- B. Increase overall supply and range of housing options in Berkeley.
- C. Expedite small-scale infill development.
- D. Support Housing Element goals of facilitating construction of accessory dwelling units and increasing the number of housing units that are more affordable to Berkeley residents.
- E. Encourage development of accessory dwelling units in zoning districts with compatible land uses and infrastructure. (Ord. 7888-NS § 8, 2023; Ord. 7799-NS § 1, 2022; Ord. 7797-NS § 1, 2022; Ord. 7787-NS § 2 (Exh. A), 2021)

23.306.020 Applicability.

- A. The provisions of this chapter apply to zoning districts where residential uses are permitted, on lots that have at least one existing or proposed Dwelling Unit or Group Living Accommodation that is not a Fraternity House, Sorority House or Dormitory.
- B. *Number Permitted.* See Table 23.306-1--ADU and Junior ADU Maximum Number of Units per Lot.
- C. *Density Exemption.* ADUs and Junior ADUs are not included in the minimum or maximum density established by the underlying zoning district.

Table 23.306-1. ADU AND JUNIOR ADU MAXIMUM NUMBER OF UNITS PER LOT

Use, Primary	ADU and Junior ADU, Maximum Per Lot
Single Family Dwelling, one unit on lot	1 ADU and 1 Junior ADU, both are permitted
Single Family Dwelling, more than one unit on lot	1 ADU
Duplex or Multi-Family Dwelling	2 detached ADUs and at least one interior ADU up to 25% of the total number of existing duplex or multi-family dwelling units on the lot
Group Living Accommodation	1 ADU

(Ord. 7888-NS § 8, 2023; Ord. 7799-NS § 1, 2022; Ord. 7797-NS § 1, 2022; Ord. 7787-NS § 2 (Exh. A), 2021)

23.306.030 Development Standards.

A. *Basic Standards.* See Table 23.306-2: ADU Development Standards.

Table 23.306-2. ADU DEVELOPMENT STANDARDS

Basic Standards		Supplemental Standards
Gross Floor Area, Maximum		23.306.030(A)(1); 23.306.030(A)(2); 23.306.030(A)(3)
Studio or 1 bedroom	850 sq. ft.	
2+ bedrooms	1,000 sq. ft.	
Building Height, Maximum		
Conversion	Same as existing structure	23.306.030(A)(1); 23.306.030(A)(3)
Detached, New Construction	20 ft.	
Attached, New Construction	25 ft.	23.306.030(A)(5); 23.306.030(A)(8)
Lot Line Setbacks, Minimum		
Front of Interior Lot	Same as underlying district	23.306.030(A)(3); 23.306.030(A)(4); 23.306.030(A)(6)

Table 23.306-2. ADU DEVELOPMENT STANDARDS

Basic Standards		Supplemental Standards
Front of Through Lot	Same as underlying district or 10 ft. on the secondary frontage as determined by the Zoning Officer	
Rear	4 ft.	
Interior Side	4 ft.	
Street Side	4 ft.	
Building Separation for Detached ADU, Minimum		
Outside the Hillside Overlay	5 ft.	
Within the Hillside Overlay	8 ft.	23.306.030(A)(7)
Required Off-Street Parking Spaces	See 23.322.030 -- Required Parking Spaces	

1. *Existing Building Conversion.* An ADU created entirely through conversion with no modifications to the existing building envelope that exceeds the development standards for maximum gross floor area in Table 23.306-2, ADU Development Standards, is allowed a physical addition of no more than 150 square feet. The addition must comply with maximum height and setback requirements.
2. *Duplex or Multi-Family Dwelling Conversion.* Interior ADU(s) must be created entirely through non-habitable residential portions of the existing main building that are not within the living space of a dwelling unit (e.g. basement, attic, garages, storage room).
3. *Accessory Building or Accessory Structure Conversion.* An ADU converted from a legally established accessory building or accessory structure is allowed to maintain non-conformity to the same location and dimensions of the existing accessory building or accessory structure, provided that the ADU meets fire and safety standards set forth in the California Building Standards Code adopted in BMC Title [19](#). Any physical additions to the existing accessory building or accessory structure shall comply with the development standards in Table 23.306-2 ADU Development Standards.
4. *Front Setback, New Construction.* An ADU shall not occupy area within the front setback, unless the requirement would preclude an ADU of 800 square feet. Should an ADU require area within the front setback, the ADU shall maintain a minimum 10-foot setback from the front lot line, unless such setback would preclude an ADU of 800 square feet. If a 10-foot setback would preclude an ADU of 800 square feet, the ADU shall maintain a 5-foot setback from the front lot line. If a 5-foot setback would preclude an ADU of 800 square feet, the ADU may be sited up to the front lot line.

5. *Attached ADU.* An ADU shall be considered attached if sharing a common wall with a primary dwelling.
6. *Detached ADU Setback Exceptions.* If there is a lesser setback allowed in [23.304.060](#) -- Accessory Buildings and Enclosed Accessory Structures for a comparable accessory building or accessory structure in the underlying zoning district, that setback shall apply.
7. *Building Separation for Detached ADU.* A minimum 8-foot separation is required within the Hillside Overlay, except where such separation would preclude an ADU of 800 square feet, in which case the minimum building separation shall be reduced to 5 feet.
8. *Attached ADU, New Construction Height.* Attached ADUs with height up to 25 ft. allowed with a Zoning Certificate.

B. *Junior ADUs.*

1. *Basic Standards.* A Junior ADU shall be contained entirely within an existing or proposed single family dwelling or its attached garage, and have no more than 500 square feet in floor area.
2. *Shared Sanitation Facility.* If a Junior ADU shares a sanitary facility with a single-family dwelling, an internal connection between the Junior ADU and the main living area of the single family dwelling is required.
3. *Junior ADU Floor Area.* The Junior ADU gross floor area calculation excludes any shared sanitation facility with the single family dwelling.

C. *Projections.*

1. *Outside of the Hillside Overlay.* Chimneys, water heater enclosures, flues, heating and cooling equipment, eaves, cornices, canopies, awnings, bay windows, and balconies may project two feet into the required front and side setbacks, so long as there remains at least a two-foot setback from property lines. Bay windows and balconies may not project into a required rear ADU setback.
2. *Within the Hillside Overlay.* No projections shall be allowed within a required setback.

D. *Rooftop Decks within the Hillside Overlay.* Roofs on ADUs within the Hillside Overlay may not be designed, converted, or used as usable open space. (Ord. 7888-NS § 8, 2023; Ord. 7799-NS § 1, 2022; Ord. 7797-NS § 1, 2022; Ord. 7787-NS § 2 (Exh. A), 2021. Formerly 23.306.040)

23.306.040 Permit Procedures.

A. *Zoning Certificate.* An application for an ADU or Junior ADU shall be allowed with a Zoning Certificate. Review must be completed within 60 days of submission of a completed application. A completed application must include evidence of compliance with this Chapter, including development standards, deed restrictions, and neighborhood noticing.

1. If an application to create an ADU or Junior ADU is submitted as part of a project that requires discretionary review, a Zoning Certificate for a building permit shall not be issued for the ADU or Junior ADU until the discretionary approval(s) has/have been granted and any applicable appeal periods have expired. See [23.404.060\(A\)](#) Post-Decision Provisions (Effective Dates).
2. Issuance of a Zoning Certificate shall not be denied for the construction or conversion of an ADU or Junior ADU that complies with the requirements of Government Code Section [65852.2\(e\)\(1\)](#).
3. Issuance of a Zoning Certificate for the construction or conversion of an ADU or Junior ADU shall not be denied based on the failure of an applicant to correct a nonconforming zoning condition.

B. *Neighbor Noticing.*

1. *Scope and Timing of Notice.* Notice of an ADU application shall be mailed to tenants of the subject property, and owners and tenants of the adjacent, confronting, and abutting properties, within ten working days of submission of the building permit application to the City.
2. *Content of Notice.* Notice shall provide the address of the project, allowable hours of construction, a link to the City's ADU webpage, and information for tenants of the subject property on how to contact a Rent Board Housing Counselor by e-mail or phone and any other resource information deemed relevant.
3. *Mailing Fees.* The applicant shall be responsible for the cost of materials, postage, and staff time necessary to process and mail notices.

C. *Deed Restriction.* The property owner shall file a deed restriction with the Alameda County Recorder which states:

1. The Junior ADU shall not be sold separately from the main building;
2. The ADU shall not be sold separately from the main building unless the conditions of BMC [23.306.040\(D\)](#) ADUs Developed by a Qualified Nonprofit Developer are met;
3. The ADU and/or Junior ADU shall not be rented for a term that is shorter than 30 days; and
4. If the property includes a Junior ADU, the Junior ADU or the Single Family Dwelling in which the Junior ADU is located shall be owner-occupied.

D. *ADUs Developed by a Qualified Nonprofit Developer.* An ADU built or developed by a "qualified nonprofit corporation" may be sold or conveyed separately from the main building to a "qualified buyer," as such terms are defined in subdivision (b) of Section [65852.26](#) of the California Government Code. The ADU must be held pursuant to a recorded tenancy in common agreement recorded on or after December 31, 2021 that includes the following elements:

1. Delineation of all areas of the property that are for the exclusive use of a cotenant;
2. Delineation of each cotenant's responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property;

3. Procedures for dispute resolution among cotenants before resorting to legal action;
4. Allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies;
5. A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the ADU or primary dwelling if the buyer desires to sell or convey the property;
6. A requirement that the qualified buyer occupy the ADU or primary dwelling as the buyer's principal residence; and
7. Affordability restrictions on the sale and conveyance of the ADU or primary dwelling that ensure the ADU and primary dwelling will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
8. If requested by a utility providing service to the primary residence, the ADU shall have a separate water, sewer, or electrical connection to that utility. (Ord. 7888-NS § 8, 2023; Ord. 7799-NS § 1, 2022; Ord. 7797-NS § 1, 2022. Formerly 23.306.030)

The Berkeley Municipal Code is current through Ordinance 7926-NS, passed July 9, 2024.

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[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

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Chapter 23.330

DENSITY BONUS

Sections:

- 23.330.010 Chapter Purpose.**
- 23.330.020 Definitions.**
- 23.330.030 Application Requirements.**
- 23.330.040 Density Bonus Calculations and Procedures.**
- 23.330.050 Incentives and Concessions.**
- 23.330.060 Waivers and Reductions.**
- 23.330.070 Qualifying Units.**
- 23.330.080 Regulatory Agreements.**

23.330.010 Chapter Purpose.

The purpose of this chapter is to:

- A. Establish procedures and local standards to implement California Government Code Sections [65915](#)--[65918](#) consistent with local zoning regulations and development standards; and
- B. Provide special provisions consistent with the intent of State and local law. Unless otherwise noted, all section references in this chapter are to the California Government Code. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.330.020 Definitions.

- A. *Terms Defined.* Terms used in this chapter are defined as follows:
 - 1. *Administrative Regulations.* Guidelines and procedures promulgated by the Planning Director that may be modified from time to time to effectively implement this ordinance.
 - 2. *Base Project.* The maximum allowable residential density on a housing development site pursuant to the applicable zoning district or, where no density standard is provided, as set forth in the Administrative Regulations before applying the density bonus.
 - 3. *Density Bonus.* Those residential units, floor area, rental beds or bedrooms added to the Base Project pursuant to the provisions of Government Code Section [65915](#) and this chapter.
 - 4. *Eligible Housing Development.* As defined in Government Code Section [65917.2](#).
 - 5. *Housing Development.* As defined in Government Code Section [65915\(i\)](#).

6. *Incentive and Concession.* An incentive or a concession as the terms are used in Government Code Section [65915](#) and in particular as defined in Section [65915\(k\)](#) thereof. The City may request reasonable documentation from the applicant to support the request.

7. *Qualifying Unit.* A unit that is provided at a below market-rate rent or sales price as set forth in Government Code Section [65915](#) to receive a Density Bonus and/or Waivers and Reductions and/or Incentives and Concessions.

8. *Waiver and Reduction.* A waiver or a reduction as the terms are used in Government Code Section [65915](#) and in particular in Section [65915\(e\)](#) thereof, and means any and all changes to or exemptions from physical lot development standards that are required to avoid precluding the construction of a Housing Development with Density Bonus Units, as set forth in Section [65915\(e\)](#). The City may request reasonable documentation from the applicant to support the request.

B. *Terms Not Defined.* Terms not defined in this section shall be interpreted to give this chapter its most reasonable meaning and application, consistent with applicable state and federal law. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.330.030 Application Requirements.

A. *Required Information.* In addition to any other information required by the Zoning Ordinance, an application for a density bonus must include the following information:

1. How the proposed project will satisfy the eligibility requirements of Section [65915](#) or [65917.2](#).
2. For those districts without density standards, a density bonus schematic as set forth in the City of Berkeley Administrative Regulations.
3. The requested density bonus pursuant to Municipal Code Section [23.330.040](#) (Density Bonus Calculations and Procedures).
4. Any waivers and reductions that are sought under Section [65915.e](#) that would be required to accommodate the housing development including the density bonus units.
5. Any incentives and concessions that are sought under Section [65915.d](#) accompanied by documentation of resulting cost reductions to provide for affordable housing costs.
6. Any requested additional bonus units under Section [65915.n](#).
7. Any requested parking reductions under Section [65915.p](#).
8. Whether the applicant elects to receive a density bonus that is less than that mandated by Section [65915](#), including a density bonus of zero. In such cases, the applicant retains their entitlement to incentives and concessions.

9. Documentation of how a project complies with regulations regarding replacement units as described in Section [65915.c.3](#).

B. *Documentation Supporting Requests.* The City may request reasonable documentation from the applicant to support requested waivers/reductions and incentives/concessions. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.330.040 Density Bonus Calculations and Procedures.

A. *Calculation.* Density bonuses must be calculated as set forth in Section [65915](#), [65917.2](#), and pursuant to the Administrative Regulations.

B. *Procedures.* Density bonus requests must accompany housing development permit applications and will be decided upon concurrent with the underlying permit for the project. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.330.050 Incentives and Concessions.

A. *Calculation.* For purposes of this chapter, the number of incentives and concessions are counted as follows:

1. Any incentive and concession that would otherwise require discretionary approval by the Zoning Officer, the ZAB, or City Council of any single dimensional lot development standard, such as height or setbacks, or any single quantitative lot development standard, such as parking or open space, counts as one.
2. A proposed incentive and concession that would involve exceedance of a single physical lot development standard counts as one even if that exceedance would otherwise require more than one permit (e.g., extra height may require permits for height, floor area ratio, and/or number of stories but would count as one incentive and concession for height).
3. Where it is ambiguous as to whether a proposed incentive and concession involves one or more dimensional or quantitative lot development standards, the stricter interpretation applies, as determined by the review authority.

B. *Procedural Requirements.*

1. The City shall grant incentives and concession unless findings are made as set forth in Section [65915d.1](#).
2. The City is not required to deny a proposed incentive and concession solely because it can make a finding under Section [65915.d.1](#).
3. The City bears the burden of proof for the denial of a requested incentive and concession.
4. Unless denied under Section [65915](#), incentives and concessions are exempt from discretionary review of permits under the Zoning Ordinance, other than Design Review, and by law do not modify the CEQA review status of a project. (Ord. 7787-NS § 2 (Exh. A), 2021)

23.330.060 Waivers and Reductions.

A. *Proposal.* An applicant may submit to the City a proposal for waivers and reductions of development standards that physically prevent construction of a housing development and density bonus units meeting the criteria of Section [65915.b](#).

B. *Negotiated Process.* The City may negotiate changes to the requested waivers and reductions as part of the Use Permit and Design Review process, in coordination with the applicant, to address aspects of the project that may be of concern in the community or inconsistent with overarching principles of the General Plan, Zoning Ordinance, and Design Guidelines.

C. *Denial.* The City may deny waivers and reductions for the reasons set forth in Section [65915.e.1](#). (Ord. 7787-NS § 2 (Exh. A), 2021)

23.330.070 Qualifying Units.

Qualifying units must meet the standards set forth in Chapter [23.328](#) (Affordable Housing Requirements). (Ord. 7853-NS § 3, 2023)

23.330.080 Regulatory Agreements.

Before issuance of a certificate of occupancy for a housing development that has received a density bonus, the applicant must enter into a regulatory agreement in a form provided by the City that implements Sections [65915](#)--[65918](#) and this chapter. (Ord. 7787-NS § 2 (Exh. A), 2021)

The Berkeley Municipal Code is current through Ordinance 7926-NS, passed July 9, 2024.

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Office of the City Manager

CONSENT CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Establishing a New Schedule of Fines and Late Payment Penalties for Parking Violations; and Rescinding Resolution No. 70,924-N.S.

RECOMMENDATION

Adopt a Resolution updating the existing schedule of parking violations and fines to include parking violations and late payment penalties for California's new daylighting law, Assembly Bill 413 (AB 413); and rescinding resolution No. 70,924-N.S.

FISCAL IMPACTS OF RECOMMENDATION

The recommendation will increase revenue to the General Fund because, beginning January 1, 2025, Parking Enforcement staff will be able to cite vehicles for parking within an unmarked daylighting zone. However, it is not known how much revenue will increase.

CURRENT SITUATION AND ITS EFFECTS

Beginning January 1, 2025, the new state daylighting law becomes enforceable. Implementing the law will include public education about the new law and Parking Enforcement Officer training to implement the new law. To enforce the state law, the City's schedule of parking violations and fines needs to be updated with the applicable section of the California Vehicle Code that establishes the legal framework for the daylighting law so that officers can issue citations for vehicles illegally parked in these zones.

The City's support for daylighting predates the state's action. On February 28, 2023, the City Manager received a referral from Council titled, "Creation of an Intersection Daylighting Policy," to develop a comprehensive intersection daylighting policy, including to identify priority areas for daylighting such as high-injury streets, streets and intersections with especially high pedestrian traffic, commercial districts, and streets near schools and colleges. Despite limited resources, Public Works has been incorporating daylighting into the City's annual pavement rehabilitation program, Vision Zero and transportation capital projects, traffic calming initiatives, and general work orders. Parking Enforcement will be able to cite vehicles for violating the daylighting law

even before all daylighting zones are marked with red curbs, which will be implemented gradually over the coming years.

BACKGROUND

Daylighting is a simple and effective concept that improves safety by removing parked cars next to crosswalks to increase visibility and reduce potentially lethal collisions. Preventing drivers from parking in the spaces directly before an intersection increases visibility and improves sightlines for all road users, helping people see each other before proceeding through an intersection. This low-cost measure is an extremely effective step towards the City of Berkeley's Vision Zero goal, as most collisions take place at or near intersections.

AB 413, California's new daylighting law, was signed into law in October 2023. The law created a new section of the California Vehicle Code, section 22500(n), to prohibit stopping, standing, or parking a vehicle within 20 feet of any unmarked or marked crosswalk or within 15-feet of any crosswalk with a curb extension. The law went into effect on January 1, 2024, and starting on January 1, 2025, cities can issue citations for violating it.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Daylighting intersections improves road safety for sustainable modes of transportation, such as walking and biking. Actions that encourage walking and biking are important steps to reducing climate impacts and helping Berkeley achieve the goals outlined in the City's Climate Action Plan.

RATIONALE FOR RECOMMENDATION

Adding a daylighting violation to the schedule of parking violations and fines would allow the City to enforce AB 413, California's daylighting law, to prohibit stopping, standing, or parking a vehicle within 20 feet of any unmarked or marked crosswalk or 15 feet of any crosswalk with a curb extension.

ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered. The City is subject to California state law and must be able to enforce daylighting violations at unmarked locations. If this resolution is not approved, then the City will not be able to enforce the state daylighting law, and people will be able to park illegally without any consequences.

CONTACT PERSONS

Wahid Amiri, Deputy Public Works Director, Public Works, (510) 981-6396
Elliott Schwimmer, Senior Transportation Planner, Public Works, 510-981-7066
Joshua Brett, Assistant Transportation Planner, Public Works, 510-981-7064

Establishing a New Schedule of Fines and Late Payment
Penalties for Parking Violations; and Rescinding Resolution No. 70,924-N.S.

CONSENT CALENDAR
December 10, 2024

Attachments:

1: Resolution

Exhibit A: Schedule of Fines and Late Payment Penalties for Parking Violations

Exhibit B: New Parking Violations

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

ESTABLISHING A NEW SCHEDULE FOR PARKING VIOLATIONS, FINES, AND LATE PAYMENT PENALTIES; AND RESCINDING RESOLUTION NO.70,924-N.S.

WHEREAS, California Assembly Bill 413 amends section 22500 of the Vehicle Code to prohibit the stopping, standing, or parking of a vehicle within 20 feet of the vehicle approach side of any unmarked or marked crosswalk or 15 feet of any crosswalk where a curb extension is present, starting on January 1, 2024;

WHEREAS, the City of Berkeley can begin issuing citations for violating section 22500 of the Vehicle Code starting January 1, 2025;

WHEREAS, the Berkeley City Council has directed City staff to develop a comprehensive intersection daylighting policy;

WHEREAS, no violation type exists in the schedule of parking violations and late payment penalties for daylighting violations at unmarked locations;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a new schedule of parking violations and late payment penalties is established, as set forth in Exhibit A, which includes fines and late penalties for violations of Vehicle Code section 22500(n), pertaining to parking within 20 feet of any unmarked or marked crosswalk or 15 feet of any crosswalk where a curb extension is present.

BE IT FURTHER RESOLVED that Resolution No.70,924-N.S is rescinded.

Exhibits

Exhibit A: Schedule of Fines and Late Payment Penalties for Parking Violations

Exhibit B: New Parking Violations

Exhibit A: Schedule of Fines and Late Payment Penalties for Parking Violations

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On Day 28 +\$30	On Day 47 +\$50
BMC	6.24.020	Off-St Rsrv Pkg No Permit Displayed	\$48	\$78	\$128
BMC	6.24.020	FD Off-St Rsrv Pkg No Permit Displayed			
BMC	6.24.020	Non-Electric Vehicle Parked in Electric Vehicle Space	\$35	\$65	\$115
BMC	6.24.060	Electric Vehicle Exceeding EV Parking Space Time Limit	\$30	\$60	\$110
BMC	6.24.020	Electric Vehicle Not Actively Charging in EV Parking Space	\$35	\$65	\$115
BMC	6.24.093	P&D Dispensing Mach Tkt Not Displayed	\$43	\$73	\$123
BMC	6.24.093	FD P&D Dispensing Mach Tkt Not Displayed	\$65	\$95	\$145
BMC	6.24.096	Improper Display of P&D Disp Mach Tkt	\$43	\$73	\$123
BMC	6.24.096	FD Improper Display of P&D Disp Mach Tkt	\$65	\$95	\$145
BMC	6.24.100 B	P&D Station Expired Time	\$43	\$73	\$123
BMC	6.24.100 B	FD P&D Station Expired Time	\$65	\$95	\$145
BMC	6.24.103 B	Time Limits Enforced at Inoperable P&D Sta	\$43	\$73	\$123

December 10, 2024

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On Day 28 +\$30	On Day 47 +\$50
BMC	6.24.103 B	FD Time Limits Enforced at Inoperable P&D Sta	\$65	\$95	\$145
BMC	6.24.130	Off-St Facility: Motorcycle Zone Only	\$48	\$78	\$128
BMC	6.24.130	Off-St Facility: Pkg Outside Markings	\$48	\$78	\$128
BMC	6.24.130	FD Off-St Facility: Pkg Outside Markings	\$72	\$102	\$152
BMC	6.24.130	Off-St Facility: Disabled Zone	\$288	\$318	\$368
BMC	6.24.130	FD Off-St Facility: Disabled Zone	\$288	\$318	\$368
BMC	6.24.130	Off-St Facility: Restricted Load Zone	\$48	\$78	\$128
BMC	6.24.130	FD Off-St Facility: Restricted Load Zone	\$72	\$102	\$152
BMC	6.24.130	Off-St Facility: Unmarked Space	\$48	\$78	\$128
BMC	6.24.130	FD Off-St Facility: Unmarked Space	\$72	\$102	\$152
BMC	6.24.140	Off-St Facility: Backed-In	\$48	\$78	\$128
BMC	9.52.140	Unattended Taxi Over 5 Min	\$91	\$121	\$171
BMC	13.52.040	Unauth Pkg on Private Property	\$41	\$71	\$121
BMC	14.24.070	Unauth Vehicle on Private Prop	\$64	\$94	\$144
BMC	14.24.230	No Parking in Transit-Only Lane	\$263	\$293	\$343

December 10, 2024

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On Day 28 +\$30	On Day 47 +\$50
BMC	14.24.230	FD No Parking in Transit-Only Lane	\$263	\$293	\$343
BMC	14.36.030 A	No Parking on Divisnl Islands	\$55	\$85	\$135
BMC	14.36.030 A	FD No Parking on Divisnl Islands	\$83	\$113	\$163
BMC	14.36.030 C	No Parking Zone (Sign Posted)	\$64	\$94	\$144
BMC	14.36.030 C	FD No Parking Zone (Sign Posted)	\$96	\$126	\$176
BMC	14.36.030 C	No Parking Zone (Red Curb)	\$64	\$94	\$144
BMC	14.36.030 C	FD No Parking Zone (Red Curb)	\$96	\$126	\$176
BMC	14.36.030 D	No Parking Street Sweeping (sign)	\$49	\$79	\$129
BMC	14.36.030 E	No Parking on Railroad Tracks	\$64	\$94	\$144
BMC	14.36.030 F	Hazard Obstructing Traffic	\$64	\$94	\$144
BMC	14.36.030 F	FD Hazard Obstructing Traffic	\$96	\$126	\$176
BMC	14.36.030 G	Construct: No Permit on Dashboard	\$64	\$94	\$144

December 10, 2024

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On Day 28 +\$30	On Day 47 +\$50
BMC	14.36.030 G	FD Construct: No Permit on Dashboard	\$96	\$126	\$176
BMC	14.36.050	On Street 72 or More Consec hrs	\$60	\$90	\$140
BMC	14.36.060	Repair Vehicle on Street	\$52	\$82	\$132
BMC	14.36.080	Vehicle Parked in School Zone	\$51	\$81	\$131
BMC	14.36.090	Pkg on Grade Brake/Block Wheels	\$55	\$85	\$135
BMC	14.36.110	Emerg Prkg w/o Permit (Tow CVC 22651)	\$52	\$82	\$132
BMC	14.40.010	3 min Limit Zone Overtime	\$43	\$73	\$123
BMC	14.40.010	FD 3 min Limit Zone Overtime	\$65	\$95	\$145
BMC	14.40.010	5 min Limit Zone Overtime	\$43	\$73	\$123
BMC	14.40.010	FD 5 min Limit Zone Overtime	\$65	\$95	\$145
BMC	14.40.010	10 min Limit Zone Overtime	\$43	\$73	\$123
BMC	14.40.010	FD 10 min Limit Zone Overtime	\$65	\$95	\$145
BMC	14.40.010	12 min Limit Zone Overtime	\$43	\$73	\$123
BMC	14.40.010	15 min Limit Zone Overtime	\$43	\$73	\$123
BMC	14.40.010	24 min Limit Zone Overtime	\$43	\$73	\$123
BMC	14.40.010	FD 24 min Limit Zone Overtime	\$65	\$95	\$145
BMC	14.40.020	30 min Limit Zone Overtime	\$43	\$73	\$123
BMC	14.40.020	FD 30 min Limit Zone Overtime	\$65	\$95	\$145

December 10, 2024

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On 28 +\$30	On 47 +\$50
BMC	14.40.030	1 hr Limit Zone Overtime	\$43	\$73	\$123
BMC	14.40.030	FD 1 hr Limit Zone Overtime	\$65	\$95	\$145
BMC	14.40.030	Faulty Meter Over 1 hr Limit	\$43	\$73	\$123
BMC	14.40.040	2 hr Limit Zone Overtime	\$43	\$73	\$123
BMC	14.40.040	FD 2 hr Limit Zone Overtime	\$65	\$95	\$145
BMC	14.40.040	Faulty Meter Over 2 hr Limit	\$43	\$73	\$123
BMC	14.40.050 A	Parallel Pkg Veh Outside Markers	\$48	\$78	\$128
BMC	14.40.050 B	Veh Facing Wrong Way 1-way St	\$48	\$78	\$128
BMC	14.40.050 B	FD Veh Facing Wrong Way 1- way St	\$72	\$102	\$152
BMC	14.40.050 B	Pkg Over 18" from Curb 1-way St	\$51	\$81	\$131
BMC	14.40.050 B	FD Pkg Over 18" fr Curb 1-way St	\$77	\$107	\$157
BMC	14.40.060 A	Diagonal Pkg Veh Outside Markers	\$51	\$81	\$131
BMC	14.40.060 B	Diagonal Pkg FW Over 6" from Curb	\$51	\$81	\$131
BMC	14.40.070 A	No Stopping 4-6pm (Tow CVC 22651)	\$64	\$94	\$144
BMC	14.40.070 A	FD No Stopping 4-6pm (Tow CVC 22651)	\$96	\$126	\$176

December 10, 2024

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On Day 28 +\$30	On Day 47 +\$50
BMC	14.40.070 A	No Stopping 7-9am (Tow CVC 22651)	\$64	\$94	\$144
BMC	14.40.070 A	No Stopping 9pm-6am (Tow CVC 22651)	\$64	\$94	\$144
BMC	14.40.070 A	Posted No Stopping Tow Away	\$64	\$94	\$144
BMC	14.40.090	RPP Zone No RPP Permit Displayed	\$49	\$79	\$129
BMC	14.40.090	FD RPP Zone A,B,D No Permit Dsply	\$98	\$128	\$178
BMC	14.40.090	RPP Zone K No Permit Displayed	\$57	\$87	\$137
BMC	14.40.090	RPP Zone RPP Permit Expired	\$49	\$79	\$129
BMC	14.40.090	FD RPP Zone A,B,D Permit Expired	\$98	\$128	\$178
BMC	14.40.090	RPP Zone Permit Improper Display	\$49	\$79	\$129
BMC	14.40.090	FD RPP A,B,D Permit Improp Dsply	\$98	\$128	\$178
BMC	14.40.090	No RPP Permit Displayed in Enhanced Fine Area (Football Game Days)	\$225	\$255	\$305
BMC	14.40.130	Pkg/Standing in City Lots/Spaces	\$55	\$85	\$135

December 10, 2024

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BMC	14.40.130 A	City Lot No Permit Displayed	\$57	\$87	\$137
BMC	14.40.130 C	Reserved Pkg No Permit Displayed	\$49	\$79	\$129
BMC	14.40.130 E	Reserved City Hall Pkg Towable	\$64	\$94	\$144
BMC	14.40.150 A	Car Parking in Motorcycle Area	\$51	\$81	\$131
BMC	14.40.150 B	Motorcycle Zone Overtime	\$51	\$81	\$131
BMC	14.40.160	Dbl-Pkd Commer Vehicle Center St	\$60	\$90	\$140
BMC	14.44.020 B	Commer Zone No Permit (yellow)	\$57	\$87	\$137
BMC	14.44.020 B	FD Commer Zone No Permit (yellow)	\$86	\$116	\$166
BMC	14.44.020 A	Commercial Zone Overtime	\$57	\$87	\$137
BMC	14.44.020 A	FD Commercial Zone Overtime	\$86	\$116	\$166
BMC	14.44.030	Passenger Load Zone (white curb)	\$57	\$87	\$137
BMC	14.44.030	FD Passgr Load Zone (white curb}	\$86	\$116	\$166
BMC	14.44.040	No Stopping Bicycle Zone	\$55	\$85	\$135

December 10, 2024

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On Day 28 +\$30	On Day 47 +\$50
BMC	14.44.040	FD No Stopping Bicycle Zone	\$83	\$113	\$163
BMC	14.44.050	Special Passenger Load Zone only	\$57	\$87	\$137
BMC	14.44.060	Parking in Coach (bus) Zone	\$64	\$94	\$144
BMC	14.44.060	FD Parking in Coach (bus) Zone	\$96	\$126	\$176
BMC	14.44.070	Unauthorized Use of Funeral Zone	\$51	\$81	\$131
BMC	14.44.080	Taxicab Parking Only	\$51	\$81	\$131
BMC	14.44.080	Unauthorized Taxicab Stand Pkg	\$51	\$81	\$131
BMC	14.46.040 B	Non-Electric Vehicle Parked in EV Space	\$49	\$79	\$129
BMC	14.46.050 B	Electric Vehicle Exceeding EV Space Time Limit	\$43	\$73	\$123
BMC	14.46.050 C	Electric Vehicle Not Actively Charging in EV Space	\$43	\$73	\$123
BMC	14.52.050 A	Meter Street: Expired Meter	\$43	\$73	\$123
BMC	14.52.050 A	FD Meter Street: Expired Meter	\$65	\$95	\$145
BMC	14.52.050 B	Pay & Display Station Expired Time	\$43	\$73	\$123
BMC	14.52.050 B	FD Pay & Display Sta Expired Time	\$65	\$95	\$145

December 10, 2024

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On 28 +\$30	On 47 +\$50
BMC	14.52.050 C	Pay by Plate Station Expired Time	\$43	\$73	\$123
BMC	14.52.050 C	FD Pay by Plate Station Expired Time	\$65	\$95	\$145
BMC	14.52.060 A	Meter St: Extending Meter Time	\$43	\$73	\$123
BMC	14.52.060 A	FD Meter St: Extending Meter Time	\$65	\$95	\$145
BMC	14.52.060 B	Pay & Display Station Extend Time	\$43	\$73	\$123
BMC	14.52.060 B	FD Pay & Display Sta Extend Time	\$65	\$95	\$145
BMC	14.52.060 C	Pay by Plate Station Extend Time	\$43	\$73	\$123
BMC	14.52.060 C	FD Pay by Plate Sta Extend Time	\$65	\$95	\$145
BMC	14.52.063	P&D Dispensing Mach Tkt Not Displayed	\$43	\$73	\$123
BMC	14.52.063	FD P&D Dispens Mach Tkt Not Displayed	\$65	\$95	\$145
BMC	14.52.066	Improper Display of P&D Disp Mach Tkt	\$43	\$73	\$123
BMC	14.52.066	FD Improper Display of P&D Disp Mach Tkt	\$65	\$95	\$145

December 10, 2024

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On 28 +\$30	Day 47 +\$50
CVC	4000	No Evidence Current Registration	\$50	\$80	\$130
CVC	4000	Expired Registration	\$50	\$80	\$130
CVC	4461 B	Improper Lending of DP Placard or Plate	\$550	\$580	\$630
CVC	4461 C	Improper Display of DP Placard or Plate	\$550	\$580	\$630
CVC	4461 D	Improper Use of DP Placard or Plate	\$550	\$580	\$630
CVC	4463 C	Use of Forged, Counterfeit, or False DP Placard or Plate	\$550	\$580	\$630
CVC	5200	Missing License Plates	\$25	\$55	\$105
CVC	5201	Lic Plates Improperly Positioned	\$25	\$55	\$105
CVC	5202	Hanging/Detached License Plate	\$25	\$55	\$105
CVC	5204 A	Expired Tags (read back)	\$25	\$55	\$105
CVC	5204 A	Missing Tags	\$25	\$55	\$105
CVC	21113 A	Parking on Public Grounds	\$54	\$84	\$134
CVC	21211 B	Vehicle Blocking Bicycle Lane	\$54	\$84	\$134
CVC	21718	Parking on Freeway	\$54	\$84	\$134
CVC	22500 A	Parking in an Intersection	\$60	\$90	\$140
CVC	22500 A	FD Parking in an Intersection	\$86	\$116	\$166
CVC	22500 B	Parking in Crosswalk	\$60	\$90	\$140

December 10, 2024

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On 28 +\$30	On 47 +\$50
CVC	22500 B	FD Parking in Crosswalk	\$90	\$120	\$170
CVC	22500 C	Parking in Safety Zone	\$60	\$90	\$140
CVC	22500 C	FD Parking in Safety Zone	\$90	\$120	\$170
CVC	22500 D	Parking within 15' of Fire Station	\$60	\$90	\$140
CVC	22500 D	FD Parking within 15' of Fire Station	\$90	\$120	\$170
CVC	22500 E	Parking in Driveway	\$60	\$90	\$140
CVC	22500 E	FD Parking in Driveway	\$90	\$120	\$170
CVC	22500 F	Parking On/Across Sidewalk	\$60	\$90	\$140
CVC	22500 F	FD Parking On/Across Sidewalk	\$90	\$120	\$170
CVC	22500 G	Parking Construction No Permit	\$60	\$90	\$140
CVC	22500 G	FD Parking Construction No Permit	\$90	\$120	\$170
CVC	22500 H	Double-Parked	\$60	\$90	\$140
CVC	22500 H	FD Double-Parked	\$90	\$120	\$170
CVC	22500 I	Parking/Stopping in Coach Zone	\$263	\$293	\$343
CVC	22500 I	FD Parking/Stopping in Coach Zone	\$263	\$293	\$343
CVC	22500 J	Parking in Tunnel	\$54	\$84	\$134
CVC	22500 K	Parking on Bridge	\$54	\$84	\$134
CVC	22500 L	Blocking Disabled Ramp	\$288	\$318	\$368

December 10, 2024

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On Day 28 +\$30	On Day 47 +\$50
CVC	22502 A	Parking Over 18" from Curb 2-Way St	\$69	\$99	\$149
CVC	22502 A	FD Parking Over 18" from Curb 2-Way St	\$104	\$134	\$184
CVC	22503 E	Parking Over 10" from Curb 1-Way St	\$58	\$88	\$138
CVC	22507.8 A	Parking in Disabled Zone	\$317	\$347	\$397
CVC	22507.8 B	Obstructing Access Disabled Zone	\$317	\$347	\$397
CVC	22507.8 B	FD Obstructing Access Disabled Zone	\$317	\$347	\$397
CVC	22514 a	Parking within 15' of Fire Hydrant	\$78	\$108	\$158
CVC	22514 a	FD Parking within 15' of Fire Hydrant	\$117	\$147	\$197
CVC	22521	Parking within 7.5' of Railroad Tracks	\$54	\$84	\$134
CVC	22522	Parking within 3' of Wheelchair Ramp	\$317	\$347	\$397
CVC	22522	FD Parking within 3' of Wheelchair Ramp	\$317	\$347	\$397
CVC	22523 a	Abandon Vehicle on Highway	\$168	\$198	\$248
CVC	22523 b	Abandon Vehicle on Pub/Prvt Prop	\$168	\$198	\$248

December 10, 2024

Note: In addition to citation placed on vehicle, "Notice of Violation" is mailed to registered owner seven (7) days after citation and indicated when the fine penalty increases will occur: On Day 28 after citation issuance, the fine increases by \$30. If payment is not received within 45 days after issuance, on Day 47, the fine increases by an additional \$50.

Exhibit B: New Parking Violations

Code	Section	Violation Description (For citations issued to a vehicle) FD = Football Game Days 9 a.m. to 11 p.m. FD fines = 50% higher on most violations & 100% higher for violations in RPP Zones A, B, D	Fine Amount	On Day 28 +\$30	On Day 47 +\$50
CVC	22500 n	No Parking Within 20' of Crosswalk	\$64	\$94	\$144
CVC	22500 n	FD No Parking Within 20' of Crosswalk	\$96	\$126	\$176
CVC	22500 n	No Parking Within 15' of Crosswalk with Curb Extension	\$64	\$94	\$144
CVC	22500 n	FD No Parking Within 15' of Crosswalk with Curb Extension	\$96	\$126	\$176



Office of the Mayor

CONSENT CALENDAR
December 10, 2024

To: Honorable Members of the City Council
From: Mayor Jesse Arreguín
Subject: City Council Committee and Regional Body Appointments

RECOMMENDATION

Adopt a Resolution approving appointments to City Council Policy Committees, Partnership Committees and Regional Bodies, to temporarily appoint Mayor Adena Ishii and Councilmembers Terry Taplin and Ben Bartlett to the Agenda & Rules Committee.

BACKGROUND

There are a number of City Council appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions. Every two years after the General Municipal Election, the Mayor makes recommendations on new Council representatives to these committees.

The Berkeley City Council Rules of Procedure and Order also require the Mayor to recommend and the full Council approve appointments to Standing Council Policy Committees by January 31st of each year.

With three members of the City Council leaving after the end of their term, the Agenda & Rules Committee will lack quorum for its meeting on January 6, 2025. While this Resolution continues to list outgoing Councilmembers in other Committees, there is not any quorum issues related to those assignments and will be updated when the incoming Council approves permanent changes for the new legislative session later in January.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

No identifiable environmental effects from taking this action.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Temporary Council Committee Assignments

CONSENT CALENDAR

December 10, 2024

Attachments:

1: Resolution

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

APPROVING APPOINTMENTS TO STANDING CITY COUNCIL POLICY COMMITTEES, PARTNERSHIP COMMITTEES, AND REGIONAL BODIES

WHEREAS, the City Council has numerous appointments to various Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions, and makes new appointments every two years following the General Municipal Election; and

WHEREAS, the Berkeley City Council Rules of Procedure and Order also require the Mayor to recommend and the full Council approve appointments to Standing Council Policy Committees by January 31st of each year; and

WHEREAS, with three members of the City Council leaving after the end of their term, the Agenda & Rules Committee will lack quorum for its meeting on January 6, 2025, requiring temporary appointments to be made before the incoming Council votes on Committee appointments for 2025-2026.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it officially makes the following appointments for the period ending December 31, 2024 or until new appointments are approved:

City Council Standing Policy Committees:

Agenda & Rules Committee

Appoint Mayor Ishii, Councilmember Taplin and Councilmember Bartlett

Alternate position vacant

Budget & Finance Committee

Appoint Mayor Arreguín, Councilmember Hahn and Councilmember Kesarwani

Appoint Vice-Mayor Wengraf as Alternate

Facilities, Infrastructure, Transportation, Environment & Sustainability Committee

Appoint Councilmember Humbert, Councilmember Lunaparra and Councilmember Taplin

Appoint Councilmember Kesarwani as Alternate

Public Safety Committee

Appoint Councilmember Bartlett, Councilmember Taplin and Councilmember Tregub

Appoint Councilmember Humbert as Alternate

Land Use, Housing & Economic Development Committee

Appoint Councilmember Humbert, Councilmember Lunaparra, and Vice-Mayor Wengraf

Appoint Councilmember Tregub as Alternate

Health, Life Enrichment, Equity & Community Committee

Appoint Councilmember Bartlett, Councilmember Kesarwani and Councilmember Tregub

Appoint Councilmember Hahn as Alternate

Partnership Committees:

4x4 Joint Task Force Committee on Housing: Rent Board/City Council

Appoint Mayor Arreguin, Councilmember Hahn, Councilmember Lunaparra, and Councilmember Tregub

3x3 Committee of the Berkeley City Council and the Berkeley Housing Authority

Appoint Mayor Arreguin, Councilmember Kesarwani, and Councilmember Tregub

2x2 Committee of the City Council and the Board of Education

Appoint Councilmember Hahn and Councilmember Taplin

Regional Committees:

Alameda County Transportation Commission

Appoint Councilmember Taplin

Appoint Councilmember Humbert as Alternate

Alameda County Waste Management Authority

Appoint Councilmember Wengraf

Appoint Councilmember Hahn as Alternate

Delegate to Association of Bay Area Governments General Assembly

Appoint Councilmember Hahn

Appoint Councilmember Humbert as Alternate

Joint Powers Authority - East Bay Community Energy Authority

Appoint Councilmember Tregub

Appoint Councilmember Lunaparra as Alternate

Joint Powers Agreement - East Bay Regional Sports Fields

Appoint Councilmember Kesarwani

Joint Powers Authority - Lead Abatement

Appoint Councilmember Wengraf

Appoint Councilmember Kesarwani as Alternate

League of California Cities - East Bay Division

Appoint Councilmember Taplin

Appoint Councilmember Humbert as Alternate

Oakland Airport Noise Forum

Appoint Councilmember Tregub

Council Liaisons to City Boards and Commissions:

Board of Library Trustees

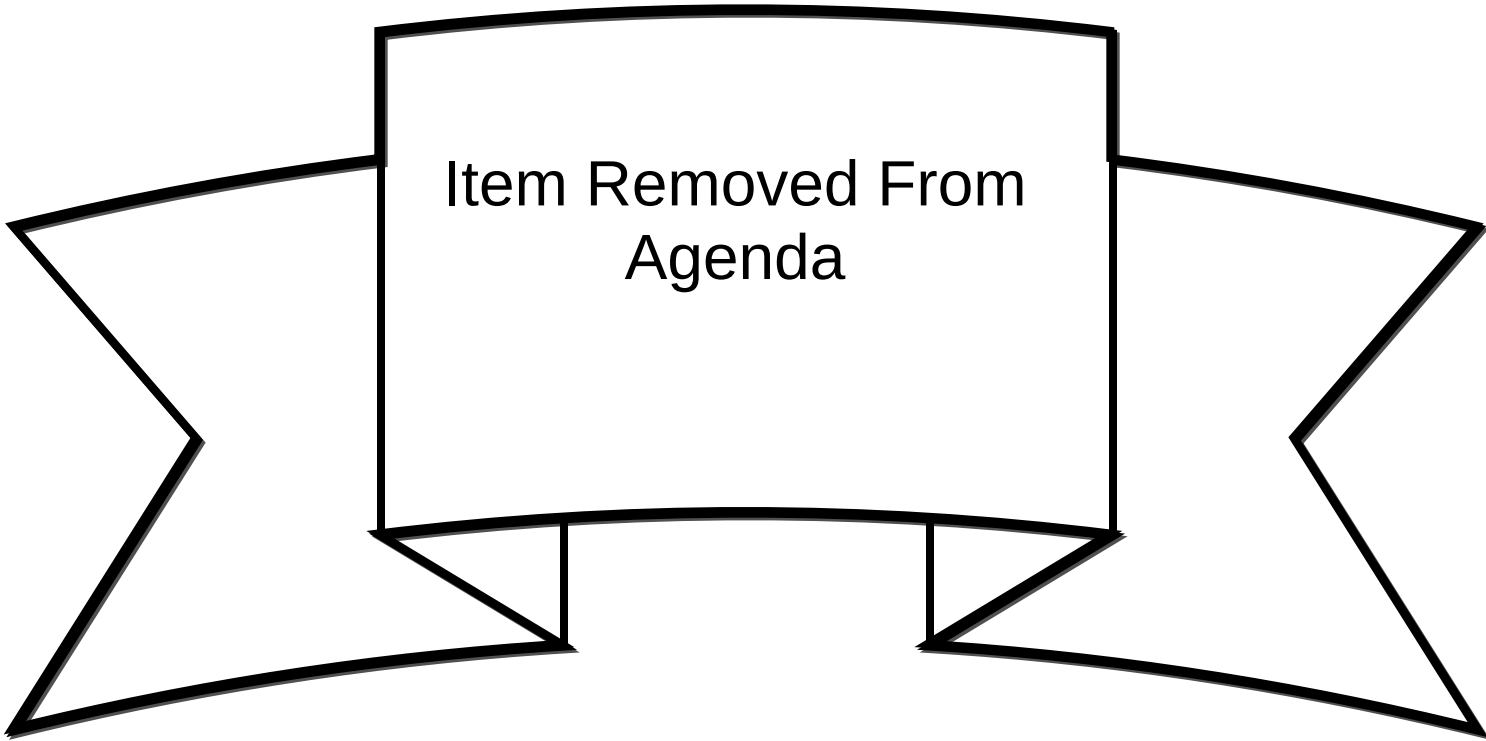
Appoint Councilmember Hahn

Community Health Commission

Appoint Councilmember Kesarwani

Mental Health Commission

Appoint Councilmember Lunaparra



Item Removed From
Agenda

This item has been removed from the agenda by the City Manager.

If you have questions regarding this report, please contact the person noted on the agenda.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

The City of Berkeley, City Council's Website
<https://berkeleyca.gov/your-government/city-council/>



Office of the City Manager

INFORMATION CALENDAR

December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Keith May, Acting Fire Chief

Subject: Fire Prevention Inspections Audit Status Report

CURRENT SITUATION AND ITS EFFECTS

On May 9, 2019 the City Auditor submitted a Fire Prevention Inspections audit report¹ to the City Council with recommendation to improve the overall fire prevention inspection program, improve customer service, and to reduce the risk of fires and other emergencies that may fall within the jurisdiction of the fire code. The purpose of this information item is to update City Council on the status of the audit report recommendations. This is the second and final status report regarding this audit, which is slated for no further follow-up action as recommended by the City Auditor for all audits more than five years old.

BACKGROUND

The initial audit included eleven recommendations. In a status report to City Council on November 3, 2022, two of the eleven recommendations were dropped, seven recommendations were started or partly implemented, and two recommendations were not started. Since that time, two of the recommendations have been started.

1.1 “Fire analyze the short- and long-term impact of putting forth a change to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections.” Fire Marshal Steve Riggs retired on 9/14/2024. New Fire Marshal Drew Whyte began on 9/16/2024.

The Fire Prevention Division (FP) has been tracking new construction on an annual basis since 2019. In 2019, there were 47 projects with 3000 projected dwelling units under construction or in plan review. In 2024, there are 83 projects with 6,400 projected dwelling units. The FP division is currently analyzing the list of annual inspections and determining which businesses need to be inspected by the FP versus Suppression. In the next code adoption cycle (Fall/Winter 2025), the FP would like to amend Berkeley Municipal Code Section 12.50.040 – Applicability [of Fire Inspection Program] and we are analyzing the revenues from our annual fire prevention inspection program and our

¹ [Audit: Fire Prevention Inspections: Insufficient Resources Strain Code Compliance](#)

new construction projects to understand what monies are accruing to the general fund. In addition, we are analyzing which businesses need to be inspected by the FP Inspectors and not the Firefighters.

3.3 “Fire Prevention coordinate work plans with Suppression for all mandated prevention inspections. These should take into consideration the volume and nature of the other work Suppression performs.” An analysis of annual fire prevention inspections completed by each engine company on each shift during Fiscal Year 2024 was delivered to the Deputy Fire Chiefs and Fire Chief in August 2024.

The FP does recognize that the General Orders and other policies and procedures pertaining to annual inspections, construction inspections, fire investigations, citizen complaints, etc. need updating. This project would require temporarily dedicating one senior Staff person to document the current processes and analyze them for process improvements. It would also include researching best practices and determining if they would be pertinent and useful for the FP.

At the auditor’s recommendation, the nine recommendations that have not been implemented after five years will be dropped. The recommendations that have been started or partially implemented will continue to move forward. There has been an increase in new construction projects that has doubled the workload relating to new construction which also indicates a need for additional staffing.

FISCAL IMPACTS OF RECOMMENDATION

None.

POSSIBLE FUTURE ACTION

Plans are currently being implemented to move away from a paper-based inspection system and into digital inspection records for both the built- and WUI-environments. This is likely to result in a small increase in the time devoted to individual inspections but should result in considerable efficiencies in handling inspection input & data, and result in a more efficient inspection process.

The fire department believes that any proposal to change the current scope of the annual fire inspection program should be made after the impacts of the current programmatic and structural changes can be assessed. Such a proposal needs to balance the City’s available fire inspection resources with the desired outcomes, namely:

- 1. Reduce the incidence and severity of fires and other emergency incidents within the scope of the fire code.*
- 2. Reduce the impacts of incidents on the lives and economy of the Berkeley community.*
- 3. Satisfy all legal mandates for fire inspection and related services which may exist.*

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CONTACT PERSON

Andrew Whyte, Fire Marshal, Fire Department, (510) 981-3473

Attachments:

1: Audit findings, Recommendations, and Status Updates

Audit Title: Fire Prevention Inspections - Insufficient Resources Strain Code Compliance					
Issue Date: 05/09/2019					
Finding	Recommendation		Department	Last Period: Status	Current status update
Fire Not Meeting Inspection Mandates; Extensive Code Requirements and Population Growth Impact Staffing Workload.	1.1	Analyze the short- and long-term impact of putting forth a change to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections.	Fire	Not started	Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.
Fire Not Meeting Inspection Mandates; Extensive Code Requirements and Population Growth Impact Staffing Workload.	1.2	Perform a workload analysis to quantify the staff needed now and in the future to comply with the local fire prevention inspection requirements.	Fire	Started	Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.
Fire Relies on Incomplete Data to Manage Inspections.	2.1	Develop a process, in consultation with the Information Technology Department, for sharing information on property changes and additions between Fire and other City database platforms.	Fire	Dropped	N/A
Fire Relies on Incomplete Data to Manage Inspections.	2.2	Work with both the database's software vendor and the Information Technology Department to strengthen controls over the database, including: assessing the needs for required fields for processing an inspection, such as unit, shift, inspector name, address, violation details, and violation location; formatting drop-down menus for inspection status, inspection type, and violation status; formatting the options available for the violation code numbers and violation description fields.	Fire	Dropped	N/A
Fire Staff Do Not Have Enough Support to Get Inspections Done.	3.1	Coordinate work plans with Suppression for all mandated fire prevention inspections. These should take into consideration the volume and nature of the other work Suppression performs.	Fire	Started	Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.
Fire Staff Do Not Have Enough Support to Get Inspections Done.	3.2	Create a risk-assessment plan to identify those properties that are most at risk of a fire.	Fire	Partly Implemented	Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.
Fire Staff Do Not Have Enough Support to Get Inspections Done.	3.3	Issue a General Order to the Department on the importance and necessity of performing fire prevention inspections.	Fire	Not started	Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.
Fire Staff Do Not Have Enough Support to Get Inspections Done.	3.4	The Fire Marshal and Suppression Management jointly develop a communication plan between Fire Prevention and Suppression.	Fire	Started	Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.
Fire Staff Do Not Have Enough Support to Get Inspections Done.	3.5	Revise the fire prevention inspection training to provide hands-on training, using experienced Suppression staff, on how to conduct inspections and interact with residents and community members during inspections.	Fire	Partly Implemented	Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.
Fire Staff Do Not Have Enough Support to Get Inspections Done.	3.6	Develop and distribute educational information to property owners prior to the beginning of the inspection cycle to provide information on the fire prevention inspection program, common violations, and any upcoming inspections for that area of the City.	Fire	Partly Implemented	Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.

Fire Staff Do Not Have Enough Support to Get Inspections Done.	3.7	Create a process for issuing, tracking, and following up on administrative citations for properties with repeat or high-risk violations, including revenue collections and tracking. That process should collaborate with other City work units that perform enforcement activities to provide consistency.	Fire	Started	Dropped. Audit recommendations are considered dropped if the City has not implemented them within five years.



Office of the City Manager

INFORMATION CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Gilman, Director, Health, Housing, and Community Services

Subject: Restaurant Inspection Audit Status Report

INTRODUCTION

On July 10, 2024 the City Auditor submitted an audit report¹ on the status of Restaurant Inspections to the City Council with recommendations to improve the overall delivery of services for the food safety inspection program. The purpose of this information item is to update City Council on the status of implementation of the audit report's recommendations. This is the first status report regarding this audit.

CURRENT SITUATION AND ITS EFFECTS

The audit included nine recommendations. As of the writing of this report five of the recommendations have been started, three have been partly implemented, and one that is dependent on others being completed first has yet to be started. In each of the cases, those recommendations currently tracked as "started" or "partly implemented" rely on the development and implementation of revised policies and procedures, incorporation of new staff hires and the implementation of technological solutions such as the planned upgrade to the Accela database.

It was during the Pandemic when EHD fell behind significantly in meeting its inspectional frequencies. EHD is now beginning to achieve staffing levels equivalent to pre-Pandemic levels. EHD recently filled its vacant inspector position, bringing the number of food inspectors to four (4) and recently conducted interviews to fill its Supervisor position. Additionally, EHD entered into a temporary contract with the California Environmental Health Administrators Association for one an additional inspector to ensure all facilities are inspected before the end of 2024. (Note: In order to help ensure timely inspections moving forward, those facilities that are receiving their 2023 inspection in 2024 will not receive their next inspection until 2025.)

EHD is also undergoing a division-wide fee study as fees have not been analyzed in over ten (10) years. In conjunction with this fee study, EHD will also evaluate its current

¹ Berkeley Restaurant Inspections: Chronically Understaffed Program Did Not Meet Targets:
https://berkeleyca.gov/sites/default/files/documents/Berkeley_Restaurant_Inspections_-_Chronically_Understaffed_Program_Did_Not_Meet_Targets.pdf

staffing needs to determine whether the current staffing levels are adequate to cover all the requirements of the food safety inspection program and other local ordinance departmental responsibilities, including but not limited to, vector control, noise complaints, stormwater inspections, swimming pools and spas, retail tobacco, and body art.

Please see Attachment 1 for a detailed table of audit report recommendations, corrective action plans, and implementation progress. The next status report to Council is expected to be presented in June 2025.

BACKGROUND

The Environmental Health Division (EHD) transitioned to a risk-based food inspection process in 2015, and followed the guidelines established by the Federal Food and Drug Administration's (FDA) Voluntary National Retail Food Regulatory Program Standards for conducting inspections at all permitted food facilities in the City of Berkeley. Under this program, EHD evaluated all its permitted foodservice operations (including restaurants, grocery markets, schools, bars, etc.), and categorized them according to the "risk categories" associated with the level of complexity of food handling processes and populations served by each facility.

In general, a market that only sells pre-packaged food items with no "open food" handling would fall under a risk category "1" (RC-1), while a facility that serves/sells food with "minimal" food handling, (e.g. deli operation that assembles sandwiches and requires food to be held under refrigeration and/or hot-holding) would be assigned a risk category "2" (RC-2). A typical full-service restaurant would be assigned an RC-3 designation, while a facility that prepares and serves food to immunocompromised, vulnerable populations (e.g. skilled nursing facilities) would be designated as an RC-4. Each RC designation also determines the number of annual inspections a facility would expect to receive, although RC-4s generally would receive the equivalent of an RC-3, which would be three inspections annually.

During the early stages of the COVID Pandemic, EHD experienced a staffing shortage due to various promotional opportunities, and/or prolonged staff illnesses, and was unable to immediately fill its vacancies due to the hiring freeze that was in effect for two (2) successive fiscal years (FY21 and FY22). When the hiring freeze was lifted, EHD experienced additional budgetary challenges that made it difficult to hire the vacant supervisor position. In addition, the hiring of the vacant inspector position was largely due to the limited pool of qualified applicants, an issue currently experienced state-wide by all Environmental Health jurisdictions.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects associated with the subject of this report.

POSSIBLE FUTURE ACTION

EHD will continue to work with the Information Technology Department to complete the upgrade and implementation of the Accela software for Environmental Health.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Annual operational costs will likely increase with the upgrade to Accela.

CONTACT PERSON

Scott Gilman, Director, Health, Housing, and Community Services (510) 981-5400

Attachments:

1: Audit Findings, Recommendations and Status Updates

Audit Title: Berkeley Restaurant Inspections: Chronically Understaffed Program Did Not Meet Targets					
Issue Date: 07/10/2024					
Finding	Recommendation		Department	Last Period: Status	Current status update
The Division was significantly behind on inspections in 2023, increasing health risk.	1.1	Develop a plan to improve coverage of routine inspections throughout the City, which may require the Division to prioritize health and safety duties over other responsibilities. As part of this process: (a) Evaluate inspection targets to determine if current inspection frequencies are achievable, or establish different temporary targets to adapt to periods of understaffing. (b) Establish a baseline of inspection coverage for all permitted food facilities in the City and prioritize inspection of facilities with high risk and very high risk designations that were not inspected in 2023.	HHCS	N/A	Started. Following an evaluation of current staffing and overdue inspections, the Division developed new priority inspection targets. The new baseline requirement includes inspecting all high-risk food facilities by October 31, 2024, and completing at least one inspection for all low- and medium-risk food facilities by December 31, 2024. The October deadline to complete 184 high and very high-risk facilities was adjusted by two weeks to allow staff to complete legally mandated public records and information requests that took priority over inspections. According to Division management, as of October 31, 2024 there were 16 high-risk facilities remaining to be inspected by November 15, 2024. In addition, 110 of the 234 overdue low- and medium-risk facilities have been inspected leaving 124 to be done before December 31, 2024.
The Division was significantly behind on inspections in 2023, increasing health risk.	1.2	Develop a plan to ensure timely response to complaints involving alleged foodborne illness, which may require the Division to prioritize health and safety duties over other responsibilities.	HHCS	N/A	Started. According to Division management, the Division provided food inspectors training on complaint response times, including response to complaints involving alleged foodborne illness in May 2024. The Division provided documentation indicating that there will be a repeat training for all staff on 11/27/2024 regarding timely response to alleged foodborne illness complaints. Division management is also assessing the prioritization of staff resources to focus on acute health and safety-related complaints.
The Division did not track spending and left critical positions vacant.	2.1	Work with the Budget Office to track how the food inspection program revenues are used.	HHCS	N/A	Partly implemented. The Environmental Health Division has collaborated with Finance to establish revenue and expenditure account codes using the program code of 2001 for restaurant inspections. The Division has also made adjustments to personnel budget to reflect the changes and trained staff on how to correctly deposit restaurant inspection-related payments into the new code. The code in the online payment system has been updated so that food facility permits will be deposited into the new revenue account as of July 1, 2025.
The Division did not track spending and left critical positions vacant.	2.2	Take the following steps to fill positions and assess program staffing: (a) Open recruitment for the supervisor position. (b) If the recruitments for the supervisor and food inspector positions do not yield qualified candidates, work with the Human Resources Department (HR) to develop targeted recruitments for the inspector and supervisor roles. This may include conducting an analysis of compensation or other factors that affect recruitment. (c) Develop a trainee program to build a pipeline into the Division's inspector positions. (d) Work with HR as needed to identify staffing resources needed to meet inspection targets.	HHCS	N/A	Partly implemented. The Environmental Health Division filled the vacant Registered Environmental Health Specialist position in October 2024 and has interviews scheduled with qualified candidates for the supervisor position. Additionally, the Division entered into a contract with the California Association of Environmental Health Administrators in October 2024 to use temporary Registered Environmental Health Specialists to help with food facility inspections in the short term.
The Division did not track spending and left critical positions vacant.	2.3	Make the following updates to the inspection data: (a) Add a risk designation to all food facilities in the Envision database. (b) Correct the date of last inspection in the Envision software that inspectors use during inspections, or develop a workaround to	HHCS	N/A	Partly implemented. The Environmental Health Division brought on a Project Manager to monitor inspection data accuracy and provide inspectors with lists of priority facilities for inspections.

		ensure inspectors have an accurate list of facilities prioritized by last inspection date. (c) Develop a process to regularly verify that the Envision database includes all food facilities that should be permitted and inspected.			
The Division did not track spending and left critical positions vacant.	2.4	Work with the Department of Information Technology (IT) to develop list of database functionalities and/or data points needed to help meet the Division's targets and produce reports. If the current database cannot provide this functionality, document the limitations of the current database and include these requirements in the future request for proposals for a new database.	HHCS	N/A	Started. The Environmental Health Division is working with the IT department to identify database functionalities that will meet the needs of all its programs, especially the food safety and inspection program. The Division has a preliminary plan to utilize an existing City contract with Accela to provide an "out-of-the-box" Environmental Health module.
The Division did not track spending and left critical positions vacant.	2.5	Identify performance metrics and report them to the public at least annually.	HHCS	N/A	Started. Environmental Health Division staff are currently being trained in Results Based Accountability and will use this methodology to develop process improvement metrics and outcome metrics.
Public information about food safety was limited.	3.1	Work with Department of Information Technology (IT) to update the online system for sharing information on food inspections. As part of this process: (a) Develop internal guidance informed by state code that details what information the Division will share with the public online and defines responsibility for managing the data. (b) Make inspection history available online for all permitted food facilities in Berkeley. This could include sharing a copy of the most recent inspection report.	HHCS	N/A	Started. The Environmental Health Division assessed the current online system for sharing information on food inspections and plans to upgrade its current database to enable public access to food facility inspection results. The Division intends to ensure the system meets all state requirements for voluntary online posting of inspection results.
Public information about food safety was limited.	3.2	Develop a plan to implement placarding in Berkeley once staffing levels are stable. As part of this process: (a) Assess resources needed to implement placarding. (b) Consider adding elements such as community engagement for designing and implementing evidence-based, equitable placarding.	HHCS	N/A	Not started. This recommendation requires completion of other projects first, including an assessment of the Division's current staffing needs to ensure that it is adequately staffed to provide mandated services. This recommendation will begin no sooner than July 2026 with recommendations to the City Council for consideration during the FY27-28 budget process.



Office of the City Manager

INFORMATION CALENDAR

December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Aram Kouyoumdjian, Director of Human Resources

Subject: UPDATE: HR Response: Audit Directive(s) for Comprehensive Domestic Violence Policy to Support City Employees

INTRODUCTION

This report is an informational update on progress toward goals recommended by a City Auditor report titled “Domestic Violence Response: Berkeley Needs a Comprehensive Policy to Support City Employees” issued on October 10, 2019.¹ Specifically, the report tracks progress toward goals articulated by the Audit’s Corrective Action Plan within the broader context of a workplace violence prevention policy being developed by the Human Resources Department.

CURRENT SITUATION AND ITS EFFECTS

The audit set forth six recommendations, and implementation of all six has been started, while four have been partly implemented. Five of the recommendations have been integrated into a working draft of a revised domestic violence policy. These revisions pertain to the title of the policy (to reflect a broader scope), pertinent definitions, factors to be considered in assessing accommodations, supporting documents required for accommodations, and best practices in implementing such a policy. The revisions will soon be submitted to the City Attorney’s Office for legal review.

As to a sixth recommendation regarding staff training for compliance with the policy, HR is looking to incorporate such training into a redesigned Supervisor Training curriculum, with an anticipated launch date early next year. Moreover, the department has developed a draft of a comprehensive Workplace Violence Prevention Policy focused on threat assessment and mechanisms for reporting suspicious behavior/activity; the policy will be effectuated in concert with broader workplace violence prevention trainings in compliance with new requirements set forth by state law (AB 553).

¹ Domestic Violence Response: Berkeley Needs a Comprehensive Policy to Support City Employees:
<https://berkeleyca.gov/sites/default/files/2022-01/Domestic-Violence-Response-Report.pdf>

BACKGROUND

The City Auditor's Office issued its report on October 10, 2019. HR's first informational update was provided on November 3, 2022 and the second on May 14, 2024. This report is HR's third informational update, and its next one will be due in Fall 2025.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CONTACT PERSON

Aram Kouyoumdjian, Director of Human Resources, (510) 981-6807.

Attachments:

1. Audit Findings, Recommendations, and Status Updates

Audit Title: Domestic Violence Response: Berkeley Needs a Comprehensive Policy to Support City Employees					
Issue Date: October 10, 2019					
Finding	Recommendation		Department	Previous status update	Current status update
Policy does not completely reflect state requirements.	1.1	Define and include sexual assault, stalking, and witnesses' rights.	Human Resources	Partly Implemented	<u>Partly Implemented:</u> Human Resources has made proposed updates to terms and definitions in the policy. Policy is in draft form and awaiting approval.
Policy does not completely reflect state requirements.	1.2	State that when assessing safety accommodations, Human Resources takes into consideration danger to the employee and undue burden to the employer.	Human Resources	Partly Implemented	<u>Partly Implemented:</u> Human Resources has made proposed updates to terms and definitions in the policy. Policy is in draft form and awaiting approval.
Policy does not completely reflect state requirements.	1.3	Revise the policy title to reflect the comprehensive scope of the policy.	Human Resources	Partly Implemented	<u>Partly Implemented:</u> Policy title is updated in draft form and is awaiting approval.
Policy does not completely reflect state requirements.	1.4	Clarify that requirements for employees to document their use of leave or request for accommodations are at the discretion of Human Resources and may include self-certification when appropriate. We also recommend that Human Resources clarify that employees are encouraged to come to Human Resources for assistance even if they do not initially have the documentation that may be requested.	Human Resources	Partly Implemented	<u>Partly Implemented:</u> Policy is updated in draft form and is awaiting approval.
Policy does not address key workplace domestic violence issues.	2.1	Incorporate the model policy and all best practice elements described in this finding, and communicate this guidance to city staff.	Human Resources	Started	<u>Started:</u> The policy update is in draft form and is awaiting approval. In addition, Human Resources will assess the feasibility of adopting additional elements from model policies and will add as appropriate at a later date.

Berkeley needs to prepare all staff to comply with the policy.	3.1	Implement best practices, including: - Training supervisors and Human Resources staff about their role in responding to employees experiencing domestic violence and providing information for employees about the domestic violence response policy; - Conducting periodic outreach to employees to inform them about the policy, encourage them to come forward, and provide general information about domestic violence; - Facilitating collaboration among city staff who have a role in implementing the policy, and convening a domestic violence response team to advise on policies, ongoing outreach and education, and Human Resources' implementation of recommendations from this audit; and - Adopting a trauma-informed and inclusive approach.	Human Resources	Started	<u>Started:</u> Human Resources may add policy review to supervisor training to include revised domestic violence policy.



Office of the City Manager

INFORMATION CALENDAR
December 10, 2024

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Terrance Davis, Director, Public Works

Subject: Audit Status Reports: Fleet Replacement Fund Short Millions and Rocky Road: Berkeley Streets at Risk and Significantly Underfunded

INTRODUCTION

On November 19, 2020, the City Auditor published the [Rocky Road: Berkeley Streets at Risk and Significantly Underfunded Audit Report](#),¹ reviewing the funding resources to sufficiently maintain City streets, and asking if Public Works has clear policies and processes to guide paving decisions.

On June 2, 2021, the City Auditor published the [Fleet Replacement Fund Short Millions Audit Report](#),² reviewing the sufficiency of the fund to replace vehicles and asking if Public Works has key information necessary for managing the fleet program.

This is the third status report to City Council on the efforts made to implement the Audit Report's recommendations for both streets paving and fleet. Previous reports were issued on [November 3, 2022](#)³ and [March 19, 2024](#).⁴

CURRENT SITUATION AND ITS EFFECTS

The street paving audit report included two findings and five recommendations for the Public Works Department and its Engineering Division and Administrative & Fiscal Services Division to review, implement and report to Council. As of this report, three recommendations have been implemented and two recommendations have been partly implemented. All recommendations currently tracking as partly implemented require

¹ <https://berkeleyca.gov/sites/default/files/2022-01/Rocky-Road-Berkeley-Streets-at-Risk-and-Significantly-Underfunded.pdf>

² <https://berkeleyca.gov/sites/default/files/2022-01/Fleet-Replacement-Fund-Short-Millions.pdf>

³ <https://berkeleyca.gov/sites/default/files/documents/2022-11-03%20Item%2044%20Audit%20Status%20Reports%20Fleet%20Replacement.pdf>

⁴ <https://berkeleyca.gov/sites/default/files/documents/2024-03-19%20Item%2013%20Audit%20Status%20Reports%20%20Fleet%20Replacement%20Fund%20Short%20Millions.pdf>

funding source availability for appropriation to streets.

The fleet audit report noted two findings and twelve recommendations for the Public Works Department and its Equipment Management Division and Administrative & Fiscal Services Division to review, implement and report to Council. As of this report, there are updates to the status of ten of the twelve recommendations. The first set of seven recommendations were related to the underfunding of the Equipment Replacement Fund. One has been started and six have been partly implemented. The second set of five recommendations focused on Public Works having critical information available to inform management and decision making, and all five recommendations under this finding have been partly implemented.

These Audit Status Reports support the Strategic Plan Priority of advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities. The attachment provides a detailed table of audit report recommendations, steps towards corrective action, and implementation progress updates. The next status report for the fleet and street paving audit are expected to be presented in Fall 2025.

BACKGROUND

Public Works' Engineering Division is responsible for capital projects to maintain over 216 centerline miles of streets in the City, while the Streets & Utilities Division handles day-to-day maintenance of those streets.

Public Works' Equipment Management Division manages the maintenance, purchase, and replacement of the City's 585 assets such as fleet vehicles, heavy duty trucks and large equipment, including public safety, fire, and alternative fuel vehicles and equipment.

The Administrative and Fiscal Services Division is responsible for the Department's budget and fiscal oversight and analytical support for routine and special projects in all Public Works operating divisions.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Public Works Equipment Maintenance always endeavors to procure electric vehicles or the most fuel-efficient vehicles and equipment that are suitable for the required tasks. Equipment Maintenance also researches the feasibility and availability of fully electric vehicles and hybrid-electric powertrains to support the City's transition away from fossil fuels towards an all-electric fleet.

Enhanced streets provide significant benefits for all users and are a key focus of Public Works' Engineering Division. By improving infrastructure, we encourage more sustainable modes of transportation, such as bicycling and walking, which in turn help reduce greenhouse gas emissions and contribute to healthier, more vibrant communities. Additionally, these projects often incorporate green infrastructure elements, such as permeable pavement and bioswales, designed to filter pollutants and manage stormwater. This ensures that runoff is cleaner and better managed before it enters the Bay, helping to protect our waterways and support long-term environmental sustainability. Through these improvements, we prioritize the safety, accessibility, and

ecological health of our urban spaces.

POSSIBLE FUTURE ACTION

Public Works will continue to address the remaining two partly implemented recommendations in the street paving audit and the twelve started and partly implemented recommendations in the fleet audit.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

In the mid-Biennial Budget update a new rate model for Equipment Maintenance will be proposed to include the cost of fleet electrification. It is estimated that the additional costs to convert the planned replacement vehicles to all electric in the next five years \$9,000,000. For the corresponding infrastructure required to support this conversion, the installation of chargers will cost the an estimated \$6,500,000.

In the biannual budget adoption for FY 2023 and FY 2024, Council approved a funding guideline to approve an \$8,000,000 annual increase to street paving funding in future fiscal years (plus annual CPI adjustments). This funding is intended to raise paving funding to levels sufficient to maintain current pavement condition. Significant additional funding would be needed to be allocated over several years to raise the pavement condition index (PCI) to 70-75 or “Good” status.

CONTACT PERSON

Carisa Lubek, Acting Administrative & Fiscal Services Manager, Public Works, (510) 981-6304

Ron Nevels, Manager of Engineering, Public Works, (510) 981-6439

Joy Brown, Public Works Operations Manager, Public Works, (510) 981-6629

Attachments:

1. Fleet Audit Findings and Recommendations Response Report
2. Street Audit Findings and Recommendations Response Report

Audit Title: Fleet Replacement Fund Short Millions					
Issue Date: June 2, 2021					
Finding	Recommendation		Department	Previous status update	Current status update
The Replacement Fund is underfunded by millions of dollars.	1.1	Calculate the dollar value of the City's replacement needs. Use results from the recent rate study to adjust departments' replacement fees to cover their share of the costs associated with vehicle replacement, including customization and personnel.	Public Works	Partly Implemented	<u>Partly Implemented:</u> Public Works is updating the replacement costs in AssetWorks, the new fleet management software, to accurately reflect current amortization values. The ongoing amortization charges, which will include upfitting expenses, are passed on to the end user departments. Additional charges are still being calculated which include personnel and electric vehicle charging infrastructure. Billing for and collecting for these additional charges will be presented to the Budget Office and City Departments as part of the next mid-biennial budget update in 2025.
The Replacement Fund is underfunded by millions of dollars.	1.2	Conduct an analysis of the City's current fleet and determine the optimal fleet size to provide services efficiently and effectively. This analysis should include fleet units identified as reserve, backup, and "pool" vehicles. The outcome of the analysis should be a plan to achieve and provide funding for the optimal fleet size.	Public Works	Started	<u>Started:</u> City Council approved a contract for Mercury Associates to conduct the fleet assessment study on November 21, 2023. The contract was executed in February 2024. Mercury delivered a draft fleet assessment in September 2024 and anticipates it to be finalized in November 2024. The assessment recommends the City conduct a right-sizing and right-typing study of the fleet. Public Works has begun this process by drafting a questionnaire for staff best suited to assess each vehicle's use.

The Replacement Fund is underfunded by millions of dollars.	1.3	Work with the City Manager's Office to adjust the funding model of the Equipment Replacement Fund or adopt a new one to ensure appropriate funding for timely fleet replacement, such as annually transferring money from the General Fund based on an assessment of the City's overall fleet needs and priorities. Expand the current vehicle and equipment replacement policy to ensure transparency of key provisions of the new or updated model.	Public Works	Started	<u>Partly Implemented:</u> Public Works updated its fund rate models based on FY 23 actuals and will update again for presentation of the new rates for adoption during the next mid-biennial budget adjustment in 2025. Public Works leadership and representatives from other departments will work with Mercury Associates to finalize an Equipment Replacement Policy which will address new to fleet purchases, and clearly identify a process for keeping vehicles for a limited time after replacement or for motor pool usage. Anticipated draft completion is December 2024 with a recommendation to have the policy become an Administrative Regulation with adoption in the spring of 2025.
The Replacement Fund is underfunded by millions of dollars.	1.4	Revise the vehicle and equipment replacement policy to include that Public Works should regularly assess the personnel expenditures related to vehicle and equipment replacement and ensure that they are appropriate and proportional to their duties.	Public Works	Started	<u>Partly Implemented:</u> Public Works leadership and department representatives will work with Mercury Associates to finalize an Equipment Replacement Policy which will address new-to-fleet purchases, and clearly identify a process for keeping vehicles for a limited time after replacement or for motor pool usage. Anticipated draft completion is December 2024 with a recommendation to have the policy become an Administrative Regulation with adoption in the Spring of 2025. Personnel expenditures that are currently being allocated to the Equipment Replacement Fund will be evaluated annually as part of the budget update process.

The Replacement Fund is underfunded by millions of dollars.	1.5	Revise the vehicle and equipment replacement policy to prevent replacing unfunded vehicles by ensuring that contributed funds are available for the purchase.	Public Works	Started	<u>Partly Implemented:</u> Public Works leadership and department representatives will work with Mercury Associates to finalize an Equipment Replacement Policy which will include provisions to prevent replacing unfunded vehicles by ensuring that contributed funds are available for the purchase. Anticipated draft completion is December 2024 with a recommendation to have the policy become an Administrative Regulation with adoption in the spring of 2025.
The Replacement Fund is underfunded by millions of dollars.	1.6	Develop an AR that clarifies PW's responsibilities to manage the fleet and maintain fleet replacement funding. Include the following provisions: Provide an analysis of the impact on fleet replacement and overall costs when the City considers reallocating replacement funds or stopping payments into the Fund. Provide documented justification when deciding to use the ERF for non-replacement needs. The decision must be supported with a documented cost analysis from Public Works showing potential impact of insufficient funds on fleet replacement. See Audit report for full recommendation.	Public Works	Started	<u>Partly Implemented:</u> Public Works leadership and department representatives will work with Mercury Associates to finalize an Equipment Replacement Policy which will address the recommended provisions. Anticipated draft completion is December 2024 with a recommendation to have the policy become an Administrative Regulation with adoption in the spring of 2025. Additional meetings will be scheduled with Budget office to ensure passage of an updated rate model as part of the budget process.

The Replacement Fund is underfunded by millions of dollars.	1.7	To help secure the funding needed for transitioning to electric vehicles by 2030, work with the City Manager's Office to develop a budgetary plan to purchase electric vehicles. The plan should align with the City's fleet electrification goals and take into consideration the current economic downturn, funding availability, available infrastructure, and electric vehicle availability.	Public Works	Started	<u>Partly Implemented:</u> The Electrical Mobility Coordinator oversaw the grant submission to support fleet electrification. Berkeley was not awarded the grant as it primarily went to counties. The Electric Mobility Coordinator together with AVA Energy and Frontier Energy completed an assessment which provides a plan for charging infrastructure, vehicle transition, and costs. The Division and a variety of fleet users continue to meet with EV manufacturers to discuss purchase options. EV charging infrastructure is currently proposed to be funded by the Equipment Replacement Fund with reimbursement to the fund from an updated rate model. PW anticipates using state rebates through CORE and HVIP programs. Current estimated infrastructure expenses to upgrade charging infrastructure at City Facilities is \$6.5 million with \$9 million for EV purchases.

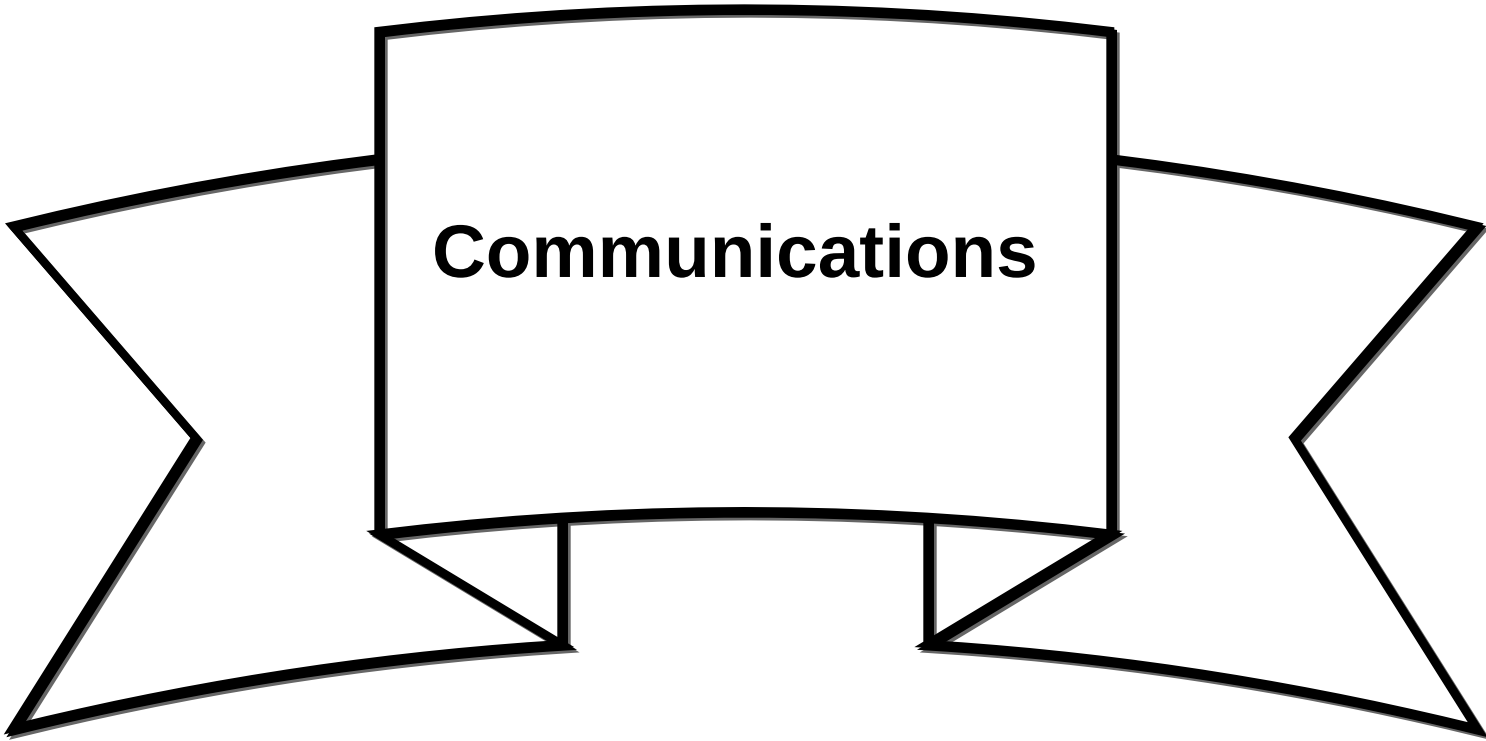
Public Works lacks information on vehicle and equipment replacement for decision making.	2.1	Conduct a needs assessment of vehicles overdue for replacement and create a plan that documents a timeline and cost for replacement. Report the findings to City Council.	Public Works	Started	<u>Partly Implemented:</u> Funding for replacement of backlog vehicle purchases was included in the FY 25 and FY 26 budgets along with scheduled replacements for those years. Additionally, as part of the annual appropriation ordinance process, funding was requested to ensure continued funding for vehicle replacement. As part of the work Mercury Associates is doing on behalf of the Equipment Maintenance Division, the Equipment Replacement Policy will outline replacement timelines and requirements. The Fleet Electrification Assessment from AVA Energy and Frontier Energy provides a Transition Calculator that outlines the expenses and timelines. The Fleet Electrification Assessment and the transition calculator were finalized in October 2024.
Public Works lacks information on vehicle and equipment replacement for decision making.	2.2	Update the vehicle and equipment replacement policy to include criteria for prioritizing fleet replacement. The policy should include a requirement to communicate a delay in replacement of their fleet to affected departments. In Administrative Regulation described in recommendation 1.6, specify that the vehicle and equipment replacement policy should include such criteria.	Public Works	Started	<u>Partly Implemented:</u> Public Works leadership and department representatives will work with Mercury Associates to finalize an Equipment Replacement Policy which will include language supportive of the recommendation. The final Policy will be reviewed by the City Manager's Office. Anticipated draft completion is December 2024 with a recommendation to have the policy become an Administrative Regulation with adoption in the spring of 2025.

Public Works lacks information on vehicle and equipment replacement for decision making.	2.3	Work with the vendor of the new fleet management system to configure it to address the data issues identified in this report, including: - Tracking Replacement Funds collected and leftover funds by department; - Zeroing out the balance after a vehicle is replaced; - Adjusting the replacement date and reporting the rationale if a replacement is deferred; and - Displaying any information needed to prioritize replacements based on specified criteria.	Public Works	Started	<u>Partly Implemented:</u> Public Works AssetWorks fleet management software launched in spring 2024. Reporting on vehicle replacement will be more thorough as the vehicle usage and maintenance costs will be more readily available. All vehicles that have been replaced have zeroed out the amortization balance. Mercury Associates will provide additional recommendations on the rationale for replacement that will be included in the replacement policy.
Public Works lacks information on vehicle and equipment replacement for decision making.	2.4	Clean and update the vehicle and equipment database before migrating it to the new fleet management system to ensure accuracy and data integrity.	Public Works	Started	<u>Partly Implemented:</u> Public Works AssetWorks fleet management software launched in spring 2024. Fleet team is still running the two systems, AssetWorks and FUND\$ side by side until the new system is fully operational. Multiple physical inventories have been taken during 2024 to ensure accuracy of the vehicle and equipment data in AssetWorks, which is anticipated to be finalized by the end of 2024.
Public Works lacks information on vehicle and equipment replacement for decision making.	2.5	Update the vehicle and equipment replacement policy or develop a separate policy to require staff manage the City's data appropriately to ensure accurate complete information to support management decisions.	Public Works	Started	<u>Partly Implemented:</u> Public Works leadership and department representatives will work with Mercury Associates to finalize an Equipment Replacement Policy which will include language supportive of the recommendation. Anticipated draft completion is December 2024 with a recommendation to have the policy become an Administrative Regulation with adoption in the spring of 2025.

Audit Title: Rocky Road: Berkeley Streets at Risk and Significantly Underfunded					
Issue Date: November 19, 2020					
Finding	Recommendation		Department	Previous status update	Current status update
Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase.	1.1	Annually, conduct a budget analysis, based on the deferred maintenance needs at that point in time, to determine what level of funding is necessary to achieve the desired goals of the Street Rehabilitation Program. Report findings to City Council. This information will be helpful during updates to the Five-Year Street Rehabilitation Plan and during the budgeting process.	Public Works	Partly Implemented	<u>Partly Implemented:</u> The City conducts budget analysis of deferred maintenance needs through the citywide paving condition survey funded by a grant from the Metropolitan Transportation Commission (MTC), which occurs every two years. The City reports these findings biannually to the City Council through the Five-Year Paving Plan adoption and the CIP Budget Development process. The City has not yet met the requirement for an annual analysis and reporting. Public Works plans to engage a consultant to inventory deferred maintenance needs and estimate associated costs for the years between the PCI survey.

Without significant additional funding, Berkeley streets will continue to deteriorate and deferred maintenance costs will increase.	1.2	Identify funding sources to achieve and maintain the goals of the Street Rehabilitation Program.	Public Works	Partly Implemented	<u>Partly Implemented:</u> The City has a baseline annual paving budget of \$7 million, with an additional \$8 million commitment (adjusted for inflation) secured in 2022. The remaining years in the 5-year plan are expected to receive \$8 million annually, adjusted for inflation. Revenue from Zero Waste rates (estimated at \$1–2 million annually) will help address pavement wear caused by refuse vehicles, and stormwater funds will cover half of green infrastructure costs. Additionally, a one-time \$3.95 million from Measure T1 Phase 2 is allocated for FY 2025–2026. Measure FF, as approved by voters in November 2024, may provide approximately \$15 million annually for 14 years in funding for: (from the ballot language) "street, sidewalk, and pedestrian path repair, repaving and reconstruction, safety improvements, and environmental infrastructure." Achieving an average Pavement Condition Index (PCI) of 70 requires an estimated \$42 million annually over the next 12 years.
The Streets Rehabilitation and Repair Policy is out-of-date and Public Works is not following it.	2.1	Update the Street Rehabilitation and Repair Policy annually and define who is responsible for ensuring the Policy is updated, as stated in the Policy.	Public Works	Implemented	<u>Implemented:</u> Public Works Commission approved a Street Rehabilitation and Repair Policy March, 2021, which was received and revised after consideration at the FITES Commission in May 2021, and ultimately adopted by City Council on January 25, 2022. The Policy and Five Year Paving Plan were considered and adopted on the same Council agenda. The Street and Maintenance Policy shall be adopted by City Council at a minimum interval of 5 years, after review by the Transportation and Infrastructure Commission.

The Streets Rehabilitation and Repair Policy is out-of-date and Public Works is not following it.	2.2	When updating the Street Rehabilitation and Repair Policy, incorporate equity to align with Vision 2050 and clearly define how it will be applied to the street maintenance and rehabilitation planning process.	Public Works	Implemented	<u>Implemented:</u> The updated Street Rehabilitation and Repair Policy was adopted with clear language placing Equity as an objective. The updated Policy can be viewed here: https://berkeleyca.gov/sites/default/files/2022-04/Street%20Maintenance%20and%20Rehabilitation%20Policy_01_25_2022.pdf .
The Streets Rehabilitation and Repair Policy is out-of-date and Public Works is not following it.	2.3	Define goals and performance measures to guide the Street Rehabilitation and Repair Policy and Street Rehabilitation Program that align with other plans and policies relevant to street paving (e.g., Complete Streets Policy, Vision 2050, etc.). Regularly report to Council on performance measures.	Public Works	Implemented	<u>Implemented:</u> Performance Metrics are included as a major part of the adopted Specific Policy. Key areas: 1) The goal is to get to standard PCI of 70 for roadways: Arterials, Collectors, Bus Routes, Bikeway Network, and Equity Zone. 2) Funding should be prioritized with Equity in mind 3) Performance metrics reporting will be included with the biannual Paving Plan review. The updated policy can be viewed here: https://berkeleyca.gov/sites/default/files/2022-04/Street%20Maintenance%20and%20Rehabilitation%20Policy_01_25_2022.pdf .



Communications

All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

City Clerk Department

2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

Records Online

<https://records.cityofberkeley.info/>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF