

AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, April 14, 2026

6:00 PM

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

TELECONFERENCE LOCATION - 1027 BANCROFT WAY, BERKELEY, CA 94710

ADENA ISHII, MAYOR

COUNCILMEMBERS:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SHOSHANA O'KEEFE

DISTRICT 6 – BRENT BLACKABY

DISTRICT 7 – CECILIA LUNAPARRA

DISTRICT 8 – MARK HUMBERT

*This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using [Zoom](#). 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: 160 368 9357**. 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.*

Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via [internet video stream](#). All Council meetings are recorded.

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 \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 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. Winston Burton, Berkeley Commissioner and Community Activist
2. Cynthia Brantly Pierce, Community Activist

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

- Contract No. 32400067 Amendment: Westcoast Online Information Systems, Inc. DBA NetFile for Online Campaign Reporting, Public Financing Administration, Form 700 Filing and Tracking, State Law SB 827 Fiscal & Financial Training and Tracking, and State Law AB 1234 Ethics Training and Tracking**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32400067 with Westcoast Online Information Systems, Inc. DBA NetFile to increase the not-to-exceed amount by \$11,850 for financial and ethics training tracking and administration for a total contract amount not to exceed \$182,550 within the original term of October 23, 2023 to September 20, 2028.
Financial Implications: See report
Contact: Mark Numainville, City Clerk, (510) 981-6900

Consent Calendar

- 2. Revenue Contract: City of Emeryville for Animal Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a revenue contract and any necessary amendments with the City of Emeryville to provide certain animal care services to be performed from FY2027 through FY2029, for which the City of Emeryville will pay the City of Berkeley a total amount not to exceed \$519,112.
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000
- 3. Contract No. 42400040 Amendment: City of Albany for Animal Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend an existing contract (contract number 42400040) and execute any necessary amendments thereafter with the City of Albany to provide certain animal care services for which the City of Albany will pay the City of Berkeley \$413,582 for services performed from FY2027 through FY2029, for a new not to exceed amount of \$704,601.
Financial Implications: See report
Contact: Peter Radu, City Manager's Office, (510) 981-7000
- 4. Contract No 32200032 Amendment: Administration of Downtown Berkeley Property Based Business Improvement District (DPBID), with the Downtown Berkeley Association**
From: City Manager
Recommendation: Adopt a Resolution to amend Contract No. 32200032 between the Downtown Berkeley Association (DBA) and the City of Berkeley. This amendment intends to modify the existing Not-to-Exceed (NTE) amount of the contract to allow all pass-through amounts collected on behalf of the Downtown Berkeley Property Based Business Improvement District (DPBID) above the existing NTE amount to be paid to the DBA when received. This amendment to the contract with the DBA will increase the contract amount by \$1,408,096 for a new contract amount NTE \$8,693,353.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530
- 5. Contract No 32600096 Amendment: Administration of the Elmwood Business Improvement District (Elmwood Business Association)**
From: City Manager
Recommendation: Adopt a Resolution to amend Contract No. 32600096 between the Elmwood Business Association and the City of Berkeley. This amendment intends to modify the existing Not-to-Exceed (NTE) amount of the contract by increasing it to \$50,000 (from \$30,000) to align with additional collections anticipated due to the expansion of the boundary of the Elmwood Business Improvement District (BID).
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

Consent Calendar

- 6. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 14, 2026**
From: City Manager
Recommendation: Approve the request for proposals or invitation for bids 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: \$817,901 - Various Funds
Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 7. Revenue Contract: Department of Health Care Services Performance Contract for City of Berkeley for Behavioral Health Services Act**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or designee to execute a contract and any amendments with the California Department of Health Care Services (DHCS) in the amount of approximately \$10,000,000 each year from July 1, 2026 through June 30, 2029, (FY 2027 – 2029) for the Behavioral Health Services Act (BHSA), Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs and county provision of community mental health services pursuant to the Bronzan-McCorquodale Act.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100
- 8. Contract No. 32200185 Amendment: Sonya Dublin Consulting to Provide Evaluation Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager, or designee, to execute an amendment and any subsequent amendments or extensions to Contract No. 32200185 with Sonya Dublin Consulting for evaluation services. The amendment would increase the contract amount by \$62,400, for a total not-to-exceed amount of \$171,600.
Financial Implications: See report
Contact: Scott Gilman, Health, Housing, and Community Services, (510) 981-5100
- 9. Contracts for On-Call Hardscape Installation and Repair Services at Parks, Recreation, and Waterfront Facilities**
From: City Manager
Recommendation: Adopt three Resolutions authorizing the City Manager to execute on-call contracts and amendments for hardscape installation and repair services for a period of three years each with the following:
1. Redwood Engineering Construction, for an amount not to exceed \$300,000.
2. Kerex Engineering, Inc., for an amount not to exceed \$300,000.
3. Calico California Constructores, Inc., for an amount not to exceed \$300,000.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

10. **Contracts for On-Call Painting and Repair Services at Parks, Recreation, and Waterfront Facilities**

From: City Manager

Recommendation: Adopt three Resolutions authorizing the City Manager to execute on-call contracts and any amendments for painting and repair services for a period of three years each with the following:

1. Athen's Painting & Commercial Coatings, Inc, for an amount not to exceed \$300,000;
2. SDM Construction, for an amount not to exceed \$300,000; and
3. Aiden's Quality Painting, Inc., for an amount not to exceed \$300,000.

Financial Implications: See report

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

11. **Contracts: Pavement and Safety Improvement/Program Management Consulting Services for Measure FF-funded Projects**

From: City Manager

Recommendation: Adopt eight Resolutions authorizing the City Manager to execute contracts and any amendments with NCE, Pavement Engineering, Inc., Kittleson & Associates, Sanbell, Bureau Veritas, Cordoba Corporation, Alta Planning + Design, Inc. and Mark Thomas for on-call professional services for Measure FF-funded projects for the amounts listed below, each for a period not to exceed three years:

1. NCE for an amount not to exceed \$2,500,000
2. Pavement Engineering, Inc. for an amount not to exceed \$2,500,000
3. Kittleson & Associates for an amount not to exceed \$2,500,000
4. Sanbell for an amount not to exceed \$2,000,000
5. Bureau Veritas for an amount not to exceed \$1,500,000
6. Cordoba Corporation for an amount not to exceed \$1,500,000
7. Alta Planning + Design, Inc. for an amount not to exceed \$1,000,000
8. Mark Thomas for an amount not to exceed \$800,000

Financial Implications: See report

Contact: Wahid Amiri, Public Works, (510) 981-6300

Council Consent Items

12. **Referral to the City Manager and the Parks Commission the Request to Develop and Implement a Plan and Identify Budget to Rename City of Berkeley Locations, Events, and the City Holiday Currently Named for Cesar Chavez, and Engage with the Chavez/Huerta Commemoration Period Partners and Latinos Unidos de Berkeley to Bring Back to City Council Recommendations for How the City of Berkeley May Move Forward with a Name Changes That Will Continue to Honor the Legacy of Labor Organizing and Solidarity for Farm Workers and Recognize Farm Workers as the Backbone of America**
From: Mayor Ishii (Author), Councilmember Lunaparra (Co-Sponsor), Councilmember Humbert (Co-Sponsor), Councilmember O’Keefe (Co-Sponsor)
Recommendation: Refer to the City Manager and the Parks Commission the request to develop and implement a plan and identify budget to rename City of Berkeley locations, events, and the city holiday currently named for Cesar Chavez and engage with the Chavez/Huerta Commemoration Period partners and Latinos Unidos de Berkeley to bring back to City Council recommendations for how the City of Berkeley, may move forward with a name changes that will continue to honor the legacy of labor organizing and solidarity for farm workers and recognize farm workers as the backbone of America.
Financial Implications: See report
Contact: Adena Ishii, Mayor, (510) 981-7100
13. **Referral to Establish a Citywide Local Density Bonus Program to Facilitate Lower-Cost Ownership Homes** (Condominiums) *(Reviewed by the Land Use, Housing & Economic Development Committee)*
From: Councilmember Kesarwani (Author), Councilmember Tregub (Co-Sponsor), Mayor Ishii (Co-Sponsor)
Recommendation: Refer to the City Manager to develop a citywide local density bonus modelled after the state density bonus that would incentivize new condominium development by allowing condo projects to take advantage of the same densities, bonuses, waivers, and concessions available under state density bonus law. Under the local density bonus, however, condo projects would be able to pay the current in-lieu affordable housing fee to the City’s Housing Trust Fund for all units, rather than create on-site for-sale below-market-rate condo units—a requirement under state density bonus law that renders larger-scale condo development infeasible. Further, the local density bonus shall consider concession rules that uphold the City’s workforce standards. The fiscal and policy goals of this proposed local density bonus are to help stalled rental residential projects in our downtown reach feasibility as condo projects, which will provide affordable housing in-lieu fee revenue, property tax revenue, serve as an economic force multiplier for our downtown, and provide much-needed ownership opportunities for young families seeking a starter home and aging residents seeking to downsize. Further, the local density bonus should apply citywide or downtown or on San Pablo Avenue, considering the area(s) that is most feasible, and provide language for at least two options for applicability: 1) Projects that have vested prior to Jan. 1, 2025 only; and 2) All projects regardless of vesting date—and to consider a sunset date, or a progress report to help determine an appropriate sunset date.

Council Consent Items

The reason for providing these two options is so that Council may consider economic conditions and the number of stalled projects at the time that the ordinance is under consideration. And further, to consider removing the exemption on the first 5,000 square feet for the affordable housing in-lieu fee. Further, request information from staff on whether it is financially feasible and operationally possible to provide Affordable Housing Trust funding to provide for below-market-rate condos on site.

Policy Committee Recommendation: To send the item to the City Council with a qualified positive recommendation and with the recommendation revised to read as follows: Refer to the City Manager to develop a citywide local density bonus modelled after the state density bonus that would incentivize new condominium development by allowing condo projects to take advantage of the same densities, bonuses, waivers, and concessions available under state density bonus law. Under the local density bonus, however, condo projects would be able to pay the current in-lieu affordable housing fee to the City's Housing Trust Fund for all units, rather than create on-site for-sale below-market-rate condo units—a requirement under state density bonus law that renders larger-scale condo development infeasible. The fiscal and policy goals of this proposed citywide local density bonus are to help stalled rental residential projects in our downtown reach feasibility as condo projects, which will provide affordable housing in-lieu fee revenue, property tax revenue, serve as an economic force multiplier for our downtown, and provide much-needed ownership opportunities for young families seeking a starter home and aging residents seeking to downsize. Further, the local density bonus should apply citywide or downtown and provide language for at least two options for applicability: 1. Projects that have vested prior to January 1, 2025 only; and 2. All projects regardless of vesting date – and to consider a sunset date, or a progress report to help determine an appropriate sunset date. The reason for providing these two options is so that Council may consider economic conditions and the number of stalled projects at the time that the ordinance is under consideration. And further, to consider removing the exemption on the first 5,000 square feet for the affordable housing in-lieu fee. Further, information from staff on whether it is financially feasible and operationally possible to provide Affordable Housing Trust funding to provide for below-market rate condos on site.

Financial Implications: Staff time

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110

14. **Kala Art 2026: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds**

From: Councilmember Taplin (Author)

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from Councilmember Taplin, to support Art Institute 2026.

Financial Implications: See report

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

Council Consent Items

- 15. Celebración Cultural Sylvia Mendez (Spring Cultural Celebration) by the Sylvia Mendez School PTA: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Bartlett (Author)
Recommendation: Adopt a Resolution approving the expenditure of funds, including \$1,000 from the discretionary council office budget of Councilmember Ben Bartlett, to the Sylvia Mendez Elementary School PTA to host a Spring Cultural Celebration event on April 26, 2026, on campus. The funds will be relinquished to the City's General Fund from the discretionary council office budget of Councilmember Ben Bartlett and the discretionary council office budgets of any other City Councilmembers who would like to contribute.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130
- 16. Recommendation to Parks and Waterfront Commission to Explore the Naming of a Public Plaza in South Berkeley as Delores Cooper Plaza**
From: Councilmember Bartlett (Author)
Recommendation: Refer to the Parks, Recreation, and Waterfront Commission to explore naming of the public plaza located at the intersection of Adeline Street and Fairview Street within the Lorin District corridor in South Berkeley as Delores Cooper Plaza; including process and directive of coordinating implementation, historical preservation, such as signage, universal design, and public engagement with community partners to document Delores Cooper's historic contributions to the City of Berkeley.
Financial Implications: See report
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Council Consent Items

17. **Referral to the City Manager: Amendments to the Berkeley Green Code for Newly Constructed Buildings and Existing Construction** *(Reviewed by the Facilities, Infrastructure, Transportation, Environment & Sustainability Policy Committee)*

From: Councilmember Tregub (Author), Councilmember Taplin (Co-Sponsor), Councilmember Lunaparra (Co-Sponsor)

Recommendation: Refer to the City Manager the following: 1. Continued development of a Single Source Energy Margin (Single Margin) reach code for adoption; 2. Further analysis, for future consideration, of additional Green Building policy and operational measures, such as Flexible Path (FlexPath) and Air Conditioner to Heat Pump (AC2HP) provisions, and/or other applicable pathways; and 3. Further streamlining, as feasible and appropriate, of the approval of certain Green Building equipment, systems, features, and processes for residential and residential-over-ground-floor-commercial construction. Consideration should be given to the establishment of an expedited permitting pathway for installations performed by contractors that participate in a California Division of Apprenticeship Standards-approved apprenticeship program in the applicable trade. As part of this ongoing work, the City Manager shall continue to examine the projected costs and potential savings, as applicable, associated with the referral; evaluate the complexity of compliance; and develop options to simplify requirements and reduce friction, particularly for smaller builders, developers, and homeowners.

Policy Committee Recommendation: To send the item to council with a qualified positive recommendation with the provisions that the ongoing work reexamine projected costs, evaluate the complexity of compliance, and offer options for making it simpler and as low friction as possible particularly for smaller builders, developers, and homeowners.

Financial Implications: See report

Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

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 – Old Business

18. **Mills Act Contract – 2845 Woolsey Street** *(Continued from March 24, 2026)*
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a Mills Act contract with Michael Pearson and Annette Blum Pearson for the maintenance and restoration of a City Landmark property at 2845 Woolsey Street.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar – New Business

19. **Proposed Resolution Limiting Use of City Property to Authorized Uses That Further City Purposes and Protect Access to City Services**
From: City Attorney
Recommendation: Adopt a Resolution limiting the use of City property to authorized uses that further City purposes and protect access to City services. This policy will ensure that City assets are not misappropriated in a manner that inhibits access to City services and interferes with City programs and other purposes.
Financial Implications: See report
Contact: Farimah Brown, City Attorney, (510) 981-6950
20. **Amendments to BMC Title 3.24 (Landmarks Preservation Commission) to Revise Procedures for Designating Landmarks, Historic Districts and Structures of Merit and Incorporate Technical Edits**
From: City Manager
Recommendation: Adopt the first reading of an ordinance amending BMC Title 3.24 (Landmarks Preservation Commission) to revise procedures for designating landmarks, historic districts and structures of merit, and to incorporate technical edits.
Financial Implications: See report
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Information Reports

21. **Environment and Climate Commission 2026 Work Plan**
From: Environment and Climate Commission
Contact: Sarah Moore, Commission Secretary, (510) 981-7400
22. **Bond Measure Subcommittee — Final Report**
From: Parks and Waterfront Commission
Contact: Roger Miller, Commission Secretary, (510) 981-6700

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: berkeleyca.gov/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, and through the City's online records portal: <https://records.cityofberkeley.info/>.

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

If you have obtained interpretation services for your use during a City Council meeting and would like to request assistance, please contact the City Clerk Department at (510) 981-6900, clerk@berkeleyca.gov, or in-person during 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 April 2, 2026.***



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](#).*

### **Item #20: Amendments to BMC Title 3.24 (Landmarks Preservation Commission) to Revise Procedures for Designating Landmarks, Historic Districts and Structures of Merit and Incorporate Technical Edits**

1. Isaac Warshauer

#### **Flock Concerns**

2. Ellen Ayres
3. Ying Su
4. Pamela Tellew
5. Arlene Owseichik

#### **Upzoning**

6. Dawn Thomas
7. David Salk
8. Julie Nachtwey (2)
9. Ellen Hahn
10. Shmuel Weissman
11. Margot Smith (2)
12. Penny Dedel
13. Nancy Bartell
14. Rocky Offner
15. Aimee Baldwin (6)
16. Gael Alcock
17. Yerasi Maeda
18. Henry Hieslmair
19. Alex Wong

#### **Hopkins St.**

20. Kenny Yip
21. Joe Berry

- 22. Andrew and Melissa Little
- 23. Glenda
- 24. Tom Leonard
- 25. Jim Offel
- 26. Greg Hendricks
- 27. Gar Smith
- 28. Carol Hirth
- 29. Jennifer Willmann
- 30. Donna DeDiemar
- 31. Cindi Goldberg
- 32. Meryl Siegal
- 33. Howard Goldberg
- 34. Chris Hamilton
- 35. Lisa Oglesby

**6<sup>th</sup> and Harrison**

- 36. Craig Nagasawa

**8<sup>th</sup> and Harrison**

- 37. Daivd Blum

**Renaming Park**

- 38. Steve Schiller

**Hardscape Assistance Request**

- 39. Patrice Ignelzi

**Career Fair Inquiry**

- 40. Victoria Cho (2)

**Property Tax Increases**

- 41. Carol Henning
- 42. Joel Libove

**Ohlone Greenway Project**

- 43. Clifford Fred

**Bearathon 2026**

- 44. Rebecca Buss and Ojas Joshi

**BAUASI**

- 45. Blair Beekman (2)

**Becker Boards**

- 46. Consuelo Tupper Hernandez on behalf of the La Pena Cultural Center
- 47. Grace Porras on behalf of Ciel Media

**Restaurant Week**

48. Jeffrey Church on behalf of Visit Berkeley

**Housing Affordability**

49. Stephen Alpert (3)

**Daylighting Law**

50. Shirley Kirsten (3)

**Save City Money**

51. Sara Sunstein

**Paint/Electronics Drop Off**

52. Cecelia Mautner and Philipp Gollner

**Animal's Rights**

53. Richard Woods (2)

**Sticky Traps**

54. Josh Shoemaker

**Formal Notice**

55. Durant Safety Concern

**Email Follow Up**

56. Stephen Alpert (4)

**Climate Engagement Data**

57. Pei Zheng

**Community Garden Fundraiser**

58. Dan Alpert

**Restaurant Inspection Results**

59. David Lerman

**Zachary's Corner**

60. Pat Kennedy

**Measure FF**

61. Wahid Amiri

62. Ray Yep, Margo Schueler, Larry Henry

63. Charles Siegal

**Community Voter Survey**

64. Stephen Alpert (2)

**Notice of Preparation**

65. Emilia Marie Flin

**Request for Services**

66. Hector91 Phuentes

**South Peninsula/Seawall**

67. Noah Marcel Sudarsky

**Berkeley Pier/Marina**

68. Cheong-Tseng

69. Michael Evans

**Ferry Project**

70. Igor Serebryany

71. Kathryn Fisher

72. Kirk van Moon

**In Memoriam**

73. Henry Thomson

**Veteran's Concerns**

74. Fiona Rawls

**Safety Concern**

75. Agata Fin

**Sidewalk Repair**

76. David Korman

**Speed Cameras**

77. Janet Stromberg

**Pedestrian Button Outage**

78. Alex S. Merenkov

**Phones Out of Schools**

79. Win Neubarth

**Cedar Rose Park**

80. Octavio Raygoza

**Use of Force Policy Revision**

81. Office of the Director of Police Accountability

82. Nathan Mizell

**Housing for Elders**

83. Margot Smith

**Proclamation Request**

84. Yanky Bell

**Resignation**

85. Vanessa Cordova

**No Right on Red**

86. Riti Dhesi

**Nature Center**

87. Bunky m

**Sidewalk Safety**

88. Patrick Golier

**Sanctuary Cities**

89. Peter Yeung

**Public Safety Concern**

90. Moni T. Law

**CalFresh Concerns**

91. Diana Lane Jensen

**Middle East Conflict**

92. Goddess of the Hunt

93. Dorothea Dorenz (2)

94. Isabelle G

95. Sara Sadeghi

**URLs**

96. Russbumper (2)

97. Moni Law

**Forwards**

98. Hempirez

99. Russbumper (3)

**Newsletters**

100. Russbumper (2)

101. Shelbi Walker

102. Visit Berkeley (2)

103. Downtown Berkeley Association

104. Berkeley Art Center (3)

**E-Scooters**

105. Karen Gottdenker

106. Gladys Block
107. Annette Blackman
108. David Coolidge
109. Robert Borghese (10)
110. Carson Lepre (10)



Office of the City Manager

CONSENT CALENDAR  
April 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Contract No. 32400067 Amendment with Westcoast Online Information Systems, Inc. DBA NetFile for Online Campaign Reporting, Public Financing Administration, Form 700 Filing and Tracking, State Law SB 827 Fiscal & Financial Training and Tracking, and State Law AB 1234 Ethics Training and Tracking

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract amendment with Westcoast Online Information Systems, Inc. DBA NetFile to increase the not-to-exceed amount by \$11,850 for financial and ethics training tracking and administration for a total contract amount not to exceed \$182,550 within the original term of October 23, 2023 to September 20, 2028.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the contract will be available in the City Clerk's Department Fiscal Year 2026 General Fund and have been allocated in budget code 011-32-314-000-0000-000-411-611120. There are adequate funds in the account to cover estimated costs for the remainder of FY 2026. Allocations of funds for subsequent years will be subject to adoption of the Annual Appropriations Ordinance for that fiscal year.

CURRENT SITUATION AND ITS EFFECTS

NetFile provides the City with a comprehensive suite of services including Online Campaign Reports, Public Financing Administration, and Form 700 Filing and Tracking. Newly passed State Law SB 827 requires fiscal and financial training and tracking, which NetFile is already equipped to handle as part of their existing service offerings. Additionally, AB 1234 Ethics Training is also included in this amendment, ensuring elected officials and department heads remain compliant with the state requirements.

Senate Bill 827 adds over 300 required filers for the financial training that must be tracked. With this new addition to the existing 50 ethics training filers, an automated system was required to efficiently implement the new requirements and ensure compliance with state law.

BACKGROUND

The City originally contracted with NetFile in 2007. For over 18 years, NetFile has provided the City of Berkeley with a high level of customer service and competitive pricing. Filing tracking software is a key function of the City's role in maintaining good record keeping, and NetFile has been instrumental in fulfilling this function for the City of Berkeley.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the action requested in this report.

RATIONALE FOR RECOMMENDATION

NetFile software is an essential tool in the City Clerk Department to automate the filing, tracking, and administration of state and locally mandated filings. This automation has increased compliance and reduced errors by filers. It also allows the Department to “do more with less” by automating the tracking, notification, and enforcement of state and local mandates.

ALTERNATIVE ACTIONS CONSIDERED

No alternative action needs to be considered at this time.

CONTACT PERSON

Mark Numainville, City Clerk, City Clerk Department, 981-6909

Attachment:

1: Resolution

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

CONTRACT NO. 32400067 AMENDMENT: WESTCOAST ONLINE INFORMATION SYSTEMS, INC. DBA NETFILE FOR ONLINE CAMPAIGN REPORTING, PUBLIC FINANCING ADMINISTRATION, FORM 700 FILING AND TRACKING, AND TRACKING FOR STATE MANDATED TRAININGS

WHEREAS, the City of Berkeley entered Contract #32400067 with Westcoast Online Information Systems, Inc. DBA NetFile on October 23, 2023 with a not-to-exceed amount of \$170,700; and

WHEREAS, in accordance with the provisions of the Government Code, the Berkeley Charter, the Municipal Code, and the Conflict-of-Interest Code, the City Clerk is the filing officer for approximately 50 city campaign committees as well as over 700 Form 700 filers; and

WHEREAS, the City Clerk is the filing officer for up to 320 people annually to complete required Fiscal & Financial training; and

WHEREAS, the City Clerk is the filing officer for up to 50 people annually to complete Ethics Training; and

WHEREAS, tracking this volume of mandated filings requires an automated system that is powerful and efficient; and

WHEREAS, since the implementation of the NetFile in 2007, staff efficiencies have increased, errors on campaign filings have decreased, time that it takes to post filings to the web has been shortened, and public access to filings has improved; and

WHEREAS, funds are available in the current year budget in the General Fund, budget code #011-32-314-000-0000-000-411-611120.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract amendment with Westcoast Online Information Systems, Inc. dba NetFile to increase the not-to-exceed amount by \$11,850 for a total not to exceed amount of not to exceed \$182,550 for the period October 1, 2023 through September 30, 2028 for online campaign report, public financing, and Form 700 filing and tracking, SB 827 Fiscal & Financial training and tracking, and AB 1234 Ethics training and tracking. A record signature copy of said contract and any amendments to be placed on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
April 14, 2026

To: Honorable Mayor and Members of the City Council  
 From: Paul Buddenhagen, City Manager  
 Submitted by: Peter Radu, Assistant to the City Manager, Neighborhood Services  
 Subject: Revenue Contract: City of Emeryville for Animal Services

RECOMMENDATION

Adopt a resolution authorizing the City Manager to enter into a revenue contract and any necessary amendments with the City of Emeryville to provide certain animal care services to be performed from FY2027 through FY2029, for which the City of Emeryville will pay the City of Berkeley a total amount not to exceed \$519,112.

FISCAL IMPACTS OF RECOMMENDATION

The FY2026 budget currently reflects revenues of \$88,516 from the City of Emeryville for animal care services. The following outlines the City of Berkeley's estimated cost of providing shelter operations and field service for the City of Emeryville and reflects the revenue anticipated to be generated under the contract:

- FY2027 - \$167,948,
- FY2028 - \$172,987 (FY2027 rate plus a CPI of 3%); and
- FY2029 - \$178,177 (FY2028 rate plus a CPI of 3%).

The total not to exceed amount of the contract is \$519,112 for the three year period. The City of Emeryville will reimburse the City of Berkeley for these additional estimated costs, and revenues will be deposited into the Animal Shelter Fund (account 115-21-203-000-0000-000-000-444310-).

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley has provided certain animal care services to the City of Emeryville for many years. The current contract between the City of Berkeley and the City of Emeryville expires on June 30, 20206, which gives the City an opportunity to renegotiate the terms of the contract to cover the estimated actual costs.

Upon request by the Emeryville Police Department, the City of Berkeley performs the following services:

1. Quarantine biting animals.

2. Impound stray domestic animals, at large or confined.
3. Rescue and seek veterinary treatment for injured animals.
4. Collect and dispose of deceased animals.
5. Quarantine and report upon vicious animals endangering the public or causing a traffic hazard.
6. Ensuring that a dog or cat that is not spayed or neutered, that is impounded, shall be spayed or neutered at the owner/guardian's expense before being returned to the owner or/guardian, per the provisions of Emeryville Municipal Code Section 6-1.304.

The City of Berkeley also provides the following shelter services to impounded City of Emeryville animals:

1. Veterinary attention when deemed necessary by the City of Berkeley.
2. The orderly and humane administration of euthanasia of animals not adopted, redeemed or otherwise transferred from the custody of the Berkeley animal shelter.
3. The disposal of deceased animals.

The City of Berkeley is responsible for maintaining current and accurate records of all animals received in or from the City of Emeryville.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3204.1 as amended by AB 339. This project does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

### BACKGROUND

The City of Emeryville does not operate its own animal shelter or employ Animal Control Officers. As a result, it relies on outside assistance to provide care and shelter for small animals within the city that are lost, stray, abandoned, or in need due to accident or illness. The City has provided these Services to the City of Emeryville since 2024. In 2024, Berkeley Animal Care Services took in 2,037 animals, with an average cost of \$1,255.22 per animal. Between 2014 and 2024, Berkeley Animal Care Services took in an average of 133.8 animals annually from Emeryville. Using the actual cost per animal multiplied by Emeryville's average intake provides a more accurate rate and addresses the subsidy currently provided by the City of Berkeley.

### RATIONALE FOR RECOMMENDATION

The City of Berkeley is well equipped to and capable of providing the services outlined above for the City of Emeryville.

### ALTERNATIVE ACTIONS CONSIDERED

None

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

CONTACT PERSON

Michael St. Pierre, Animal Care Services Manager, 510-981-6603.

Attachments:

1. Resolution

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

AUTHORIZING THE CITY MANAGER TO ENTER INTO A REVENUE CONTRACT AND ANY NECESSARY AMENDMENTS WITH THE CITY OF EMERYVILLE FOR ANIMAL CARE SERVICES FOR FY2027-FY2029, IN A TOTAL AMOUNT NOT TO EXCEED \$519,112.

WHEREAS, The City of Emeryville requires field services and law enforcement for animal matters in their jurisdiction; and

WHEREAS, The City of Emeryville requires assistance in providing care and shelter for small animals within its City that are in need by reason of accident, sickness or being lost, stray or abandoned; and

WHEREAS, The City of Berkeley is well equipped to and capable of providing these services to the City of Emeryville.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to enter into a revenue contract and execute any necessary amendments thereafter, including additions to the contract's not-to-exceed total in incremental amounts that fall within the City Manager's expenditure authority, with the City of Emeryville for animal care services for FY2027-FY2029, for a Not to Exceed (NTE) total contract amount of \$519,112.



Office of the City Manager

CONSENT CALENDAR  
April 14, 2026

To: Honorable Mayor and Members of the City Council  
 From: Paul Buddenhagen, City Manager  
 Submitted by: Peter Radu, Assistant to the City Manager, Neighborhood Services  
 Subject: Contract No.42400040 Amendment: City of Albany for Animal Services

RECOMMENDATION

Adopt a resolution authorizing the City Manager to amend an existing contract (contract number 42400040) and execute any necessary amendments thereafter with the City of Albany to provide certain animal care services, for which the City of Albany will pay the City of Berkeley \$413,582 for services performed from FY2027 through FY2029, for a new not to exceed amount of \$704,601.

FISCAL IMPACTS OF RECOMMENDATION

The FY2026 budget currently reflects revenues of \$105,672 from the City of Albany for animal care services. The contract with the City of Albany is anticipated to generate additional revenue to cover the costs of providing shelter operations and field service as outlined below:

- FY2027 - \$133,806;
- FY2028 - \$137,821 (FY2027 rate plus a CPI of 3%); and
- FY2029 -- \$141,955 (FY2028 rate plus a CPI of 3%).

The total not to exceed amount for the three-year contract amendment is \$413,582, which results in a not to exceed total contract amount of \$704,601. The City of Albany will reimburse the City of Berkeley for these additional estimated costs, and revenues will be deposited into the Animal Shelter Fund (account 115-21-203-000-0000-000-000-444310-).

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley has provided certain animal care services to the City of Albany for many years. The current contract between the City of Berkeley and the City of Albany expires on June 30, 2026, which gives the City an opportunity to renegotiate the terms of the contract to more fully cover the estimated actual costs.

Upon request by the Albany Police Department, the City of Berkeley performs the following services:

1. Quarantine biting animals.
2. Hearing for vicious and dangerous dogs.
3. Impound stray domestic animals, at large or confined.
4. Rescue and seek veterinary treatment for injured animals.
5. Collect and dispose of deceased animals.
6. Investigate, quarantine and report upon vicious animals endangering the public or causing a traffic hazard.
7. Ensuring that a dog or cat that is not sprayed or neutered that is impounded shall be sprayed or neutered at the owner/guardian's expense before being returned to the owner or/guardian, per the provisions of Albany Municipal Code Section 10-4.6, and that the City Administrator designates City of Berkeley Animal Control Supervisor as the Hearing Officer per AMC Section 10-4.6(D).

The City of Berkeley also provides the following shelter services to impounded City of Albany animals:

1. Veterinary attention when deemed necessary by the City of Berkeley.
2. The orderly and humane administration of euthanasia of animals not adopted, redeemed or otherwise transferred from the custody of the Berkeley animal shelter.
3. The disposal of deceased animals.

The City of Berkeley is responsible for maintaining current and accurate records of all animals received in or from the City of Albany.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3204.1 as amended by AB 339. This project does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

### BACKGROUND

The City of Albany does not operate its own animal shelter or employ Animal Control Officers. As a result, it relies on outside assistance to provide care and shelter for small animals within the city that are lost, stray, abandoned, or in need due to accident or illness. The City has provided these Services to the City of Albany since 2014. In 2024, Berkeley Animal Care Services took in 2,037 animals, with an average cost of \$1,255.22 per animal. Between 2014 and 2024, Berkeley Animal Care Services took in an average of 106.6 animals annually from Albany. Using the actual cost per animal multiplied by Albany's average intake provides a more accurate rate and removes the subsidy currently provided by the City of Berkeley.

### RATIONALE FOR RECOMMENDATION

The City of Berkeley is well equipped to and capable of providing the services outlined above for the City of Albany.

ALTERNATIVE ACTIONS CONSIDERED

None

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

CONTACT PERSON

Michael St. Pierre, Animal Care Services Manager, 510-981-6603.

Attachments:

1. Resolution

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

AUTHORIZING THE CITY MANAGER TO AMEND EXISTING CONTRACT NO. 42400040 AND ANY AMENDMENTS WITH THE CITY OF ALBANY FOR ANIMAL CARE SERVICES FOR FY2027-FY2029 IN THE AMOUNT OF \$413,582, FOR A NEW NOT TO EXCEED (NTE) TOTAL CONTRACT AMOUNT OF \$704,601.

WHEREAS, The City of Albany requires field services and law enforcement for animal matters in their jurisdiction: and

WHEREAS, The City of Albany requires assistance in providing care and shelter for small animals within its City that are in need by reason of accident, sickness or being lost, stray or abandoned: and

WHEREAS, The City of Berkeley is well equipped to and capable of providing these services to the City of Albany.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to amend Contract No. 42400040 and execute any necessary amendments thereafter, including additions to the contract's not-to-exceed total in incremental amounts that fall within the City Manager's expenditure authority, with the City of Albany for animal care services for FY2027-FY2029 in the amount of \$413,582, for a new Not to Exceed (NTE) total contract amount of \$704,601.



Office of the City Manager

CONSENT CALENDAR

April 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Eleanor Hollander, Economic Development Manager

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

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

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

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

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

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

### CURRENT SITUATION AND ITS EFFECTS

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

### BACKGROUND

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

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

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

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachment

1: Resolution

Exhibit A: Executed Contract No. (32200032)

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

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

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

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

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

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

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

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

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

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

Exhibit

A: Executed Contract No. (32200032)

**EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM: NEW CONTRACT**

CMS #  
(To be filled in by department)

Contract # 32200032  
(To be filled in by Auditor)

CONTRACTOR NAME: Downtown Berkeley Association

VENDOR # 4035

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

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

Berkeley Business License # 16-03558

Contract Amount \$ \$7,285,257

Requisition # 12200878 (Hard copy attached)

Council Approved Amount \$ 7,285,257

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

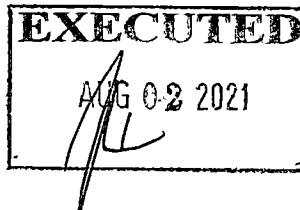
Was there any advance payment? No  Yes  ..... If Yes, Advanced Amount \$ \_\_\_\_\_

If Yes, Purchase Order # \_\_\_\_\_

**Routing and signatures:**

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

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



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

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

**Roben, Josh**

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

Budget Final - Approved

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

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

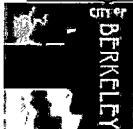
Budget Initial- Approved

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

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

-Shamika

**Shamika Cole, MPA**  
Senior Management Analyst  
Office of Budget and Fiscal Management  
City Manager's Office  
E [sscole@cityofberkeley.info](mailto:sscole@cityofberkeley.info)



## PERSONAL SERVICES CONTRACT

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

1. **SCOPE OF SERVICES**

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

2. **PAYMENT**

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

3. **TERM**

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

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

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

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

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

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

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

4. **INDEMNIFICATION**

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

5. **INSURANCE**

a. Contractor shall maintain at all times during the performance of this Contract a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$2,000,000 (two-million dollars); an automobile liability insurance policy in the minimum amount of \$1,000,000 (one-million dollars); and, if any licensed professional performs services under this contract, a professional liability insurance policy in the minimum amount of \$0 to cover any claims arising out of Contractor's performance of services under this Contract. All insurance, except professional liability, shall name the City, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

All insurance policies shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to the City's Contract Administrator; 2) be evidenced by the original Certificate of Insurance, specifying the required coverage and the insurance carrier's standard additional insured form endorsement; and 3) be approved as to form and sufficiency by the City's Contract Administrator. **The original insurance certificates and all extensions to the insurance certificates should be sent to the address identified below and include the CMS#.**

b. If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of this Contract, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Contract.

c. If Contractor employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty

(30) days written notice to the City's Contract Administrator; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Contract Administrator.

d. Contractor shall forward all insurance documents to:

**Department Name:** Office of Economic Development

**CONTRACT Number:**

**Department Address:** 2180 Milvia Street, 5<sup>th</sup> Street, Berkeley, CA 94704

6. **CONFORMITY WITH LAW AND SAFETY**

a. Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations. Contractor shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Contractor shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Contractor shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Contractor's subcontractor, if any; 3) name and address of Contractor's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

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

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

7. **MATERIAL SAFETY DATA SHEETS**

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

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

8. **OWNERSHIP OF DOCUMENTS**

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

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

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

9. **NON-DISCRIMINATION**

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

a. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

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

10. **INDEPENDENT CONTRACTOR**

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

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

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

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

11. **CONFLICT OF INTEREST PROHIBITED**

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

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Contractor, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Contractor.

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

12. **NUCLEAR FREE BERKELEY**

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

13. **OPPRESSIVE STATES CONTRACTING PROHIBITION**

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

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

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

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

14. **RECYCLED PAPER FOR WRITTEN REPORTS**

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

15. **BERKELEY LIVING WAGE ORDINANCE**

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

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

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

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

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

In addition, at City's sole discretion, Contractor may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Contractor's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and

that the liquidated damage amount is not intended as a penalty or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

16. **BERKELEY EQUAL BENEFITS ORDINANCE**

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

b. If Contractor is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Contractor agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 17 of this contract.

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

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

In addition, at City's sole discretion, Contractor may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Contractor's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

17. **AUDIT**

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

18. **SETOFF AGAINST DEBTS**

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

19. **CONFIDENTIALITY OF INFORMATION**

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

20. **PREVAILING WAGES**

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

21. **GOVERNING LAW**

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

22. **AMENDMENTS**

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

23. **ENTIRE CONTRACT**

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

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

24. **SEVERABILITY**

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

25. **WAIVER**

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

26. **ASSIGNMENT**

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

26. **EFFECT ON SUCCESSORS AND ASSIGNS**

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

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

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

29. **SECTION HEADINGS**

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

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

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

*BL-003558*

Business License Number 16-03558

B.M.C. §

Taxpayer ID Number 94-3107356

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

CITY OF BERKELEY

By: Paul Bussbacher  
CITY MANAGER *Paul Bussbacher*

Registered by:

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

\_\_\_\_\_  
CITY AUDITOR

Registered on behalf of the City Auditor:

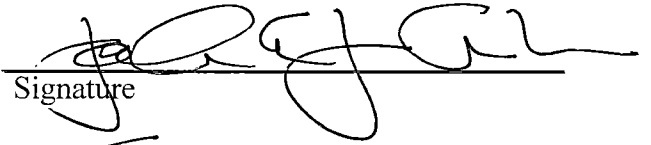
*[Signature]*  
Finance Department

Attest:

*for* Miriam M...  
CITY CLERK

CONTRACTOR

Downtown Berkeley Assoc.  
Contractor Name (print or type)

  
Signature

John E. Z. Conner Jr  
Print Name

Tax Identification # \_\_\_\_\_

Berkeley Business License # BL-003558

Incorporated: Yes  No

Certified Woman Business Enterprise: Yes  No

Certified Minority Business Enterprise: Yes  No

If yes, state ethnicity: \_\_\_\_\_

Certified Disadvantaged Business Enterprise: Yes  No

## EXHIBIT A

### SCOPE OF SERVICES

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

#### **I. WORK PROGRAM IMPLEMENTATION**

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

##### **Management of Environmental Enhancements:**

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

##### **Management of Economic Enhancements:**

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

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

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

## II. REPORTING

Contractor shall submit the following:

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

**EXHIBIT B**  
**PAYMENT**

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

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

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

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

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

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

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

**NON-DISCRIMINATION/WORKFORCE COMPOSITION**

FOR ALL CONTRACTS: 5 OR MORE EMPLOYEES

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

ORGANIZATION

ADDRESS

BUSINESS LICENSE #

*Downtown Berkeley Association*  
 2230 Shattuck Avenue Suite C Lower Level

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

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

\*Specify other occupation: \_\_\_\_\_

\*\*Specify other ethnicity: \_\_\_\_\_

Is your business MBE/WBE/DBE certified?

If Yes, by what agency? \_\_\_\_\_

If Yes, please specify:

or ethnic identification: \_\_\_\_\_

Do you have a policy of non-discrimination?

Signature \_\_\_\_\_

Date

Print/Type Name of Signer \_\_\_\_\_

Verified by \_\_\_\_\_

Date \_\_\_\_\_

City of Berkeley Contract Administrator

**OCCUPATIONAL CATEGORIES**

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

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

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

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

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

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

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

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

**CITY OF BERKELEY**  
**Nuclear Free Zone Disclosure Form**

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90.130:

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

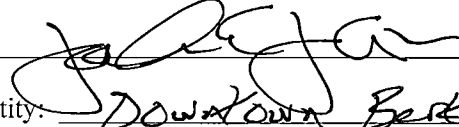
"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such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

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

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

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

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

Signature:  Date: 6-23-21

Business Entity: Downtown Berkeley Association

Contract Description/Specification No. \_\_\_\_\_

**Attachment C**

CITY OF BERKELEY
Oppressive States Compliance Statement for Personal Services

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

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

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

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

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

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

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

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

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

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

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

Business Entity: Downtown Berkeley Association

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

Signature: Date:

Contract description/Specification No.:

CITY OF BERKELEY  
Sanctuary City Compliance Statement

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

- a. "Data Broker" means either of the following:
  - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
  - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services." Extreme Vetting does not include:
  - i. The City's computer-network health and performance tools;
  - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

Contractor understands that it is not eligible to receive or retain a City contract if at the time the Contract is executed, or at any time during the term of the Contract, it provides Data Broker or Extreme Vetting services to ICE.

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

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

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27<sup>th</sup> day of July, 2021, at Berkeley, California.

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

Signed: [Signature] Date: July 27, 2021

Business Entity: Downtown Berkeley Assoc

CITY OF BERKELEY
Living Wage Certification for Providers of Personal Services

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

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance.

Section I.

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

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?
YES [X] NO [ ]

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

b. Do you have six (6) or more employees, including part-time and stipend workers?
YES [ ] NO [X]

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. Please continue to Section II.

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

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?
YES [ ] NO [ ]

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?
YES [ ] NO [ ]

If you have answered, "YES" to questions 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. Please continue to Section II.

Section II

Please read, complete, and sign the following:

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

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

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

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

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

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

Business Entity: Downtown Berkeley Assoc.

Contract Description/Specification No: \_\_\_\_\_

**Section III**

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

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

\_\_\_\_\_  
Department Name

\_\_\_\_\_  
Department Representative

To be completed by Contractor/Vendor

Form EBO-1 CITY OF BERKELEY



CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

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

SECTION 1. CONTRACTOR/VENDOR INFORMATION

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

SECTION 2. COMPLIANCE QUESTIONS

- Questions A through E regarding EBO applicability and benefits. Includes checkboxes for Yes/No and instructions on how to proceed based on answers.

SECTION 3. PROVISIONAL COMPLIANCE

- Questions A and B regarding provisional compliance with EBO. Includes checkboxes for Yes/No and a definition of cash equivalent.

SECTION 4. REQUIRED DOCUMENTATION

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

SECTION 5. CERTIFICATION

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

Executed this 23 day of June, in the year 2023, at Berkeley, CA  
(City) (State)

John Carter  
Name (please print)

[Signature]  
Signature

CEO  
Title

\_\_\_\_\_  
Federal ID or Social Security Number

FOR CITY OF BERKELEY USE ONLY

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

Staff Name(Sign and Print): \_\_\_\_\_ Date: \_\_\_\_\_



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

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

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

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

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

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

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



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

February 3, 2021

City Of Berkeley  
2180 MILVIA ST  
BERKELEY CA 94704

**Account Information:**

|                                |                                  |
|--------------------------------|----------------------------------|
| <b>Policy Holder Details :</b> | DOWNTOWN BERKELEY<br>ASSOCIATION |
|--------------------------------|----------------------------------|



**Contact Us**

Business Service Center

**Business Hours:** Monday - Friday  
(7AM - 7PM Central Standard Time)

**Phone:** (888) 920-6259

**Fax:** (888) 443-6112

**Email:** [agency.services@thehartford.com](mailto:agency.services@thehartford.com)

**Website:** <https://business.thehartford.com>

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

Sincerely,

Your Hartford Service Team

RESOLUTION NO. 69,862-N.S.

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

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

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

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

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

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

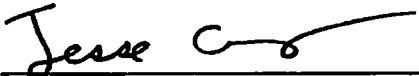
BE IT FURTHER RESOLVED by the City Council of the City of Berkeley to authorize the City Manager to execute a sole source contract and any amendments with the Downtown Berkeley Association (DBA) not to exceed \$7,285,257 of DPBID funds to support the Downtown area for the period July 1, 2021 to December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


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

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

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk





Office of the City Manager

CONSENT CALENDAR

April 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Eleanor Hollander, Economic Development Manager

Subject: Amendment to Contract No 32600096, *Administration of the Elmwood Business Improvement District* (Elmwood Business Association)

RECOMMENDATION

Adopt a Resolution to amend Contract No. 32600096 between the Elmwood Business Association and the City of Berkeley. This amendment intends to modify the existing Not-to-Exceed (NTE) amount of the contract by increasing it to \$50,000 (from \$30,000) to align with additional collections anticipated due to the expansion of the boundary of the Elmwood Business Improvement District (BID).

FISCAL IMPACTS OF RECOMMENDATION

Assessments levied in the Elmwood Business Improvement District (BID) must be targeted towards commercial revitalization efforts that are recommended by the Elmwood BID Advisory Board and implemented by the Elmwood Business Association (EBA). In January of 2024, the City Council authorized the expansion of the boundaries of the Elmwood Business Improvement District (Ordinance No. 7,894-N.S.), starting in calendar year 2025, and gave the City Manager authority to contract with the Elmwood Business Association (EBA) to receive assessment revenue and spend it on improvements and activities authorized in the Ordinance and the Resolution of Intention (Resolution No. 71,099 -N.S.).

In October of 2025, the City Council authorized the renewal of the Elmwood BID for the calendar year of 2026, with a projected revenue of approximately \$30,000 to be deposited into the Elmwood BID Fund and expensed from budget code 782-21-208-251-0000-000-446-636110. Following this, the City executed contract number 32600096 for an amount not to exceed \$30,000 with the Elmwood Business Association (Attachment 1, Exhibit A). The City currently is processing a payment for Elmwood BID revenues collected in Fund 782 thus far (in calendar year 2026) in the amount of \$24,567.85, and would not want to delay future payments to the EBA due to the Elmwood BID in calendar year 2026 when the existing \$30,000 NTE amount is reached.

Because the Elmwood BID anticipates up to \$50,000 in revenue for the calendar year of 2026 the NTE amount of this pass-through contract must be modified to \$50,000 from its existing NTE amount of \$30,000.

CURRENT SITUATION AND ITS EFFECTS

The Elmwood Business Improvement District (BID) provides decoration, event production, and marketing services for Berkeley’s Elmwood commercial district. Recently, the BID was geographically expanded and renewed, authorizing operations through December 31, 2026, and again designating the Elmwood Business Association (EBA) as the District’s Owners’ Association. As such, the City is obligated to pass through all amounts collected on behalf of Elmwood BID in Fund 782 to the EBA. To do this through the term of the open contract, the not-to-exceed (NTE) amount stated in Contract No. 32600096 must be modified to \$50,000 from the existing \$30,000.

BACKGROUND

The Elmwood BID was established in November 2013 to provide the Elmwood Business Association with a sustainable, predictable source of funding for its activities to promote, maintain, and beautify the Elmwood commercial district. The Elmwood BID has been renewed annually every year since and expanded in size in 2025, with the Elmwood Business Association (EBA) continuing to act as the District’s Owners’ Association. The EBA has used the funds raised through the BID to implement a variety of activities such as place-based marketing, events, and capital improvements.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

RATIONALE FOR RECOMMENDATION

Council must now pass a Resolution to amend to the contract between the City and Elmwood Business Association to increase the amount of the Not-to-Exceed (NTE) contract to \$50,000 to allow all pass-through amounts collected on behalf of the Elmwood BID in Fund 782 above the existing NTE amount in contract to be paid to the Elmwood Business Association (EBA) when received through the term of the contract.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachment

1: Resolution

Exhibit A: Executed Contract No. (32600096)

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

TO APPROVE AMENDMENT OF CONTRACT NUMBER 32600096 BETWEEN THE  
ELMWOOD BUSINESS ASSOCIATION AND THE CITY OF BERKELEY

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on November 19, 2013 the Berkeley City Council established such an area known as the Elmwood Business Improvement District (the "District"); and

WHEREAS, the District has been renewed annually every year since and expanded in size in 2025, with the Elmwood Business Association (EBA) continuing to act as the District's Owners' Association; and

WHEREAS, the City Council authorized the City Manager to execute a contract and any amendments with the Elmwood Business Association, not to exceed \$30,000 of Elmwood BID revenues, (Contract No. 32600096) for calendar year 2026; and

WHEREAS, the City of Berkeley Office of Economic Development (OED) is obligated to distribute the full amount collected in Fund 782 (Elmwood BID Revenue) to the Elmwood Business Association via a calendar year contract; and

WHEREAS, payments due to the Elmwood Business Association in Fund 782 will exceed the existing NTE amount of \$30,000 provided for in the existing Contract Number 32600096; and

WHEREAS, an amendment to modify the (NTE) amount of Contract No. 32600096 between the Elmwood Business Association and the City of Berkeley to an amount not to exceed \$50,000 will be needed to disburse the balance of Fund 782 for calendar year 2026.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the not to exceed (NTE) amount of Contract No. 32600096 between the Elmwood Business Association and the City of Berkeley is amended to \$50,000 to align with projections for the Elmwood Business Improvement District revenue (Fund 782) for the remainder of the contract term.

Exhibit

A: Executed Contract No. (32600096)

## EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM "NEW CONTRACT"

|                            |               |
|----------------------------|---------------|
| Contract # <b>32200096</b> | Vendor #28598 |
|----------------------------|---------------|

**CONTRACTOR NAME:** Elmwood Business Association **Berkeley Business License** BL-002118

**Subject of Contract:** Administration of the Elmwood Business Improvement District (BID)

| This contract package contains:<br><b>2 Original Contracts (Vital Record and Vendor) in folder</b>                                                                                  | Attached                            | Waiver Attached                     | Not Required                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <i>*The Vital Record contract MUST be in a folder. Vendor copies may be assembled with an Acco-fastener.<br/>**DocuSign Agreements only require 1 Original (Vital Record) copy.</i> |                                     |                                     |                                     |
| 1. CONTRACT BOILERPLATE                                                                                                                                                             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Scope of Services (Exhibit A @ boilerplate)                                                                                                                                      | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Payment Provisions (Exhibit B @ boilerplate)                                                                                                                                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Evidence of Competitive Solicitation OR Waiver by CM or by Council Resolution                                                                                                    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 5. CERTIFICATIONS                                                                                                                                                                   |                                     |                                     |                                     |
| a. Workforce Composition ( <i>businesses with 5 or more employees</i> )                                                                                                             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| b. Nuclear Free Berkeley Disclosure                                                                                                                                                 | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| c. Oppressive States Disclosure ( <i>Exception: Community-based, non-profit organizations</i> )                                                                                     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| d. Sanctuary City Compliance Statement                                                                                                                                              | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| e. Certification of Compliance with Living Wage Ordinance (LWO): <i>use current form on web*</i>                                                                                    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| f. Certification of Compliance with Equal Benefits Ordinance: <i>use current form on web*</i>                                                                                       | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| g. Community Agency: Certification of Anti-Lobbying                                                                                                                                 | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| h. Community Agency: Certification of Drug-Free Workplace                                                                                                                           | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| 6. Insurance Certificate/s AND Endorsement/s OR Insurance Waiver/s ( <i>originals, not copies</i> )                                                                                 | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| 7. Authorizing Council Resolution # 72,077 N.S.                                                                                                                                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| 8. Consultant Contracts: Form 700, Statement of Economic Interests                                                                                                                  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. Federally Funded Project Requirement: Debarment status printout (SAM.gov)                                                                                                        | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

**Requisition #** 2026/12608235 (*Hard copy attached*) **Budget Code** 785-21-208-251-0000-000-446-636110

**Council Approved Amount** \$30,000 **Contract Amount** \$30,000

**Was there any advance payment?** No  Yes  ..... **If Yes, Advanced Amount \$** \_\_\_\_\_  
**If Yes, Purchase Order #** \_\_\_\_\_

**Routing and signatures:**

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

1. Vincent McCoy Vincent McCoy CMO-OED 510-542-4064 1/21/26  
**Project Manager (PRINT NAME/SIGN)** **Department** **Executed** **Date**
2. Ramonda Clarke Ramonda Clarke 1/21/26  
**Department Administrative Officer/Accounting (PRINT NAME/SIGN)** **Date**
3. Eleanor Hollander Eleanor Hollander 1/21/26  
**Department Head (PRINT NAME/SIGN)** **Date:** 1/30/2026 **Date**
4. Aundra Richards Aundra Richards 1/22/2026  
**Contract Administrator (PRINT NAME/SIGN)** **Date**
5. Maricar Dupaya Maricar Dupaya 1-29-2026  
**Budget Manager (PRINT NAME/SIGN)** **Date**

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

6. **City Manager** (*Will not sign unless all signatures and dates appear above*)
7. **City Clerk:** Destruct \_\_\_\_\_ Review \_\_\_\_\_

VC20 1/30/26

\* For current vendor forms, go to City of Berkeley website: [Vendor Forms & Requirements](#)

## PERSONAL SERVICES CONTRACT

**THIS CONTRACT** is between the CITY OF BERKELEY (“City”), a Charter City organized and existing under the laws of the State of California, and Elmwood Business Association (EBA) (“Contractor”), a Non-profit corporation doing business at 2947 College Avenue, Berkeley, CA 94705, who agree as follows:

1. **SCOPE OF SERVICES**

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

2. **PAYMENT**

For services referred to in Section 1, City will pay Contractor a total amount not to exceed \$30,000.00. City shall make payments to Contractor in accordance with the provisions described in Exhibit B, which is attached to and made a part of this Contract.

3. **TERM**

a. This Contract shall begin on December 18, 2025 and end on December 31, 2026. The City Manager of the City may extend the term of this Contract by giving written notice.

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

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

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

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

Andrew Han  
Elmwood Business Association  
PO Box 5881  
Berkeley, CA 94705-0881

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

4. **INDEMNIFICATION**

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

5. **INSURANCE**

a. Contractor shall maintain at all times during the performance of this Contract a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$2,000,000 (two million dollars); an automobile liability insurance policy in the minimum amount of \$1,000,000 (one million dollars); and, if any licensed professional performs services under this contract, a professional liability insurance policy in the minimum amount of \$ \_\_\_\_\_ to cover any claims arising out of Contractor's performance of services under this Contract. All insurance, except professional liability, shall name the City, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

All insurance policies shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to the City's Contract Administrator; 2) be evidenced by the original Certificate of Insurance, specifying the required coverage and the insurance carrier's standard additional insured form endorsement; and 3) be approved as to form and sufficiency by the City's Contract Administrator. **The original insurance certificates and all extensions to the insurance certificates should be sent to the address identified below.**

b. If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of this Contract, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Contract.

c. If Contractor employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City's Contract Administrator; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Contract Administrator.

d. Contractor shall forward all insurance documents to:  
**Department Name:** City Manager Office/Office of Economic Development  
**Department Address:** 2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
**Department Email:** oedmailbox@berkeleyca.gov

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6. **CONFORMITY WITH LAW AND SAFETY**

a. Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations. Contractor shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Contractor shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Contractor shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Contractor's subcontractor, if any; 3) name and address of Contractor's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

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

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

7. **SAFETY DATA SHEETS**

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

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

8. **OWNERSHIP OF DOCUMENTS**

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

b. Contractor grants City a royalty-free, exclusive and irrevocable license to reproduce, publish, use and to authorize others to do so, all original computer programs, writing, sound recordings, pictorial reproductions, diagrams, charts, computations, drawings

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and other works of similar nature produced in the course of the performance of this Contract. Contractor shall not publish any such material without the prior written agreement of the City.

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

9. **NON-DISCRIMINATION**

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

a. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

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

10. **INDEPENDENT CONTRACTOR**

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

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

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

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

11. **CONFLICT OF INTEREST PROHIBITED**

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

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Contractor, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board,

Public

commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Contractor.

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

12. **NUCLEAR FREE BERKELEY**

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

13. **OPPRESSIVE STATES CONTRACTING PROHIBITION**

a. In accordance with Resolution Nos. 59,853-N.S., 60,382-N.S., and 70,606-N.S., Contractor certifies that it has no contractual relations with, and agrees during the term of this Contract to forego contractual relations to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this Contract, the Tibet Autonomous Region, the provinces of ADO, Kham, and U-Tsang; and Burma (Myanmar) shall be deemed oppressive states.

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

14. **SANCTUARY CITY CONTRACTING**

Contractor hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Contractor 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:
  - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;

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

#### 15. RECYCLED PAPER FOR WRITTEN REPORTS

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

#### 16. BERKELEY LIVING WAGE ORDINANCE

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

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

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

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

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

In addition, at City's sole discretion, Contractor may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Contractor's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

17. **BERKELEY EQUAL BENEFITS ORDINANCE**

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

b. If Contractor is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Contractor agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 17 of this contract.

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

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

In addition, at City's sole discretion, Contractor may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Contractor's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

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18. **AUDIT**

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

19. **SETOFF AGAINST DEBTS**

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

20. **CONFIDENTIALITY OF INFORMATION**

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

21. **PREVAILING WAGES**

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

22. **GOVERNING LAW**

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

23. **AMENDMENTS**

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

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24. **ENTIRE CONTRACT**

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

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

25. **SEVERABILITY**

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

26. **WAIVER**

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

27. **ASSIGNMENT**

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

28. **EFFECT ON SUCCESSORS AND ASSIGNS**

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

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

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

30. **SECTION HEADINGS**

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

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

Contractor has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Contractor is exempt from the provisions of

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B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Contractor shall pay all state and federal income taxes and any other taxes due. **Contractor certifies under penalty of perjury that the taxpayer identification number written below is correct.**

Business License Number BL-002118

B.M.C. § \_\_\_\_\_

Taxpayer ID Number \_\_\_\_\_

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

CITY OF BERKELEY

By: *Paul B. ...*  
City Manager

Pre-approved as to form  
CITY ATTORNEY  
10/2019

Registered on behalf  
of the City Auditor by: *Andrea Richard*  
Finance Department

Attest by: *Matt Merrill*  
City Clerk

CONTRACTOR

Printed Name: ANDREW S. HAN

By: *Andrew S. Han*

Title: TREASURER/EBA

Tax Identification # \_\_\_\_\_

Berkeley Business License # BL-002118

Incorporated: Yes  No

Certified Woman Business Enterprise: Yes  No

Certified Minority Business Enterprise: Yes  No

If yes, state ethnicity: \_\_\_\_\_

Certified Disadvantaged Business Enterprise: Yes  No

Public

**EXHIBIT A**

SCOPE OF SERVICES

In accordance with Resolution No. 72,077-N.S, incorporated in and made a part of, Resolution No 72,077-N.S., services by Contractor, Elmwood Business Association, shall be:

- Maintenance of year-round lighting installation on district buildings
- Website: [www.shoptheelmwood.com](http://www.shoptheelmwood.com) serves as one of the district's main marketing tools – District Events, Introducing New Businesses, and ongoing marketing updates
- Installation of Welcome to Elmwood banners as well as seasonal banners and decorations on light posts and ongoing maintenance
- Quarterly weeding and cleaning of Russell St. parking lot partnering with UC Berkeley
- Maintaining a Support Assistant to:
  - Post on social media
  - Manage merchant communications
  - Promote monthly specials among Elmwood Merchants
  - Updating the website to keep it current
  - Project manage events around Elmwood BID
- Sponsored the following events, and others as desired by the EBA Board/BID Leadership:
  - Spring and Fall Outdoor Movie Nights
  - Fall Live Music Stroll
  - Shop Local Promotions
- Held a Merchant Social
- Outreach to merchants at the norther and southern end of Elmwood toward Alcatraz to include them in the Elmwood BID expansion area effective in calendar year 2025.
- Members of the board active in other Berkeley commercial and residential neighborhoods to promote harmony and cooperation

**EXHIBIT B**

PAYMENT

**GENERAL:** Contract Not to Exceed amount is 30,000.00.

**BILLING:** Contractor will submit invoices for services rendered, upon execution of the contract Elmwood Business Association and the successful renewal of the Elmwood Business Improvement District and adoption of the annual report, will present the Project Manager with an invoice for all revenues collected in fund for special assessments levied in the Elmwood Business Improvement District to implement the Scope of Services, Exhibit A. Project Manager will ensure that said revenues are disbursed to the Elmwood Business Association.

Since additional revenue may be collected later in the year, the Elmwood Business Association may present the City with an additional invoice or invoices for this revenue.

The total annual payments will not exceed \$30,000 per calendar year. Total payments will not exceed the revenues that the City collects for the Elmwood Business Improvement District.

**INVOICES:** Invoices must be fully itemized, and provide sufficient information for approving payment and audit. Invoices must be accompanied by receipt for services in order for payment to be processed.

Invoice will be paid at the execution of the contract Elmwood Business Association and the successful renewal of the Elmwood Business Improvement District and adoption of the annual report Invoices must provide sufficient information for approving payment and audit.

**Email invoices to Accounts Payable and cc' [oadmailbox@berkeleyca.gov](mailto:oadmailbox@berkeleyca.gov);** (List on invoice, Attn: Elmwood BID Admin and reference the contract number.

City of Berkeley  
Accounts Payable  
P.O. Box 700  
Berkeley, CA 94710-700  
Email: [AccountsPayable@berkeleyca.gov](mailto:AccountsPayable@berkeleyca.gov)  
Phone: 510-981-7310

**PAYMENTS:** The City will make payment to the vendor within 30 days of receipt of a correct, approved and complete invoice.

RESOLUTION NO. 72,077-N.S.

CONFIRMING THE ANNUAL REPORT FOR THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT (BID), LEVYING AN ANNUAL ASSESSMENT FOR THE ELMWOOD BID FOR 2026, AND AUTHORIZING A CONTRACT OR CONTRACT AMENDMENTS WITH ELMWOOD BUSINESS ASSOCIATION TO SERVE AS FISCAL AGENT FOR RECEIPT AND EXPENDITURE OF ELMWOOD BID FUNDS

WHEREAS, the Elmwood Business Improvement District (BID) Advisory Board recommended an Annual Report to the Berkeley City Council that outlined the activities of the District proposed for the year 2026, including a budget for said activities, as required by California Streets and Highways Code Section 36533 and Berkeley Municipal Code Section 7.97.080; and

WHEREAS, on October 28, 2025, the City Council by Resolution No. 72,011-N.S. (attached as Exhibit A) approved the Annual Report and proposed budget of the Elmwood BID for 2025-26 and declared its intent to levy an assessment in the District to finance the proposed activities for the calendar year 2026; and

WHEREAS, Resolution No. 72,011-N.S. also scheduled a public hearing for December 2, 2025, to consider levying said assessment and gave notice that interested parties could attend and be heard on the issue, for and against; and

WHEREAS, the City Clerk has notified potential assessees of the public hearing by publishing the Resolution of Intention in a newspaper of general circulation; and

WHEREAS, the public hearing has now been held and there has not been protests by business owners who collectively pay 50 percent or more of the assessment proposed to be levied.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that any protests are overruled and the Annual Report of the Elmwood BID is confirmed, thereby levying an annual assessment for the Elmwood BID for calendar year 2026.

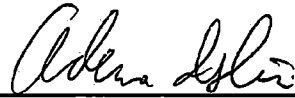
BE IT FURTHER RESOLVED that the Council authorizes the City Manager to enter into a contract or contract amendments with Elmwood Business Association to receive and spend funds for purposes approved in the Annual Report and Budget and as directed by the Elmwood BID Advisory Board.

The foregoing Resolution was adopted by the Berkeley City Council on December 2, 2025 by the following vote:

Ayes: Bartlett, Blackaby, Humbert, Kesarwani, Lunaparra, O'Keefe, Taplin, Tregub, and Ishii.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Adena Ishii, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk

RESOLUTION NO. 72,011-N.S.

APPROVING THE 2025 ANNUAL REPORT AND PROPOSED BUDGET OF THE ELMWOOD BUSINESS IMPROVEMENT DISTRICT FOR 2026; DECLARING COUNCIL'S INTENTION TO LEVY AN ASSESSMENT IN THE DISTRICT FOR 2026; AND DIRECTING THE CITY CLERK TO SCHEDULE A PUBLIC HEARING FOR DECEMBER 2, 2025 REGARDING LEVYING OF A RENEWED ASSESSMENT FOR 2026

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highway Code section 36500 et seq.) authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain purposes; and

WHEREAS, on November 19, 2013 the Berkeley City Council established such an area known as the Elmwood Business Improvement District (the "District"); and

WHEREAS, the City Council established an Elmwood Business Improvement District Advisory Board (Advisory Board) to act in compliance with State law to oversee the activities of the District; and

WHEREAS, the Advisory Board has submitted an Annual Report to the Berkeley City Council that outlines the activities of the District proposed for 2026 as required by the California Streets and Highways Code Section 36533; and

WHEREAS, the Annual Report is clear and complete and found to comply with the interests of Elmwood BID assesseees; and

WHEREAS, the annual process for levying assessments in Business Improvement Districts requires that cities adopt a Resolution of Intent that declares their intent to levy such an assessment and then set a date for a public hearing where interested parties may be heard on the issue.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

Section 1. The City Council hereby approves the Elmwood Business Improvement District Annual Report for 2025-26 (Exhibit A) as submitted to the City Clerk by the Elmwood Business Improvement District Advisory Board.

Section 2. Pursuant to the provisions of Section 36500 et seq. of the California Streets and Highways Code (the "Act"), the City Council declares its intent to levy an annual assessment for the parking and business improvement area known as the Elmwood Business Improvement District.

Section 3. The boundaries of the District are set forth in Exhibit A1 to the 2025-26 Annual Report which is attached hereto and incorporated herein by reference.

Section 4. The improvements and activities proposed for the District are as described in the Report and budget (Exhibit A) and appended hereto.

Council intends that these funds be used for designated activities and improvements in the Elmwood commercial area. Council explicitly intends that funds generated through this BID shall not be used to pay for activities routinely paid for by the City.

Section 5. The City Council intends to levy assessments on businesses located within the boundaries of the District shown Exhibit A1 and according to the business classifications and rates set forth in Exhibit A2 which is attached hereto and incorporated herein by reference.

Section 6. A public hearing shall be held before the City Council on December 2, 2025, virtually on a publicly accessible video conference call. Following the hearing the Council will consider adoption of a resolution levying an assessment as recommended by the Elmwood Business Improvement Advisory Board. At this hearing the Council will hear all interested persons for or against the levying of such an assessment.

Formal protests against the levying of the District assessment must be made in writing. All written and oral protests should contain the following certification: "I certify that I am the owner of the business listed below, and that the business is located or operates within the boundaries of the Elmwood Business Improvement District." Protests should also contain the following information: business name (printed), business address (printed), City Business License Tax Registration number, name of protester (printed), signature of protester, date of protest and the reason(s) the protester is against the levying of the District assessment. Protests will not be considered valid unless signed and submitted by the owner of a business located within the boundaries of the proposed District. Written protests shall be filed with the City Clerk, First Floor, City Hall, at 2180 Milvia Street, Berkeley, California, 94704, at or before 3 pm on December 2, 2025 and shall contain a description of the business sufficient to identify the business, and if the person so protesting is not listed on City records as the owner of the business, the protest shall be accompanied by written evidence that the person subscribing the protest is the owner of the business. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made. If written protests are received from the owners of businesses in the District which will pay fifty percent (50%) or more of the assessment proposed to be levied, no further proceedings to levy the assessment shall be taken for a period of one year from the date of the finding of a majority protest by the City Council. If the majority protest is only against the furnishing of a specified type or types of improvements or activities within the District, those types of improvements or activities shall be eliminated.

Section 7. The City Clerk is directed to give notice of said public hearing by publishing the Resolution of Intention in a newspaper of general circulation.

#### Exhibits

- A: Annual Report for the Elmwood Business Improvement District for 2025-26
  - A1: Map of the Elmwood BID
  - A2: Assessment Rates

**EXHIBIT A**

**Annual Report for the Elmwood Business Improvement District for 2025**

September 8, 2025

To: Members of the Berkeley City Council  
From: The Elmwood Business Improvement District Advisory Board  
Re: 2026 Elmwood BID Renewal

We respectfully request that the Elmwood Business Improvement District be renewed for the 2026 fiscal year, with the same boundary as the prior year (Exhibit A1). The assessment method and basis remain the same.

The Elmwood BID was established in November 2013 to promote, maintain and beautify the Elmwood commercial district. Revenues of roughly \$30,000 per year provide a regular, predictable source of funding for the Elmwood Business Association (EBA) activities, and an additional \$5,000 of grant funding and fundraising is also anticipated. The Elmwood BID has allowed the EBA to expand its activities into areas such as maintenance and capital improvements.

The Elmwood Business Association is continuing to be the catalyst for Elmwood Business District's ongoing vitality. Here are some highlights:

- Engaging the merchants in the expanded BID to envision how EBA can assist in supporting their businesses
- Successfully put on the Second Elmwood Music Festival on three stages, partnering with the Berkeley Public Library – Claremont Branch, local food truck vendors, and local craft artists, bringing together the community
- Bringing back the popular Wine Walk on September 13, 2025
- Officially installed the SmartSpace Program (employee parking program) after a successful pilot in collaboration with CoB Transportation Dept.
- Participation in the AC Transit EasyPass program by the Elmwood merchants
- Maintenance of year-round lighting installation on district buildings
- Website: [www.shoptheelmwood.com](http://www.shoptheelmwood.com) serves as one of the district's main marketing tools – District Events, Introducing New Businesses, and ongoing marketing updates
- Continued maintenance of Welcome to Elmwood banners as well as seasonal banners on light posts and ongoing maintenance
- Quarterly weeding and cleaning of Russell St. parking lot partnering with UC Berkeley
- Maintenance of security camera at Russell St. parking lot
- Maintaining a part-time Administrative Assistant to:
  - Engage the public on social media
  - Manage merchant communications

- Promote monthly specials among Elmwood Merchants
- Updating the website to keep it current
- Project manage events around Elmwood BID
- Sponsored the following events:
  - Spring and Fall Outdoor Movie Nights
  - Spring Elmwood Music Festival
  - Where's Waldo Events
  - Summer Merchant Social to integrate merchants from the expanded BID
  - Fall Live Music Stroll
  - Stop for Berkeley Bicycle Day participants for snacks and water
  - Craft Fair featuring local artists
  - Fall Wine Walk
  - Holiday Season Events
  - Shop Local Promotions
- Members of the board are active in other Berkeley commercial and residential neighborhoods to promote harmony and cooperation

Below is a summary of our current financial position and our proposed budget for 2026 for your review.

## 2025-2026 Actual and Projected Expenditures Elmwood Business Association

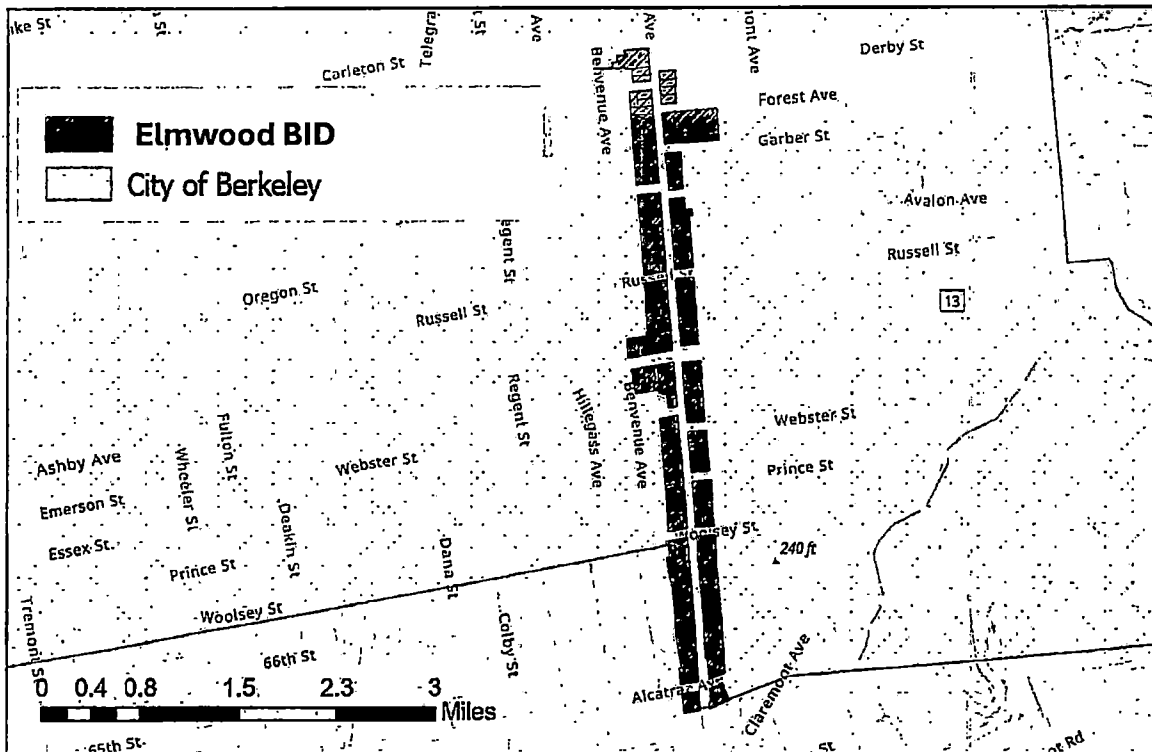
| INCOME                                    |                                                     | 2025 Budget      | 2026 Budget      |
|-------------------------------------------|-----------------------------------------------------|------------------|------------------|
| <b>Operating Income</b>                   |                                                     |                  |                  |
|                                           | BID Membership dues                                 | \$ 30,000        | \$ 33,000        |
|                                           | Other Revenue                                       | \$ 4,495         | \$ 5,500         |
|                                           | <b>Total Operating Income</b>                       | <b>\$ 34,495</b> | <b>\$ 38,500</b> |
| <b>Non-Operating Income</b>               |                                                     |                  |                  |
|                                           | Fees Collected from Vendors                         | \$ 500           | \$ 1,000         |
|                                           | <b>Total Non-Operating Income</b>                   | <b>\$ 500</b>    | <b>\$ 1,000</b>  |
| <b>Total INCOME</b>                       |                                                     | <b>\$ 34,995</b> | <b>\$ 39,500</b> |
| EXPENSES                                  |                                                     |                  |                  |
| <b>Advertising &amp; Marketing</b>        |                                                     |                  |                  |
|                                           | Banner Maintenance                                  | \$ 1,000         | \$ 1,800         |
|                                           | Building Light Maintenance                          | \$ 250           | \$ 250           |
|                                           | Spring event production                             | \$ 500           | \$ 500           |
|                                           | Merchant Social - Summer                            | \$ 1,000         | \$ 1,300         |
|                                           | Artisan Craft Event                                 | \$ 300           | \$ 300           |
|                                           | Web Hosting and marketing                           | \$ 1,000         | \$ 1,000         |
|                                           | Halloween event production                          | \$ 600           | \$ 600           |
|                                           | Holiday season event production (incl. tree lights) | \$ 2,500         | \$ 2,500         |
| <b>Music in the Elmwood</b>               |                                                     |                  |                  |
|                                           | Music Festival Expenses                             | \$ 5,000         | \$ 7,000         |
| <b>Consulting &amp; Accounting</b>        |                                                     |                  |                  |
|                                           | Square Payment System                               | \$ 120           | \$ 120           |
|                                           | Accounting S/W (Xero)/Tax Filing                    | \$ 200           | \$ 200           |
| <b>Dues and Subscriptions</b>             |                                                     |                  |                  |
|                                           | Chamber of Commerce                                 | \$ 350           | \$ 350           |
| <b>Insurance</b>                          |                                                     |                  |                  |
|                                           | Liability for EBA                                   | \$ 500           | \$ 650           |
|                                           | Liability for Board members                         | \$ 800           | \$ 900           |
| <b>License &amp; Permits</b>              |                                                     |                  |                  |
|                                           | Taxes & Licenses                                    | \$ 175           | \$ 200           |
| <b>Other: Office Supplies/Annual Mtg.</b> |                                                     |                  |                  |
|                                           | Printing/copy                                       | \$ 1,000         | \$ 1,200         |
|                                           | Postage & Delivery (PO Box)                         | \$ 250           | \$ 250           |
|                                           | Annual Mtg. Food/Beverage                           | \$ 1,000         | \$ 1,300         |
| <b>Repairs and Maintenance</b>            |                                                     |                  |                  |

|                                 |                             |                  |                  |
|---------------------------------|-----------------------------|------------------|------------------|
| <b>Professional Fees</b>        | Gardening (Tree wells)      | \$ 400           | \$ 400           |
| <b>Bank Fees</b>                | Legal and Professional Fees | \$ 100           | \$ 100           |
| <b>Security</b>                 | Wells Fargo Bank            | \$ 150           | \$ 150           |
| <b>Admin Support</b>            | Holiday Private Security    | \$ 9,000         | \$ 10,000        |
|                                 | Wages                       | \$ 12,500        | \$ 12,500        |
| <b>Total Operating Expenses</b> |                             | <b>\$ 38,695</b> | <b>\$ 43,570</b> |

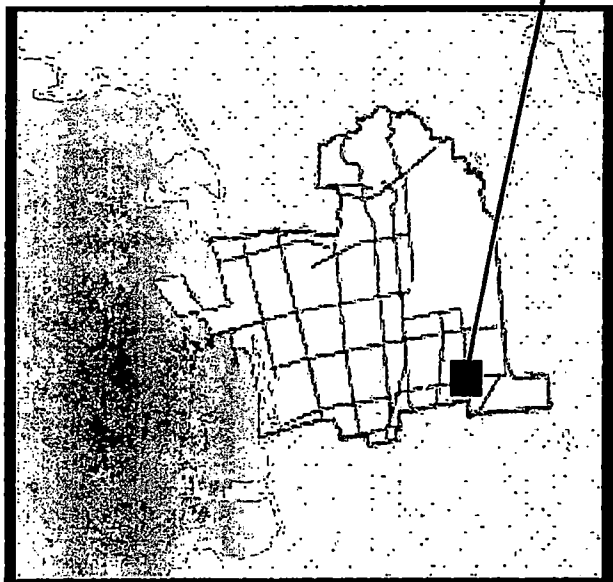
|                          |  |            |            |
|--------------------------|--|------------|------------|
| <b>Retained Earnings</b> |  | \$ (3,700) | \$ (4,070) |
|--------------------------|--|------------|------------|

### Exhibit A1: Elmwood Business Improvement District (BID), Map

#### Elmwood BID Boundaries



#### City of Berkeley



**Exhibit A2: Elmwood Business Improvement District, Assessment Rates**

| <b>Business Classifications and Assessment Rates</b>                                                                                    |                     |
|-----------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <b>Classifications</b>                                                                                                                  | <b>Annual Rates</b> |
| Retail including jewelers & groceries but not restaurants (Tax Codes R, M and G but without NAICS 722, Food Services & Drinking Places) |                     |
| • Gross receipts under \$350,000                                                                                                        | \$250               |
| • Gross receipts \$350,000–\$999,000                                                                                                    | \$350               |
| • Gross receipts \$1,000,000                                                                                                            | \$500               |
| Restaurants, including all businesses that prepare and serve food at the request of customers (NAICS 722)                               | \$500               |
| Professionals including offices of real estate brokers (Tax Code P)                                                                     |                     |
| • Gross receipts under \$100,000                                                                                                        | \$300               |
| • Gross receipts over \$100,000                                                                                                         | \$400               |
| Entertainment and Recreation (Tax Code E)                                                                                               | \$450               |
| Business, Personal and Repair Services (Tax Code B) except Hair, Nail and Skin Care Services (NAICS 81211)                              | \$200               |
| Hair, Nail and Skin Care Services (NAICS 81211)                                                                                         | \$200               |
| Parking lot operators                                                                                                                   | \$2,000             |
| Financial Institutions                                                                                                                  | \$2,500             |

Any business that is classified as a nonprofit (Tax Code N) for business licenses purposes, shall nevertheless pay the assessment at the rate that corresponds to its North American Standard Industrial Classification if it is engaged in the sale of products or services. Any new business established within the District shall not be required to pay

an assessment on application for its business license but only on renewal at the end of the year it was initiated. (Ord. 7317-NS § 3 (part), 20

**NON-DISCRIMINATION/WORKFORCE COMPOSITION**

FOR ALL CONTRACTS: 5 OR MORE EMPLOYEES

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

**ORGANIZATION** Elmwood Business Association

**ADDRESS** PO Box 5881, Berkeley, CA 94705

**BUSINESS LICENSE #** BL-002118

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

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

\*Specify other occupation:

\*\*Specify other ethnicity:

is your business MBE/WBE/DBE certified?  N/A If Yes, by what agency?

If Yes, please specify:  or ethnic identification:

Do you have a policy of non-discrimination?  N/A

Signature Andrew S. Han Date 01/16/2026

Print/Type Name of Signer ANDREW S. HAN

Verified by \_\_\_\_\_ Date \_\_\_\_\_

**City of Berkeley Contract Administrator**

**CITY OF BERKELEY**  
**Nuclear Free Zone Disclosure Form**

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90.130:  
  
 "Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.  
  
 "Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.  
  
 "Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).
4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

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

Printed Name: Andrew Han Title: President

Signature: *Andrew Han* Date: 12/15/2025

Business Entity: Elmwood Business Association

CITY OF BERKELEY  
Oppressive States Compliance Statement for Personal Services

The undersigned, an authorized agent of Elmwood Business Association (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution Nos. 59,853-N.S., 60,382-N.S., and 70,606-N.S., (hereafter "Resolutions"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolutions:

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

"Oppressive State" means: **Tibet Autonomous Region, the provinces of Abo, Kham, and U-Tsang; and Burma (Myanmar)**

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

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

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

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

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

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

Printed Name: Andrew Han Title: President

Signature: Andrew Han Date: 10/15/2025

Business Entity: Elmwood Business Association

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Contract Description/Specification No.: \_\_\_\_\_

**Attachment D**

CITY OF BERKELEY  
Sanctuary City Compliance Statement

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

- a. "Data Broker" means either of the following:
  - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
  - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services." Extreme Vetting does not include:
  - i. The City's computer-network health and performance tools;
  - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

Contractor understands that it is not eligible to receive or retain a City contract if at the time the Contract is executed, or at any time during the term of the Contract, it provides Data Broker or Extreme Vetting services to ICE.

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

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

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21 day of November 21, at Berkeley, California.

Printed Name: Andrew Han Title: President

Signed: Andrew Han Date: 10/21/2025

Business Entity: Elmwood Business Association

**CITY OF BERKELEY**  
**Living Wage Certification for Providers of Services**

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

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

**Section I.**

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

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

YES \_\_\_\_\_ NO \_\_\_\_\_

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

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

YES \_\_\_\_\_ NO \_\_\_\_\_

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. Please continue to Section II.

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

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

YES \_\_\_\_\_ NO

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

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

YES \_\_\_\_\_ NO \_\_\_\_\_

If you have answered, "YES" to questions 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. Please continue to Section II.

**Section II**

**Please read, complete, and sign the following:**

THIS CONTRACT **IS** SUBJECT TO THE LIVING WAGE ORDINANCE.  
THIS CONTRACT **IS NOT** SUBJECT TO THE LIVING WAGE ORDINANCE.

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

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

Printed Name: Andrew Han Title: President

Signature: Andrew Han Date: 12/08/2025

Business Entity: Elmwood Business Association

Contract Description/Specification No: **Project Name** ~~XXXXXXXX~~

**Section III**

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

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

\_\_\_\_\_  
Department Name

\_\_\_\_\_  
Department Representative

To be completed by Contractor/Vendor

Form EBO-1 CITY OF BERKELEY



CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

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

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Form with fields for Name, Vendor No., Address, City, State, ZIP, Contact Person, Telephone, E-mail Address, Fax No.

SECTION 2. COMPLIANCE QUESTIONS

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

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent?\*

SECTION 4. REQUIRED DOCUMENTATION

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

SECTION 5. CERTIFICATION

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

Executed this 15 day of Dec, in the year 2025, at Berkeley, CA  
(City) (State)

Andrew Han  
Name (please print)  
President  
Title

Andrew Han  
Signature  
Federal ID or Social Security Number

FOR CITY OF BERKELEY USE ONLY

- Non-Compliant (The City may not do business with this contractor/vendor)
- One-Person Contractor/Vendor       Full Compliance       Reasonable Measures
- Provisional Compliance Category, Full Compliance by Date: \_\_\_\_\_
- Staff Name(Sign and Print): \_\_\_\_\_ Date: \_\_\_\_\_







Office of the City Manager

CONSENT CALENDAR  
April 14, 2026

To: Honorable Mayor and Members of the City Council  
 From: Paul Buddenhagen, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 14, 2026

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 **\$817,900.80**

| PROJECT                                                       | FUND | SOURCE            | AMOUNT              |
|---------------------------------------------------------------|------|-------------------|---------------------|
| Rebranding Services for the Berkeley Public Library           | 102  | Library           | \$175,000           |
| Food Assistance: HOME-ARP Support Services                    | 310  | HUD               | \$372,900.80        |
| Mini-Bulk Swimming Pool Treatment Chemicals for FY27 and FY28 | 11   | General Fund      | \$180,000           |
| Derelict Vessel/Debris Removal & Disposal                     | 608  | Marina Operations | \$90,000            |
| <b>Total:</b>                                                 |      |                   | <b>\$817,900.80</b> |

CURRENT SITUATION AND ITS EFFECTS

BMC Section 7.18.010 sets out the City Manager’s expenditure limits. 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, purchases in excess of the following amounts must be submitted for Council approval: \$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

Aundra Richards, Contract Administrator, 510-981-7324

Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on April 14, 2026
  - a. Rebranding Services for the Berkeley Public Library
  - b. Food Assistance: HOME-ARP Support Services
  - c. Mini-Bulk Swimming Pool Treatment Chemicals for FY27 and FY28
  - d. Derelict Vessel/Debris Removal & Disposal

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        |
|-------------------|---------------------------------------------------------------|----------------------|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------|------------------------|-----------------------------|
| 26-11785-C        | Rebranding Services for the Berkeley Public Library           | 4/15/26              | 5/11/2026                | The Selected vendor will be expected to provide the following services; Discovery & Research, Brand Strategy Development, Visual Identity Development, Brand guidelines, Implementation Support,                                               | \$ 175,000.00        | 102-22-241-261-0000-000-463-612990                                                                                                          | Library Administration | Aimee Reeder 510-981-6104   |
| <b>Dept Total</b> |                                                               |                      |                          |                                                                                                                                                                                                                                                | <b>\$ 175,000.00</b> |                                                                                                                                             |                        |                             |
| 26-11786-C        | Food Assistance: HOME-ARP Support Services                    | 4/15/26              | 5/11/2026                | Soliciting proposals from community-based organizations serving food insecure Berkeley-based individuals and families. Funding available through the HOME Investment Partnership Program                                                       | \$ 372,900.80        | 310-51-504-530-2075-000-444-636110                                                                                                          | HHCS/HCS               | Kat Larrowe 510-981-7555    |
| <b>Dept Total</b> |                                                               |                      |                          |                                                                                                                                                                                                                                                | <b>\$ 372,900.80</b> |                                                                                                                                             |                        |                             |
| 26-11787-C        | Mini-Bulk Swimming Pool Treatment Chemicals for FY27 and FY28 | 4/15/26              | 4/30/2026                | Purchase of mini-bulk chlorine, muratic acid and carbon dioxide                                                                                                                                                                                | \$ 180,000.00        | King Pool: 011-52-543-574-0000-000-461-642990 West Campus: 011-52-543-575-0000-000-461-642990 Echo Lake: 125-52-543-582-0000-000-461-642990 | PRW - Recreation       | Justin Pitcher 510-981-5123 |
| 26-11788-C        | Derelict Vessel/Debris Removal & Disposal                     | 4/15/26              | 5/11/2026                | The project includes removal and disposal of derelict vessels that have become teh property of COB through the lien process or have been surrendered This also includes removal/disposal of the in-water debris including broken dock sections | \$ 90,000.00         | FY27 \$45,000<br>FY28 \$45,000<br>Marina Fund<br>608-52-545-000-0000-000-472-612990                                                         | PRW - Waterfront       | Sean Crothers 510-981-6744  |
| <b>Dept Total</b> |                                                               |                      |                          |                                                                                                                                                                                                                                                | <b>\$ 270,000.00</b> |                                                                                                                                             |                        |                             |
| <b>TOTAL</b>      |                                                               |                      |                          |                                                                                                                                                                                                                                                | <b>\$ 817,900.80</b> |                                                                                                                                             |                        |                             |





Office of the City Manager

**07**CONSENT CALENDAR

April 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Scott Gilman, Director, Health, Housing & Community Services

Subject: Revenue Contract: Department of Health Care Services Performance Contract for City of Berkeley for Behavioral Health Services Act

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or designee to execute a contract and any amendments with the California Department of Health Care Services (DHCS) in the amount of approximately \$10,000,000 each year from July 1, 2026 through June 30, 2029, (FY 2027 – 2029) for the Behavioral Health Services Act (BHSA), Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs and county provision of community mental health services pursuant to the Bronzan-McCorquodale Act.

FISCAL IMPACTS OF RECOMMENDATION

The Mental Health Division of the Health, Housing, and Community Services Department (HHCS) is projected to receive Behavioral Health Services Act funding for Fiscal Year 2027-2029. These funds will be deposited in Fund 315.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley receives BHSA funding directly from the State of California, and DHCS requires a performance contract with the City of Berkeley to delineate the responsibilities and requirements connected with transferring these funds to the City of Berkeley. For the purposes of this contract, DHCS considers the City of Berkeley a small County.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3504.1 as amended by AB 339. This contract does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

BACKGROUND

DHCS provides funding and oversight for mental health care plans administered primarily through County Health Plans. In 2011, the contract that delineates the

responsibilities and requirements for receiving these funds was consolidated into a single “performance contract.”

On September 13, 2021, via Resolution No. 70,013-N.S., City Council approved entering into Contract No. 42200027 with DHCS for \$26,035,194 for funding period Fiscal Year 2022. DHCS is again requiring Berkeley to enter into a performance contract regarding funds received directly from the State. DHCS does not amend previous contracts; rather, it requires new agreements for each funding period. The standard State Performance Contract covers a wide variety of possible funding streams.

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

To receive BHSA funding, Berkeley is required to enter into this performance contract with DHCS. As BHSA funding is the largest funding source for mental health services provided by the Mental Health Division of HHCS, it is vital that HHCS continue to receive these funds to provide mental health services in Berkeley. These funds support numerous programs, including Full-Service Partnerships that provide specialized, comprehensive outpatient services to highest need individuals in Berkeley, as well as a variety of support programs for treatment participants.

ALTERNATIVE ACTIONS CONSIDERED

Council may choose not to enter into contract with DHCS for the Behavioral Health Services Act, however, doing so would limit the City in providing essential services and potentially be detrimental to the ongoing treatment of behavioral health patients.

CONTACT PERSON

Jeffrey Buell, Manager of Mental Health Services, (510) 981-7682  
Conor Murphy, Associate Management Analyst, HHCS, (510) 981-7611

Attachments:

- 1: Resolution
- 2: Performance Contract City of Berkeley Fiscal Years 2027-2029

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

REVENUE CONTRACT: DEPARTMENT OF HEALTH CARE SERVICES  
PERFORMANCE CONTRACT FOR CITY OF BERKELEY

WHEREAS, the California Department of Health Care Services (DHCS) requires the City of Berkeley to enter into a performance contract to receive funding from the Behavioral Health Services Act in the amount of approximately \$10,000,000 for Fiscal Year 2027; and

WHEREAS, DHCS does not amend previous contracts; rather, it requires new agreements for each funding period. For the purposes of this contract, DHCS considers the City of Berkeley a small County; and

WHEREAS, On September 13, 2021, via Resolution No. 70,013-N.S., City Council approved entering into Contract No. 42200027 with DCHS for \$26,035,194 for funding period Fiscal Year 2022; and

WHEREAS, the Mental Health Division will utilize the Behavioral Health Services Act to fund a wide variety of mental health programs for residents of Berkeley from July 1, 2026, through June 30, 2029 (FY 2027 – FY 2029). Funds from this revenue contract will be deposited in Fund 315.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or designee is authorized to execute a contract and any amendments with the California Department of Health Care Services for the Behavioral Health Services Act, Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), and Crisis Counseling Assistance and Training Program (CCP) programs and county provision of community mental health services pursuant to the Bronzan-McCorquodale Act. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES  
**STANDARD AGREEMENT**  
 STD 213 (Rev. 04/2020)

|                                     |                                             |
|-------------------------------------|---------------------------------------------|
| AGREEMENT NUMBER<br><b>26-60018</b> | PURCHASING AUTHORITY NUMBER (If Applicable) |
|-------------------------------------|---------------------------------------------|

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME  
 Department of Health Care Services

CONTRACTOR NAME  
 City of Berkeley Dept of Health, Housing and Community Services

2. The term of this Agreement is:

START DATE  
 July 1, 2026

THROUGH END DATE  
 June 30, 2029

3. The maximum amount of this Agreement is:  
 \$0 (Zero Dollar)

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

| Exhibits                  | Title                               | Pages          |
|---------------------------|-------------------------------------|----------------|
| Exhibit A                 | Scope of Work                       | 4              |
| Exhibit A, Attachment I   | Behavioral Health Services Act      | 34             |
| Exhibit A, Attachment II  | Additional Terms and Conditions     | 6              |
| Exhibit A, Attachment III | Request for Waiver                  | 1              |
| Exhibit B                 | Budget Detail Provisions            | 1              |
| Exhibit C *               | General Terms and Conditions        | GTC<br>02/2025 |
| Exhibit D                 | Special Terms and Conditions        | 40             |
| Exhibit E                 | Additional Provisions               | 5              |
| Exhibit F                 | Contractor's Release                | 2              |
| Exhibit G                 | Business Associate Addendum (HIPAA) | 6              |

*Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>*

**IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.**

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)  
 City of Berkeley Dept of Health, Housing and Community Services

|                                                              |                  |             |              |
|--------------------------------------------------------------|------------------|-------------|--------------|
| CONTRACTOR BUSINESS ADDRESS<br>2180 Milvia Street, 2nd Floor | CITY<br>Berkeley | STATE<br>CA | ZIP<br>94704 |
|--------------------------------------------------------------|------------------|-------------|--------------|

|                                |       |
|--------------------------------|-------|
| PRINTED NAME OF PERSON SIGNING | TITLE |
|--------------------------------|-------|

|                                 |             |
|---------------------------------|-------------|
| CONTRACTOR AUTHORIZED SIGNATURE | DATE SIGNED |
|---------------------------------|-------------|

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

|                              |                                             |
|------------------------------|---------------------------------------------|
| AGREEMENT NUMBER<br>26-60018 | PURCHASING AUTHORITY NUMBER (If Applicable) |
|------------------------------|---------------------------------------------|

**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

Department of Health Care Services

CONTRACTING AGENCY ADDRESS

1501 Capitol Avenue, MS 4200

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

Exempt per Budget Act 2025, Assembly Bill 227, Item 4260-116-0890; Welfare and Institution Code, Sections 5402(i), 5706, and 5814(g).

**Exhibit A**  
**SCOPE OF WORK**

**I. Service Overview**

The California Department of Health Care Services (hereafter referred to as DHCS) administers the Behavioral Health Services Act, Lanterman-Petris-Short (LPS) Act, Projects for Assistance in Transition from Homelessness (PATH), Community Mental Health Services Block Grant (MHBG), Substance Use Prevention, Treatment, and Recovery Services Block Grant (SUBG), and Crisis Counseling Assistance and Training Program (CCP), and oversees county provision of community mental health services pursuant to the Bronzan-McCorquodale Act.

Contractor (hereafter referred to as County) must meet certain conditions and requirements to receive funding for these programs and services, as set forth in this County Performance Contract (hereafter referred to as the Contract or Agreement), as required by Welfare and Institutions Code (W&I) sections 5650(a), 5651, and 5897. County agrees to comply with all of the conditions and requirements described herein.

DHCS will monitor this Contract to ensure compliance with applicable federal and State law and applicable regulations. (California Government Code (GC), §§ 11180-11182; W&I §§ 5614, 5717(b), 5651(b)(10), 5897(d), 5963.04, 14124.2(a), and 14197.7.)

County must submit all deliverables required in this Contract in the schedule, form, and manner specified by DHCS.

**II. Service Location**

The services must be performed at the Contractor's work site unless specified via writing to the DHCS Contract Manager.

**III. Service Hours**

The services must be provided during the Contractor's normal working hours, 8:00AM – 5:00PM, Monday through Friday, unless specified via writing to the DHCS Contract Manager.

**IV. Contract Representatives**

A. The Contract representatives during the term of this Contract will be:

|                                                                                                                                                                |                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Department of Health Care Services</b></p> <p>Contract Manager: Waheeda Sabah</p> <p>Telephone: 916-345-7462</p> <p>Email: waheeda.sabah@dhcs.ca.gov</p> | <p><b>City of Berkeley Department of Health, Housing and Community Services</b></p> <p>Paul Buddenhagen, City Manager</p> <p>Telephone: (510) 981-7000</p> <p>Fax: (510) 981-7099</p> <p>Email: <a href="mailto:CManager@berkeleyca.gov">CManager@berkeleyca.gov</a></p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

B. Direct all inquiries to:

|                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Department of Health Care Services</b></p> <p>Behavioral Health – Community Services Division/Federal Grants Branch</p> <p>Attention: Waheeda Sabah</p> <p>1501 Capitol Avenue</p> <p>P.O. Box Number 997413, Mail Stop 2624</p> <p>Sacramento, CA 95899-7413</p> <p>Telephone: (916) 345-7462</p> <p>Email: waheeda.sabah@dhcs.ca.gov</p> | <p><b>City of Berkeley Department of Health, Housing and Community Services</b></p> <p>Attention: Paul Buddenhagen</p> <p>2180 Milvia Street</p> <p>Berkeley, CA 94704</p> <p>Telephone: (510) 981-7000</p> <p>Fax: (510) 981-7099</p> <p>Email: <a href="mailto:CManager@berkeleyca.gov">CManager@berkeleyca.gov</a></p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

C. Either party may make changes to the information in provision 4 of this Exhibit A by giving written notice to the other party. Said changes will not require an amendment to this Contract.

**V. General Requirements for Agreement**

W&I section 5651(b) sets forth specific assurances that must be incorporated into this Contract. County must:

A. Comply with the expenditure requirements of W&I section 17608.05;

- B. Provide services to persons receiving involuntary treatment as required by the LPS Act (commencing with W&I section 5000) and the Children's Civil Commitment and Mental Health Treatment Act of 1988 (commencing with W&I section 5585);
- C. Comply with all of the requirements necessary for Medi-Cal reimbursement for mental health treatment services and case management programs provided to Medi-Cal eligible individuals, including, but not limited to, the provisions set forth in Chapter 3 of the Bronzan-McCorquodale Act (commencing with W&I section 5700) , and submit cost reports and other data to DHCS in the form and manner determined by DHCS;
- D. Ensure that the Behavioral Health Advisory Board has reviewed and approved procedures ensuring citizen and professional involvement at all stages of the planning process pursuant to W&I section 5604.2;
- E. Comply with all provisions and requirements in law pertaining to patient rights;
- F. Comply with all requirements in federal law and regulation, and all agreements, certifications, assurances, and policy letters, pertaining to federally funded mental/behavioral health programs, including, but not limited to, the PATH, MHBG, and SUBG programs;
- G. Provide all data and information set forth in W&I sections 5610 and 5664 ;
- H. If County elects to provide the services described in Chapter 2.5 of the Bronzan-McCorquodale Act (commencing with W&I section 5670), comply with guidelines established for program initiatives outlined in this chapter; and
- I. Comply with all applicable laws and regulations for all services delivered, including all laws, regulations, and guidelines of the Behavioral Health Services Act.

**VI. County Behavioral Health Director**

- A. County must comply with the organizational requirements of W&I sections 5604 (Behavioral Health Board), 5607, and 5608 (County Behavioral Health Director).
- B. County agrees to notify DHCS immediately if there is any change in the position of the County Behavioral Health Director. County must provide DHCS the contact information for any new County Behavioral Health Director appointed.

**VII. Americans with Disabilities Act**

County agrees to ensure that deliverables developed and produced, pursuant to this Agreement must comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973 as amended (29 United States Code (USC) § 794d), the Americans with Disabilities Act of 1990 (42 USC § 12101 *et seq.*), and the implementing regulations, including 36 Code of Federal Regulations (CFR) Part 1194 and 28 CFR Part 36, as applicable. In 1998, Congress amended the Rehabilitation Act of 1973 to require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. California GC section 7405 codifies section 508 of the Rehabilitation Act of 1973 and its implementing regulations requiring accessibility of electronic and information technology.

**VIII. Executive Order N-6-22 – Russia Sanctions**

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under State law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine County is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that will be grounds for termination of this Contract. The State must provide County advance written notice of such termination, allowing County at least 30 calendar days to provide a written response. Termination will be at the sole discretion of the State.

**IX. Word Usage**

Unless the context of this Contract clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neutral genders shall each be deemed to include the others; (c) "shall," "will," "must," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

**The provision of the services is subject to the provisions set forth in the Exhibits and Attachments appended hereto.**

**Exhibit A, Attachment I**

**Table of Contents**

**1.0 Behavioral Health Services Act**

- 1.1 BHSA: Overview and General Requirements
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**1.0 Behavioral Health Services Act**

This Article enumerates key County requirements for implementing the Behavioral Health Services Act (BHSA). These requirements are set forth in greater detail in the BHSA County Policy Manual and other applicable DHCS guidance. This Article is executed pursuant to Welfare and Institutions Code (W&I) section 5897.

In March 2024, voters approved Proposition 1 to reform the Mental Health Services Act (MHSA) and fund needed behavioral health facility infrastructure through a general obligation bond. The primary goals of the BHSA are to improve access to care, increase accountability and transparency for publicly funded, county-administered behavioral health services, and expand the capacity of behavioral health care facilities across California.

This Article details County’s obligations under the BHSA, including reporting requirements, fiscal policies, and programmatic requirements for BHSA-funded

Behavioral Health Services and Supports (BHSS), Housing Interventions, and Full Service Partnership (FSP) programs.

## **1.1 BHSA: Overview and General Requirements**

### **1.1.1 Overview**

- A. County must implement the BHSA consistent with this Contract (which is executed pursuant to W&I section 5897), applicable law and regulations, the BHSA County Policy Manual (hereafter referred to as the BHSA Policy Manual), and other applicable DHCS guidance.
- B. The defined terms enumerated in the BHSA Policy Manual apply to this Contract, except as otherwise provided.
- C. To the extent there is a conflict between the terms of this Contract and any federal or state statute or regulation or DHCS guidance issued pursuant to W&I section 5963.05 (or other applicable bulletin authority), County must comply with the statute, regulation, or guidance, and the conflicting Contract provision will no longer be in effect.
- D. Where a requirement provided or referenced herein has an effective date that differs from the effective date of this Contract, County is required to comply with the requirement as of its applicable effective date (not the effective date of this Contract) unless DHCS guidance provides otherwise.
- E. All terms and conditions set forth in the BHSA Policy Manual are hereby incorporated by reference and made a part of this Contract as if fully set forth herein.

### **1.1.2 Eligible and Priority Populations**

County must comply with BHSA requirements concerning eligibility for and prioritization of services, as described in BHSA Policy Manual section 2.B.3 and any other applicable DHCS guidance.

- A. Eligible Populations
  - 1) County must limit BHSA services to eligible children and youth and eligible adults and older adults, as defined in W&I section 5892(k). BHSA eligible populations are not required to be enrolled in the Medi-Cal program. (W&I § 5892(k)(7)-(8).)
- B. Priority Populations

- 1) County must prioritize BHSA services to the populations enumerated in W&I section 5892(d).
- 2) County is permitted to offer BHSA services to eligible individuals outside these priority populations.

## 1.2 Integrated Plan, Annual Updates, and Intermittent Updates

County must develop and submit three-year Integrated Plans (IPs) for Behavioral Health Services and Outcomes and Annual Updates as described in this section. Counties may submit intermittent updates as needed at any time during the IP cycle consistent with BHSA Policy Manual section 3, and any other applicable DHCS guidance. (W&I §§ 5963–5963.03.)

### 1.2.1 IP Purpose & Contents

- A. Using the IP and budget templates developed by DHCS, County must comply with the requirements in this section and the BHSA Policy Manual chapter 3:
  - 1) Describe its planned BHSA services and programming in accordance with:
    - a. Local data, including using local mental health and substance use disorder (SUD) prevalence data, unmet behavioral health treatment needs data, as well as identifying local health disparities, homelessness point-in-time counts and considering community health improvement plans (W&I § 5963.02(b)(2), (b)(4)); and
    - b. Statewide behavioral health goals and performance measures as described in BHSA Policy Manual section 3.E.6 (W&I § 5963.02(c)(3); BHSA Policy Manual §§ 2.C, 3.D);
  - 2) Report County’s planned activities and projected expenditures for all County Behavioral Health System services within the Behavioral Health Care Continuum for all funding sources (W&I § 5963.02(c)(1-2); BHSA Policy Manual § 3.C); and
  - 3) Ensure County Board of Supervisors approves the IP and certifies that County will meet its realignment obligations, including but not limited to time and distance standards and appointment time standards as set forth W&I section 14197 without utilizing waitlists. (W&I §§ 5963.02(a), (c), 14197; 14197.71(c)(2).)
- B. Joint IP Submissions
  - 1) Counties submitting a joint IP must comply with the requirements in this subsection and the BHSA Policy Manual section 3.E.5. A joint IP means an IP that covers:

- a. Two or more county behavioral health departments; or
  - b. One or more city-operated programs or departments acting jointly with another city-operated program or department or county behavioral health department.
- 2) Special circumstances for joint IPs
- a. Counties that submitted joint three-year plans under the MHSA may continue to submit joint IPs under BHSA.
  - b. The two city-operated mental health authorities receiving funds pursuant to W&I section 5701.5 must submit IPs independently from their counties under BHSA.
  - c. Counties with separate mental health and substance use disorder departments must collaborate on development on the IP and submit one joint IP to their County Board of Supervisors.
- 3) Counties must ensure joint IP is (BHSA Policy Manual § 3.E.5.3):
- a. Approved by the Board of Supervisors for each county represented in the joint IP or other local governing body prior to submission to the Behavioral health Services Oversight and Accountability Commission and DHCS; and
  - b. Includes certification from the joint entity's behavioral health director as described in subsection 1.2.7.D. of this Attachment I.

### 1.2.2 IP Submission

- A. County must submit a draft IP no later than March 31 and final IP no later than June 30 to DHCS the fiscal year prior to the effective date of the IP in accordance with BHSA Policy Manual sections 3.A.1 and 3.E.
- 1) If County fails to submit a complete draft or final IP by the required deadlines, County will be out of compliance and may be subject to corrective action. (BHSA Policy Manual § 3.E.4.)
  - 2) County must submit draft and final IPs through the DHCS' web-based county portal. (BHSA Policy Manual §§ 3.A, 3.E.4.1.)
    - a. If DHCS requires County to revise the IP, County will have 15 calendar days from the revision notice to address the issues raised by DHCS and resubmit the IP through the county portal. IPs are effective beginning July 1 of the fiscal year the IP covers. DHCS will post County's IP on DHCS' website. (BHSA Policy Manual § 3.E.4.2.)

### 1.2.3 Exemptions Submissions & Approval

- A. If County seeks an exemption (as described in subsections 1.7.4 (FSP) and 1.8.2 (Housing Interventions) of this Attachment I), County must comply with the requirements in this subsection 1.2.3 and in BHSA Policy Manual section 3.E.3.
- B. County must submit any exemption requests as part of the draft IP, as outlined in subsection 1.2.2, above. To determine local priorities and make the exemption requests responsive to local needs, counties must begin their community planning process, as described in subsection 1.2.6 of this Attachment I, prior to submitting a draft IP with an exemption request. (BHSA Policy Manual § 3.E.3.2.)
- C. DHCS must approve or deny County's exemption request 30 calendar days from receipt of the request. If DHCS does not respond within 30 calendar days, the exemption request will be considered approved. (BHSA Policy Manual § 3.E.3.4.)
- D. If DHCS denies County's exemption request, County may appeal the denial within 30 calendar days of receiving DHCS' denial as described in BHSA Policy Manual section 3.E.3.5.
- E. An approved exemption will only be valid for the duration of the three-year plan. For each subsequent three-year plan submission, County must submit an updated exemption request for DHCS approval. (BHSA Policy Manual § 3.E.3.2.)

### 1.2.4 Funding Allocation Percentage Changes

- A. Approved funding allocation percentage changes are final and cannot be adjusted again for the duration of the three-year plan, unless an annual change is approved by DHCS due to a state or local emergency. To be granted an annual change, County must demonstrate to DHCS that (BHSA Policy Manual § 6.B.5.1):
  - 1) It is experiencing a state (Government Code (GC), § 8625) or local (GC § 8630) emergency, and
  - 2) The change is necessary because of the emergency.
- B. County may only request an annual change in funding allocation percentages for previously approved funding allocation percentage changes. (W&I § 5892(c)(4)(C).)
- C. County must submit the funding allocation percentage change request in the county portal.

### 1.2.5 Annual Updates and Intermittent Updates

- A. County must submit annual updates to the IP in the second and third years of the IP cycle. (W&I § 5963.02(a); BHSAPolicy Manual § 3.A.3.)
- B. County may prepare intermittent updates to the IP at any time during the IP cycle, although County must notify DHCS prior to submitting intermittent updates. (BHSAPolicy Manual § 3.A.3.)
- C. County must include a summary and justification of the changes made by the annual updates and intermittent updates for a 30-day comment period prior to the effective date of the updates. (W&I § 5963.03(c)(2)(B); BHSAPolicy Manual § 3.A.3.)
- D. Annual updates and intermittent updates are not subject to the stakeholder engagement requirements outlined in subsection 1.2.6 of this Attachment I. (W&I § 5963.03(a).) However (BHSAPolicy Manual § 3.A.3):
  - 1) DHCS encourages stakeholder engagement; and
  - 2) If County chooses to elicit local stakeholder engagement in developing annual updates or intermittent updates, County must comply with the local behavioral health public hearing requirements outlined in subsection 1.2.7 of this Attachment I. (W&I § 5963.03(b)(1).)
- E. Submission and DHCS Review
  - 1) County must submit annual updates and intermittent updates using the DHCS' templates and web-based portal.
  - 2) Annual updates and intermittent updates are subject to the same process for submission and DHCS review as the IP, as described above in subsection 1.2.1 of this Attachment I.

### 1.2.6 Community Planning Process

- A. In developing the IP, County must conduct the following Community Planning Process activities (W&I § 5963.03(a); BHSAPolicy Manual § 3.B):
  - 1) Engage local stakeholders in developing each element of the IP, as described in BHSAPolicy Manual section 3.B.1 (W&I § 5963.02(b)); and
  - 2) Collaborate and engage with Medi-Cal Managed Care Plans (MCPs) and Local Health Jurisdictions (LHJs) as described in BHSAPolicy Manual section 3.B.2, including by:
    - a. Working with its LHI on the development of the Community Health Improvement Plan (CHIP) (W&I § 5963.01(b));

- b. Considering the CHIP of each LHJ that covers residents of the County in preparing County's IP and annual update (W&I § 5963.02(b)(4));
  - c. Working with each MCP that covers residents of the County on the development of the MCP's Population Needs Assessment (PNA) (W&I § 5963.01(a)); and
  - d. Considering the PNA of each MCP that covers residents of the County in preparing County's IP and annual update. (W&I § 5963.02(b)(3).)
- B. In implementing this subsection 1.2.6, County must:
- 1) Engage with LHJs and MCPs on Community Health Assessments (CHAs) and CHIPs through collaboration, data-sharing, and stakeholder engagement as described in BHSa Policy Manual section 3.B.2.3.
  - 2) Refer to the statewide behavioral health goals and associated performance measures during the community planning process, as described in BHSa Policy Manual section E.6.

### 1.2.7 Public Comment

For each draft IP, County must comply with the public comment and update processes outlined in this section, as applicable, and the requirements specified in BHSa Policy Manual sections 3.B.3 and 3.E.2.1.2 (W&I § 5963.03(a)-(b)):

- A. Provide 30 days for stakeholder comment, which may be conducted before or after County submits its draft IP to DHCS (W&I § 5963.03(a)(2)(B));
- B. After the 30-day comment period, require the local behavioral health board to (W&I § 5963.03(b), (d)):
  - 1) Review the draft plan and make recommendations to the local behavioral health agency for revisions (W&I § 5963.03(b).); and
  - 2) Provide an annual report to the local governing body (the local Board of Supervisors or city council) and to DHCS that includes written explanations in response to any substantive recommendations made by the local behavioral health board that are not included in the final IP or annual or intermittent updates. (W&I § 5963.03(d), (b)(5).)
- C. After the 30-day comment period and public hearing are complete, County must revise the IP to include (W&I § 5963.03(b)((2)-(3)):
  - 1) A summary of substantive written recommendations; and

- 2) A summary and analysis of the revisions made as a result of stakeholder feedback.
- D. County must receive approval from County's Board of Supervisors and certification from County's Behavioral Health Director prior to submitting the final IP. (BHSA Policy Manual § 3.E.2.1.2.)

### **1.2.8 County Planning Funds**

- A. County may allocate up to 5 percent of the total annual revenue received from the local Behavioral Health Services Fund (BHSF) to fund planning costs, pursuant to the requirements set forth in subsection 1.4 of this Attachment I. (W&I § 5892(e)(1)(B)-(C); BHSA Policy Manual § 3.B.4; Behavioral Health Information Notice (BHIN) 25-016.) Eligible planning costs do not include costs incurred as administrative costs or program expenditures.

### **1.3 Behavioral Health Outcomes, Accountability, and Transparency Report**

County must develop and submit an annual Behavioral Health Outcomes, Accountability, and Transparency Report (BHOATR) to DHCS, consistent with BHSA Policy Manual section 4 and any other applicable DHCS guidance. (W&I § 5963.04.)

#### **1.3.1 BHOATR Purpose, Contents and Submission**

- A. Using the BHOATR and expenditure templates developed by DHCS, County must:
- 1) Report on behavioral health spending, service utilization, and achievement of goals and outcomes outlined for the reporting period (W&I § 5963.04(a); BHSA Policy Manual §§ 3.C, 4); and
  - 2) Ensure County Board of Supervisors approves the BHOATR and certifies that County will meet its realignment obligations, including but not limited to time and distance standards and appointment time standards as set forth W&I section 14197 without utilizing waitlists. (W&I § 5963.04(b)-(c), 14197.71(c)(2).)
- B. County must submit the BHOATR through DHCS' web-based county portal.
- C. DHCS must post County's BHOATR and an aggregated statewide BHOATR on DHCS' website. (W&I § 5964.04(d); BHSA Policy Manual § 4.A.)

### **1.4 BHSA Fiscal Policies**

County must establish a local BHSF, appropriately allocate funding, and comply with related reporting requirements consistent with BHSA Policy Manual section 6.B and any other applicable DHCS guidance. (W&I § 5892.)

### 1.4.1 Allocation Methodology

- A. County must establish a local BHSF for the monthly distribution of funds from the State Controller's Office. (W&I §§ 5892(g), 5891(c); BHSF Policy Manual § 6.B.1.)
- B. County must establish and maintain sub-accounts for each BHSF component (Housing Intervention Programs, FSP Program, and BHSS). County is encouraged to maintain sub-accounts for each suballocation under each BHSF component, as described in BHSF Policy Manual section 6.B.1.1.
- C. County must allocate and spend funds consistent with the proposed activities and projected expenditures approved in County's IP, intermittent updates, and/or annual update. (W&I § 5892(h); BHSF Policy Manual § 6.B.1.1.)

### 1.4.2 Local Prudent Reserve

County must (BHSF Policy Manual § 6.B.3):

- A. Establish and maintain a local Prudent Reserve (PR) to ensure BHSF components are not significantly impacted during years where revenues for the BHSF are below recent averages adjusted by changes in the state population and the California Consumer Price Index, as determined by DHCS. During such periods, County may transfer funds out of the PR in accordance with this Attachment I and BHSF Policy Manual section 6.B.3. (W&I § 5892(b)(1).) County may draw down PR funds only during periods in which DHCS has determined that state-level BHSF revenues are below recent trends.
- B. Assess PR funding levels at least once every three years. County must report PR assessments in the IP and must ensure each PR assessment is certified by County's Behavioral Health Director in the county portal. (W&I § 5892(b)(5).)
- C. Not exceed the maximum PR levels calculated by DHCS.
- D. Spend excess funds on BHSF components as outlined in subsection 1.4.1.A if County exceeds the PR allowable maximum. (W&I § 5892(b)(1), (b)(3)-(5).)
- E. Not count funds placed in the PR toward its required BHSF component allocations. Counties may transfer funds from their monthly disbursement to their local PR after allocating the required amount of funds to each component. (W&I § 5892.)
- F. Report all PR transfers and expenditures in the BHOATR.

### 1.4.3 Funding Component Allowances

County must comply with the following funding allocation and suballocation requirements, unless County receives approval for a funding transfer (in accordance with subsection 1.4.4, below) or exemption (in accordance with subsections 1.7.4 (FSP) and 1.8.2 (Housing), below). (W&I § 5892(a); BHSA Policy Manual § 6.B.5.)

- A. County must allocate funding for BHSA components and suballocations according to the following requirements:
- 1) Thirty percent for Housing Intervention Programs. Within this thirty percent (W&I § 5892(a)(1)(A)):
    - a. A minimum of fifty percent must be spent on housing interventions for persons who are chronically homeless with a focus on those in encampments; and
    - b. A maximum of twenty-five percent may be spent on Capital Development Projects.
  - 2) Thirty-five percent for the FSP Program (W&I § 5892(a)(2)(A)); and
  - 3) Thirty-five percent for BHSS, including (W&I § 5892(a)(3)(A), (a)(3)(B)(i)-(ii)):
    - a. A minimum of fifty-one percent exclusively for early intervention programs, of which at least fifty-one percent must be used to serve individuals 25 years of age and younger. Services provided as part of an early intervention evidence-based practices (EBPs) or community-defined evidence-based practices (CDEPs) that supports parents and caregivers may count towards the percentage to be used to service individuals 25 years of age and younger when they are provided for the benefit of that child/youth. (BHSA Policy Manual § 7.A.7.)

#### 1.4.4 Funding Transfer Requests

County may request permission from DHCS to change required funding allocation percentages by transferring BHSA funds between BHSA components, in accordance with BHSA Policy Manual section 6.B.4. (W&I § 5892(c).)

- A. County's approved funds transfers between BHSA components are final and cannot be adjusted for the three-year duration of the IP, unless an annual change is approved by DHCS due to a state or local emergency pursuant to W&I section 5892(c)(4)(C).
- 1) County may modify its budgeted projected expenditures for the suballocations within a component without advance DHCS approval as

part of an annual or intermittent update, in accordance with subsection 1.2.5.E, above. However, County must continue to abide by the suballocation requirements described in subsection 1.4.3, above.

- B. County must report approved transfers and updated BHSA allocations on the BHOATR, consistent with the transfers and exemptions approved as part of the IP. (W&I § 5963.04(a).)
- C. Transferring funds between BHSA components, pursuant to an approved funding transfer request under this subsection 1.4.4, does not reset or extend the original reversion period. All transferred funds remain subject to the same reversion period that applied based on the fiscal year in which the funds were originally allocated.
- D. County's funding transfer requests are not exempt from:
  - 1) Suballocation requirements or any other additional applicable laws, including as described in subsection 1.4.3 of this Attachment I (W&I § 5892(c)(2));
  - 2) Local stakeholder consultation requirements (W&I § 5892(c)(3)); and
  - 3) Reversion requirements, including the reversion period associated with the funds prior to the transfer. (W&I § 5892(i).)
- E. County must submit transfer requests to DHCS prior to or at the same time as County's IP submission using DHCS' web-based county portal and must report all approved transfer requests on the IP. (W&I § 5892(c)(4).) Transfer requests must be approved by DHCS prior to the beginning of the fiscal year in which the requested changes would take effect.

#### **1.4.5 Reversion Policy**

County must spend BHSA funds allocated to BHSA components within three years for large counties, or within five years for small counties, as described in BHSA Policy Manual section 6.B.6.2. Workforce Education and Training (WET) and Capital Facilities and Technological Needs (CFTN) funds must be spent within ten years, regardless of county size. (BHSA Policy Manual § 6.B.6.)

- A. For purposes of this Attachment I, a small county is defined as a county with a population of less than 200,000, and a large county is defined as a county with a population of 200,000 or more.
- B. Any BHSA funds remaining after the reversion period must revert to the State. DHCS will offset the amount of reverted funds from the County's future monthly BHSA distribution. (W&I § 5892(i); BHSA Policy Manual § 6.B.6.)

- C. DHCS will provide notice of funds subject to reversion. County may submit an appeal to DHCS if County disagrees with DHCS' determination of the reversion amount. For details, see BHSA Policy Manual sections B.6.5-9. (W&I § 5892.1(b)(2).)

**1.4.6 Mental Health Services Act to Behavioral Health Services Act Transition**

- A. County must only use BHSF dollars for permissible BHSA purposes. County must not allocate BHSF funds to any of the following activities, notwithstanding that these activities represented permissible uses of funds under the MHSA (W&I § 5892(a)(1)-(3); BHSA Policy Manual § 6.B.7):
  - 1) Community Services and Supports
  - 2) Prevention and Early Intervention
  - 3) Innovation (INN) funds (BHSA Policy Manual § 6.B.7.2)
    - a. If County has INN funds that were encumbered prior to July 1, 2026, and the INN project is operational, meaning that County has spent any funds on the INN project prior to July 1, 2026, those INN funds will remain encumbered for the duration of the FY 2026-29 IP.
    - b. If County's INN funds are encumbered in a previously approved INN project, but that project is not operational as of July 1, 2026, those funds will be disencumbered and may be subject to reversion.
    - c. County must report all INN projects, including which INN projects are operational, in the IP and expenditures in the BHOATR.
- B. If County has unspent MHSA funds as of July 1, 2026, County may allocate those funds to BHSA components, subject to compliance with applicable BHSA requirements, including:
  - 1) Allocation and suballocation requirements for each BHSA component as outlined in subsection 1.4.3 of this Attachment I;
  - 2) BHSA component requirements as outlined in subsections 1.6, 1.7, and 1.8 of this Attachment I; and
  - 3) Reversion requirements as outlined in subsection 1.4.5 of this Attachment I except for INN Funds.
- C. County's MHSA funds for WET and CFTN must remain available for WET and CFTN expenditures within the BHSS component. (BHSA Policy Manual §§ 6.B.7.3, 6.B.7.6.)

- 1) MHSA WET or CFTN funds transferred into BHSA BHSS will remain WET or CFTN funds and will not be subject to BHSA suballocation requirements.
  - 2) All transfers into WET and CFTN are irrevocable and cannot be transferred out of WET and CFTN.
- D. Any unspent MHSA funds transferred to the BHSF remain subject to their original revision periods. (BHSA Policy Manual §§ 6.B.7.3, 6.B.7.6.)

#### 1.4.7 Administrative Cost Principles

County may claim reimbursement for administrative costs in accordance with BHSA Policy Manual section 6.B.8 and BHIN 25-016.

- A. Administrative costs are costs that support the operations and overhead of County's behavioral health programs. Administrative costs for BHSA do not include costs incurred as planning costs (outlined in subsection 1.2.8 of this Attachment I and BHSA Policy Manual section 3.B.4) or service expenditures.
- B. County may use a portion of local BHSA revenue towards direct and indirect administrative costs.
- 1) Administrative costs include expenses related to improving planning, quality outcomes, data reporting, and subcontract oversight for County's behavioral health programs, including programs other than BHSA. Administrative costs are capped at two percent for large counties and four percent for small counties. (W&I § 5892(e)(2)(B).)
  - 2) Administrative costs do not include expenditures incurred as direct service costs or as planning costs related to development of the IP. Planning costs for the IP are subject to a separate five percent cap, as outlined in subsection 1.2.8 of this Attachment I. (W&I § 5892(e)(1)(B)-(C); BHSA Policy Manual § 3.B.4.)
  - 3) Counties may submit claims for reimbursement of certain direct administrative costs in excess of these caps pertaining to preparing and submitting the IP or BHOATR, or to information technology system enhancements, as described in BHIN 25-016.
- C. County must report all administrative costs in the IP and BHOATR, and must report such costs consistent with 2 Code of Federal Regulations (CFR) section 200. (W&I § 5963.04(a)(2)(F); BHSA Policy Manual § 6.B.8.1.)
- D. For indirect administrative costs, County must charge indirect costs to a BHSA program through an acceptable allocation method that allocates the costs of

support and administrative services to the benefiting programs, in accordance with 2 CFR part 200 and BHSAs Policy Manual section 6.B.8.2.2.

## **1.5 Promoting Access to Care through Efficient Use of State and County Resources**

### **1.5.1 Overview**

Effective July 1, 2027, County must comply with the requirements set forth in this subsection 1.5, BHSAs Policy Manual section 6.C, and any other applicable DHCS guidance. These requirements apply with respect to all BHSAs-funded providers (including contracted providers as well as providers employed, owned, or operated by County) delivering a BHSAs-funded service that is also covered by, as applicable (W&I § 5891(a)(2)-(3)):

- A. County's Medi-Cal Behavioral Health Delivery System (BHDS) (i.e., the county's administration of Specialty Mental Health Services (SMHS), Drug Medi-Cal (DMC) and/or DMC Organized Delivery System (DMC- ODS) services);
- B. An MCP; or
- C. Commercial health insurance.

### **1.5.2 Medi-Cal BHDSs**

For any provider receiving BHSAs funding for services that are covered by County's BHDS, County must require the provider to (W&I § 5891(a)(3); BHSAs Policy Manual § 6.C.2):

- A. Enroll in Medi-Cal, seek SMHS and/or DMC certification, and participate in County's BHDS, as applicable;
- B. For an individual receiving BHSAs-funded services that are also covered by County's BHDS, check whether the individual is enrolled in Medi-Cal, and if not, refer the individual for eligibility screening and enrollment support; and
- C. Submit claims to the BHDS for all covered services for all Medi-Cal members.

### **1.5.3 Medi-Cal MCPs**

For any provider receiving BHSAs funding for services that are non-specialty mental health services (NSMHS) or SUD services covered by Medi-Cal MCPs, County must require the provider to (W&I § 5891(a)(3)-(4); BHSAs Policy Manual § 6.C.2):

- A. Enroll in Medi-Cal;

- B. For an individual receiving BHSA-funded services that are also covered by MCPs, check whether the individual is enrolled in Medi-Cal, and if not, refer the individual for eligibility screening and enrollment support; and
- C. Make a good faith effort to submit claims to MCPs for all covered services for all Medi-Cal members in accordance with each MCP's billing requirements, including obtaining prior authorization, when applicable.

#### **1.5.4 Commercial Health Insurance**

For any provider receiving BHSA funding for services that are covered by commercial health insurance, County must require provider to make a good faith effort to meet the following requirements in this subsection 1.5.4. For County-contracted providers, County will meet these requirements if it contractually requires BHSA-funded providers to take the following steps (W&I § 5891(a)(3)-(4); BHSA Policy Manual § 6.C.3):

- A. Check whether individuals receiving BHSA-funded services are enrolled in a commercial health plan at the time the individuals request and receive BHSA-funded service; and if so,
- B. Make a good faith effort to submit claims to commercial health plans for all covered services in accordance with each health plan's billing requirements, including obtaining prior authorization, when applicable.
- C. Report complaints about commercial health plan conduct for failure to contract, enter into agreements, or timely reimburse the county for services.

#### **1.5.5 Appropriate Use of Other Non-Behavioral Health Services Act Funds**

County must not use BHSA funds to supplant existing State or County funds that have been used to provide mental health services or SUD treatment services, in accordance with W&I section 5891(a)(1)(B). (BHSA Policy Manual § 6.C.4.)

#### **1.6 Behavioral Health Services and Supports**

County must implement BHSA BHSS consistent with BHSA Policy Manual section 7.A and any other applicable DHCS guidance. (W&I § 5892, (a)(3)(A).) BHSS categories include:

##### **1.6.1 Children's Adult, and Older Adult Systems of Care**

County may use a portion of BHSS funds to provide services pursuant to W&I Division 5, Part 4 (commencing with section 5850) for the Children's System of Care and Part 3 (commencing with section 5800) for the Adult Systems of Care. Children's, Adult, and Older Adult Systems of Care services funded under BHSS may not include Housing Interventions or services for individuals enrolled in an FSP. (BHSA Policy Manual § 7.A.2.)

### **1.6.2 Outreach and Engagement**

County may use a portion of BHSS funds for Outreach and Engagement. BHSS funds may be used for activities intended to reach, identify, and engage individuals, families, and communities in the behavioral health system and reduce disparities. (BHSA Policy Manual § 7.A.3.)

### **1.6.3 WET**

- A. County may use a portion of BHSS funds for County-operated and County-contracted behavioral health workforce recruitment, development, training, and retention activities. BHSS funds for WET activities must be spent within ten years, after which unspent funds will be subject to reversion. (BHSA Policy Manual § 7.A.4.)
- B. WET activities must supplement, but must not duplicate, funding available through other State-administered workforce initiatives, including the Behavioral Health Community-Based Organized Networks of Equitable Care and Treatment (BH-CONNECT) workforce initiative administered by the Department of Health Care Access and Information (HCAI). (BHSA Policy Manual § 7.A.4.1.)

### **1.6.4 CFTN**

County may use a portion of BHSS funds for CFTN. BHSS CFTN projects include the acquisition and development of land, the construction or renovation of buildings, or the development, maintenance, or improvement of information technology to support behavioral health administration and services. Counties can also use BHSS funds as the required match for Behavioral Health Infrastructure Bond Act of 2023 Program Behavioral Health Continuum Infrastructure Program (BHCIP) awards. BHSS funds for CFTN projects must be spent within ten years, after which unspent funds will be subject to reversion. (BHSA Policy Manual § 7.A.5.)

### **1.6.5 Innovative Behavioral Health Pilots and Projects**

The goal of innovative behavioral health pilots and projects is to build the evidence base for the effectiveness of new statewide strategies. County is encouraged to pilot and test innovative behavioral health pilots and projects in all BHSA funding components (Housing Interventions, FSP, and BHSS). County should fund innovative behavioral health pilots and projects under each of those separate funding components. (BHSA Policy Manual § 7.A.6.)

### **1.6.6 Early Intervention Programs**

County must implement Early Intervention Programs designed to prevent mental illness and substance use disorders from becoming severe and disabling and to reduce

disparities in behavioral health. (W&I §§ 5840(a)(1), 5892(a)(3)(A)(ii); BHSA Policy Manual § 7.A.7)

- A. County's Early Intervention Program must, as described in BHSA Policy Manual section 7.A.7:
  - 1) Emphasize the reduction of the likelihood of suicide and self-harm, incarcerations, homelessness, and the other adverse outcomes enumerated in BHSA Policy Manual section 7.A.7 (W&I § 5840(d));
  - 2) Include culturally responsive and linguistically appropriate interventions;
  - 3) Create critical linkages with community-based organizations;
  - 4) Prioritize funds according to BHSA Policy Manual section 7.A.7.2, including specific interventions focused on childhood trauma (W&I §§ 5840.7; 5840.6(c));
  - 5) Include the following components, as described in BHSA Policy Manual section 7.A.3: outreach, access and linkage to care, and mental health and SUD services and supports (W&I § 5840(b)); and
  - 6) Provide an Early Psychosis Intervention (EPI) Plus Program, which must include a Coordinated Specialty Care for First Episode Psychosis (CSC for FEP) program with fidelity and consistent with the requirements established for BH-CONNECT, as described in BHSA Policy Manual section 7.A.7.5.2. This BHSA requirement applies regardless of whether the County has elected to offer CSC for FEP as a bundled Medi-Cal service.
- B. In addition to CSC for FEP, DHCS may, in the future, identify other EBPs or CDEPs that County is required to implement. (W&I § 5840(c)(5).) County may, in addition, describe in their IP County-specific CDEPs that are not included on DHCS' list of EBPs and CDEPs. (BHSA Policy Manual § 7.A.6.)

## 1.7 Full Service Partnership

County must implement a BHSA FSP program consistent with BHSA Policy Manual section 7.B and any other applicable DHCS guidance. (W&I § 5887.)

### 1.7.1 Eligible and Priority Populations

- A. FSP eligible populations include (W&I § 5892(k); BHSA Policy Manual § 7.B.3.1):
  - 1) BHSA eligible adults and older adults who meet the priority population criteria specified in W&I section 5892(d); and

- 2) BHSA eligible children and youth, including transitional age youth (TAY) ages 16-25.
- B. County must comply with presumptive eligibility requirements set forth in W&I section 5887(d)(2) and any other applicable DHCS guidance.

### 1.7.2 FSP Levels of Care

County must, as described in BHSA Policy Manual section 7.B.4, ensure that FSP programs have a standard of care, with levels of care using the appropriate EBP to treat individuals based on acuity, based on clinical judgment and discretion reflecting individualized needs. (W&I § 5887(e).)

### 1.7.3 Program Requirements

- A. County must provide the following BHSA services to FSP participants in accordance with demonstrated clinical need and in alignment with the required FSP levels of care, regardless of whether County's BHDS has opted to provide these services under a Medi-Cal bundled rate (W&I § 5887; BHSA Policy Manual § 7.B):
- 1) Mental health services, supportive services, and SUD services as described in BHSA Policy Manual section 7.B.3.2;
  - 2) Assertive Community Treatment (ACT) as described in BHSA Policy Manual section 7.B.4.1;
  - 3) Forensic ACT (FACT) as described in BHSA Policy Manual section 7.B.4.1;
  - 4) FSP Intensive Case Management (ICM) under a team-based approach with an identified team lead, as described in BHSA Policy Manual section 7.B.4.2;
  - 5) High Fidelity Wraparound (HFW) as described in BHSA Policy Manual section 7.B.4.3;
  - 6) Individual Placement and Support (IPS) model of Supported Employment as described in BHSA Policy Manual section 7.B.5;
  - 7) Assertive field-based initiation for SUD as described in BHSA Policy Manual section 7.B.6;
  - 8) Outpatient behavioral health services for evaluation and stabilization as described in BHSA Policy Manual section 7.B.3.2;
  - 9) Ongoing engagement services as described in BHSA Policy Manual section 7.B.3.2;

- 10) Service Planning in accordance with the processes in W&I sections 5806 and 5868; County's FSP Program is not required to maintain documentation in a "standalone" treatment plan or service plan; and
  - 11) Housing Interventions, funded under the Housing Interventions category as outlined in subsection 1.8 of this Attachment I.
- B. County FSP teams must be capable of supporting FSP participants living with co-occurring mental health and SUD conditions, as described in BHSA Policy Manual sections 7.B.3.2 and 7.B.3.5.
- C. County may include additional behavioral health services County determines are beneficial to an eligible individual's treatment, if not already covered by ACT, FACT, FSP ICM, or HFW, in collaboration with the individual and, when appropriate, the individual's family. (BHSA Policy Manual § 7.B.3.3.)
- D. County may use FSP funding for outreach activities if the activities relate to enrolling individuals living with significant behavioral health needs in an FSP (W&I § 5887(d).) General outreach to individuals living with significant behavioral health needs who are not FSP eligible should be funded under other appropriate funding sources including BHSS and Housing Interventions. (BHSA Policy Manual § 7.B.3.3.)

#### 1.7.4 FSP Exemptions

- A. For the first IP (covering July 1, 2026, to June 30, 2029), all counties are exempt from the EBP fidelity requirements for ACT, FACT, IPS Model of Supported Employment, and HFW. Counties are still required to begin offering the required FSP EBPs by July 1, 2026, unless a small county receives an exemption under subsection 1.7.4.C, below. (BHSA Policy Manual § 7.B.3.4.)
- B. To meet FSP EBP requirements (between fiscal years 2026-2029), County must (BHSA Policy Manual § 7.B.3.4):
- 1) Participate in ongoing training and technical assistance for all FSP EBPs;
  - 2) Understand gaps to fidelity for each FSP EBP by December 31, 2027; and
  - 3) Meet other requirements and implementation milestones as described in BHSA Policy Manual section 7.B.6.
- C. Small counties as defined under subsection 1.4.5.A.1 of this Attachment I and cities submitting an IP independently may request an exemption from the EBP requirements for ACT, FACT, and/or IPS. (W&I § 5887(a)(2); BHSA Policy Manual § 7.B.3.4.) County must request exemptions from each EBP (ACT, FACT, and/or IPS) individually and provide corresponding documentation. Criteria for FSP exemption requests include (BHSA Policy Manual § 7.B.3.4):

- 1) Limited workforce (e.g., qualified providers)
- 2) Limited need (e.g., the estimated population with a clinical need for an EBP)
- 3) Other hardships, subject to DHCS' review

### 1.7.5 FSP EBP Service Capacity and Fidelity Standards

- A. Absent a DHCS-approved exemption, County is required to adhere to EBP requirements and to establish teams of behavioral health practitioners to deliver each FSP EBP, regardless of whether County's Medi-Cal BHDS has opted to cover these services as bundled Medi-Cal services. (BHSA Policy Manual § 7.B.)
- B. County must use the IP and annual update to project the number of full-time equivalent (FTE) practitioners and multidisciplinary teams to provide ACT, FACT, IPS, and HFW between 2026 and 2029. (BHSA Policy § 7.B.6.1.) County must ensure that the projected teams identified comply with the FSP EBP fidelity standards as described in BHSA Policy Manual section 7.B.6.2.

## 1.8 Housing Interventions

County must implement BHSA Housing Interventions consistent with BHSA Policy Manual section 7.C and any other applicable DHCS guidance. (W&I § 5830.)

### 1.8.1 Eligible and Priority Populations

- A. County must limit BHSA Housing Interventions component to individuals who (W&I § 5830(a)):
  - 1) Meet BHSA eligibility criteria as defined in subsection 1.1.2 of this Attachment I; and
  - 2) Are either at risk of homelessness, experiencing homelessness, or chronically homeless as defined in W&I section 5892(k)(2)-(3) and BHSA Policy Manual section 7.C.4.
- B. Housing Interventions must not (W&I § 5830(a)(2)-(4); BHSA Policy Manual § 7.C.5):
  - 1) Be limited to individuals enrolled in FSP;
  - 2) Be limited to individuals enrolled in Medi-Cal; and
  - 3) Discriminate against or deny access to housing for individuals that are utilizing medications for addiction treatment or other authorized medications, or individuals who are justice-involved.

- C. County must prioritize BHSA Housing Interventions to the populations enumerated in BHSA Policy Manual section 7.C.4.2.
- D. For individuals housed under the MHSA as of June 30, 2026, County must comply with the BHSA transition policies outlined in BHSA Policy Manual section 7.C.4.3.
- E. County must ensure that all BHSA Housing Intervention settings are combined with access to clinical and supportive behavioral health care and housing services that will promote the individual's health and functioning and long-term stability. (BHSA Policy Manual § 7.C.5.)

### **1.8.2 Housing Interventions Exemptions**

In accordance with the procedures in BHSA Policy Manual section 7.C.6.2 (W&I § 5892(a)(1)(B)-(C)):

- A. Beginning with the IP covering fiscal years 2026-2029, counties with a population of less than 200,000 and cities submitting an IP independently may request an exemption from the Housing Interventions component allocation and suballocation funding allowances described in subsection 1.4.3 of this Attachment I; and
- B. Beginning with the IP covering fiscal years 2032-2035, all counties regardless of size may request such exemptions.

### **1.8.3 Relationship to Medi-Cal Funded Housing Services**

BHSA Housing Interventions may not be used for housing services covered by Medi-Cal MCPs. (W&I § 5830(c)(2); BHSA Policy Manual § 7.C.7.) County must coordinate with MCPs as described in BHSA Policy Manual section 7.C.7 to:

- A. Ensure Housing Interventions are not used for services covered by MCPs;
- B. Support seamless connections from the county to MCPs for coverage of housing services and vice versa; and
- C. Provide whole-person care and integrated housing services for MCP-enrolled members with significant behavioral health needs who meet eligibility criteria for BHSA.

### **1.8.4 Allowable Expenditures and Related Requirements**

BHSA Housing Interventions may include the following types of expenditures, subject to the program requirements and limitations outlined in this section and BHSA Policy Manual sections 7.C.9 and 7.C.10:

- A. Rental subsidies (BHSA Policy Manual § 7.C.9.1.)
- B. Operating subsidies (BHSA Policy Manual § 7.C.9.2.)
- C. Allowable settings (BHSA Policy Manual § 7.C.9.3.)
  - 1) Non-time-limited permanent settings, including Permanent Supportive Housing (PSH)
  - 2) Time limited interim settings
- D. Other housing supports (BHSA Policy Manual § 7.C.9.4.)
  - 1) Landlord Outreach and Mitigation Funds
  - 2) Participant Assistance Funds
  - 3) Housing Transition Navigation Services and Tenancy and Sustaining Services
  - 4) Outreach and Engagement, up to a limit of seven percent of Housing Interventions
- E. Other Housing Interventions requirements and policies (BHSA Policy Manual § 7.C.9.5)
  - 1) County must ensure Housing Interventions are:
    - a. Operated in compliance with the core components of Housing First (W&I §§ 8255(b), 5830(a)(5));
    - b. Available to support Family Housing, as appropriate; and
    - c. Only used in connection with housing settings that meet minimum standards for habitability and quality.
  - 2) County must operate the Housing Interventions component in accordance with Homeless Management Information System (HMIS) reporting requirements. (W&I § 8256(d)(3)(A).)
- F. Capital development projects, up to a limit of 25 percent of Housing Interventions funding (W&I § 5892(a)(1)(A)(iii); BHSA Policy Manual § 7.C.10.)

**1.9 Documentation Requirements for BHSA Services**

- A. County must ensure all mental health and SUD services funded under BHSA (with the exception of hospital inpatient and Narcotic Treatment Program services) comply with documentation requirements established in BHIN 23-068. (BHSA Policy Manual § 8.)

- B. Documentation requirements do not apply to services and supports where this approach to clinical documentation requirements may be unsuitable, such as (BHSA Policy Manual § 8):
- 1) BHSA housing services;
  - 2) Outreach programs, including BHSS Outreach and Engagement and outreach funded under FSP, where gathering identifying information is not feasible (e.g., outreach to homeless individuals and others who are not yet comfortable providing their information);
  - 3) Warm lines and hotlines; and
  - 4) Food support provided under FSP.

## 1.10 BHSA Oversight and Enforcement

### 1.10.1 DHCS Oversight and Enforcement

- A. DHCS will conduct compliance reviews to assess County's compliance with BHSA program requirements as required under W&I section 5897(d). The reviews will be conducted as described in BHSA Policy Manual section 9.C.
- 1) County must comply with DHCS requests for documents and information needed to conduct compliance reviews, including (BHSA Policy Manual §§ 9.C.1-2.):
    - a. Submitting requested documents to DHCS prior to and during the review; and
    - b. Making personnel, including personnel employed by or under contract with County and BHSA-funded providers (including contracted providers and providers employed, owned, or operated by County) available for DHCS to interview.
- B. If DHCS determines that County is out of compliance with BHSA requirements as set forth in State law, applicable DHCS guidance, and this Contract, DHCS may conduct enforcement actions, such as (W&I §§ 5897(e), 5963.04(e), 14197.7; BHSA Policy Manual § 9.D):
- 1) Administrative sanctions, including (W&I § 5963.04(e); BHSA Policy Manual § 9.D.1):
    - a. Imposing a corrective action plan (CAP) as described in BHSA Policy Manual section 9.D.1.1 or requiring County to revise its IP or annual update as described in BHSA Policy Manual section 9.D.1.2.

- i. Administrative sanctions may be imposed for, among other reasons, failure to make adequate progress in meeting performance measures established by DHCS pursuant to W&I section 5963.04(b). DHCS can exercise this authority outside the standard IP and annual update submission timeline, including after County's BHOATR submission. (BHSA Policy Manual § 9.D.1.2.)
- 2) Temporary monetary withholds and monetary sanctions. (W&I §§ 5963.04(e)(3), 14197.7(n)(5); BHSA Policy Manual § 9.D.2.)
- a. DHCS may impose temporary monetary withholds and monetary sanctions, as outlined in BHSA Policy Manual section 9.D.2, if County (W&I § 5963.04(e)(3)):
    - i. Fails to follow stakeholder engagement requirements for the IP or the 30-day comment period for the annual update and intermittent update, as described in W&I section 5963.03 and BHSA Policy Manual section 3.B;
    - i. Fails to allocate BHSA funds in accordance with statutory requirements, as set forth at W&I section 5892 and BHSA Policy Manual section 6.B;
    - ii. Fails to submit a complete, accurate, and timely BHOATR in accordance with W&I section 5963.04 and BHSA Policy Manual chapter 4; or
    - iii. Spends BHSA funds in a manner that significantly varies from its budget in the IP, annual update, or intermittent update.
- C. County may appeal a temporary withhold or monetary sanction imposed pursuant to this subsection 1.10.1.A.2, above. County's appeal will be conducted in accordance with the requirements specified in BHSA Policy Manual section 9.D.2.5 and pursuant to procedures outlined in DHCS guidance. (W&I 14197.7(h), (k)-(m); BHIN 25-023.)

### 1.10.2 County Oversight

County must comply with BHSA Policy Manual Section 9.E and any other applicable DHCS guidance regarding oversight of BHSA-funded providers (including contracted providers as well as providers employed, owned, or operated by County).

- A. County must ensure its behavioral health workforce, including all BHSA-funded providers (contracted providers and providers employed, owned, or operated by

County) are well-supported and culturally and linguistically concordant with the population to be served, and robust enough to achieve the statewide and local behavioral health goals and measures as described in W&I section 5963.02(c)(8). (BHSA Policy Manual § 9.E.)

- B. County must describe in the IP how County will conduct oversight of BHSA providers to ensure compliance with federal and state laws and regulations and requirements specified in the Policy Manual, as described in BHSA Policy Manual section 9.E.3. (W&I § 5963.02(c)(8)(l).)
- C. County must execute a contract with each non-County provider (i.e., providers that are not owned or operated by County) receiving BHSA funds that meets the requirements in BHSA Policy Manual section 9.E.1.1. County must make a good-faith effort to execute the contract before the provider begins delivering BHSA-funded services.
  - 1) If County is unable to execute a contract before the delivery of BHSA-funded services, County must execute the contract within 120 calendar days from the commencement of BHSA-funded services, consistent with the time limit for provisional SMHS provider contracts. (BHSA Policy Manual § 9.E.1.1.)
  - 2) County must codify the applicable standards outlined in this subsection 1.10.2.D of this Attachment I in each County-contracted provider contract. (BHSA Policy Manual § 9.E.2.)
- D. County must monitor each provider's compliance (including contracted providers, and providers employed, owned, or operated by County) with the following requirements as described in BHSA Policy Manual section 9.E.1.1:
  - 1) All program requirements applicable to the provider's BHSA-funded services;
  - 2) Any requests for records, information, or onsite access by the county, DHCS or their designees for purposes of BHSA oversight;
  - 3) BHSA fiscal policies, as set forth in subsection 1.5 of this Attachment I and BHSA Policy Manual section 6.C;
  - 4) General standards for BHSA providers, which include ensuring providers are qualified to deliver services, comply with nondiscrimination requirements, and deliver services in a culturally competent manner, as specified in W&I section 5963.02(c)(8)(C)-(F) and BHSA Policy Manual section 9.E.2; and

- 5) County monitoring activities resulting from County's oversight of BHSA providers, as described in this subsection 1.10.2.F, below (BHSA Policy Manual § 9.E.3.)
- E. For all providers (contracted providers, and providers employed, owned, or operated by County), County must: (BHSA Policy Manual § 9.E.1.2):
  - 1) Maintain records of expenditures sufficient to comply with BHOATR requirements; and
  - 2) Maintain policies and procedures to ensure compliance with the requirements described in this subsection 1.10.2.D, above.
- F. Effective July 1, 2027, County must describe how they will conduct oversight of BHSA providers in the IP, and must conduct the following monitoring activities (W&I § 5963.02(c)(8)(l); BHSA Policy Manual § 9.E.3):
  - 1) Adopt a monitoring schedule for BHSA-funded providers that includes periodic site visits;
  - 2) Preserve provider monitoring records, including monitoring reports, county-approved provider CAPs, and confirmations of CAP resolutions; and
  - 3) Provide monitoring records to DHCS at any time, upon DHCS' request.

## **2.1 Bronzan-McCorquodale Act**

### **2.1.1 Overview**

- A. The Bronzan-McCorquodale Act realigned responsibility for administration of community mental health services, for the indigent population, to counties and provided a dedicated funding source. (Welfare and Institutions Code (W&I), § 5600.)
- B. County's primary goal in using the funds is to provide an array of treatment options to seriously emotionally disturbed children and adults who have a serious mental disorder, in every geographic area, to the extent resources are available to County. (W&I §§ 5600.3, 5600.35, 5600.4.)
- C. The mission of California's mental health system is to enable persons experiencing severe and disabling mental illnesses and children with serious emotional disturbances to access services and programs that assist them, in a manner tailored to each individual, to better control their illness, to achieve their personal goals, and to develop skills and supports leading to their living the most constructive and satisfying lives possible in the least restrictive available settings. (W&I § 5600.1.)

### **2.1.2 County Obligations**

County must comply with all requirements in the Bronzan-McCorquodale Act (W&I § 5600 *et. seq.*), including the following:

- A. County must comply with Chapter 3 of Part 2 of Division 5 of W&I (commencing with section 5700), including that County must fund children's services pursuant to the requirements of W&I sections 5704.5 and 5704.6.
- B. County must comply with all reporting requirements pursuant to W&I sections 5610, 5664, and 5614(b)(4).
- C. To the extent resources are available, County must maintain the program principles and array of treatment options required under W&I sections 5600.2 to 5600.9, inclusive. (W&I § 5614(b)(5).)
- D. County must report data to the State required by the performance outcome systems for adults and children in accordance with W&I sections 5612 and 5613. (W&I §§ 5610, 5664, 5614(b)(6).)

## **2.2 Lanterman-Petris-Short Act**

### **2.2.1 Overview**

- A. The Lanterman-Petris-Short (LPS) Act was enacted to end indefinite involuntary commitment of persons with mental health disorders, developmental disabilities, and chronic alcoholism; to provide prompt evaluation and treatment, to establish consistent personal rights standards, and to provide services in the least restrictive setting for individuals served under the Act. (W&I § 5001.)
- B. Pursuant to W&I section 5400, DHCS administers the LPS Act and may adopt standards as necessary.

### **2.2.2 Designating Facilities for Involuntary Treatment**

- A. County must comply with applicable statutes, regulations, and DHCS standards and guidance pertaining to designating and monitoring facilities to provide involuntary evaluation and treatment services under the LPS Act and the Children's Civil Commitment and Mental Health Treatment Act. (W&I §§ 5008, 5120, 5121, 5150–5349.5, 5350–5372, 5585–5599, 5651(b)(2).)

### **2.2.3 Reporting and Data Submission Requirements**

- A. County must maintain data on the following (W&I § 5402):

- 1) The number of persons admitted for 72-hour evaluation and treatment, 14-day and 30-day periods of intensive treatment, and 180-day post-certification intensive treatment and the conditions for which they are held, including danger to self, danger to others, grave disability due to mental health disorder, grave disability due to severe substance use disorder, grave disability due to both a mental health disorder and a severe substance use disorder;
- 2) The number of persons transferred to mental health facilities pursuant to section 4011.6 of the Penal Code;
- 3) The number of persons for whom temporary conservatorships are established, and the number of persons for whom conservatorships are established in the County;
- 4) Services provided, including payer information, and clinical outcomes for the individuals identified in paragraphs (1) through (3) of this subsection 2.2.3.A, above;
- 5) Demographic data for the individuals identified in paragraphs (1) through (3) of this subsection 2.2.3.A, above. Demographic data must include age, sex, gender identity, race, ethnicity, primary language, sexual orientation, veteran status, and housing status, to the extent those data are available;
- 6) The number of persons admitted or detained once, between two and five times, between six and eight times, and greater than eight times for each type of admission or detention including 72-hour evaluation and treatment, 14-day and 30-day periods of intensive treatment, and 180-day postcertification intensive treatment;
- 7) The waiting periods for individuals prior to receiving an evaluation in a designated and approved facility pursuant to W&I sections 5150 or 5151 and waiting periods for individuals prior to receiving treatment services in a designated facility, including the reasons for waiting periods;
- 8) Number of all County-contracted beds; and
- 9) Number and outcomes for the following:
  - a. The certification review hearings (W&I § 5256);
  - b. The petitions for writs of habeas corpus filed (W&I § 5275);
  - c. The judicial review hearings held (W&I § 5276);
  - d. The petitions for capacity hearings filed (W&I § 5332); and
  - e. The capacity hearings held (W&I § 5334).

- B. County must provide data as required in this subsection 2.2.3.A, above, or other information, records, and reports, which DHCS deems necessary for the purposes of W&I section 5402 on a quarterly basis, or more frequently as required by DHCS.
- C. County must maintain data on the number of persons whose rights under W&I section 5325 were denied and the right or rights which were denied. Quarterly, County must provide DHCS with a report of this information (W&I § 5326.1.)
- D. County must collect information regarding the number of patients receiving treatment for each patient type, total treatments given, complications attributed to treatment, excessive treatment, and payment source of patients, and report this information quarterly to DHCS (W&I § 5326.15(a).)

## **2.3 Laura's Law**

### **2.3.1 County Obligations**

- A. County must comply with Article 9 of Part 1 of Division 5 of W&I (Laura's Law), unless its governing body has passed a resolution in compliance with W&I section 5349.
- B. County either individually or pursuant to its memorandum of understanding with a group of Counties to which County has joined for participation in Laura's Law, must:
  - 1) Maintain and provide data to DHCS regarding the services County provides under Laura's Law. (W&I § 5348.) The report must include an evaluation of the effectiveness of the strategies employed by each program in reducing homelessness and hospitalization of persons in the program and in reducing involvement with local law enforcement by persons in the program. County must maintain and include in the report to DHCS all of the information enumerated in W&I section 5348(d).
  - 2) Pay for the provision of services under W&I sections 5347 and 5348 using funds distributed to the counties from the Mental Health Subaccount, the Mental Health Equity Subaccount, and the Vehicle License Collection Account of the Local Revenue Fund, funds from the Mental Health Account and the Behavioral Health Subaccount within the Support Services Account of the Local Revenue Fund 2011, funds from the Behavioral Health Services Fund when included in County plans pursuant to W&I sections 5847 or 5963.02 and any other funds from which the Controller makes distributions to the counties for those purposes. (W&I § 5349.)

## **2.4 Projects For Assistance In Transition From Homelessness Program**

### **2.4.1 Overview**

- A. Pursuant to Title 42 of the United States Code (USC), sections 290cc-21 through 290cc-35, inclusive, the State of California has been awarded federal homeless funds through the federal McKinney Projects for Assistance in Transition from Homelessness (PATH) formula grant.
- B. The PATH grant funds community-based outreach, mental health and substance abuse referral/treatment, case management and other support services, as well as a limited set of housing services for the homeless mentally ill.

### **2.4.2 Application for Funds and Compliance with Requirements**

- A. County must submit its Request for Application (RFA) responses and required documentation specified in DHCS' RFA to receive PATH funds. County must complete its RFA responses in accordance with the instructions, enclosures and attachments distributed annually from DHCS by email.
- B. If County applied for and DHCS approved its request to receive PATH grant funds, the following documents are incorporated by reference in this Contract and County must comply with all applicable provisions:
  - 1) The Notice of Funding Opportunity (NOFO) issued by Substance Abuse and Mental Health Services Administration (SAMHSA) for the PATH program;
  - 2) The State's approved application to SAMHSA for PATH funding;
  - 3) The federal Notice of Award issued to DHCS;
  - 4) DHCS's RFA;
  - 5) County's RFA responses, including the proposed scope of work and budget details.

### **2.4.3 Federal Authorities**

The PATH grant is a federal award within the meaning of Title 2 Code of Federal Regulations (CFR) parts 200 and 300. County's receipt of PATH funds is a subaward to County. County is a subrecipient and subject to all applicable requirements in 2 CFR parts 200 and 300, including, but not limited to, the County requirement to have a single audit performed for PATH funds in accordance with the audit requirements therein.

## **2.5 Community Mental Health Services Block Grant**

### 2.5.1 Overview

- A. Pursuant to Title 42 USC section 300x *et seq.*, the State of California has been awarded the federal Community Mental Health Services Block Grant funds, known as Mental Health Block Grant (MHBG).
- B. County mental health agencies utilize MHBG funding to provide a broad array of mental health services within their mental health system of care programs. These programs provide services to the following target populations: children and youth with serious emotional disturbances and adults and older adults with serious mental illnesses.

### 2.6 Application for Funds and Compliance with Requirements

- A. County must submit its RFA responses and required documentation specified in DHCS' RFA to receive MHBG funding. County must complete its RFA responses in accordance with the instructions, enclosures and attachments.
- B. If County applied for and DHCS approved its request to receive MHBG grant funds, the following documents are incorporated by reference in this Contract and County must comply with all applicable provisions:
  - 1) The NOFO issued by SAMHSA for the MHBG program;
  - 2) The State's approved application to SAMHSA for MHBG funding;
  - 3) The federal Notice of Award issued to DHCS;
  - 4) DHCS's RFA;
  - 5) County's RFA responses, including the proposed scope of work and budget details.

#### 2.6.1 Federal Authorities

- A. The MHBG grant is a federal award within the meaning of 2 CFR parts 200 and 300. County's receipt of MHBG funds is a subaward to County. County is a subrecipient and subject to all applicable requirements in 2 CFR parts 200 and 300, and 45 CFR part 96 including, but not limited to, the County requirement to have a single audit performed for MHBG funds in accordance with the audit requirements therein.
- B. MHBG Funding must not be used to supplant existing resources. County expenditure of MHBG Funds are subject to State and federal oversight, including on-sight program performance reviews and federal audits. (42 USC § 300x-4(b); 42 CFR § 200.503.)

## **2.7 Substance Use Prevention, Treatment, and Recovery Services Block Grant**

### **2.7.1 Overview**

- A. Pursuant to Title 42 USC section 300x *et seq.*, the State of California has been awarded the federal Substance Use Prevention, Treatment, and Recovery Services Block Grant (SUBG).
- B. County Alcohol and Other Drug Programs utilize SUBG funding to provide a broad array of alcohol and other drug treatment and prevention services within their system of care programs.

### **2.7.2 Application for Funds and Compliance with Requirements**

- A. County must submit its RFA responses and required documentation specified in DHCS' RFA to receive SUBG funding. County must complete its RFA responses in accordance with the instructions, enclosures and attachments.
- B. If County applied for, and DHCS approved its request to receive SUBG funds, the following documents are incorporated by reference in this Contract and County must comply with all applicable provisions:
  - 1) The NOFO issued by SAMHSA for the SUBG program;
  - 2) The State's approved application to SAMHSA for SUBG funding;
  - 3) The federal Notice of Award issued to DHCS;
  - 4) DHCS's RFA; and
  - 5) County's RFA responses, including the proposed scope of work and budget details.

### **2.7.3 Federal Authorities**

- A. The SUBG is a federal award within the meaning of 2 CFR parts 200 and 300. County's receipt of SUBG funds is a subaward to County. County is a subrecipient and subject to all applicable requirements in 2 CFR parts 200 and 300, and Title 45 CFR part 96, including, but not limited to, the County requirement to have a single audit performed for SUBG funds in accordance with the audit requirements therein.
- B. SUBG Funding must not be used to supplant existing resources. County expenditure of SUBG Funds are subject to State and federal oversight, including on-sight program performance reviews and federal audits. (45 CFR § 96.134(a), 42 CFR § 200.503.)

## **2.8 Crisis Counseling Assistance and Training Program**

### **2.8.1 Overview**

- A. Pursuant to Title 42 USC section 5183, and upon the issuance of a Presidential declaration of a major disaster, the State of California may be awarded Federal Emergency Management Agency (FEMA) funding for the Crisis Counseling Assistance and Training Program (CCP) pursuant to 44 CFR section 206.171.
- B. The CCP supports short-term interventions that involve assisting disaster survivors in understanding their current situation and reactions, mitigating stress, developing coping strategies, providing emotional support, and encouraging linkages with other individuals and agencies that help survivors in their recovery process. These funds are used to provide services to all individuals affected during a disaster.

### **2.8.2 Request for Funds and Compliance with Requirements**

- A. Participation in the CCP is optional.
- B. If County participates in the CCP, it must comply with all applicable federal and State requirements, including:
  - 1) FEMA or SAMHSA approved funding application and budget;
  - 2) Applicable requirements in the Notice of Award (from FEMA or SAMHSA) to the State, including special and standard program conditions or terms, supplemental grant information, and the federal Health and Human Services Grants Policy Statement; and
  - 3) 44 CFR section 206.171, 42 CFR part 38, and FEMA or SAMHSA CCP secondary guidance.

### **2.8.3 Federal Authorities**

- A. The CCP is a federal award within the meaning of 2 CFR part 200. County's receipt of CCP funding is a subaward to County. County is a subrecipient and subject to all applicable requirements in 2 CFR part 200 and 44 CFR section 206.207(c), including, but not limited to, the County requirement to have a single audit performed for CCP funds in accordance with the audit requirements therein.
- B. CCP Funding must not be used to supplant existing resources. County expenditure of CCP Funds are subject to State and federal oversight, including on-sight program performance reviews and federal audits. (44 CFR § 206.171(k), 42 CFR § 38.9.)

- C. For reference, FEMA Crisis Counseling Assistance and Training Program (FEMA secondary guidance), is accessible at the following link:  
<https://www.samhsa.gov/technical-assistance/dtac/ccp>.

**Exhibit A, ATTACHMENT II**

**Table of Contents**

**1.0 Additional Terms and Conditions**

- 1.1 Dispute Resolution Process for Projects For Assistance In Transition From Homelessness, Community Mental Health Services Block Grant, and Substance Use Prevention, Treatment, and Recovery Services Block Grant
- 1.2 Welfare and Institutions Code section 5751.7 Waiver
- 1.3 Reporting, Data Submission, and Data Sharing Requirements

**1.1 Dispute Resolution Process for Projects For Assistance In Transition From Homelessness, Community Mental Health Services Block Grant, and Substance Use Prevention, Treatment, and Recovery Services Block Grant**

**1.1.1 Dispute Resolution Process**

- A. Notwithstanding Exhibit D, if a dispute arises between County and DHCS regarding County's compliance with subsection 2.4 (Projects For Assistance In Transition From Homelessness), subsection 2.5 (Community Mental Health Services Block Grant), or subsection 2.6 (Substance Use Prevention, Treatment and Recovery Services Block Grant) of Attachment I, the County must seek resolution using the process outlined in this subsection 1.1.1.D, below.
- B. County must first informally discuss the problem with the DHCS Project Representative listed in subsection 1.1.1.D, below. If County and DHCS are unable to resolve the problem informally, County must mail a written Statement of Dispute, with supporting evidence, to DHCS at the address listed in subsection 1.1.1.D, below. The Statement of Dispute must describe the issues in dispute, the legal authority or other basis for County's position, and the remedy sought.
- C. The Branch Chief of DHCS' Federal Grants Branch will decide the dispute and mail a written decision to the County within twenty (20) working days of receiving the Statement of Dispute from County. The decision will be in writing, and include a statement of the reasons for the decision that addresses each issue raised by County. If applicable, the decision will also indicate any action County must take to comply with the decision. The Branch Chief's decision will be the final administrative determination of DHCS.
- D. Unless otherwise agreed to in writing by DHCS, the Statement of Dispute, supporting documentation, and all correspondence and documents related to the dispute resolution process must be directed to the following:

California Department of Health Care Services  
Community Services Division/Federal Grants Branch  
Attention: Waheeda Sabah  
1501 Capitol Avenue  
P.O. Box Number 997413, Mail Stop 2624  
Sacramento, CA, 95899-7413

## 1.2 Welfare and Institutions Code section 5751.7 Waiver

### 1.2.1 Overview

- A. County must comply with Welfare and Institutions Code (W&I) section 5751.7 and ensure that minors are not admitted into inpatient psychiatric treatment with adults. If this requirement creates undue hardship to County due to inadequate or unavailable alternative resources, County may request a waiver of this requirement. County must submit the waiver request on Exhibit A, Attachment III of this Contract to DHCS.
- B. DHCS must review County's waiver request and provide a written notice of approval or denial of the waiver. If County's waiver request is denied, County must prohibit health facilities from admitting minors into psychiatric treatment with adults.
- C. County must submit the waiver request to DHCS at the time County submits this Contract, signed by County, to DHCS for execution. County must complete Exhibit A, Attachment III and attach it to this Contract.
- D. Execution of this Contract by DHCS will not constitute approval of a waiver submitted pursuant to this section.
- E. Any waiver granted in the prior fiscal year's Contract will be deemed to continue until either party chooses to discontinue it, as specified in Exhibit A, Attachment III. Execution of this Contract will continue independently of the waiver review and approval process.
- F. In unusual or emergency circumstances, when County needs to request waivers after this Contract has been executed, these requests should be e-mailed, with the subject line "Performance Contract: Unusual or Emergency Circumstances", immediately to the contact listed in this subsection 1.2.1.G, below.
- G. County must submit waiver requests for designated facilities by e-mail to:
  - California Department of Health Care Services
  - Licensing and Certification Division
  - Mental Health Licensing and Certification Branch
  - e-mail: [LPSinfo@dhcs.ca.gov](mailto:LPSinfo@dhcs.ca.gov).
- H. Each admission of a minor to a facility that has an approved waiver must be reported to the Local Behavioral Health Director.

### 1.3 Reporting, Data Submission, and Data Sharing Requirements

#### 1.3.1 Data Requirements

- A. County must comply with all data and information submission requirements specified in State and federal law, this Contract, and all applicable DHCS guidance. (W&I §§ 5610(a)(1), 5664(a), 5963.04(a)(2).) Applicable laws include:
  - 1) Title 42 of the United States Code (USC), sections 290cc-21 through 290ee-10 and 300x through 300x-68, inclusive;
  - 2) W&I sections 5000 through 5987; and
  - 3) All corresponding regulations that implement, interpret or make specific, these federal and State laws.
  
- B. County must provide data and information regarding the following programs as required by, and in accordance with, federal and State laws and DHCS guidance:
  - 1) The Behavioral Health Services Act (BHSA), as outlined in Exhibit A, Attachment I, Article 1.0;
  - 2) Projects for Assistance in Transition from Homelessness (PATH), as outlined in Article 2.0, subsection 2.4 of Attachment I;
  - 3) Community Mental Health Services Block Grant (MHBG), as outlined in Article 2.0, subsection 2.5 of Attachment I;
  - 4) Substance Use Prevention, Treatment, and Recovery Services Block Grant (SUBG), as outlined in Article 2.0, subsection 2.6 of Attachment I; and
  - 5) County provision of community behavioral health services provided with 1991 and 2011 realignment funds (other than Medi-Cal).

#### 1.3.2 Reporting Requirements

- A. County must comply with all reporting requirements as specified in DHCS guidance and State and federal law. (W&I §§ 5610(a)(1), 5664(a), 5651(b)(7), 5963.04(e)(3)(A); Health & Safety Code §§ 11754(a), 11755(q)(1).)
  
- B. County must submit complete and accurate information to DHCS, and as applicable to the Behavioral Health Services Oversight and Accountability Commission, including, but not limited, to the following (W&I §§ 5610(a)(1), 5963.04(a)(1)-(2)):
  - 1) Client and Service Information (CSI) System Data, as specified in Title 9 of the California Code of Regulations (CCR) section 3530.10 and according to the specifications set forth in DHCS' CSI Data Dictionary. County must:

- a. Report complete and accurate monthly CSI data to DHCS within 60 calendar days after the end of the month in which services were provided.
  - b. If complete and accurate data are not reported within 60 calendar days, County must be in compliance with an approved plan of correction.
  - c. Make diligent efforts to minimize errors on the CSI error file.
  - d. Correct all errors on the CSI error file.
  - e. Notify DHCS 90 calendar days prior to any change in reporting system or change of automated system vendor.
- 2) Full Service Partnership Performance Outcome data (9 CCR § 3530.30)
  - 3) Consumer Perception Survey (9 CCR § 3530.40)
  - 4) Substance use disorder treatment services data in accordance with W&I section 5891.5(b).
- C. Effective January 1, 2027, County must capture and submit all behavioral health individual service-level (ISL) encounter data to DHCS pursuant to applicable DHCS guidance. (W&I §§ 5610(b), (d), 5664(a).)
- D. In the event that DHCS or County determines that, due to federal or State law changes or business requirements, an amendment is needed of either County's or DHCS' obligations under this contract relating to either DHCS' or County's information needs, both DHCS and County agree to provide notice to the other party as soon as feasible prior to implementation. This notice must include information and comments regarding the anticipated requirements and impacts of the projected changes. DHCS and County agree to meet and discuss the design, development, and costs of the anticipated changes prior to implementation.
- E. County must submit complete, accurate, reasonable, and timely data as mandated by State and federal law and DHCS guidance, and in a form and manner specified by DHCS.
- F. If applicable to a specific federal or State funding source covered by this Contract, County must require each of its subcontractors to submit a fiscal year-end cost report to DHCS no later than December 31 following the close of the fiscal year, in accordance with applicable federal and State laws, regulations, and DHCS guidance.

### 1.3.3 Data Sharing Requirements

- A. County must comply with all data sharing requirements as mandated by and in accordance with applicable federal and State law and applicable Data Exchange Framework Policies and Procedures and DHCS guidance. (W&I §§ 14197.71(d)(1), 14184.102(j).)
- B. County must implement data sharing policies and procedures and adhere to required state and federal care coordination rules and regulations, including bidirectionally sharing the minimum necessary individual data in real time with other counties, Managed Care Plans (MCPs), County-contracted providers, and other delivery systems and partners that support service delivery, care coordination, referrals, closed loop referrals, and care transitions. (W&I § 14197.71(d)(1).)

**Exhibit A, Attachment III**  
Request for Waiver

**Request for Waiver Pursuant To Section 5751.7 of the Welfare and Institutions Code**

\_\_\_\_\_ hereby requests a waiver for the following public or private health facilities pursuant to section 5751.7 of the Welfare and Institutions Code for the term of this contract. These are facilities where minors may be provided psychiatric treatment with nonspecific separate housing arrangements, treatment staff, and treatment programs designed to serve minors. However, no minor shall be admitted for psychiatric treatment into the same treatment ward as an adult receiving treatment who is in the custody of any jailor for a violent crime, is a known registered sex offender, or has a known history of, or exhibits inappropriate sexual or other violent behavior which would present a threat to the physical safety of others.

The request for waiver must include, as an attachment, the following:

1. A description of the hardship to the County/City due to inadequate or unavailable alternative resources that would be caused by compliance with the State policy regarding the provision of psychiatric treatment to minors.
2. The specific treatment protocols and administrative procedures established by the County/City for identifying and providing appropriate treatment to minors admitted with adults.
3. The specific plan and administrative procedures established by the County ensuring that a designated facility admitting both adults and minors will house them in specific and separate housing arrangements.
4. Name, address and telephone number of the facility:
  - Number of the facility's beds designated for involuntary treatment
  - Type of facility, license(s), certification(s) or accreditation(s) held (including licensing, certifying, or accrediting agency and license, certificate, or accreditation number)
  - A copy of the facility's current license, certificate or accreditation and a description of the program, including target population and age range, and genders to be admitted to the designated facility.
5. If applicable, include a copy of the County's approval letter indicating the County has designated a facility to house both minors and adults.

To rescind the waiver, either party shall send a letter to the other party on official letterhead signed by their respective County Behavioral Health Director or his or her designee indicating that the party no longer grants or requests a waiver. If not otherwise specified by the party in the letter to the respective party, the discontinuance shall be effective the date the letter to the party is postmarked and the facility shall no longer be waived as of this date. When DHCS denies or rescinds a waiver issued to a County, the facility and the County Behavioral Health Director or designee shall receive written notification from DHCS, by certified mail or e-mail. The notice shall include the decision, the basis for the decision, and any supporting documentation. DHCS' denial or rescission is the final administrative decision and there is no further review or appeal.

**Exhibit B – Budget Detail Provisions**

**1.0 Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Contract does not appropriate sufficient funds for the program, this Contract will be of no further force and effect. In this event, DHCS will have no liability to pay any funds whatsoever to County or to furnish any other considerations under this Contract and County will not be obligated to perform any provisions of this Contract.
  
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DHCS will have the option to either cancel this Contract with no liability occurring to DHCS, or offer an agreement amendment to County to reflect the reduced amount.

## **Exhibit D Special Terms and Conditions**

The provisions herein apply to this Agreement **unless** the applicable conditions do not exist, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the provisions are removed by reference on the face of this Agreement.

The use of headings or titles throughout this exhibit is for convenience only and will not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" will also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Health Care Services", "California Department of Health Services", "Department of Health Care Services", "Department of Health Services", "CDHCS", "DHCS", "CDHS", and "DHS" will all have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount; agreement is federally funded, etc.).

**Index of Special Terms and Conditions**

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## 1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the Department of Health Care Services)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action will include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212). Such notices will state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and will post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 Code of Federal Regulations (C.F.R.) Part 60, "Office of the Federal Contract Compliance

Programs, Equal Employment Opportunity, Department of Labor,” and of the rules, regulations, and relevant orders of the Secretary of Labor.

- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,’ and as supplemented by regulation at 41 C.F.R. Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,’ and as supplemented by regulation at 41 C.F.R. Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,’ and as supplemented by regulation at 41 C.F.R. Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. § 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

## 2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from DHCS under this Agreement will, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Human Resources (CalHR), for non-represented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the CalHR rates change during the term of the Agreement, the new rates will apply upon their effective date and no amendment to this Agreement will be necessary. Exceptions to CalHR rates may be approved by DHCS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California will be reimbursed without prior authorization from DHCS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

## 3. Procurement Rules

(Applicable to agreements in which equipment/property, commodities and/or supplies are furnished by DHCS or expenses for said items are reimbursed by DHCS with state or federal funds provided under the Agreement.)

### a. Equipment/Property definitions

Wherever the term equipment and/or property is used, the following definitions will apply:

- 1) **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
- 2) **Minor equipment/property:** A tangible item having a base unit cost of less than \$5,000 with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement.

b. **Government and public entities (including state colleges/universities and auxiliary organizations)**, whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 will also apply, if equipment/property purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment/property and services related to such purchases for performance under this Agreement.

- 1) Equipment/property purchases must not exceed \$50,000 annually.

To secure equipment/property above the annual maximum limit of \$50,000, the Contractor must make arrangements through the appropriate DHCS Program Contract Manager, to have all remaining equipment/property purchased through DHCS' Purchasing Unit. The cost of equipment/property purchased by or through DHCS will be deducted from the funds available in this Agreement. Contractor will submit to the DHCS Program Contract Manager a list of equipment/property specifications for those items that the State must procure. DHCS may pay the vendor directly for such arranged equipment/property purchases and title to the equipment/property will remain with DHCS. The equipment/property will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the DHCS Program Contract Manager, in writing, of an alternate delivery address.

- 2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 will also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.
- 3) Nonprofit organizations and commercial businesses must use a procurement system that meets the following standards:
  - a) Maintain a code or standard of conduct that will govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent will participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
  - b) Procurements must be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
  - c) Procurements must be conducted in a manner that provides for all of the following:
    - i. Avoid purchasing unnecessary or duplicate items.
    - ii. Equipment/property solicitations must be based upon a clear and accurate description of the technical requirements of the goods to be procured.
    - iii. Take positive steps to utilize small and veteran owned businesses.
  - d. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or

desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.

- e. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) must also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

#### **4. Equipment / Property Ownership / Inventory / Disposition**

(Applicable to agreements in which equipment/property is furnished by DHCS and/or when said items are purchased or reimbursed by DHCS with state or federal funds provided under the Agreement.)

- a. Wherever the term equipment and/or property is used in Provision 4, the definitions in Paragraph a of Provision 3 will apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement will be considered state equipment and the property of DHCS.

##### **1) Reporting of Equipment/Property Receipt**

DHCS requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by DHCS or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor must report the

receipt to the DHCS Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor must use a form or format designated by DHCS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with DHCS Funds) does not accompany this Agreement, Contractor must request a copy from the DHCS Program Contract Manager.

## 2) Annual Equipment/Property Inventory

If the Contractor enters into an agreement with a term of more than twelve months, the Contractor must submit an annual inventory of state equipment and/or property to the DHCS Program Contract Manager using a form or format designated by DHCS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of DHCS-Funded Equipment) does not accompany this Agreement, Contractor must request a copy from the DHCS Program Contract Manager. Contractor must:

- a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
  - b) Submit the inventory report to DHCS according to the instructions appearing on the inventory form or issued by the DHCS Program Contract Manager.
  - c) Contact the DHCS Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by either the DHCS Program Contract Manager or DHCS' Asset Management Unit.
- b. Title to State equipment and/or property will not be affected by its incorporation or attachment to any property not owned by the State.
  - c. Unless otherwise stipulated, DHCS will be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
  - d. The Contractor and/or Subcontractor must maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
    - 1) In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor and/or Subcontractor must immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor must promptly submit one copy of the theft report to the DHCS Program Contract Manager.
  - e. Unless otherwise stipulated by the Program funding this Agreement, equipment

and/or property purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, must only be used for performance of this Agreement or another DHCS agreement.

- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor must provide a final inventory report of equipment and/or property to the DHCS Program Contract Manager and must, at that time, query DHCS as to the requirements, including the manner and method, of returning state equipment and/or property to DHCS. Final disposition of equipment and/or property will be at DHCS expense and according to DHCS instructions. Equipment and/or property disposition instructions will be issued by DHCS immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, DHCS may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different DHCS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under this Agreement.)

- 1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor must return such vehicles to DHCS and must deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to DHCS.
- 2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the State of California will be the legal owner of said motor vehicles and the Contractor will be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.
- 3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, must hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator must also hold a State of California Class B driver's license.
- 4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, must provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

### **Automobile Liability Insurance**

- a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, to the Contractor and/or Subcontractor.
- b) The Contractor and/or Subcontractor must, as soon as practical, furnish a copy of the certificate of insurance to the DHCS Program Contract Manager. The certificate of insurance must identify the DHCS contract or agreement number for which the insurance applies.
- c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, will remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to DHCS.
- d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
  - I. The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Care Services).
  - II. The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
  - III. The insurance carrier must notify the California Department of Health Care Services (DHCS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices will contain a reference to each agreement number for which the insurance was obtained.
- f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance

Management. The Contractor will be notified by DHCS, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services will be performed prior to obtaining said approval.

- g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, DHCS may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

## 5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor must obtain at least three bids or justify a sole source award.
  - 1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
  - 2) DHCS may identify the information needed to fulfill this requirement.
  - 3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
    - a) A local governmental entity or the federal government,
    - b) A State college or State university from any State,
    - c) A Joint Powers Authority,
    - d) An auxiliary organization of a California State University or a California community college,
    - e) A foundation organized to support the Board of Governors of the California Community Colleges,
    - f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
    - g) Firms or individuals proposed for use and approved by DHCS' funding program via acceptance of an application or proposal for funding or pre/post contract award negotiations,
    - h) Entities and/or service types identified as exempt from advertising and competitive bidding in [State Contracting Manual Volume 1 Chapter 5 Section 5.80 Subsection B.](#)

- i) Entities whose name and budgeted costs have been submitted to DHCS in response to a competitive Invitation for Bid or Request for Proposal.
- b. Agreements with governmental or public entities and their auxiliaries, or a Joint Powers Authority
  - 1) If the total amount of all subcontracts exceeds twenty-five percent (25%) of the total agreement amount or \$50,000, whichever is less and each subcontract is not with an entity or of a service type described in paragraph a(3) herein, DHCS will:
    - a) Obtain approval from DGS to use said subcontracts, or
    - b) If applicable, obtain a certification from the prime Contractor indicating that each subcontractor was selected pursuant to a competitive bidding process requiring at least three bids from responsible bidders, or
    - c) Obtain attestation from the Secretary of the California Health and Human Services Agency attesting that the selection of the particular subcontractor(s) without competitive bidding was necessary to promote DHCS' program needs and was not done for the purpose of circumventing competitive bidding requirements.
  - 2) When the conditions of b(1) apply, each subcontract that is not with a type of entity or of a service type described in paragraph a(3) herein, must not commence work before DHCS has obtained applicable prior approval to use said subcontractor. DHCS will inform the Contractor when DHCS has obtained appropriate approval to use said subcontractors.
- c. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.
  - 1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor must take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.
  - 2) The requirements specified in Provision 28 entitled, "Use of Disabled Veteran Business Enterprises (DVBEs)" will apply to the use and substitution of DVBE subcontractors.
  - 3) The requirements specified in Provision 30 entitled, "Use of Small Business Subcontractors" will apply to the use and substitution of small business subcontractors.
- d. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers must be confirmed in writing by DHCS.

- e. Contractor must maintain a copy of each subcontract entered into in support of this Agreement and must, upon request by DHCS, make copies available for approval, inspection, or audit.
- f. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
- g. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- h. When entering into a consulting agreement with DHCS, the contract must include detailed criteria and a mandatory progress schedule for the performance of the contract, and must require Contractor to provide a detailed analysis of the costs of performing the contract.
- i. The Contractor must ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
- j. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:  
  
"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- k. Unless otherwise stipulated in writing by DHCS, the Contractor will be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- l. Contractor must, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 18, 19, 20, 32, 37, 38 and/or other numbered provisions herein that are deemed applicable.

## 6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement must be paid by the Contractor to DHCS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHCS under this Agreement.

## 7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor must maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or Subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records must be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that DHCS, DGS, the California State Auditor, or their designated representatives including, but not limited to, the Comptroller General of the United States will have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Government Code (Gov. Code) § 8546.7, Title 2 Code of California Regulations (C.C.R.), § 1896.77 and other applicable State laws.) The Contractor must comply with the above and be aware of the penalties for violations of fraud and for obstruction of an investigation under applicable State laws.
- d. The Contractor and/or Subcontractor must preserve and make available his/her records (1) for a period of six years for all records related to Disabled Veteran Business Enterprise (DVBE) participation (Military and Veterans Code (Mil. & Vet. Code) § 999.55), if this Agreement involves DVBE participation, and three years for all other contract records from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
  - 1) If this Agreement is completely or partially terminated, the records relating to the work terminated must be preserved and made available for a period of three years from the date of any resulting final settlement.
  - 2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other

data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

- f. For agreements with non-profit entities funded in part or whole with federal funds in the amount of \$750,000 or more, the Contractor must, if applicable, comply with the Single Audit Act and the audit requirements set forth in 2 C.F.R. § 200.501 et seq.
- g. For Direct Service Contracts as defined in Health & Saf. Code § 38040 in the amount of \$25,000 or more, the Contract must comply with the audit requirements set forth in Health & Saf. Code § 38040.

## **8. Site Inspection**

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor must provide and must require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations will be performed in such a manner as will not unduly delay the work.

## **9. Federal Contract Funds**

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- d. DHCS has the option to invalidate or cancel the Agreement with 30-days

advance written notice or to amend the Agreement to reflect any reduction in funds.

## **10. Termination**

### **a. For Cause**

The State may terminate this Agreement, in whole or in part, and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the State may proceed with the work in any manner deemed proper by the State. All costs to the State will be deducted from any sum due the Contractor under this Agreement and the balance, if any, will be paid to the Contractor upon demand. If this Agreement is terminated, in whole or in part, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials, related to the terminated portion of the Contract, including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The State will pay contract price for completed deliverables delivered and accepted and items the State requires the Contractor to transfer as described in this paragraph above.

### **b. For Convenience**

The State retains the option to terminate this Agreement, in whole or in part, without cause, at the State's convenience, without penalty, provided that written notice has been delivered to the Contractor at least thirty (30) calendar days prior to such termination date. In the event of termination, in whole or in part, under this paragraph, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials related to the terminated portion of the Contract including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The Contractor will be entitled to compensation upon submission of an invoice and proper proof of claim for the services and products satisfactorily rendered, subject to all payment provisions of the Agreement. Payment is limited to expenses necessarily incurred pursuant to this Agreement up to the date of termination.

## **11. Intellectual Property Rights**

(Applicable to all agreements that may be fund, in whole or part, the creation and development Intellectual Property.)

- a. The State will be the owner of all rights, title, and interest in any and all intellectual property or other products or materials created or developed pursuant to this Agreement, whether or not published, produced, manufactured or distributed. The copyright, patent and/or other intellectual property rights to any and all products created, provided or developed, in whole or part, under this Agreement, whether or not published, produced, manufactured or distributed belongs to the State from the moment of creation.
- b. The State retains all rights to use, reproduce, distribute, or display any products or materials created, provided, developed, or produced under this Agreement and any derivative products based on Agreement products or materials, as well as all other rights, privileges, and remedies granted or reserved to a copyright, patent, service mark or trademark owner under statutory and common law.
- c. Contractor agrees to cooperate with State and to execute any document(s) that may be necessary to give the foregoing provisions full force and effect, including but not limited to, an assignment of trademark, copyright or patent rights. Contractor, subject to reasonable availability, agrees to give testimony and take all further acts necessary to acquire, transfer, maintain, and enforce the State's intellectual property rights and interest.
- d. Contractor agrees to cooperate with the State in assuring the State's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor must require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to the State all rights, title and interest in Intellectual Property conceived, developed, derived from, or reduced to practice by the subcontractor, Contractor or the State and which result from this Agreement or any subcontract.
- e. Contractor agrees not to incorporate into or make the works developed, dependent upon any original works of authorship or Intellectual Property Rights of third parties without first (a) obtaining State's prior written permission, and (b) granting to or obtaining for State, without additional compensation, a nonexclusive, royalty-free, paid-up, irrevocable, perpetual, world-wide license, to use, reproduce, sell, modify, publicly and privately display and distribute, for any purpose whatsoever, any such prior works.
- f. Contractor will retain title to all of its Intellectual Property to the extent such intellectual Property is in existence prior to the effective date of this Agreement. **Unless otherwise specified in the Statement of Work in contracts other than those funded, in part or whole, by federal funds (see paragraph k below)**, Contractor hereby grants to DHCS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in

the Intellectual Property resulting from this Agreement. Proprietary software packages that are provided at established catalog or market prices and sold or leased to the general public will not be subject to this license provision.

- g. In the case of copyrighted materials, all materials distributed under the terms of this Agreement, and any reproductions or derivative works thereof, must include a notice of copyright in a place that can be visually perceived at the direction of the State. This notice must be placed prominently on products or materials and set apart from other matter on the page or medium where it appears. The notice "Copyright" or "©", the year in which the work was first created, and the Department of Health Care Services DHCS", or other appropriate mark as directed by DHCS, must be included on any such products or materials.
- h. Contractor represents and warrants that:
- 1) It is free to enter into and fully perform this Agreement.
  - 2) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
  - 3) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or the State and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any State, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
  - 4) Neither Contractor's performance nor any part of its performance will violate the right of privacy of or constitute a libel or slander against any person or entity.
  - 5) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real property, sites, locations, property or props that may be used or shown.
  - 6) It has not granted and will not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to the State in this Agreement.
  - 7) It has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition,

operation or maintenance of computer software in violation of copyright laws.

- 8) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.
- i. THE STATE MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.
- j. INTELLECTUAL PROPERTY INDEMNITY
  - 1) Contractor must indemnify, defend and hold harmless the State and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of the State's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or the State and which result directly or indirectly from this Agreement. This indemnity obligation will apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. The State reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against the State.
  - 2) Should any Intellectual Property licensed by the Contractor to the State under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve the State's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to the State. The State will have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for the State to continue using the licensed Intellectual Property; or replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, the State will be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in

equity.

- 3) Contractor agrees that damages alone would be inadequate to compensate the State for breach of any term of this Intellectual Property attachment by Contractor. Contractor acknowledges the State would suffer irreparable harm in the event of such breach and agrees the State will be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.
- k. If this Agreement is funded in whole or part by federal funds, the State will retain all Intellectual Property rights, title, and ownership, which result directly or indirectly from the Agreement pursuant to applicable federal law including, but not limited to, 45 C.F.R. § 75.322 and 45 C.F.R. § 95.617, except as provided in 37 C.F.R. Part 401.14. However, the federal government will have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.
- l. The provisions set forth herein will survive any termination or expiration of this Agreement.

## **12. Air or Water Pollution Requirements**

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt by law.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. § 7606), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations.
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 et seq.), as amended, and the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended.

## **13. Prior Approval of Training Seminars, Workshops or Conferences**

Contractor must obtain prior DHCS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor must acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

#### **14. Confidentiality of Information**

- a. The Contractor and its employees, agents, or subcontractors must protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors must not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. The Contractor and its employees, agents, or subcontractors must promptly transmit to the DHCS Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor must not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity will include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f. As deemed applicable by DHCS, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

#### **15. Documents, Publications and Written Reports**

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Gov. Code § 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement must contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

#### **16. Dispute Resolution Process**

- a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance

between the Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.

- 1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor must direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief will render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief will respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
  - 2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor must include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal must be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee will meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee will be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. The decision rendered by the Deputy Director or his/her designee will be the final administrative determination by the Department.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code (Health & Saf. Code) § 100171.
  - c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence will be directed to the DHCS Program Contract Manager.
  - d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor will be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.
  - e. Notwithstanding any dispute, the Contractor shall diligently continue performance of the Contract (including matters subject to dispute to the maximum extent possible).

## 17. Subrecipient Compliance

(Applicable to agreements in which a Subrecipient receives federal funding. This does not apply to Medi-Cal programs.)

Per 2 C.F.R. § 200.93, a Subrecipient is a non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal award. Subrecipients must comply with certain requirements, including without limitation, audit requirements, as set forth in 2 C.F.R. Part 200, as applicable to Subrecipients. Subrecipients may be subject to applicable monitoring activities by DHCS as required in 2 C.F.R. § 200.332.

## 18. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. § 263a (CLIA) and the regulations thereunder.

## 19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 2 C.F.R. Part 180, 2 C.F.R. Part 376.
- b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
  - 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - 2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, obstruction of justice, or the commission of any other offense indicating a lack of business integrity or business honesty that seriously affects its business honesty;
  - 3) Are not presently indicted for or otherwise criminally or civilly charged by a

- governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
- 4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
  - 5) Have not, within a three-year period preceding this application/proposal/agreement, engaged in any of the violations listed under 2 C.F.R. Part 180, Subpart C as supplemented by 2 C.F.R. Part 376.
  - 6) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 C.F.R. part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
  - 7) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor must submit an explanation to the DHCS Program Contract Manager.
  - d. The terms and definitions herein have the meanings set out in 2 C.F.R. Part 180 as supplemented by 2 C.F.R. Part 376.
  - e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this Agreement for cause or default.

## **20. Smoke-Free Workplace Certification**

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

## **21. Drug Free Workplace Act of 1988**

The Federal government implemented the Drug Free Workplace Act of 1988 in an attempt to address the problems of drug abuse on the job. It is a fact that employees who use drugs have less productivity, a lower quality of work, and a higher absenteeism, and are more likely to misappropriate funds or services. From this perspective, the drug abuser may endanger other employees, the public at large, or themselves. Damage to property, whether owned by this entity or not, could result from drug abuse on the job. All these actions might undermine public confidence in the services this entity provides. Therefore, in order to remain a responsible source for government contracts, the following guidelines have been adopted:

- a. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace.
- b. Violators may be terminated or requested to seek counseling from an approved rehabilitation service.
- c. Employees must notify their employer of any conviction of a criminal drug statute no later than five days after such conviction.
- d. Although alcohol is not a controlled substance, it is nonetheless a drug. It is the policy that abuse of this drug will also not be tolerated in the workplace.
- e. Contractors of federal agencies are required to certify that they will provide drug-free workplaces for their employees.

## **22. Covenant Against Contingent Fees**

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, DHCS

will have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

### **23. Payment Withholds**

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, DHCS may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until DHCS receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

### **24. Progress Reports or Meetings**

(Applicable to consultant service agreements and, at DHCS' option, other agreements.)

- a. Contractor shall submit progress reports or attend meetings with state personnel at intervals determined by DHCS to determine if the Contractor is on the right track, whether the project is on schedule, provide communication of interim findings, and afford occasions for airing difficulties or special problems encountered so that remedies can be developed quickly.
- b. At the conclusion of this Agreement and if applicable, Contractor shall hold a final meeting at which Contractor shall present any findings, conclusions, and recommendations. If required by this Agreement, Contractor shall submit a comprehensive final report.

### **25. Performance Evaluation**

- a. For all consultant service agreements of \$5000 or more:
  - 1) The Contractor's performance under this Agreement will be evaluated at the conclusion of the term of this Agreement. The evaluation will include, but not be limited to:
    - a) Whether the contracted work or services were completed as specified in the Agreement and reasons for and amount of any cost overruns.
    - b) Whether the contracted work or services met the quality standards specified in the Agreement.
    - c) Whether the Contractor fulfilled all requirements of the Agreement and if not, in what ways the Contractor did not fulfill the contract.
    - d) Factors outside the control of the Contractor, which caused difficulties in Contractor performance. Factors outside the control of the Contractor will not include a Subcontractor's poor performance.
    - e) Other information the awarding agency may require.

- f) How the Contract results and findings will be utilized to meet the agency goals.
- 2) The evaluation of the Contractor will not be a public record.

b. For all other agreements except grant agreements:

DHCS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation will not be a public record and will remain on file with DHCS. Negative performance evaluations may be considered by DHCS prior to making future contract awards.

## **26. Officials Not to Benefit**

No members of or delegate of Congress or the State Legislature will be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision will not be construed to extend to this Agreement if made with a corporation for its general benefits.

## **27. Prohibited Use of State Funds for Software**

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

## **28. Use of Disabled Veteran's Business Enterprises (DVBE)**

(Applicable to agreements over \$10,000 in which the Contractor committed to achieve DVBE participation. Not applicable to agreements and amendments specifically exempted from DVBE requirements by DHCS.)

- a. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises.
- b. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting, or amending a subject agreement, are incorporated herein and made a part of this Agreement by this reference.
- c. Contractor agrees to use the proposed DVBEs, as identified in previously submitted DVBE participation attachments. Contractor understands and agrees to comply with the requirements set forth in Mil. & Vet. Code § 999 et seq. in that should award of this Contract be based on part on its commitment to use the DVBE subcontractor(s) identified in its bid or offer, per Mil. & Vet. Code § 999.5(g), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by both DHCS and the DGS prior to the commencement of any work by the proposed subcontractor. Changes to the

scope of work that impact the DVBE subcontractor(s) identified in the bid or offer and approved DVBE substitutions will be documented by contract amendment.

- d. Requests for DVBE subcontractor substitution must include:
  - 1) A written explanation of the reason for the DVBE substitution.
  - 2) A written description of the business enterprise that will be substituted, including its DVBE certification status and contact information.
  - 3) A written description of the work to be performed by the substituted DVBE subcontractor and an identification of the percentage share/dollar amount of the overall contract that the substituted subcontractor will perform.
  - 4) One or more of the permissible justifications for substituting a DVBE subcontractor as found in 2 C.C.R. § 1896.73(g).
- e. Failure of the Contractor to seek substitution and adhere to the DVBE participation level identified in the bid or offer may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in Mil. & Vet. Code § 999.9 and other applicable State laws.
- f. Upon completion of this Contract, DHCS requires the Contractor to certify using the Prime Contractor's Certification – DVBE Subcontracting Report (STD 817), all of the following:
  - 1) The total amount the prime Contractor received under the Agreement;
  - 2) The name, address, Contract number and certification ID Number of the DVBE(s) that participated in the performance of this Contract;
  - 3) The amount and percentage of work the prime Contractor committed to provide to one or more DVBE(s) under the requirements of the Contract and the total payment each DVBE received from the prime Contractor;
  - 4) That all payments under the Contract have been made to the DVBE(s); and
  - 5) The actual percentage of DVBE participation that was achieved. Upon request, the prime Contractor must provide proof of payment for the work.
- g. If for this Contract the Contractor made a commitment to achieve the DVBE participation goal, the Department will withhold \$10,000 from the final payment, or the full payment if less than \$10,000, until the Contractor complies with the certification requirements above. A Contractor that fails to comply with the certification requirement must, after written notice, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of written notice, the prime Contractor refuses to comply with the certification requirements, DHCS will permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. (Mil. & Vet. Code § 999.7.)

- h. A person or entity that knowingly provides false information will be subject to a civil penalty for each violation. (Mil. & Vet. Code § 999.5(d); Govt. Code § 14841.)
- i. Contractor agrees to comply with the rules, regulations, ordinances, and statutes that apply to the DVBE program as defined in § 999 of the Mil. & Vet. Code, including, but not limited to, the requirements of § 999.5(d).

## **29. Use of Small, Minority Owned and Women's Businesses**

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts must be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors must take all of the following steps to further this goal.

- a. Ensure that small businesses, minority-owned firms and women's business enterprises are used to the fullest extent practicable.
- b. Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms and women's business enterprises.
- c. Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- d. Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- e. Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

## **30. Use of Small Business Subcontractors**

(Only applicable to agreements awarded in part due to the granting of small business preference where the Contractor committed to use small business subcontractors for at least 25% of the initial contract cost or amount bid.)

- a. All Small Business Preference Request attachments and Small Business Subcontractor/Supplier Acknowledgment attachments, however labeled, completed as a condition of bidding, are incorporated herein, and made a part of this Agreement by this reference.
- b. Contractor agrees to use each small business subcontractor/supplier, as

identified in previously submitted Small Business Preference Request attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by DHCS, in writing (including email or fax), prior to using a proposed substitute subcontractor.

- c. Requests for substitution must be approved by the funding program and must include, at a minimum:
  - 1) An explanation of the reason for the substitution.
  - 2) A written description of the business enterprise that will be substituted, including its small business certification status and contact information.
  - 3) If substitution of an alternate small business does not occur, include a written justification and description of the steps taken to try to acquire a new small business and how that portion of the Contract will be fulfilled.
  - 4) A written description of the work to be performed by the substituted subcontractor identified by both task (if applicable) and dollar amount or percentage of the overall Contract that the substituted subcontractor will perform. The substituted business, if approved, must perform a commercially useful function in the Contract pursuant to 2 C.C.R. § 1896.15.
- d. DHCS may consent to the substitution if allowed by applicable State laws.
- e. Prior to the approval of the prime contractor's request for the substitution, the funding program will give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request to substitute. The notice will be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been so notified will have five (5) working days after the receipt of the notice to submit written objections to the substitution to the funding program. Failure to file these written objections will constitute the listed subcontractor's consent to the substitution. If written objections are filed, DHCS will give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by DHCS on the prime contractor's request for substitution.
- f. Failure of the Contractor to subcontract with the small businesses listed in its bid or proposal to DHCS, or failure to follow applicable substitution rules and regulations will be grounds for DGS to impose sanctions pursuant to Gov. Code § 14842.5 and 2 C.C.R. § 1896.92. In the event such sanction are to be imposed, the Contractor be notified in writing and entitled to a hearing pursuant to Gov. Code § 14842. and 2 C.C.R. § 1896.18 and § 1896.20.
- g. If requested by DHCS, Contractor agrees to provide documentation/verification, in a form agreed to by DHCS, that small business subcontractor usage under this Agreement complies with the commitments specified during the contractor selection process.

### **31. Alien Ineligibility Certification**

(Applicable to sole proprietors entering into federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. § 1601, et seq.)

### **32. Union Organizing**

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Gov. Code §§ 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee must, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee must provide those records to the Attorney General upon request.

### **33. Contract Uniformity (Fringe Benefit Allowability)**

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with § 100525) of Chapter 3 of Part 1 of Division 101 of the Health & Saf. Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
  - 1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
  - 2) Director's and executive committee member's fees.

- 3) Incentive awards and/or bonus incentive pay.
  - 4) Allowances for off-site pay.
  - 5) Location allowances.
  - 6) Hardship pay.
  - 7) Cost-of-living differentials.
- c. Specific allowable fringe benefits include:
- 1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
- 1) Be necessary and reasonable for the performance of the Agreement.
  - 2) Be determined in accordance with generally accepted accounting principles.
  - 3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits must be at actual cost.
- f. Earned/Accrued Compensation
- 1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
  - 2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
  - 3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

### **34. Suspension or Stop Work Notification**

- a. DHCS may, at any time, issue a notice to suspend performance or stop work under this Agreement. The initial notification may be a verbal or written directive issued by the funding Program's Contract Manager. Upon receipt of said notice, the Contractor is to suspend and/or stop all, or any part, of the work called for by this Agreement.
- b. Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within 30 working days of the verbal notification. The suspension or stop work notification will remain in effect until further written notice is received from DHCS. The resumption of work (in whole or part) will be at DHCS' discretion and upon receipt of written confirmation.
  - 1) Upon receipt of a suspension or stop work notification, the Contractor must immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.
  - 2) Within 90 days of the issuance of a suspension or stop work notification, DHCS will either:

- a) Cancel, extend, or modify the suspension or stop work notification; or
- b) Terminate the Agreement as provided for in the Cancellation / Termination clause of the Agreement.
- c. If a suspension or stop work notification issued under this clause is canceled or the period of suspension or any extension thereof is modified or expires, the Contractor may resume work only upon written concurrence of funding Program's Contract Manager.
- d. If the suspension or stop work notification is canceled and the Agreement resumes, changes to the services, deliverables, performance dates, and/or contract terms resulting from the suspension or stop work notification will require an amendment to the Agreement.
- e. If a suspension or stop work notification is not canceled and the Agreement is canceled or terminated pursuant to the provision entitled Cancellation / Termination, DHCS will allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.
- f. DHCS will not be liable to the Contractor for loss of profits because of any suspension or stop work notification issued under this clause.

### **35. Public Communications**

"Electronic and printed documents developed and produced, for public communications must follow the following requirements to comply with Section 508 of the Rehabilitation Act and the American with Disabilities Act:

- a. Ensure visual-impaired, hearing-impaired and other special needs audiences are provided material information in formats that provide the most assistance in making informed choices."

### **36. Legal Services Contract Requirements**

(Applicable only to agreements involving the performance of legal services.)

The Contractor must:

- a. Adhere to legal cost and billing guidelines designated by DHCS.
- b. Adhere to litigation plans designated by DHCS.
- c. Adhere to case phasing of activities designated by DHCS.
- d. Submit and adhere to legal budgets as designated by DHCS.
- e. Maintain legal malpractice insurance in an amount not less than the amount designated by DHCS. Said amount must be indicated in a separate letter to the Contractor.

- f. Submit to legal bill audits and law firm audits if requested by DHCS. Such audits may be conducted by State employees or its designees or by any legal cost control providers retained by DHCS for such purpose.
- g. Applicable only to legal agreements of \$50,000 or more:

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

### **37. Compliance with Statutes and Regulations**

- a. The Contractor must comply with all California and federal law, regulations, and published guidelines, to the extent that these authorities contain requirements applicable to Contractor's performance under the Agreement. This includes any changes to the applicable laws, regulations, and/or published guidelines that arise after the execution of this Agreement.
- b. For federally funded agreements, these authorities include, but are not limited to, 2 C.F.R. Part 200, subpart F, Appendix II; 42 C.F.R. Part 431, subpart F; 42 C.F.R. Part 433, subpart D; 42 C.F.R. Part 434; 45 C.F.R. Part 75, subpart D; and 45 C.F.R. Part 95, subpart F. To the extent applicable under federal law, this Agreement will incorporate the contractual provisions in these federal regulations and they will supersede any conflicting provisions in this Agreement.

### **38. Lobbying Restrictions and Disclosure Certification**

(Applicable to federally funded agreements in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

- a. Certification and Disclosure Requirements
  - 1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, must file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
  - 2) Each recipient must file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that

contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.

- 3) Each recipient must file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
  - a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
  - b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
  - c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- 4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant must file a certification, and a disclosure form, if required, to the next tier above.
- 5) All disclosure forms (but not certifications) must be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person must forward all disclosure forms to DHCS Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

**Attachment 1  
CERTIFICATION REGARDING LOBBYING**

The recipient certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned must complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" (Attachment 2) in accordance with its instructions.
3. The recipient must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By signing or otherwise accepting the Agreement, the recipient certifies and files this Attachment 1. **CERTIFICATION REGARDING LOBBYING**, as required by Section 1352, Title 31, U.S.C., unless the conditions stated in paragraph 2 above exist. In such case, the awardee/contractor must complete and sign Attachment 2. **CERTIFICATION REGARDING LOBBYING and returning it to the Department of Health Care Services.**

**Attachment 2  
 CERTIFICATION REGARDING LOBBYING**

Approved by OMB (0348-0046)  
 Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
 (See reverse for public burden disclosure)

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                            |                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. Type of Federal Action:</b><br>_ a. contract<br>_ b. grant<br>_ c. cooperative agreement<br>_ d. loan<br>_ e. loan guarantee<br>_ f. loan insurance                                                                                                                                                                                                                                                                                                                                                                   | <b>2. Status of Federal Action:</b><br>_ a. bid/offer/application<br>_ b. initial award<br>_ c. post-award                                                 | <b>3. Report Type:</b><br>_ a. initial filing<br>_ b. material change<br>For Material Change Only:<br>Year _____ quarter _____<br>date of last report _____. |
| <b>4. Name and Address of Reporting Entity:</b><br><br><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee<br>Tier ____, if known:<br><br>Congressional District, If known:                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                            | <b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b><br><br><br><br>Congressional District, If known:                      |
| <b>6. Federal Department/Agency</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>7. Federal Program Name/Description:</b><br><br><br>CDFA Number, if applicable: _____                                                                   |                                                                                                                                                              |
| <b>8. Federal Action Number, if known:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>9. Award Amount, if known:</b>                                                                                                                          |                                                                                                                                                              |
| <b>10.a. Name and Address of Lobbying Registrant<br/>                 (If individual, last name, first name, MI):</b>                                                                                                                                                                                                                                                                                                                                                                                                       | <b>b. Individuals Performing Services<br/>                 (including address if different from 10a.<br/>                 (Last name, First name, MI):</b> |                                                                                                                                                              |
| <b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person that fails to file the required disclosure shall be subject to a not more than \$100,000 for each such failure.</b> |                                                                                                                                                            |                                                                                                                                                              |
| Signature:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                            |                                                                                                                                                              |
| Print Name:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                            |                                                                                                                                                              |
| Title:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                            |                                                                                                                                                              |
| Telephone Number:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                            |                                                                                                                                                              |
| Date:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                            |                                                                                                                                                              |
| <b>Federal Use Only</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Authorized for Local Reproduction<br>Standard Form-LLL (Rev. 7-97)                                                                                         |                                                                                                                                                              |

## **INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grant.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**Exhibit E**  
Additional Provisions

**1. Amendment Process**

- A. This provision is in addition to provision 2 of Exhibit C, General Terms and Conditions (GTC 02/2025).
- B. Should either party, during the term of this Agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments must be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes must be made through the State's official agreement amendment process, unless otherwise stipulated within this Agreement. No amendment will be considered binding on either party until it is formally approved by both parties and the Department of General Services (DGS), the Centers for Medicare and Medicaid (CMS), or any other applicable regulatory agencies, if such approval(s) are required.

**2. Termination for Convenience**

- A. This provision replaces and supersedes only Provision 10(b) Termination for Convenience in Exhibit D. **Note:** Provision 10(a) Termination for Cause in Exhibit D remains in force as is.
- B. This agreement may be terminated, in whole or in part, without cause, and without penalty, by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification must state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements. Upon receipt of a notice of termination or cancellation from DHCS, Contractor must take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
- C. In the event of termination, in whole or in part, under this paragraph, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials related to the terminated portion of the Contract including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims.

**Exhibit E**  
Additional Provisions

- D. The Contractor will be entitled to compensation upon submission of an invoice and proper proof of claim for the services and products satisfactorily rendered, subject to all payment provisions of the Agreement. Payment is limited to expenses necessarily incurred pursuant to this Agreement up to the date of termination.

**3. Insurance Requirements**

Contractor must comply with the following insurance requirements:

**A. General Provisions Applying to All Policies**

**1. Coverage Term**

Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least thirty (30) days prior to the expiration of this insurance. Any new insurance must still comply to the original terms of the contract.

**2. Policy Cancellation or Termination & Notice of Non-Renewal**

Contractor is responsible to notify the State within thirty (30) days of any cancellation, non-renewal or material change that affects required insurance coverage. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.

**3. Deductible & Other Costs**

Contractor is responsible for any deductible or self-insured retention contained within their insurance program, or any premiums or assessments.

**4. Primary Clause**

Any required insurance contained in this contract must be primary, and not excess or contributory, to any other insurance carried by the State.

**5. Insurance Carrier Required Rating**

All insurance companies must carry an A rating or better. If the Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.

**Exhibit E**  
Additional Provisions

6. Endorsements

Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

7. Inadequate Insurance

Inadequate or lack of insurance does not negate the Contractor's obligations under the contract.

8. Subcontractors

If Contractor has identified subcontractors for the work/services identified in the scope of work, the Contractor must include all subcontractors as insureds under Contractor's insurance or supply evidence of subcontractor's insurance to the State equal to policies, coverages and limits required of Contractor.

9. Certificate of Insurance

The Contractor shall furnish a Certificate of Insurance for in complete compliance with the terms of the applicable insurance requirements in this provision (i.e., coverage type; dollar limit per occurrence; cancellation requires notification to DHCS at least thirty (30) days in advance; and the State of California, its officers, agents, and employees are included as additional insureds with respect to work performed for the State of California under this Agreement).

B. Commercial General Liability

Contractor and any subcontractors must maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limits must apply separately to this project/location, or the general aggregate limit must be twice the required occurrence limit. If the aggregate applies "per project/location" it must so state on the certificate. The policy must include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance must apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must be endorsed to include the State of California, its officers, agents and employees as additional insured with respect to work performed under the

**Exhibit E**  
Additional Provisions

contract. The additional insured endorsement must be provided with the certificate of insurance.

**C. Automobile Liability**

Contractor must maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance must cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. The policy must be endorsed to include the State of California, its officers, agents and employees as additional insured with respect to work performed under the contract. The additional insured endorsement must be provided with the certificate of insurance.

**D. Workers Compensation and Employers Liability**

Contractor must maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract. Employer's liability limits of \$1,000,000 are required. The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of the State.

**E. Errors and Omissions/Professional Liability**

Contractor shall maintain Errors and Omissions/Profession liability with limits of not less than \$1,000,000 each incident and \$2,000,000 aggregate covering damages caused by negligent, acts or omissions. The policy retro date must be shown on a certificate of insurance and must be before the Contract date, or before the date contract work begins. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after the completion of work.

Contractor must maintain Pollution Liability covering the Contractor's liability for bodily injury, property damage, and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under this agreement. Coverage must be provided for both work performed on site and during transportation as well as proper disposal of hazardous materials. Proof of Pollution during transportation must be provided on an MCS-90 form. Limits of not less than \$1,000,000 per incident, and annual aggregate amount of \$2,000,000 must be provided. The policy must name The State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the

**Exhibit E**  
Additional Provisions

agreement.

F. Cyber Liability

Contractor shall maintain Cyber Liability insurance with limits of not less than \$2,000,000 for each occurrence and an annual aggregate of \$4,000,000 covering claims involving privacy violations, information theft, damage or destruction of electronic information, intentional and/or unintentional release of State and or private information, alteration of electronic information, extortion and network security. The policy must name The State of California, its officers, agents, and employees as additional insured with respect to work performed under the contract.

## **Contractor's Release**

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### **Instructions to Contractor:**

#### **Final Invoice(s)**

Submit one original invoice signed by a person authorized to bind the Contractor. The original invoice may be submitted and signed electronically using an authorized electronic signature in accordance with California State Administrative Manual 1240. The only authorized form of electronic signature is a digital signature that meets requirements under California Government Code 16.5 and California Secretary of State Regulations for Digital Signatures.

#### **Submission of Final Invoice**

Pursuant to contract number \_\_\_\_\_ entered into between the Department of Health Care Services (DHCS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via invoice number(s) \_\_\_\_\_, in the amount(s) of \$ \_\_\_\_\_ and dated \_\_\_\_\_.

If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

#### **Release of all Obligations**

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

#### **Repayments Due to Audit Exceptions / Record Retention**

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

#### **Recycled Product Use Certification**

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post-consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

**Reminder to Return State Equipment/Property (If Applicable)**

(Applies only if equipment was provided by DHCS or purchased with or reimbursed by contract funds)

Unless DHCS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another DHCS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to DHCS, at DHCS' expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

**Patents / Other Issues**

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

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**ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING IT TO THE FINAL INVOICE**

Contractor's Legal Name (as on contract): \_\_\_\_\_

Signature of Contractor or Official Designee: \_\_\_\_\_

Printed Name/Title of Person Signing: \_\_\_\_\_

Date: \_\_\_\_\_

**Distribution:**      Accounting (Original)      Program

### Business Associate Addendum

1. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (HIPAA) and its implementing privacy and security regulations at 45 Code of Federal Regulations, Parts 160 and 164 (collectively, and as used in this Agreement)
2. The term "Agreement" as used in this document refers to and includes both this Business Associate Addendum and the contract to which this Business Associate Agreement is attached as an exhibit, if any.
3. For purposes of this Agreement, the term "Business Associate" shall have the same meaning as set forth in 45 CFR section 160.103.
4. The Department of Health Care Services (DHCS) intends that Business Associate may create, receive, maintain, transmit or aggregate certain information pursuant to the terms of this Agreement, some of which information may constitute Protected Health Information (PHI) and/or confidential information protected by Federal and/or state laws.
  - 4.1 As used in this Agreement and unless otherwise stated, the term "PHI" refers to and includes both "PHI" as defined at 45 CFR section 160.103 and Personal Information (PI) as defined in the Information Practices Act (IPA) at California Civil Code section 1798.3(a). PHI includes information in any form, including paper, oral, and electronic.
  - 4.2 As used in this Agreement, the term "confidential information" refers to information not otherwise defined as PHI in Section 4.1 of this Agreement, but to which state and/or federal privacy and/or security protections apply.
5. Contractor (however named elsewhere in this Agreement) is the Business Associate of DHCS acting on DHCS's behalf and provides services or arranges, performs or assists in the performance of functions or activities on behalf of DHCS, and may create, receive, maintain, transmit, aggregate, use or disclose PHI (collectively, "use or disclose PHI") in order to fulfill Business Associate's obligations under this Agreement. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
6. The terms used in this Agreement, but not otherwise defined, shall have the same meanings as those terms in HIPAA and/or the IPA. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.
7. **Permitted Uses and Disclosures of PHI by Business Associate.** Except as otherwise indicated in this Agreement, Business Associate may use or disclose PHI, inclusive of de-identified data derived from such PHI, only to perform functions, activities or services specified in this Agreement on behalf of DHCS, provided that such use or disclosure would not violate HIPAA or other applicable laws if done by DHCS.
  - 7.1 **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Agreement, Business Associate may use and disclose PHI if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may disclose PHI for this purpose if the disclosure is required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person. The person shall notify the Business Associate of any instances of which the person is aware that the confidentiality of the information has been breached, unless such person is a treatment provider not acting as a business associate of Business Associate.
  - 7.2 **Nondisclosure.** Business Associate shall not use or disclose PHI or other confidential information other than as permitted or required by this Agreement or as required by law.

## 8. Compliance with Other Applicable Law

- 8.1** To the extent that other state and/or federal laws provide additional, stricter and/or more protective (collectively, more protective) privacy and/or security protections to PHI or other confidential information covered under this Agreement beyond those provided through HIPAA, Business Associate agrees:
- 8.1.1** To comply with the more protective of the privacy and security standards set forth in applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA or are otherwise more favorable to the individuals whose information is concerned; and
- 8.1.2** To treat any violation of such additional and/or more protective standards as a breach or security incident, as appropriate, pursuant to Section 19. of this Agreement.
- 8.2** Examples of laws that provide additional and/or stricter privacy protections to certain types of PHI and/or confidential information, as defined in Section 4. of this Agreement, include, but are not limited to the Information Practices Act, California Civil Code sections 1798-1798.78, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, Welfare and Institutions Code section 5328, and California Health and Safety Code section 11845.5.
- 8.3** If Business Associate is a Qualified Service Organization (QSO) as defined in 42 CFR section 2.11, Business Associate agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) under the definition of QSO in 42 CFR section 2.11.

## 9. Additional Responsibilities of Business Associate

### 9.1 Safeguards and Security.

- 9.1.1** Business Associate shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and other confidential data and comply, where applicable, with subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the information other than as provided for by this Agreement. Such safeguards shall be based on applicable Federal Information Processing Standards (FIPS) Publication 199 protection levels.
- 9.1.2** Business Associate shall, at a minimum, utilize a National Institute of Standards and Technology Special Publication (NIST SP) 800-53 compliant security framework when selecting and implementing its security controls and shall maintain continuous compliance with NIST SP 800-53 as it may be updated from time to time. The current version of NIST SP 800-53, Revision 5, is available online at <https://csrc.nist.gov/publications/detail/sp/800-53/rev-5/final>; updates will be available online at <https://csrc.nist.gov/publications/sp800>.
- 9.1.3** Business Associate shall employ FIPS 140-3 validated encryption of PHI at rest and in motion unless Business Associate determines it is not reasonable and appropriate to do so based upon a risk assessment, and equivalent alternative measures are in place and documented as such. FIPS 140-3 validation can be determined online at <https://csrc.nist.gov/projects/cryptographic-module-validation-program/validated-modules/search>. In addition, Business Associate shall maintain, at a minimum, the most current industry standards for transmission and storage of PHI and other confidential information.
- 9.1.4** Business Associate shall apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other confidential information may be used.
- 9.1.5** Business Associate shall ensure that all members of its workforce with access to PHI and/or other confidential information sign a confidentiality statement prior to access to such data. The statement must be renewed annually.

**9.1.6** Business Associate shall identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 CFR Part 164, Subpart C.

**9.1.7** Remote access to PHI from outside the continental United States, inclusive of remote access to PHI by Business Associate's support staff in identified support centers, is prohibited.

**9.1.8** Business Associate shall only store PHI in a data center physically located within the continental United States.

**9.2 Business Associate's Agent.** Business Associate shall ensure that any agents, subcontractors, subawardees, vendors or others (collectively, "agents") that use or disclose PHI and/or confidential information on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI and/or confidential information.

**10. Mitigation of Harmful Effects.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI and other confidential information in violation of the requirements of this Agreement.

**11. Access to PHI.** Business Associate shall make PHI available in accordance with 45 CFR section 164.524.

**12. Amendment of PHI.** Business Associate shall make PHI available for amendment and incorporate any amendments to protected health information in accordance with 45 CFR section 164.526.

**13. Accounting for Disclosures.** Business Associate shall make available the information required to provide an accounting of disclosures in accordance with 45 CFR section 164.528.

**14. Collaboration.** The parties shall collaborate as appropriate and necessary to ensure compliance with this Agreement, including but not limited to Sections 11 – 13 of this Agreement. The parties acknowledge and agree that neither party intends that this Agreement shall create obligations and/or liabilities that do not otherwise exist as appropriate based on the nature of the work performed and applicable law.

**15. Compliance with DHCS Obligations.** To the extent Business Associate is to carry out an obligation of DHCS under 45 CFR Part 164, Subpart E, comply with the requirements of the subpart that apply to DHCS in the performance of such obligation.

**16. Access to Practices, Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI on behalf of DHCS available to the federal Secretary of Health and Human Services for purposes of determining DHCS' compliance with 45 CFR Part 164, Subpart E.

**17. Return or Destroy PHI on Termination; Survival.** At termination of this Agreement, if feasible, Business Associate shall return or destroy all PHI and other confidential information received from, or created or received by Business Associate on behalf of, DHCS that Business Associate still maintains in any form and retain no copies of such information. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. If such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

**18. Special Provision for SSA Data.** If Business Associate receives data from or on behalf of DHCS that was verified by or provided by the Social Security Administration (SSA data) and is subject to an agreement between DHCS and SSA, Business Associate shall provide, upon request by DHCS, a list of all employees and agents and employees who have access to such data, including employees and agents of its agents, to DHCS.

**19. Breaches and Security Incidents.** Business Associate shall implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and take the following steps:

**19.1 Notice to DHCS.**

**19.1.1** Business Associate shall notify DHCS **immediately** upon the discovery of a suspected breach or security incident that involves SSA data. This notification shall be provided via the DHCS Incident Reporting Portal upon discovery of the breach. If Business Associate is unable to provide notification via the DHCS Incident Reporting Portal, then Business Associate shall provide notice by email or telephone to DHCS.

**19.1.2** Business Associate shall notify DHCS **within 24** hours via the online DHCS Incident Reporting Portal (or by email or telephone if Business Associate is unable to use the DHCS Incident Reporting Portal) of the discovery of the following, unless attributable to a treatment provider that is not acting as a business associate of Business Associate:

**19.1.2.1** Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;

**19.1.2.2** Any suspected security incident which risks unauthorized access to PHI and/or other confidential information;

**19.1.2.3** Any intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement; or

**19.1.2.4** Potential loss of confidential information affecting this Agreement.

**19.1.3** Notice submitted to the DHCS Incident Reporting Portal will be sent to the DHCS Program Contract Manager (as applicable), the DHCS Privacy Office, and the DHCS Information Security Office. If providing notice to DHCS via email, use the DHCS contact information at Section 19.6 below (collectively, "DHCS Contacts").

Notice shall be made using the DHCS Incident Reporting Portal via the link on the DHCS Data Privacy Website online at

<https://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx>

Notice via email shall be made using the current DHCS "Privacy Incident Reporting Form" and shall include all information known at the time the incident is reported. The form is available online at

<https://www.dhcs.ca.gov/formsandpubs/laws/priv/Documents/Privacy-Incident-Report-PIR.pdf>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI, Business Associate shall take:

**19.1.3.1** Prompt action to mitigate any risks or damages involved with the security incident or breach; and

**19.1.3.2** Any action pertaining to such unauthorized disclosure required by applicable Federal and State law.

**19.2 Investigation.** Business Associate shall immediately investigate such security incident or breach.

**19.3 Complete Report.** Business Associate shall provide a complete report of the investigation to DHCS within ten (10) working days of the discovery of the security incident or breach. This complete report must include any applicable additional information not included in the initial submission. The complete report shall include an assessment of all known factors relevant to a determination of whether a breach occurred under HIPAA and other applicable federal and state laws. The report shall also include a full, detailed corrective action plan, including its implementation date and information on mitigation measures taken to halt and/or contain the improper use or disclosure. If DHCS requests additional information, Business Associate shall make reasonable efforts to provide DHCS with such information. DHCS will review and approve or disapprove Business Associate’s determination of whether a breach occurred, whether the security incident or breach is reportable to the appropriate entities, if individual notifications are required, and Business Associate’s corrective action plan.

**19.3.1** If Business Associate does not submit a complete report within the ten (10) working day timeframe, Business Associate shall request approval from DHCS within the ten (10) working day timeframe of a new submission timeframe for the complete report.

**19.4 Notification of Individuals.** If the cause of a breach is attributable to Business Associate or its agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate shall notify individuals accordingly and shall pay all costs of such notifications, as well as all costs associated with the breach. The notifications shall comply with applicable federal and state law. DHCS shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.

**19.5 Responsibility for Reporting of Breaches to Entities Other than DHCS.** If the cause of a breach of PHI is attributable to Business Associate or its agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate is responsible for all required reporting of the breach as required by applicable federal and state law.

**19.6 DHCS Contact Information.** To contact the above referenced DHCS staff, the Contractor shall initiate contact as indicated here. DHCS reserves the right to make changes to the contact information below by giving written notice to Business Associate. These changes shall not require an amendment to this Agreement.

| DHCS Program Contract Manager                                                                                                                                                                           | DHCS Privacy Office                                                                                                                                                                                                                                     | DHCS Information Security Office                                                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| See the Scope of Work exhibit for Program Contract Manager information. If this Business Associate Agreement is not attached as an exhibit to a contract, contact the DHCS signatory to this Agreement. | Privacy Office<br>c/o: Data Privacy Unit<br>Department of Health Care Services<br>P.O. Box 997413, MS 4722<br>Sacramento, CA 95899-7413<br><br>Email: <a href="mailto:incidents@dhcs.ca.gov">incidents@dhcs.ca.gov</a><br><br>Telephone: (916) 445-4646 | Information Security Office<br>Department of Health Care Services<br>P.O. Box 997413, MS 6400<br>Sacramento, CA 95899-7413<br><br>Email: <a href="mailto:incidents@dhcs.ca.gov">incidents@dhcs.ca.gov</a> |

**20. Responsibility of DHCS.** DHCS agrees to not request the Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.

**21. Audits, Inspection and Enforcement**

**21.1** From time to time, DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of this Agreement and shall certify the same to the DHCS Privacy Officer in writing. Whether or how

DHCS exercises this provision shall not in any respect relieve Business Associate of its responsibility to comply with this Agreement.

**21.2** If Business Associate is the subject of an audit, compliance review, investigation or any proceeding that is related to the performance of its obligations pursuant to this Agreement, or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Business Associate shall promptly notify DHCS unless it is legally prohibited from doing so.

## 22. Termination

**22.1 Termination for Cause.** Upon DHCS' knowledge of a violation of this Agreement by Business Associate, DHCS may in its discretion:

**22.1.1** Provide an opportunity for Business Associate to cure the violation and terminate this Agreement if Business Associate does not do so within the time specified by DHCS; or

**22.1.2** Terminate this Agreement if Business Associate has violated a material term of this Agreement.

**22.2 Judicial or Administrative Proceedings.** DHCS may terminate this Agreement if Business Associate is found to have violated HIPAA, or stipulates or consents to any such conclusion, in any judicial or administrative proceeding.

## 23. Miscellaneous Provisions

**23.1 Disclaimer.** DHCS makes no warranty or representation that compliance by Business Associate with this Agreement will satisfy Business Associate's business needs or compliance obligations. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and other confidential information.

### 23.2. Amendment.

**23.2.1** Any provision of this Agreement which is in conflict with current or future applicable Federal or State laws is hereby amended to conform to the provisions of those laws. Such amendment of this Agreement shall be effective on the effective date of the laws necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

**23.2.2** Failure by Business Associate to take necessary actions required by amendments to this Agreement under Section 23.2.1 shall constitute a material violation of this Agreement.

**23.3 Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and its employees and agents available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by the Business Associate.

**23.4 No Third-Party Beneficiaries.** Nothing in this Agreement is intended to or shall confer, upon any third person any rights or remedies whatsoever.

**23.5 Interpretation.** The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable laws.

**23.6 No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

# Contractor Certification Clauses

CCC 04/2017

## CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

|                                                   |                   |
|---------------------------------------------------|-------------------|
| Contractor/Bidder Firm Name (Printed)             | Federal ID Number |
| City of Berkeley Dept of Health, Housing and Comm | 94-6000507        |

By (Authorized Signature)

Printed Name and Title of Person Signing

|               |                           |
|---------------|---------------------------|
| Date Executed | Executed in the County of |
|               |                           |

## CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,

2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably

required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

8. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

## DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions, and

Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.



Office of the City Manager

**08**CONSENT CALENDAR

April 14, 2026

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: Contract No. 32200185 Amendment: Sonya Dublin Consulting to Provide Evaluation Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager, or designee, to execute an amendment and any subsequent amendments or extensions to Contract No. 32200185 with Sonya Dublin Consulting for evaluation services. The amendment would increase the contract amount by \$62,400, for a total not-to-exceed amount of \$171,600.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the external evaluator is available through Local Lead Agency funding through the California Tobacco Control Program (CTCP) in budget code 157-51-506-559-2053-000-451-612990. The not-to-exceed amount of the contract is currently \$109,200 and the amendment will increase the limit by \$62,400 for a total not-to-exceed amount of \$171,600.

CURRENT SITUATION AND ITS EFFECTS

Through the Health, Housing and Community Services Department's Public Health Division (HHCS/PHD), the City of Berkeley receives grant funding from the California Tobacco Control Program as a Local Lead Agency and is required to contract with an external evaluator as part of the program's contract deliverables.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3504.1 as amended by AB 339. This project does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

BACKGROUND

As a Local Lead Agency receiving funding from the California Control Tobacco Program, HHCS/PHD is required to contract with an external evaluator that is responsible for designing the evaluation plan and providing consultation on the entire scope of work; developing data collection instruments, protocols, and methodology; analyzing data; and preparing evaluation reports. The external evaluator coordinates

with the Tobacco Control Program Director and will execute a variety of evaluation-related tasks.

This service is specialized because Sonya Dublin is an approved evaluator of the California Tobacco Control Program (CTCP), the grant funder of the City of Berkeley Tobacco Prevention Program. She has conducted evaluation services for the City of Berkeley's Tobacco Prevention Program and the California Tobacco Control Program (CTCP) for the past two years and has extensive, intimate knowledge of the program, datasets, and evaluation plan that would provide the necessary continuity in the upcoming funding cycles.

On February 21, 2022, HHCS/PHD entered into Contract No. 32200185 for a total amount not to exceed \$15,600 and for a term from February 21, 2022, to June 30, 2022.

On June 2, 2022, HHCS/PHD, extended the term of the contract to June 30, 2025, and all other aspects of the contract remained the same. On July 26, 2022, the HHCS/PHD amended Contract No. 32200185 with Sonya Dublin Consulting by Resolution No. 70,462-N.S., adding \$93,600 for a contract total amount not to exceed \$109,200 and the term of the contract to June 30, 2025. On April 25, 2025, HHCS/PHD amended Contract No. 32200185 with Sonya Dublin Consulting extending the term of the contract to June 30, 2027, all other aspects of the contract remained the same.

This grant cycle concludes in FY2027. The City of Berkeley will conduct a new RFP process in the new grant cycle, which begins on July 1st, 2027 (FY 2028).

#### 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

Execution of this contract will allow the City of Berkeley's Tobacco Prevention Program to comply with the California Tobacco Control Program's external evaluator requirement as a Local Lead Agency awardee.

#### ALTERNATIVE ACTIONS CONSIDERED

City Council could consider not approving the contract amendment. However, failure to contract with an external evaluator would render the City of Berkeley's Tobacco Prevention Program unable to complete program deliverables and would place the City of Berkeley out of compliance with its contract with the California Tobacco Control Program.

#### CONTACT PERSON

JoAnn Evangelista, Sr. Health Services Program Specialist, HHCS, 510-981-7710

Attachments:  
1: Resolution

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

CONTRACT NO. 32200185 AMENDMENT: SONYA DUBLIN CONSULTING TO  
PROVIDE EVALUATION SERVICES

WHEREAS, the Health, Housing & Community Services Department's Public Health Division Tobacco Prevention Program, as a State funded LLA grantee, fosters collaboration and engagement in grassroots community mobilization activities to support social norm change and education to reduce tobacco use and address the tobacco industry strategies through a comprehensive tobacco control plan; and

WHEREAS, the City of Berkeley entered into Contract No. 32200185 on February 21, 2022, for a total amount not to exceed \$15,600 and for a term from February 21, 2022, to June 30, 2022, and

WHEREAS, the City of Berkeley on June 2, 2022, extended Contract No. 32200185 with Sonya Dublin Consulting extending the term of the contract to June 30, 2025, all other aspects of the contract remained the same, and

WHEREAS, the City of Berkeley on July 26, 2022, amended Contract No. 32200185 with Sonya Dublin Consulting by Resolution No. 70,462-N.S., adding \$93,600 for a contract total amount not to exceed \$109,200 and the term of the contract to June 30, 2025, and

WHEREAS, the City of Berkeley on April 25, 2025, extended Contract No. 32200185 with Sonya Dublin Consulting extending the term of the contract to June 30, 2027, all other aspects of the contract remained the same, and

WHEREAS, Local Lead Agency funding is available through the California Tobacco Control Program (CTCP) for Fiscal Year 2023 through Fiscal Year 2027 in budget code 157-51-506-559-2053-000-451-612990 (\$171,600 total).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or designee is authorized to execute an amendment to Contract No. 32200185, and any subsequent amendments or extensions with Sonya Dublin Consulting to provide external evaluation services for the Health, Housing & Community Services Department's Public Health Division Tobacco Prevention Program, adding \$62,400 for a total amount not to exceed \$171,600 through June 30, 2027. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
April 14, 2026

To: Honorable Mayor and Members of the City Council  
From: Paul Buddenhagen, City Manager  
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
Subject: Contracts for On-call Hardscape Installation and Repair Services at Parks, Recreation, and Waterfront Facilities

RECOMMENDATION

Adopt three (3) Resolutions authorizing the City Manager to execute on-call contracts and amendments for hardscape installation and repair services for a period of three years each with the following:

- 1. Redwood Engineering Construction, for an amount not to exceed \$300,000.
- 2. Kerex Engineering, Inc., for an amount not to exceed \$300,000.
- 3. Calico California Constructores, Inc., for an amount not to exceed \$300,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the on-call contracts is available in the FY 2026 budget in the Parks Tax Fund (138) and Marina Fund (608) minor maintenance budgets. Funding for FY 2027 through FY 2029 is subject to appropriation in the Parks Tax and Marina Fund and will be identified as needs arise.

CURRENT SITUATION AND ITS EFFECTS

On-call hardscape installation and repair services are needed from qualified contractors to perform large-scale installation and repair of surfaces in and around park fixtures and buildings, parking lots, docks, retaining walls, sport courts, catwalks, pedestrian bridges, road surfaces, medians, paths, staircases, and other park assets throughout the City.

BACKGROUND

The City contracts with private companies for large-scale hardscape installation and repair services that include concrete, stone, and asphalt surface work, sport court surfaces, pour-in-place for protection in playgrounds, and excavation for park repairs and improvements. On January 20, 2026, the City published a Request for Proposal (RFP) seeking qualified firms or individuals to provide on-call hardscape installation and repair services (Specification No. 26-11775-C). On February 19, 2026, the City received

Statements of Proposals (SOPs) from three (3) separate construction and engineering firms. A panel of City staff reviewed the SOPs and determined that three (3) firms met the criteria described in the RFP.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

These on-call hardscape installation and repair contracts will help the City achieve Strategic Plan Long-term Goal Number 1 to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities. The proper maintenance of City facilities helps extend the life cycle of facilities and reduces the need for reconstruction that is more costly and has more impacts on the environment.

#### RATIONALE FOR RECOMMENDATION

The City has extensive needs for hardscape installation and repair at Parks, Recreation and Waterfront Department facilities throughout the City. After conducting a competitive Request For Proposal (RFP) process, the City has determined that three contractors met the requirements described in the RFP.

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6700

Bruce Pratt, Parks Superintendent, Parks Recreations and Waterfront 981-6632

Walter Vandernald, Senior Building Maintenance Supervisor, Parks, Recreation and Waterfront 981-6727

#### Attachments:

1. Resolution: Redwood Engineering Construction
2. Resolution: Kerex Engineering, Inc.
3. Resolution: Calico California Constructores, Inc.

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

CONTRACT: REDWOOD ENGINEERING CONSTRUCTION

WHEREAS, the City contracts with private companies for large-scale hardscape installation and repair services that include concrete, stone, and asphalt surface work, sport court surfaces, pour-in-place for protection in playgrounds, and excavation for park repairs and improvements; and

WHEREAS, on January 20, 2026, the City published a Request for Proposal (RFP) seeking qualified firms or individuals to provide on-call hardscape installation and repair services; and

WHEREAS, on February 19, 2026, the City received three (3) submissions, which were reviewed and rated; and

WHEREAS, City staff determined that Redwood Engineering Construction met the criteria described in the RFP; and

WHEREAS, the desired hardscape installation and repair service firm will be available on-call over a three-year period for an amount not to exceed \$300,000; and

WHEREAS, funding for the on-call painting and repair contracts is available in the FY 2026 budget in the Parks Tax Fund (138) and Marina Fund (608) minor maintenance budgets. Funding for FY 2027 through FY 2029 is subject to appropriation in the Parks Tax and Marina Fund and will be identified as needs arise.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with Redwood Engineering Construction for on-call hardscape installation and repair services for the three-year contract period of April 30, 2026, through April 30, 2029, in an amount not to exceed \$300,000. A recorded signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: KEREX ENGINEERING, INC.

WHEREAS, the City contracts with private companies for large-scale hardscape installation and repair services that include concrete, stone, and asphalt surface work, sport court surfaces, pour-in-place for protection in playgrounds, and excavation for park repairs and improvements; and

WHEREAS, on January 20, 2026, the City published a Request for Proposal (RFP) seeking qualified firms or individuals to provide on-call hardscape installation and repair services; and

WHEREAS, on February 19, 2026, the City received three (3) submissions, which were reviewed and rated; and

WHEREAS, City staff determined that Kerex Engineering, Inc. met the criteria described in the RFP; and

WHEREAS, the desired hardscape installation and repair service firm will be available on-call over a three-year period for an amount not to exceed \$300,000; and

WHEREAS, funding for the on-call painting and repair contracts is available in the FY 2026 budget in the Parks Tax Fund (138) and Marina Fund (608) minor maintenance budgets. Funding for FY 2027 through FY 2029 is subject to appropriation in the Parks Tax and Marina Fund and will be identified as needs arise.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with Kerex Engineering, Inc. for on-call hardscape installation and repair services for the three-year contract period of April 30, 2026, through April 30, 2029, in an amount not to exceed \$300,000. A recorded signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: CALICO CALIFORNIA CONSTRUCTORES, INC.

WHEREAS, the City contracts with private companies for large-scale hardscape installation and repair services that include concrete, stone, and asphalt surface work, sport court surfaces, pour-in-place for protection in playgrounds, and excavation for park repairs and improvements; and

WHEREAS, on January 20, 2026, the City published a Request for Proposal (RFP) seeking qualified firms or individuals to provide on-call hardscape installation and repair services; and

WHEREAS, on February 19, 2026, the City received three (3) submissions, which were reviewed and rated; and

WHEREAS, City staff determined that Calico California Constructores, Inc. met the criteria described in the RFP; and

WHEREAS, the desired hardscape installation and repair service firm will be available on-call over a three-year period for an amount not to exceed \$300,000; and

WHEREAS, funding for the on-call painting and repair contracts is available in the FY 2026 budget in the Parks Tax Fund (138) and Marina Fund (608) minor maintenance budgets. Funding for FY 2027 through FY 2029 is subject to appropriation in the Parks Tax and Marina Fund and will be identified as needs arise.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with Calico California Constructores, Inc. for on-call hardscape installation and repair services for the three-year contract period of April 30, 2026, through April 30, 2029, in an amount not to exceed \$300,000. A recorded signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
April 14, 2026

To: Honorable Mayor and Members of the City Council  
 From: Paul Buddenhagen, City Manager  
 Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
 Subject: Contracts for On-call Painting and Repair Services at Parks, Recreation, and Waterfront Facilities

RECOMMENDATION

Adopt three (3) Resolutions authorizing the City Manager to execute on-call contracts and any amendments for painting and repair services for a period of three years each with the following:

1. Athen's Painting & Commercial Coatings, Inc, for an amount not to exceed \$300,000;
2. SDM Construction, for an amount not to exceed \$300,000; and
3. Aiden's Quality Painting, Inc., for an amount not to exceed \$300,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the on-call painting and repair contracts is available in the FY 2026 budget in the Parks Tax Fund (138) and Marina Fund (608) minor maintenance budgets. Funding for FY 2027 through FY 2029 is subject to appropriation in the Parks Tax and Marina Fund and will be identified as needs arise.

CURRENT SITUATION AND ITS EFFECTS

On-call painting and repair services are needed from qualified contractors to perform large-scale painting and repair of park fixtures, park buildings, restroom buildings, docks, gates, sport courts, catwalks, pedestrian bridges, signage, road surfaces, utility boxes, and other park assets throughout the City.

BACKGROUND

The City contracts with private companies for large-scale painting and repair services that include pressure washing, dry rot repair, patching and sealing, cleaning and disposing of old painted surfaces, staining, priming, and painting. On January 20, 2026, the City published a Request for Proposal (RFP) seeking qualified firms or individuals to provide on-call painting and repair services (Specification No. 26-11774-C). On February 19, 2026, the City received Statements of Proposals (SOPs) from four (4)

separate painting and construction firms. A panel of City staff reviewed the SOPs and determined that three (3) firms met the criteria described in the RFP.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

These on-call painting and repair contracts will help the City achieve Strategic Plan Long-term Goal Number 1 to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities. The proper maintenance of City facilities helps extend the life cycle of facilities and reduces the need for reconstruction that is more costly and has more impacts on the environment.

RATIONALE FOR RECOMMENDATION

The City has extensive needs for painting and repair at Parks, Recreation and Waterfront Department facilities throughout the City. After conducting a competitive Request For Proposal (RFP) process, the City has determined that three contractors met the requirements described in the RFP.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 981-6700

Bruce Pratt, Parks Superintendent, Parks Recreations and Waterfront 981-6632

Walter Vandernald, Senior Building Maintenance Supervisor, Parks, Recreation and Waterfront 981-6727

Attachments:

1. Resolution: Athen's Painting & Commercial Coatings, Inc.
2. Resolution: SDM Construction
3. Resolution: Aiden's Quality Painting, Inc.

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

CONTRACT: ATHEN'S PAINTING & COMMERCIAL COATINGS, INC.

WHEREAS, the City contracts with private companies for large scale pressure washing, dry rot repair, patching and sealing, cleaning and disposing of old painted surfaces, priming, staining, and painting; and

WHEREAS, on January 20, 2026, the City published a Request for Proposal (RFP) seeking qualified firms or individuals to provide on-call painting and repair services; and

WHEREAS, on February 19, 2026, the City received four (4) submissions, which were reviewed and rated; and

WHEREAS, City staff determined that Athen's Painting & Commercial Coatings, Inc. met the criteria described in the RFP; and

WHEREAS, the desired painting and repair service firm will be available on-call over a three-year period for a not-to-exceed amount of \$300,000; and

WHEREAS, funding for the on-call painting and repair contracts is available in the FY 2026 budget in the Parks Tax Fund (138) and Marina Fund (608) minor maintenance budgets. Funding for FY 2027 through FY 2029 is subject to appropriation in the Parks Tax and Marina Fund and will be identified as needs arise.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with Athen's Painting & Commercial Coatings, Inc. for on-call painting and repair services for the three-year contract period of April 30, 2026, through April 30, 2029, in an amount not to exceed \$300,000. A recorded signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: SDM CONSTRUCTION

WHEREAS, the City contracts with private companies for large scale pressure washing, dry rot repair, patching and sealing, cleaning and disposing of old painted surfaces, priming, staining, and painting; and

WHEREAS, on January 20, 2026, the City published a Request for Proposal (RFP) seeking qualified firms or individuals to provide on-call painting and repair services; and

WHEREAS, on February 19, 2026, the City received four (4) submissions, which were reviewed and rated; and

WHEREAS, City staff determined that SDM Construction met the criteria described in the RFP; and

WHEREAS, the desired painting and repair service firm will be available on-call over a three-year period for a not-to-exceed amount of \$300,000; and

WHEREAS, funding for the on-call painting and repair contracts is available in the FY 2026 budget in the Parks Tax Fund (138) and Marina Fund (608) minor maintenance budgets. Funding for FY 2027 through FY 2029 is subject to appropriation in the Parks Tax and Marina Fund and will be identified as needs arise.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with SDM Construction for on-call painting and repair services for the three-year contract period of April 30, 2026, through April 30, 2029, in an amount not to exceed \$300,000. A recorded signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.

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

CONTRACT: AIDEN'S QUALITY PAINTING, INC.

WHEREAS, the City contracts with private companies for large scale pressure washing, dry rot repair, patching and sealing, cleaning and disposing of old painted surfaces, priming, staining, and painting; and

WHEREAS, on January 20, 2026, the City published a Request for Proposal (RFP) seeking qualified firms or individuals to provide on-call painting and repair services; and

WHEREAS, on February 19, 2026, the City received four (4) submissions, which were reviewed and rated; and

WHEREAS, City staff determined that Aiden's Quality Painting, Inc. met the criteria described in the RFP; and

WHEREAS, the desired painting and repair service firm will be available on-call over a three-year period for a not-to-exceed amount of \$300,000; and

WHEREAS, funding for the on-call painting and repair contracts is available in the FY 2026 budget in the Parks Tax Fund (138) and Marina Fund (608) minor maintenance budgets. Funding for FY 2027 through FY 2029 is subject to appropriation in the Parks Tax and Marina Fund and will be identified as needs arise.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with Aiden's Quality Painting, Inc. for on-call painting and repair services for the three-year contract period of April 30, 2026, through April 30, 2029, in an amount not to exceed \$300,000. A recorded signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR

April 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Wahid Amiri, Interim Director, Department of Public Works

Subject: Contracts: Pavement and Safety Improvement/Program Management Consulting Services for Measure FF-funded Projects

RECOMMENDATION

Adopt eight Resolutions authorizing the City Manager to execute contracts and any amendments with NCE, Pavement Engineering, Inc., Kittleson & Associates, Sanbell, Bureau Veritas, Cordoba Corporation, Alta Planning + Design, Inc. and Mark Thomas for on-call professional services for Measure FF-funded projects for the amounts listed below, each for a period not to exceed three years:

1. NCE for an amount not to exceed \$2,500,000
2. Pavement Engineering, Inc. for an amount not to exceed \$2,500,000
3. Kittleson & Associates for an amount not to exceed \$2,500,000
4. Sanbell for an amount not to exceed \$2,000,000
5. Bureau Veritas for an amount not to exceed \$1,500,000
6. Cordoba Corporation for an amount not to exceed \$1,500,000
7. Alta Planning + Design, Inc. for an amount not to exceed \$1,000,000
8. Mark Thomas for an amount not to exceed \$800,000

SUMMARY

In November 2024, Berkeley voters approved Measure FF, a parcel tax to fund sidewalk and street repairs and improvements. The measure provides dedicated infrastructure funding over a 14-year duration, beginning in Fiscal Year 2026 (July 1, 2025). Measure FF revenues are projected to generate \$15 million per year and can be adjusted by the Council each year for inflation. Based on responses to the request for qualifications released in October 2025, staff recommend executing contracts, not to exceed three years, with eight consulting firms that are best qualified to provide services related to delivering Measure FF-funded projects.

FISCAL IMPACTS OF RECOMMENDATION

Initial funding for these contracts in the amount of \$750,000 is available in the Fiscal Year (FY) 2026 budget in Fund 166 (Measure FF Sidewalk and Street Repairs Parcel Tax). Ongoing funding for these services in FY 2027 and FY 2028 is subject to future budget appropriations of Measure FF revenues.

The not-to-exceed amount for each contract does not correlate to any one existing project. The amounts are intended to reflect potential need within the contract period that would be directly associated with an approved budgeted scope of work. Work performed under these agreements would be managed through City purchase and task order processes, which provides for detailed accounting on a project basis.

#### CURRENT SITUATION AND ITS EFFECTS

A Request for Qualifications (RFQ) was issued October 30, 2025 (Specification No. 26-11765-C), seeking qualified firms or individuals to provide on-call civil engineering planning, design and construction management services for various infrastructure programs and projects related to the Measure FF parcel tax. The work may include design services, pavement rehabilitation, pavement plan public input, accountability reporting, commission meeting support, and Complete Streets and green infrastructure related services that support the implementation of Measure FF funded projects citywide.

On December 2, 2025, the City received ten Statements of Qualifications (SOQs) from firms, which were evaluated by one or more review panels for each specialized service area. In each service area, the following firms (in alphabetical order) received the highest rankings of those evaluated, and after completing reference checks, were determined to be the best qualified to meet the City's needs:

##### Infrastructure/Streets

- Bureau Veritas
- Cordoba Corporation
- Mark Thomas
- NCE
- Pavement Engineering, Inc.

##### Traffic/Transportation

- Alta Planning + Design, Inc.
- Cordoba Corporation
- Kittleson & Associates
- Mark Thomas
- Sanbell

The City does not have the expertise possessed by the firms outlined above nor are their adequate staff resources; therefore third-party support is necessary. This bench of consultants will allow the City to make timely progress on existing work plans and support the acceleration of Measure FF project delivery. Multiple contractor selections in each category ensure that the City will be able to secure competitive pricing among the best qualified contractors for each scope of work.

The services provided support the Strategic Plan goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

Effective January 1, 2026, local agencies are required to satisfy noticing requirements for certain contracts for services that meet the criteria outlined in Government Code Section 3204.1 as amended by AB 339. This project does not meet the criteria in Government Code Section 3504.1 and is exempt from the noticing requirement.

### BACKGROUND

Over the next fourteen years, the Public Works Department is expecting to significantly increase its capital projects output with the implementation projects funded by the voter-approved Measure FF. The Measure is projected to generate approximately \$15 million per year in new funding for street repair, sidewalks and pedestrian path repair, safety improvements for streets, sidewalks, bicycle facilities and pedestrian paths, and other environmental enhancements,

Public Works utilizes civil engineering and transportation consultants to design and manage projects. Particularly in situations where the nature of the work is highly specialized, such as assessment districts, paving, drainage, sanitary sewer, transportation engineering and planning, traffic engineering, green infrastructure design and permitting, construction administration and inspections. On-call contracts provide professional planning, design, engineering, and construction management services on as needed basis, reducing the City's structural overhead.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

These contracts will help ensure successful completion of capital improvement and other projects that advance the City's sustainability goals, including stormwater improvements to reduce flood potential and green infrastructure projects, sanitary sewer projects to minimize risk of Sanitary Sewer Overflows, as well as Complete Streets projects that promote walking, biking and transit use. There are no negative environmental effects of this action.

### RATIONALE FOR RECOMMENDATION

These firms received the highest rankings of the firms evaluated and are the best qualified to meet the City's needs. City staff recommend awarding contracts to these consultants to get the best value for the City, distribute the anticipated workload, and create an alternative source for services. NCE, Pavement Engineering, Inc., Kittleson & Associates, Sanbell, Bureau Veritas, Mark Thomas, Alta Planning + Design, Inc. and Cordoba Corporation have expertise in one or more areas of civil engineering & planning; transportation & safety; and infrastructure.

### ALTERNATIVE ACTIONS CONSIDERED

Council could choose not to move forward with these contracts; however, the progress of implementing Measure FF and its funded improvement projects would be significantly

delayed. Existing staff do not have capacity to deliver the anticipated workload associated with these on-call contracts. The City does not have the expertise or staff resources to design, manage and inspect construction of the number of projects in this program. If these contracts are not awarded, the City will not have the technical resources to deliver Measure FF improvement projects.

CONTACT PERSON

Wahid Amiri, Interim Director of Public Works, Public Works (510) 981-6396

Attachments:

1. Resolution – Contract with NCE
2. Resolution – Contract with Pavement Engineering, Inc.
3. Resolution – Contract with Kittleson & Associates
4. Resolution – Contract with Sanbell
5. Resolution – Contract with Bureau Veritas
6. Resolution – Contract with Mark Thomas
7. Resolution – Contract with Alta Planning + Design, Inc.
8. Resolution – Contract with Cordoba Corporation
9. Bid Abstract

April 14, 2026

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

CONTRACT: NCE CORPORATION FOR ON-CALL PROFESSIONAL SERVICES

WHEREAS, Public Works requires on-call professional services for the implementation of Measure FF-funded projects and programs, and

WHEREAS, initial funding in the amount of \$100,000 is available in the Fiscal Year (FY) 2026 budget in Fund 166 (Measure FF Sidewalk and Street Repairs Parcel Tax). Additional funding for FY 2027 and FY 2028 of each contract is subject to appropriation in the future fiscal years' budget based on the department's needs for professional services, and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, on October 30, 2025, the City issued a Request For Qualifications for Pavement and Safety Improvement/Program Management Consulting Services (Specification No. 26-11765-C) soliciting proposals from qualified firms; and

WHEREAS, on December 2, 2025, ten Statements of Qualifications were received from firms specializing in a variety of professional services necessary to provide on-call civil engineering planning, design and construction management services for various infrastructure programs and projects related to the Measure FF parcel tax; and

WHEREAS, staff reviewed the proposals and determined that NCE is highly qualified to provide infrastructure/streets services.

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 with NCE for on-call professional services for a total contract period of three years in an amount not to exceed \$2,500,000. A record signature copy of said contracts and any amendments to be on file in the Office of the City Clerk.

April 14, 2026

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

CONTRACT: PAVEMENT ENGINEERING, INC. FOR ON-CALL PROFESSIONAL SERVICES

WHEREAS, Public Works requires on-call professional services for the implementation of Measure FF-funded projects and programs, and

WHEREAS, initial funding in the amount of \$100,000 is available in the Fiscal Year (FY) 2026 budget in Fund 166 (Measure FF Sidewalk and Street Repairs Parcel Tax). Additional funding for FY 2027 and FY 2028 of each contract is subject to appropriation in the future fiscal years' budget based on the department's needs for professional services, and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, on October 30, 2025, the City issued a Request For Qualifications for Pavement and Safety Improvement/Program Management Consulting Services (Specification No. 26-11765-C) soliciting proposals from qualified firms; and

WHEREAS, on December 2, 2025, ten Statements of Qualifications were received from firms specializing in a variety of professional services necessary to provide on-call civil engineering planning, design and construction management services for various infrastructure programs and projects related to the Measure FF parcel tax; and

WHEREAS, staff reviewed the proposals and determined that Pavement Engineering, Inc. is highly qualified to provide infrastructure/streets services.

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 with Pavement Engineering, Inc. for on-call professional services for a total contract period of three years in an amount not to exceed \$2,500,000. A record signature copy of said contracts and any amendments to be on file in the Office of the City Clerk.

April 14, 2026

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

CONTRACT: KITTLESON & ASSOCIATES FOR ON-CALL PROFESSIONAL SERVICES

WHEREAS, Public Works requires on-call professional services for the implementation of Measure FF-funded projects and programs, and

WHEREAS, initial funding in the amount of \$100,000 is available in the Fiscal Year (FY) 2026 budget in Fund 166 (Measure FF Sidewalk and Street Repairs Parcel Tax). Additional funding for FY 2027 and FY 2028 of each contract is subject to appropriation in the future fiscal years' budget based on the department's needs for professional services, and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, on October 30, 2025, the City issued a Request For Qualifications for Pavement and Safety Improvement/Program Management Consulting Services (Specification No. 26-11765-C) soliciting proposals from qualified firms; and

WHEREAS, on December 2, 2025, ten Statements of Qualifications were received from firms specializing in a variety of professional services necessary to provide on-call civil engineering planning, design and construction management services for various infrastructure programs and projects related to the Measure FF parcel tax; and

WHEREAS, staff reviewed the proposals and determined that Kittleson & Associates is highly qualified to provide traffic/transportation services.

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 with Kittleson & Associates for on-call professional services for a total contract period of three years in an amount not to exceed \$2,500,000. A record signature copy of said contracts and any amendments to be on file in the Office of the City Clerk.

April 14, 2026

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

CONTRACT: SANBELL FOR ON-CALL PROFESSIONAL SERVICES

WHEREAS, Public Works requires on-call professional services for the implementation of Measure FF-funded projects and programs, and

WHEREAS, initial funding in the amount of \$100,000 is available in the Fiscal Year (FY) 2026 budget in Fund 166 (Measure FF Sidewalk and Street Repairs Parcel Tax). Additional funding for FY 2027 and FY 2028 of each contract is subject to appropriation in the future fiscal years' budget based on the department's needs for professional services, and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, on October 30, 2025, the City issued a Request For Qualifications for Pavement and Safety Improvement/Program Management Consulting Services (Specification No. 26-11765-C) soliciting proposals from qualified firms; and

WHEREAS, on December 2, 2025, ten Statements of Qualifications were received from firms specializing in a variety of professional services necessary to provide on-call civil engineering planning, design and construction management services for various infrastructure programs and projects related to the Measure FF parcel tax; and

WHEREAS, staff reviewed the proposals and determined that Sanbell is highly qualified to provide traffic/transportation services.

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 with Sanbell for on-call professional services for a total contract period of three years in an amount not to exceed \$2,000,000. A record signature copy of said contracts and any amendments to be on file in the Office of the City Clerk.

April 14, 2026

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

CONTRACT: BUREAU VERITAS FOR ON-CALL PROFESSIONAL SERVICES

WHEREAS, Public Works requires on-call professional services for the implementation of Measure FF-funded projects and programs, and

WHEREAS, initial funding in the amount of \$100,000 is available in the Fiscal Year (FY) 2026 budget in Fund 166 (Measure FF Sidewalk and Street Repairs Parcel Tax). Additional funding for FY 2027 and FY 2028 of each contract is subject to appropriation in the future fiscal years' budget based on the department's needs for professional services, and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, on October 30, 2025, the City issued a Request For Qualifications for Pavement and Safety Improvement/Program Management Consulting Services (Specification No. 26-11765-C) soliciting proposals from qualified firms; and

WHEREAS, on December 2, 2025, ten Statements of Qualifications were received from firms specializing in a variety of professional services necessary to provide on-call civil engineering planning, design and construction management services for various infrastructure programs and projects related to the Measure FF parcel tax; and

WHEREAS, staff reviewed the proposals and determined that Bureau Veritas is highly qualified to provide traffic/transportation services.

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 with Bureau Veritas for on-call professional services for a total contract period of three years in an amount not to exceed \$1,500,000. A record signature copy of said contracts and any amendments to be on file in the Office of the City Clerk.

April 14, 2026

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

CONTRACT: CORDOBA CORPORATION FOR ON-CALL PROFESSIONAL SERVICES

WHEREAS, Public Works requires on-call professional services for the implementation of Measure FF-funded projects and programs, and

WHEREAS, initial funding in the amount of \$100,000 is available in the Fiscal Year (FY) 2026 budget in Fund 166 (Measure FF Sidewalk and Street Repairs Parcel Tax). Additional funding for FY 2027 and FY 2028 of each contract is subject to appropriation in the future fiscal years' budget based on the department's needs for professional services, and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, on October 30, 2025, the City issued a Request For Qualifications for Pavement and Safety Improvement/Program Management Consulting Services (Specification No. 26-11765-C) soliciting proposals from qualified firms; and

WHEREAS, on December 2, 2025, ten Statements of Qualifications were received from firms specializing in a variety of professional services necessary to provide on-call civil engineering planning, design and construction management services for various infrastructure programs and projects related to the Measure FF parcel tax; and

WHEREAS, staff reviewed the proposals and determined that Cordoba Corporation is highly qualified to provide infrastructure/streets and traffic/transportation services.

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 with Cordoba Corporation for on-call professional services for a total contract period of three years in an amount not to exceed \$1,500,000. A record signature copy of said contracts and any amendments to be on file in the Office of the City Clerk.

April 14, 2026

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

CONTRACT: ALTA PLANNING + DESIGN, INC. FOR ON-CALL PROFESSIONAL SERVICES

WHEREAS, Public Works requires on-call professional services for the implementation of Measure FF-funded projects and programs, and

WHEREAS, initial funding in the amount of \$100,000 is available in the Fiscal Year (FY) 2026 budget in Fund 166 (Measure FF Sidewalk and Street Repairs Parcel Tax). Additional funding for FY 2027 and FY 2028 of each contract is subject to appropriation in the future fiscal years' budget based on the department's needs for professional services, and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, on October 30, 2025, the City issued a Request For Qualifications for Pavement and Safety Improvement/Program Management Consulting Services (Specification No. 26-11765-C) soliciting proposals from qualified firms; and

WHEREAS, on December 2, 2025, ten Statements of Qualifications were received from firms specializing in a variety of professional services necessary to provide on-call civil engineering planning, design and construction management services for various infrastructure programs and projects related to the Measure FF parcel tax; and

WHEREAS, staff reviewed the proposals and determined that Alta Planning + Design, Inc. is highly qualified to provide traffic/transportation services.

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 with Alta Planning + Design, Inc. for on-call professional services for a total contract period of three years in an amount not to exceed \$1,000,000. A record signature copy of said contracts and any amendments to be on file in the Office of the City Clerk.

April 14, 2026

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

CONTRACT: MARK THOMAS FOR ON-CALL PROFESSIONAL SERVICES

WHEREAS, Public Works requires on-call professional services for the implementation of Measure FF-funded projects and programs, and

WHEREAS, initial funding in the amount of \$50,000 is available in the Fiscal Year (FY) 2026 budget in Fund 166 (Measure FF Sidewalk and Street Repairs Parcel Tax). Additional funding for FY 2027 and FY 2028 of each contract is subject to appropriation in the future fiscal years' budget based on the department's needs for professional services, and

WHEREAS, this contract is exempt from the noticing requirements set forth in Government Code Section 3504.1; and

WHEREAS, on October 30, 2025, the City issued a Request For Qualifications for Pavement and Safety Improvement/Program Management Consulting Services (Specification No. 26-11765-C) soliciting proposals from qualified firms; and

WHEREAS, on December 2, 2025, ten Statements of Qualifications were received from firms specializing in a variety of professional services necessary to provide on-call civil engineering planning, design and construction management services for various infrastructure programs and projects related to the Measure FF parcel tax; and

WHEREAS, staff reviewed the proposals and determined that Mark Thomas is highly qualified to provide infrastructure/streets and traffic/transportation services.

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 with Mark Thomas for on-call professional services for a total contract period of three years in an amount not to exceed \$800,000. A record signature copy of said contracts and any amendments to be on file in the Office of the City Clerk.



City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

For: Pavement and Safety Improvement/Program Management Consulting Service

Spec. 26-11765-C

DATE: 12/02/2025

|    | Bidders                    |  | Local Vendor | WC | NF | OS | SC | LW | EBO |
|----|----------------------------|--|--------------|----|----|----|----|----|-----|
| 1  | Bureau Veritas             |  |              | X  | X  | X  | X  | X  | X   |
| 2  | Kittelson                  |  |              | X  | X  | X  | X  | X  |     |
| 3  | Pavement Engineering, INC. |  |              | X  | X  | X  | X  | X  | X   |
| 4  | NCE                        |  |              | X  | X  | X  | X  | X  | X   |
| 5  | Sanbell                    |  |              | X  | X  | X  | X  | X  | X   |
| 6  | Willdan Engineering        |  |              | X  | X  | X  | X  | X  | X   |
| 7  | Cordoba Corporation        |  |              | X  | X  | X  | X  | X  | X   |
| 8  | Mark Thomas                |  |              | X  | X  | X  | X  | X  | X   |
| 9  | Shields Sowko              |  |              | X  | X  | X  | X  | X  | X   |
| 10 | Alta Planning & Design     |  |              | X  | X  | X  | X  | X  | X   |

**Bid Recorder:**

Tanisha/Roop S. (rev) *RSoorma*

DATE 03/16/2026

**Bid Opener:**

Sherri Degnan/Tanisa G. (rev) *Tanisha Gainer*

DATE 03/16/2026

**Project Manager:**

Wahid Amiri *Wahid Amiri*

DATE 03/16/2026





CONSENT CALENDAR  
April 14, 2026

To: Honorable Members of the City Council

From: Mayor Adena Ishii (Author), and Council Members Lunaparra, Humbert and O'Keefe (Co-Sponsors)

Subject: Referral to the City Manager and the Parks Commission the request to develop and implement a plan and identify budget to rename City of Berkeley locations, events, and the city holiday currently named for Cesar Chavez, and engage with the Chavez/Huerta Commemoration Period partners and Latinos Unidos de Berkeley to bring back to City Council recommendations for how the City of Berkeley may move forward with a name changes that will continue to honor the legacy of labor organizing and solidarity for farm workers and recognize farm workers as the backbone of America.

#### RECOMMENDATION

Refer to the City Manager and the Parks Commission the request to develop and implement a plan and identify budget to rename City of Berkeley locations, events, and the city holiday currently named for Cesar Chavez and engage with the Chavez/Huerta Commemoration Period partners and Latinos Unidos de Berkeley to bring back to City Council recommendations for how the City of Berkeley, may move forward with a name changes that will continue to honor the legacy of labor organizing and solidarity for farm workers and recognize farm workers as the backbone of America.

#### BACKGROUND

Cesar Chavez, the late United Farm Workers (UFW) co-founder and labor leader has long been an icon and hero to communities across the country. Berkeley has a long history of honoring the legacy of Cesar Chavez dating back to 1996 by naming the City's waterfront park after him and with an official city holiday that aligns with the State of California holiday. Over the years, the City has worked collaboratively with the Latinx community, local educational institutions, and community based organizations to organize commemorative activities that honor Cesar Chavez, Dolores Huerta, and farm workers.

The following is an initial list of locations and events:

- Cesar Chavez Park (1996)
- Cesar Chavez Day -March 30/31 (2000 - aligned with the State Holiday)
- Chavez/Huerta Tribute Site and Solar Calendar (2011)
- Cesar Chavez-Dolores Huerta Commemorative Period (2021)
- Cesar Chavez Park Perimeter Trail Project (2024 -aka Olivia Stegman Trail)

On March 18, 2026, the New York Times published an in-depth investigation documenting extensive evidence that Mr. Chavez groomed and sexually abused young girls who worked in the farmworker movement<sup>1</sup>. In the same story it was revealed that Mr. Chavez raped UFW co-founder Dolores Huerta. After 60 years of silence, Ms. Huerta, a renowned labor leader and civil rights activist issued a statement with her personal story recounting how Chavez had raped her and how she stayed silent because she “believed that exposing the truth would hurt the farmworker movement I have spent my entire life fighting for.”<sup>2</sup>

The members of the Berkeley City Council condemns sexual violence and stands with the survivors who bravely told their story. In light of the in-depth reporting of credible accusations against Mr. Chavez the City must work on a path forward to remove Cesar Chavez’s name from city locations, events, and holidays.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No Impact

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time to develop a plan and cost allocation to change the name.

#### ALTERNATIVE ACTIONS CONSIDERED

No name change

#### CONTACT PERSON

Mayor Adena Ishii  
(510) 981-7100

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<sup>1</sup> <https://www.nytimes.com/2026/03/18/us/cesar-chavez-sexual-abuse-allegations-ufw.html>

<sup>2</sup> [https://medium.com/@dolores\\_huerta/march-18-2026-e74c20430555?](https://medium.com/@dolores_huerta/march-18-2026-e74c20430555?)



Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR

April 14, 2026

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author), Councilmember Igor Tregub, and Mayor Adena Ishii (Co-Sponsors)

SUBJECT: Referral to Establish a Citywide Local Density Bonus Program to Facilitate Lower-Cost Ownership Homes (Condominiums)

**RECOMMENDATION**

Refer to the City Manager to develop a citywide local density bonus modelled after the state density bonus that would incentivize new condominium development by allowing condo projects to take advantage of the same densities, bonuses, waivers, and concessions available under state density bonus law. Under the local density bonus, however, condo projects would be able to pay the current in-lieu affordable housing fee to the City's Housing Trust Fund for all units, rather than create on-site for-sale below-market-rate condo units—a requirement under state density bonus law that renders larger-scale condo development infeasible. Further, the local density bonus shall consider concession rules that uphold the City's workforce standards.

The fiscal and policy goals of this proposed local density bonus are to help stalled rental residential projects in our downtown reach feasibility as condo projects, which will provide affordable housing in-lieu fee revenue, property tax revenue, serve as an economic force multiplier for our downtown, and provide much-needed ownership opportunities for young families seeking a starter home and aging residents seeking to downsize. Further, the local density bonus should apply citywide or downtown or on San Pablo Avenue, considering the area(s) that is most feasible, and provide language for at least two options for applicability:

- 1) Projects that have vested prior to Jan. 1, 2025 only; and
- 2) All projects regardless of vesting date—and to consider a sunset date, or a progress report to help determine an appropriate sunset date.

The reason for providing these two options is so that Council may consider economic conditions and the number of stalled projects at the time that the ordinance is under consideration.

And further, to consider removing the exemption on the first 5,000 square feet for the affordable housing in-lieu fee.

Further, request information from staff on whether it is financially feasible and operationally possible to provide Affordable Housing Trust funding to provide for below-market-rate condos on site.

### **POLICY COMMITTEE RECOMMENDATION**

On March 2, 2026 the Land Use Policy Committee took the following action:

Action: 15 speakers. M/S/C (Bartlett/Lunaparra) to send the item to the City Council with a qualified positive recommendation and with the recommendation revised to read as follows:

Refer to the City Manager to develop a citywide local density bonus modelled after the state density bonus that would incentivize new condominium development by allowing condo projects to take advantage of the same densities, bonuses, waivers, and concessions available under state density bonus law. Under the local density bonus, however, condo projects would be able to pay the current in-lieu affordable housing fee to the City's Housing Trust Fund for all units, rather than create on-site for-sale below-market-rate condo units—a requirement under state density bonus law that renders larger-scale condo development infeasible. The fiscal and policy goals of this proposed citywide local density bonus are to help stalled rental residential projects in our downtown reach feasibility as condo projects, which will provide affordable housing in-lieu fee revenue, property tax revenue, serve as an economic force multiplier for our downtown, and provide much-needed ownership opportunities for young families seeking a starter home and aging residents seeking to downsize. Further, the local density bonus should apply citywide or downtown and provide language for at least two options for applicability:

1. Projects that have vested prior to January 1, 2025 only; and
2. All projects regardless of vesting date – and to consider a sunset date, or a progress report to help determine an appropriate sunset date. The reason for providing these two options is so that Council may consider economic conditions and the number of stalled projects at the time that the ordinance is under consideration.

And further, to consider removing the exemption on the first 5,000 square feet for the affordable housing in-lieu fee. Further, information from staff on whether it is financially feasible and operationally possible to provide Affordable Housing Trust funding to provide for below-market rate condos on site.

Vote: All Ayes.

### **CURRENT SITUATION AND ITS EFFECTS**

***At Least Nine Recent Rental Residential Development Projects Are Stalled in Berkeley’s Downtown, Sometimes Creating Blight.*** Currently, there are at least nine rental residential development projects that have received a zoning permit, the initial step that allows a project to apply for a building permit, as shown in Exhibit 1. However, only five of these nine projects have received a building permit and none have broken ground due to unfavorable economic conditions. According to a May 2024 residential feasibility analysis for the City of Berkeley, most development prototypes cannot support the current cost of development in today’s market.<sup>1</sup> The report states, “This is being driven by increased construction and financing costs that are outpacing projected rental revenue relative to the required rate of return developers must provide to finance a project.”

**Exhibit 1: Nine Recent Proposed Rental Residential Development Projects in Downtown Have Received a Zoning Permit, But Have Not Broken Ground**

| Address                                       | Date Zoning Permit Was Received | Number of Proposed Units |
|-----------------------------------------------|---------------------------------|--------------------------|
| 2128 Oxford                                   | Oct. 4, 2024                    | 456                      |
| 2190 Shattuck                                 | April 28, 2023                  | 325                      |
| 2274 Shattuck                                 | April 22, 2025                  | 277                      |
| 2015 Blake                                    | Sept. 25, 2023                  | 219                      |
| 2100 Milvia                                   | July 1, 2025                    | 205                      |
| 2065 Kittredge <sup>1</sup>                   | Feb. 22, 2023                   | 189                      |
| 2037 Durant                                   | June 19, 2024                   | 74                       |
| 2138 Kittredge                                | Oct. 20, 2025                   | 66                       |
| 2210 Harold Way                               | Dec. 10, 2020                   | 38                       |
| <b>Total Number of Proposed Units Stalled</b> |                                 | <b>1,849</b>             |

Source: City of Berkeley, <https://berkeley.buildingeye.com/building>

<sup>1</sup>Note: Harold Way Development at 2065 Kittredge has broken ground but is currently stalled.

For the nine proposed projects listed above that received a zoning permit, five projects went on to receive a building permit (2210 Harold Way, 2065 Kittredge, 2190 Shattuck, 2128 Oxford, and 2138 Kittredge) but have not broken ground for various reasons. We note that another three projects not listed above (2113 Kittredge, 1998 Shattuck, and 2450 Shattuck) submitted a pre-application but never received a zoning permit. Some of these stalled projects are creating blighted conditions in our downtown:

<sup>1</sup> Ernst, Margot, “Residential Feasibility Analysis and In-Lieu Fee Recommendations,” City of Berkeley Worksession, May 21, 2024, <https://berkeleyca.gov/sites/default/files/documents/2025-02-25%20Item%2014%20Inclusionary%20Housing%20Ordinance.pdf>

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- The 2128 Oxford Street stalled project has caused a once vibrant block of small businesses to remain shuttered, with boarded up storefronts and fencing for an extended period;
- 2065 Kittredge project is the site of an unsightly pit of dirt; and
- 2274 Shattuck is the site of the shuttered United Artists Theatres.

**Over Last Five Years, No Largescale Condo Projects Utilizing the State Density Bonus Have Been Built in Berkeley.** While many multiunit rental housing developments have recently been added to Berkeley’s housing stock, that has not been the case with multiunit ownership developments. Nor have many rental units been converted to condominiums over the same period. In large part that can be attributed to affordable housing requirements compelling developers to either include below-market-rate housing on site, which costs would need to be offset by the construction of additional market rate units, or pay an in-lieu fee that until very recently was costly.<sup>2</sup> The City’s condominium conversion fees are also high which likely impacts the numbers of units converted to ownership opportunities.<sup>3</sup> Exhibit 2 shows the numbers of condominiums constructed and/or converted from rental units in Berkeley over the last five years.

**Exhibit 2: Number of Condominium Units Constructed and Converted over the Last Five Years in Berkeley**

| Year         | Project Addresses (New Construction Only) | Number of New Construction Units | Number of Converted Rental Units | Total Number of Condo Units |
|--------------|-------------------------------------------|----------------------------------|----------------------------------|-----------------------------|
| 2020         | 1811 Sixty-Third St (3 units)             | 7                                | 14                               | 21                          |
|              | 1444 Fifth St (4 units)                   |                                  |                                  |                             |
| 2021         | 1923 Ninth St (3 units)                   | 6                                | 3                                | 9                           |
|              | 1516 Carleton St (3 units)                |                                  |                                  |                             |
| 2022         | 1157 Hearst Ave (4 units)                 | 4                                | 5                                | 9                           |
| 2023         | 1519 Fairview St (1 units)                | 4                                | 10                               | 14                          |
|              | 776 Page St (3 units)                     |                                  |                                  |                             |
| 2024         | 2421 Ninth St (2 units)                   | 4                                | 2                                | 6                           |
|              | 2323 Eighth St (2 units)                  |                                  |                                  |                             |
| 2025         | 2403 San Pablo Ave (36 units)*            | 42                               | 0                                | 42                          |
|              | 805 Jones St (6 units)                    |                                  |                                  |                             |
| <b>TOTAL</b> |                                           | <b>67</b>                        | <b>34</b>                        | <b>101</b>                  |

<sup>2</sup> Berkeley’s Inclusionary Housing Ordinance In-Lieu Fee was amended February 2025: [https://berkeleyca.gov/sites/default/files/documents/2025-02-25%20Item%2014%20Inclusionary%20Housing%20Ordinance.pdf#:~:text=SUMMARY%20The%20proposed%20updates%20to%20Berkeley's%20Inclusionary,development%20\(2%E2%80%9319%20units\)%2C%20which%20face%20market%20constraints](https://berkeleyca.gov/sites/default/files/documents/2025-02-25%20Item%2014%20Inclusionary%20Housing%20Ordinance.pdf#:~:text=SUMMARY%20The%20proposed%20updates%20to%20Berkeley's%20Inclusionary,development%20(2%E2%80%9319%20units)%2C%20which%20face%20market%20constraints).

<sup>3</sup> City of Berkeley Planning and Development Residential Condominium Conversion Packet: [https://berkeleyca.gov/sites/default/files/documents/Condo%20Packet%2007-01-2022\\_Posted%20Online.pdf](https://berkeleyca.gov/sites/default/files/documents/Condo%20Packet%2007-01-2022_Posted%20Online.pdf)

Source: Berkeley Planning Department

\*Indicates a private development for the purpose of a group living/ownership situation.

Note: There are two developments (2025 Kala Bagai Way, constructing 48 units, and 3000 San Pablo Avenue constructing 78 units) that have put a condo map on their projects but are being advertised as rental units; they are using a density bonus for those developments though will not be providing ownership units.

***A Local Density Bonus Would Alter the Financial Feasibility of Larger-Scale Condominium Development, Allowing Stalled Rental Projects to Move Forward as Condominium Projects.*** Establishing a local density bonus for stalled rental residential projects that received a zoning permit since Jan. 1, 2024 could enable these projects to move forward as condo projects. A local density bonus can provide the benefits of the state density bonus (in terms of densities, bonuses, concessions, and waivers) that helps projects reach economic feasibility, while also providing the option to pay the in-lieu affordable housing fee for *all* condo units on site. These funds can then be used to fund 100 percent below-market-rate affordable housing elsewhere in Berkeley, such as at the Ashby East Parking Lot that is now owned by the City. The requirement under the state density bonus to provide below-market-rate units on site for condo developments currently renders these types of projects infeasible, as the for-sale price for below-market-rate condos is too low to be absorbed by the project's market-rate units. Costs for purchasing a condo unit can be considerable as they include mortgage loan payments, homeowner's insurance payments, property taxes and assessments, homeowner's association fees, utilities allowances, insurance premiums, etc., making ownership units much more costly to subsidize than rental units.<sup>4</sup> A local density bonus exclusively for condo projects could allow some of the stalled rental projects to convert to condo developments, providing the City with affordable housing in-lieu fee revenue that it cannot otherwise realize for stalled rental projects under current economic conditions.

***Creating a Local Density Bonus to Jumpstart Stalled Residential Development Provides Fiscal Benefits to City and Economic Development in Downtown.*** By developing a citywide local density bonus, the City of Berkeley can help to ensure that some of the stalled rental projects can move forward as condo projects, providing significant fiscal benefits to the City. The City would realize affordable housing in-lieu fee revenue to fund 100 percent affordable housing as well as property tax revenue to support baseline City services. Further, new condominiums will bring new residents to our downtown who will patronize downtown small businesses, restaurants, and arts venues—acting as an economic force multiplier.

***Condo Development in Downtown Offers Starter Homeownership Opportunities for Young Families and Downsizing Opportunities for Empty Nesters That's***

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<sup>4</sup> Meyers|Nave 2024 California Developers' Toolkit: Density Bonus Law, Housing Laws, & Strategies for Success, p. 4: <https://www.meyersnave.com/wp-content/uploads/2024.10-California-Developers-Toolkit-Density-Bonus-Law.pdf>

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***Walkable to Amenities and Public Transit.*** The City’s median home price of \$1.3 to \$1.5 million remains out of reach for all but the wealthiest families. This is an issue of public concern because our community must be able to provide long-term viable home options for the families of middle-class workers who serve our community, including police officers, firefighters, teachers, and health care workers. For aging empty nesters living in larger homes in the hills, there are virtually no opportunities to remain in the community and downsize to a smaller home that is walkable to amenities like grocery stores and public transit. A local density bonus for stalled rental projects seeking to convert to condo projects addresses the need to create smaller and more affordable ownership units for those seeking more affordable homeownership opportunities than a single-family home.

## **BACKGROUND**

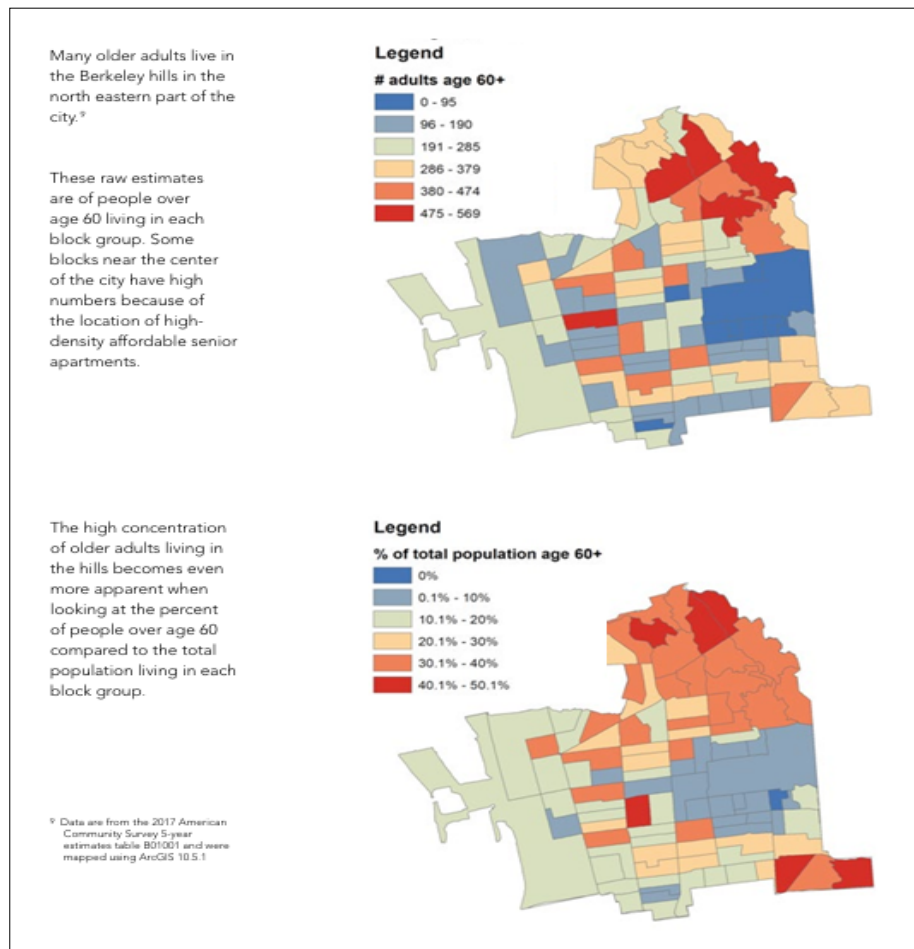
***The State Density Bonus Is a Powerful Tool to Help Residential Development Reach Feasibility.*** The state density bonus law allows developers to build more housing units than normally permitted by local zoning standards in exchange for including affordable deed-restricted units on site. Depending on the number of below-market-rate units and the affordability level, developers can increase the project’s density. For example, providing 20 percent of units at a very low-income level allows a developer to utilize a 50 percent density bonus. The goal of the state density bonus law is to incentivize the creation of affordable housing by helping a project reach economic feasibility. For each project that utilize a density bonus, local jurisdictions are required to provide up to four concessions to achieve an “identifiable and actual cost reduction” per State Government Code Section 65915(k) as well as an unlimited number of waivers as long as the developer can prove that the project cannot be built without them.

***Berkeley Has a Significant Aging Population of Homeowners.*** Slightly over a quarter of all Berkeley residents are 55 and older.<sup>5</sup> A high concentration of these older residents live in the Berkeley Hills, as shown in Exhibit 2 below. For aging residents wishing to remain in the community and downsize to a home they can own that is walkable to amenities and public transit, there are few options. Some new senior housing has been developed in recent years, such as Jordan Court for low-income seniors (corner of Oxford and Cedar), The Ivy at Berkeley assisted living and memory care home (corner of Dwight and Milvia), and Elegance Berkeley assisted living (corner of San Pablo Avenue and Addison). However, given the City’s significant aging population, more ownership opportunities are needed for seniors seeking to downsize and relocate to a walkable neighborhood as they age.

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<sup>5</sup> State of Public Health in Berkeley Summary Report, Information Report presented at the June 24, 2025 City Council meeting: <https://berkeleyca.gov/sites/default/files/documents/2025-06-24%20Item%2030%20State%20of%20Public%20Health%20in%20Berkeley%20Summary%20Report.pdf>

## Exhibit 2: Aging Berkeley Residents Are Concentrated In Berkeley Hills



Source: Age-Friendly Berkeley Action Plan, 2018, : <https://berkeleyca.gov/sites/default/files/2022-01/Age-Friendly-Berkeley-Action-Plan.pdf>

**Condo Affordable Housing In-Lieu Fee Has Been Lowered To Be Equal to Rental Affordable Housing Fee, With Potential to Encourage New Condo Development.** Historically, the affordable housing in-lieu fee for condo developments has been much higher than the fee imposed on rental projects; it was calculated as 62.5 percent of the difference between the market price for each unit and the below-market-rate price for each inclusionary unit.<sup>6</sup> In January 2023, the Berkeley City Council modified the affordable housing in-lieu fee to be applied on a square-foot basis, and to be applied equally to rental and ownership units.<sup>7</sup> Effective July 1, 2025, the current in lieu fee is \$62.83 per square foot, with all projects receiving a discount on the first 5,000 square feet.<sup>8</sup>

<sup>6</sup> Klein, Jordan and Warhuus, Lisa. "Citywide Affordable Housing Requirements," Jan. 17, 2023, <https://berkeleyca.gov/sites/default/files/documents/2023-01-17%20Item%2021%20Citywide%20Affordable%20Housing%20Requirements.pdf>

<sup>7</sup> Klein, Jordan and Warhuus, Lisa. "Citywide Affordable Housing Requirements," Jan. 17, 2023, <https://berkeleyca.gov/sites/default/files/documents/2023-01-17%20Item%2021%20Citywide%20Affordable%20Housing%20Requirements.pdf>

<sup>8</sup> Affordable Housing Requirements for Developers, City of Berkeley, [https://berkeleyca.gov/construction-development/permits-design-parameters/design-2180 Milvia Street, Berkeley, CA 94704](https://berkeleyca.gov/construction-development/permits-design-parameters/design-2180-Milvia-Street-Berkeley-CA-94704) • Tel: (510) 981-7110 • Fax: (510) 981-7111  
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***Oakland, San Francisco, and Hayward Have Implemented a Local Density Bonus To Further Policy Goals.*** Neighboring jurisdictions have adopted their own local density programs going beyond state requirements to further their own specific policy goals. In Oakland, the Zoning Incentive Program allows additional density beyond what is allowed by the Downtown Oakland Specific Plan Base Zoning in exchange for a variety of community benefits, on-site affordable housing and with the option of paying in-lieu fees.<sup>9</sup> San Francisco's local density program, HOME-SF,<sup>10</sup> allows more height than the state's density bonus in exchange for 20 to 30 percent of the units being affordable to low and moderate-income families, with 40 percent of the total units being two-bedrooms or larger, in an effort to provide more family-friendly housing. The City of Hayward allows an additional density bonus, incentives, and concessions for housing targeted to special populations, such as large families (3+ bedrooms), projects including universal design features for people with disabilities, seniors, college students, and foster youth to name several examples.<sup>11</sup> While this item is somewhat novel in allowing condominium projects to pay an in-lieu fee into our Housing Trust Fund only and not build affordable units on site, these other examples illustrate the flexibility that a local density bonus can provide to address local concerns.

### **FISCAL IMPACT**

The fiscal impacts of this referral would be staff time to draft municipal code updates and implement the referral. The overall fiscal benefits to the City could be notable if we are able to incentivize stalled rental projects to move forward as condo developments.

### **ENVIRONMENTAL SUSTAINABILITY**

Implementing a local density bonus for condo development will help create more infill housing in closer proximity to public transit. Studies show that infill development is an effective strategy for reducing greenhouse gas emissions by reducing vehicle miles travelled when compared to homes created in outlying undeveloped areas.

### **CONTACT PERSON**

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

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parameters/affordable-housing#:~:text=Effective%20July%201%2C%202025%2C%20the%20rental%20or,from%20the%20Residential%20Unit%20Floor%20Area%20calculation

<sup>9</sup> Hausrath Economics Group Memorandum: Comparative Analysis of Housing Outcomes: Downtown Oakland Specific Plan Zoning Incentive Program and California Density Bonus Law, March 10, 2023: <https://www.oaklandca.gov/files/assets/city/v/1/public-meetings/zoning-update-committee/2023/b-comparing-zip-and-sdb-housing-outcomes.pdf>

<sup>10</sup> San Francisco Planning Department: HOME-SF: <https://sfplanning.org/home-sf>

<sup>11</sup> City of Hayward, Hayward Density Bonus User Guide, June 2025: <https://www.hayward-ca.gov/sites/default/files/documents/City-of-Hayward-Density-Bonus-User-Guide-2506.pdf>

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BERKELEY CITY COUNCILMEMBER  
**TERRY TAPLÍN**  
DISTRICT 2

**14**

CONSENT CALENDAR  
April 14<sup>th</sup>, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Terry Taplin

Subject: Kala Art 2026: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 from Councilmember Taplin, to support Art Institute 2026.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impacts. Up to \$500 is available from contributing Councilmember's Council Office Budget discretionary accounts.

BACKGROUND

Founded in 1974, by Archana Horsting and Yuzo Nakano, as an international residency program rooted in the local community and a forum for ideas, Kala Art Institute encourages artistic experimentation. Over four decades -- from a garage studio with one etching press and a single hot plate to a 15,200 sq. ft. facility in the historic West Berkeley Heinz building -- Kala has grown steadily in the breadth of its offerings and in the size of its operation, yet remains true to its mission to be a workshop of ideas and to engage the community through exhibitions, education, and public programs.

In 2009, Kala dynamically expanded its facility providing new opportunities for artists and the community. With improved studios, project rooms, classrooms, and a 2,200 sq. ft. light-filled gallery with an accessible street level location, Kala is working to maximize its capacity to serve the community as a vital center for artistic experimentation. Kala serves 35,000 individuals yearly through artist residencies, exhibitions, and community workshops. In addition, Kala's Artists-in-Schools program provides curriculum-based visual arts education to children in neighboring public schools in Berkeley, Emeryville, and Oakland. Overall, their constituents range from 5 to 95 years old and represent a diverse group of participants including local residents, visiting artists from all state, country, and abroad -- representing an international spectrum of backgrounds and experience. Bay Area artists represent 85% of participants in Kala's artist residencies.

Kala Art Institute's mission is to help artists sustain their creative work overtime through its Artist-in-Residence and Fellowship Programs, and to engage the community through exhibitions, public programs, and education.

The heart of Kala's mission as a vital California art-making hub is supporting artists and engaging the community. Kala offers professional facilities to those working in and across print and digital media, new media, and performance. Artists at Kala are encouraged to work across disciplines, produce innovative artwork of the highest quality, and are given total freedom to realize their artistic vision using media that span the Gutenberg to digital eras. Kala offers access to equipment, time, and space to cultivate creative projects. Kala's studios provide tools for printmaking, photography, video, installation, and digital media. Kala fosters a fresh approach to experimentation, as artists investigate the interface of digital work, work made by hand, work made in the studio, performance-based work that engages the community and everything in between. A spirit of exchange and education is nurtured through all Kala's community programs.

Kala's creative community builds bridges between the intense art-making environment of the Kala studios, located in the historic Heinz ketchup factory in Berkeley and life outside the studio in Kala's immediate neighborhood and far beyond. Additionally, Kala is committed to offering quality art education to the general public and public school children through its on-site and online program of classes and workshops, summer programs and its Artists-in-Schools program, established in 1991, providing multiple week artist-led instruction to students in neighboring East Bay public schools.

Celebrating Kala's 52nd year, Art Kala 2026 brings together Kala's creative community and features the inventive and meaningful art being made in the Bay Area. Art Kala 52nd Anniversary Party with Honorary Auction Chair Doree Friedman will take place April 25th 2026, honoring Gale Antokal, Cathy Lu, and Adia Millett. Art Kala 52nd Anniversary Party will take place at: Kala Gallery, 2990 San Pablo Avenue, Berkeley, California 94702.

More information can be found at: <http://www.kala.org/gallery/spring-gala-and-auction/>.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This item is consistent with the city's vision on sustainability.

#### CONTACT PERSON

Councilmember Terry Taplin, Council District 2 - 510-981-7120

Attachments:

1: Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Taplin has surplus funds in his office expenditure account (budget code 011-11-102-100-0000-000-411); and

WHEREAS, a private 501(c)(3) non-profit tax-exempt corporation Kala Arts Institute seeks funds to support their continued fundraising; and

WHEREAS, Kala Art Institute is a nonprofit organization dedicated to helping artists sustain their creative work overtime through its Artist-in-Residence and Fellowship Programs, and to engaging the community through exhibitions, public programs, and education; and

WHEREAS, since 1974, Kala has grown steadily in the breadth of its offerings and in the size of its operation, yet remains true to its mission to be a workshop of ideas and to engage the community through exhibitions, education, and public programs; and

WHEREAS, Kala serves 35,000 individuals yearly through artist residencies, exhibitions, and community workshops, and through its Artists-in-Schools program provides curriculum-based visual arts education to children in neighboring public schools in Berkeley, Emeryville, and Oakland; and

WHEREAS, Kala's constituents range from 5 to 95 years old and represent a diverse group of participants including local residents, visiting artists from all state, country, and abroad – representing an international spectrum of backgrounds and experience – with Bay Area artists representing 85% of participants in Kala's artist residencies; and

WHEREAS, Art Kala 2025 brings together Kala's creative community and features the inventive and meaningful art being made in the Bay Area, honoring Gale Antokal, Cathy Lu, and Adia Millett; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by \$500 from Councilmember Taplin and any funds, up to \$500 per Council Office Budget, from the Mayor and other Councilmembers shall be granted to the Kala Art Institute to support Art Kala 2026 and to celebrate Kala's 52nd year helping artists sustain their creative work in Berkeley and beyond.





CONSENT CALENDAR

April 14, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett (Author)

Subject: Celebración Cultural Sylvia Mendez (Spring Cultural Celebration) by the Sylvia Mendez School PTA: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of funds, including \$1,000 from the discretionary council office budget of Councilmember Ben Bartlett, to the Sylvia Mendez Elementary School PTA to host a Spring Cultural Celebration event on April 26, 2026, on campus. The funds will be relinquished to the City's General Fund from the discretionary council office budget of Councilmember Ben Bartlett and the discretionary council office budgets of any other City Councilmembers who would like to contribute.

BACKGROUND

This year, the Berkeley Unified School District's (BUSD) only Two-Way Immersion school, Sylvia Mendez Elementary (Sylvia Mendez), will host a Cultural Celebration to celebrate the global heritage, various nationalities, and other cultures important to its community. Community members are creating teams to determine the information, tastes, crafts, dress, music, and performances they want to share at the event.

This is the fourth year of the event. In previous years, teams were formed to represent the following cultures: Eritrea, Mexico, Chile, Cuba, Canada, African American, Croatia, Farm & Garden, Rainbow Families, Finland, Germany, and Venezuela. Meals were catered by different local ethnic restaurants and supplemented by some of the teams with homemade foods. In addition, the tables shared cultural music in a community playlist, and there was live music. The participants shaped the events, which were well received by the community, which hopes to build off of last year's great success, which included a national parade featuring traditional clothing, a third-grade dance, and a traditional guitar performance.

With such great success, the Sylvia Mendez PTA is hosting this event for the fourth consecutive time, maintaining the same goal of contextualizing our students' cultural influences, backgrounds, and much more. The funds requested are intended to offset some costs associated with the event. Therefore, they should be sent to the Sylvia Mendez PTA organization to distribute accordingly.

This parent-led committee is already funding most of the event's costs and has been a reliable resource for offsetting budget shortfalls. The donations ultimately support the program guidelines laid out by BUSD (on the [Sylvia Mendez Elementary website](#)<sup>1</sup>), which is to “develop long-lasting relationships and cultural appreciation for peers who are often separated by race and language.” This is further defined on the [school's website](#) as “to seek to honor and understand families.”

Since the pandemic restrictions were lifted in 2022, Sylvia Mendez Elementary has hosted well-attended Spring Events. Scheduled late in the school year, they have proven crucial for the community. Facing heightened challenges this year due to on-site construction that began last summer and will continue at least through next school year, fostering relationships by building a greater understanding of families within and the development of our community is fundamental in uplifting morale.

ENVIRONMENTAL SUSTAINABILITY

No negative impact.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$1,000 is available from the discretionary council office budget of Councilmember Ben Bartlett.

The cost is Sylvia Mendez School PTA: Celebración Cultural (Spring Cultural Celebration).

CONTACT PERSON

Councilmember Ben Bartlett  
James Chang

bbartlett@cityofberkeley.info  
jchang@cityofberkeley.info

ATTACHMENT

1. Resolution

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<sup>1</sup> <https://www.berkeleyschools.net/schools/elementary-schools/sylviamendez-elementary/>

Attachment 1

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

AUTHORIZE THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A DONATION TO THE SYLVIA MENDEZ SCHOOL PTA TO PROVIDE SUPPORT FOR A SPRING CULTURAL CELEBRATION EVENT.

**WHEREAS**, Councilmember Ben Bartlett has surplus funds in his office expenditure account; and

**WHEREAS**, Sylvia Mendez School PTA, a California non-profit organization, will receive funds in the amount of \$1,000 from Councilmember Ben Bartlett's office expenditure account; and

**WHEREAS**, the Sylvia Mendez School PTA supports equitable public education for students, families, and our community through grants and volunteer programs; and

**WHEREAS**, the provisions of such services would fulfill the municipal public purpose of providing students and the youth with opportunities through educational programs and activities to encourage them to learn and embrace cultural diversity; and

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their office budgets, of an amount to be determined by each Councilmember, shall be granted to Sylvia Mendez School PTA for the purpose of supporting students and the youth in highlighting cultural heritage that forms the community of the student body.





CONSENT CALENDAR

April 14, 2026

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Ben Bartlett  
 Subject: Recommendation to Parks and Waterfront Commission to Explore the Naming of a Public Plaza in South Berkeley as Delores Cooper Plaza

**RECOMMENDATION**

Refer to the Parks, Recreation, and Waterfront Commission to explore naming of the public plaza located at the intersection of Adeline Street and Fairview Street within the Lorin District corridor in South Berkeley as Delores Cooper Plaza; including process and directive of coordinating implementation, historical preservation, such as signage, universal design, and public engagement with community partners to document Delores Cooper's historic contributions to the City of Berkeley.

**CURRENT SITUATION**

The City of Berkeley has continuously recognized individuals whose leadership and service have shaped the City's cultural and civic identity. Public space naming is an important tool that honors community legacy by strengthening neighborhood identity and civic pride.

Delores Nochi Cooper is a founding board member and Executive Manager of Berkeley Juneteenth Cultural Celebrations, a 35-year-old non-profit organization located in Berkeley, California. A retired peace officer with 25 years of experience, Ms. Cooper's professional background includes legal compliance monitoring, investigations, needs assessments, report writing, and drug intervention education. Ms. Cooper's five years as a departmental training manager provided her with experience in strategic planning, policy development, contract negotiation, and production management. Ms. Cooper holds an MA in Legal Analysis and a BA in History from Lone Mountain College in San Francisco.

Ms. Cooper has used her professional expertise to empower and strengthen the community through events such as Juneteenth and Black History Month. Since taking over the helm of Berkeley Juneteenth as its Production Manager ten years ago, the festival has grown in its scope and influence and is hailed as the longest-running Juneteenth event in California. Ms. Cooper's portfolio includes serving as a historical exhibits curator, Vision magazine editor, and graphic designer in charge of web and social media content,

event images, marketing materials, fundraising and proposal writing, budget management, and as the single point of contact for the City, press, and service providers.

Ms. Cooper played a central role in the successful effort to rename Grove Street as Martin Luther King Jr. Way, serving as a member of the Martin Luther King Ad Hoc Committee. She is an active participant in her community and has volunteered her services as a writing coach at Berkeley and Richmond schools through Writer Coach Connection; as a program consultant with the South Berkeley Legacy Project; and as a Police Review Commissioner with the City of Berkeley. In 2021, Ms. Cooper was appointed to serve on the City of Berkeley's Independent Redistricting Commission. In 2024, she published a collection of poetry, "A Sweating Body That is Cooled By A Sometimey Breeze."

South Berkeley, and specifically the Lorin District corridor, is widely recognized as the historic and contemporary epicenter of culture in Berkeley. As displacement pressures continue, it is increasingly important for the City to preserve and affirm Berkeley's legacy through intentional placemaking and cultural recognition.

The proposed Delores Cooper Plaza, located at the intersection of Adeline Street and Fairview Street within the Lorin District corridor in South Berkeley, reflects Ms. Cooper's deep connection to Berkeley and its ongoing cultural and historical significance. The naming has received unanimous support from the Lorin Business Association of South Berkeley and strong support from numerous members of the broader Berkeley community.

## **BACKGROUND**

Delores Cooper's legacy as an educator, advocate, and cultural leader spans decades of service to Berkeley residents, particularly Black youth and families. Born in Oakland, nurtured in Compton, and raised in Berkeley, she believes art, music, and history can serve as vehicles for channeling creative expression and building self-esteem, ultimately addressing the generational emotional trauma of slavery and systemic racism. Her passion is event programming with a community-healing component that builds community, with "ME and WE" as essential participants in a healthy, diverse community.

Cooper's leadership and her continued involvement in cultural institutions, such as the Berkeley Juneteenth Festival, demonstrate her enduring commitment to building the Berkeley community.

This proposal is further supported by Inter-City Services Inc. (ICS), a Bay Area organization that has served marginalized and underserved communities since 1984, which has formally expressed its support for establishing Delores Cooper Plaza and highlighted the appropriateness of the proposed location.

### **REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS**

This action is consistent with the Adeline Corridor Specific Plan's placemaking goals, which emphasize improvements to the public realm, corridor identity, and pedestrian-oriented retail and cultural activity.

### **ENVIRONMENTAL SUSTAINABILITY**

No negative impact.

### **COMMUNITY OUTREACH**

Community outreach for this proposal included engagement with the Lorin Business Association, community organizations, and South Berkeley residents. The proposal received unanimous support from the Lorin Business Association and broad endorsement from members of the Berkeley community.

In addition, outreach and consultation were conducted with Kieron Slaughter, former City of Berkeley Office of Economic Development staff member and former Liaison to the Lorin Business Association of South Berkeley. Mr. Slaughter brings extensive experience in public-space renaming and placemaking in Berkeley, as well as several other successful renaming efforts and placemaking installations in Oakland and Richmond. His expertise helped inform the proposed process and community-centered approach for this initiative.

The Commission is asked to review this proposal and, if appropriate, recommend a plan and approval to the City Council.

### **FISCAL IMPLICATIONS**

Costs associated with the fabrication and installation of plaza signage and interpretive elements are anticipated to be modest and may be covered by existing departmental budgets or through partnerships and donations.

### **CONTACT PERSON**

Councilmember Ben Bartlett

[bbartlett@berkeleyca.gov](mailto:bbartlett@berkeleyca.gov)

James Chang

[jchang@berkeleyca.gov](mailto:jchang@berkeleyca.gov)

Artemisia Spencer Mace

[aspencermace@berkeleyca.gov](mailto:aspencermace@berkeleyca.gov)

ATTACHMENTS AND MATERIALS

1. Delores Cooper Plaza Proposed Location Map
2. Inter-City Services Inc. Letter of Support
3. The Lorin Business Association Letter of Support
4. Delores Nochi Cooper Biography

Attachment 1:



Attachment 2:

s Fun



YOU CAN MAKE A DIFFERENCE

Date: December 04, 2025

Kamau A. Edwards, Attorney  
The Edwards Firm  
ROW DTLA  
777 S. Alameda Street, 2nd Floor  
Los Angeles, California 90021

Re: Endorsement — Delores Cooper Honoring Project

Dear Mr. Edwards,

This letter confirms that Inter-City Services Inc. (ICS) fully endorses the proposal to honor Ms. Delores Cooper through the establishment of the Proposed Delores Cooper Plaza, located near Alcatraz Avenue and Adeline Street within the Lorin District corridor in the South Berkeley area of the City of Berkeley.

As a longstanding organization dedicated to serving and elevating marginalized and underserved communities in the Bay Area since 1984, ICS expresses its full support for this meaningful project recognizing Ms. Cooper's enduring legacy and contributions to the Berkeley community. The proposed location reflects her deep connection to South Berkeley and its ongoing cultural and historical significance.

Please accept this letter as formal documentation of ICS's endorsement. We look forward to continued collaboration on the next steps in bringing this project to fruition.

Sincerely,

Mansour Id-Deen  
Founder and Executive Director

3282 Adeline Street  
Berkeley, CA 94703 (510)  
655-3552 [www.icsworks.com](http://www.icsworks.com)

Attachment 3:



**Date:** 11/3/25

**Kamau A. Edwards, Attorney**  
**The Edwards Firm**  
ROW DTLA  
777 S. Alameda Street, 2nd Floor  
Los Angeles, California 90021

**Re: Board Approval — Delores Cooper Honoring Project**

Dear Mr. Edwards,

This letter confirms that the **Lorin Business Association** met on **October 17, 2025**, and voted to **approve the proposal to honor Ms. Delores Cooper** through the establishment of the **Proposed Delores Cooper Plaza**, located near **Alcatraz Avenue and Adeline Street** within the Lorin District corridor.

The Lorin Business Association expresses its full support for this meaningful project, recognizing Ms. Cooper’s enduring legacy and contributions to the Berkeley community. The proposed location reflects her deep connection to the Lorin District and its ongoing cultural and historical significance.

Please accept this letter as formal documentation of the Board’s approval. We look forward to continued collaboration on the next steps in bringing this project to fruition.

Sincerely,  
**Liz Lisle, Co-Chair**  
**Yvette Holts, Co-Chair**

Attachment 4:

## DELORES NOCHI COOPER



Delores Nochi Cooper is a founding board member and Executive Manager of the day-to-day operation of Berkeley Juneteenth Cultural Celebrations, a 35-year-old non-profit organization located in Berkeley, California.

Her background as a retired peace officer for 25 years, honed her skills in legal compliance monitoring, investigation, needs assessment, report writing, and as a drug intervention educator; her five years as the departmental training manager provided her with experience in strategic planning, policy development, contract negotiation, and production management. Delores has transitioned her professional expertise in pursuit of her overarching commitment to the emotional well-being of her community through events such as Juneteenth and Black History

Month that celebrate the African American experience. Probation work taught her the importance of family, community connectedness, and that change is always possible.

Delores believes merely celebrating Juneteenth is not enough. Her passion is event programming with a community healing component that builds community with "ME and WE" as essential participants in a healthy, diverse community. Delores believes art, music and history can be used as a vehicle to channel creative juices and build self-esteem, that can change norms and behaviors, and ultimately address the generational emotional trauma of slavery and systemic racism.

Since taking over the helm of Berkeley Juneteenth as its Production Manager ten years ago, the festival has grown in its scope and influence and is hailed as the longest running Juneteenth event in California. Delores' portfolio includes historical exhibits curator, Vision magazine editor, graphic designer in charge of web and social media content, event images, and marketing materials. To that portfolio, add fundraising and proposal writing, budget management, and the single point of contact for the City, press, and service providers.

Delores is an active participant in her community and has volunteered her services as a writing coach at Berkeley and Richmond schools with Writer Coach Connection; as a program consultant with the South Berkeley Legacy Project; as a member of the Martin Luther King Ad Hoc Committee which successfully renamed a major Berkeley thoroughfare in honor of Martin Luther King, Jr.; and with the City of Berkeley as a Police Review Commissioner. In 2021, Delores was appointed to serve on the City of Berkeley's Independent Redistricting Commission.

In 2024, Delores published a collection of poetry, "A Sweating Body That is Cooled By A Sometimey Breeze." She is currently working on her memoir.

Born in Oakland, nurtured in Compton, and raised in Berkeley, CA, Delores is a daughter, sister, mother, grandmother, aunt, cousin, devoted friend, and a team player with a strong work ethic instilled in her at an early age. She believes in cultivating dreams and ideas to fruition. In her down time, she enjoys, reading, writing, water aerobics, finding treasures at estate sales, sitting in her sacred spot just being and observing, and above all, spending time with loved ones.

Delores received her MA in Legal Analysis and BA in History from Lone Mountain College in San Francisco.



CONSENT CALENDAR  
April 14, 2026

To: Honorable Mayor and Members of the City Council

From: Councilmember Igor Tregub (Author), Councilmember Terry Taplin (Co-Sponsor), Councilmember Cecilia Lunaparra (Co-Sponsor)

Subject: Referral to the City Manager: Amendments to the Berkeley Green Code for Newly Constructed Buildings and Existing Construction

**RECOMMENDATION**

Refer to the City Manager the following:

- (1) Continued development of a Single Source Energy Margin (Single Margin) reach code for adoption;
- (2) Further analysis, for future consideration, of additional Green Building policy and operational measures, such as Flexible Path (FlexPath) and Air Conditioner to Heat Pump (AC2HP) provisions, and/or other applicable pathways; and
- (3) Further streamlining, as feasible and appropriate, of the approval of certain Green Building equipment, systems, features, and processes for residential and residential-over-ground-floor-commercial construction. Consideration should be given to the establishment of an expedited permitting pathway for installations performed by contractors that participate in a California Division of Apprenticeship Standards-approved apprenticeship program in the applicable trade.

As part of this ongoing work, the City Manager shall continue to examine the projected costs and potential savings, as applicable, associated with the referral; evaluate the complexity of compliance; and develop options to simplify requirements and reduce friction, particularly for smaller builders, developers, and homeowners.

**POLICY COMMITTEE RECOMMENDATION**

On March 18, 2026, the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Taplin/Humbert) To send the item to council with a qualified positive recommendation with the provisions that the ongoing work reexamine projected costs, evaluate the complexity of compliance, and offer options for making it simpler and as low friction as possible particularly for smaller builders, developers, and homeowners. Vote: All Ayes.

## **FISCAL IMPACTS OF RECOMMENDATION**

The proposed Ordinance may modestly or moderately increase the plan check and inspection workload. Costs would be offset by existing fees paid by permit applicants. Staff time associated with Recommendation 1 is already budgeted for and underway.

## **CURRENT SITUATION AND ITS EFFECTS**

City of Berkeley staff is in the process of responding to a May 2025 referral by the City Council to evaluate policies that accelerate building decarbonization.<sup>1</sup> Recommendations 1 and 2 align with the existing proposal for staff's current work plan.<sup>2 3</sup> Recommendation 3 aligns with the City of Berkeley's ongoing efforts to streamline the permitting process for green building systems and equipment and reduce "soft costs" associated with their permitting process.<sup>4</sup>

### **Single-Margin Energy Reach Code**

The single margin approach would require the proposed building to meet a higher source energy compliance margin for all occupancies than currently required by the California Energy Code. Although "source energy" is not defined in the state Energy Code, a Code manual explains it generally measures the marginal greenhouse gas emissions of energy used to supply electricity (2022 Single Family Residential Compliance Manual at 1.6.4). The metric accounts for the system delivering energy to the building, as well as the time of day the energy is delivered.

By requiring that a proposed building achieve a certain compliance margin below the source energy requirement for a standard design building, such an ordinance would require that a building improve upon the state code's performance metric. Each building type would have a respective single margin it would need to comply with. This approach gives builders flexibility in how to meet these standards and allows and applies to both electric and mixed-use fuel designs. Methods to achieve a particular source energy compliance margin include electrifying appliances, or, if a building uses gas appliances, adding efficiency improvements such as insulation, and/or utilizing solar photovoltaic (PV) or a battery.

### **Air Conditioning (AC) to Heat Pump**

As the federal government is rolling back climate progress, local governments such as Berkeley have the opportunity to step up to sustain and accelerate emissions reductions. Under an "AC to Heat Pump" (AC2HP) policy, any new installation of an air conditioner

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<sup>1</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-05-20%20Item%2025%20Authorization%20for%20City%20Manager%20to%20evaluate%20policies.pdf>

<sup>2</sup> [2025-12-03 ECC Item 8 Reach Code Memo.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025%20Reach%20Codes%20for%20FITES%2003-04-26.pdf)

<sup>3</sup> <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2025%20Reach%20Codes%20for%20FITES%2003-04-26.pdf>

<sup>4</sup> [2023-10-30 Online Standardized Plan Review and Permitting for Rooftop Solar Systems.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/2023-10-30%20Online%20Standardized%20Plan%20Review%20and%20Permitting%20for%20Rooftop%20Solar%20Systems.pdf)

would instead be required to use a heat pump, which provides both heating and cooling through a two-way valve, or, alternatively, to install a suite of energy efficiency measures. An AC2HP ordinance was produced in collaboration with the Statewide Reach Codes Program<sup>5</sup>, and establishes a “Time of Replacement” policy. The model code language proposes a reach code requiring that any existing single-family home involving replacement or alteration of an existing air conditioning system or installation of a new air conditioning must either include a heat pump space heater as the primary heating system or install other energy conservation measures. This approach targets a natural point of intervention in a building’s lifecycle. By focusing on equipment replacement events, this policy minimizes disruption to property owners while ensuring progress toward decarbonization.<sup>6</sup> Several other California jurisdictions (e.g., Mill Valley<sup>7</sup>, Glendale<sup>8</sup>, Oakland<sup>9</sup>, Menlo Park<sup>10</sup>, San Jose<sup>11</sup>, Sunnyvale<sup>12</sup>, Los Altos Hills<sup>13</sup>, Saratoga<sup>14</sup>, Campbell<sup>15</sup>, *et al*<sup>16</sup>) have passed or are on track to pass an AC2HP measure by the end of 2026.

## **BACKGROUND**

The Berkeley City Council adopted the California Green Building Standards Code with local amendments on November 29, 2022, and readopted this code on June 4, 2024, with State Mid-Cycle Supplements and further local amendments (effective July 1, 2024).<sup>17</sup>

Proposed amendments to the Berkeley Green Code were discussed by the Environment and Climate Commission (ECC) at its April and May 2024 meetings. ECC considered

<sup>5</sup> <https://localenergycodes.com/>

<sup>6</sup> <https://bayareareachcodes.org/model-reach-codes/>

<sup>7</sup> [https://cityofmillvalley.granicus.com/Viewer.php?view\\_id=2&clip\\_id=2073&meta\\_id=100851](https://cityofmillvalley.granicus.com/Viewer.php?view_id=2&clip_id=2073&meta_id=100851)

<sup>8</sup>

<https://glendaleca.primegov.com/api/compilemeetingattachmenthistory/historyattachment/?historyId=db909199-b056-4790-90ff-994bc0f6b172>

<sup>9</sup> Draft not publicly available as of the date of this report’s publication.

<sup>10</sup> <https://menlopark.gov/files/sharedassets/public/v/1/agendas-and-minutes/city-council/2025-meetings/20250812/h1-ordinance-amend-chapter-12-muni-code.pdf>

<sup>11</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=14574069&GUID=051302E5-52A2-4958-9CEB-6AEDF6C0CAF8>

<sup>12</sup> <https://sunnyvaleca.legistar.com/View.ashx?M=AO&ID=164851&GUID=16d2e642-ad7e-485a-ac75-599a0d0b0f19&N=Q291bmNpbCBBZ2VuZGEgSXRlbSB1cGRhdGVkIGZvbGxvd2luZyBwdWJsaWNhdGlvbiAocG9zdGVkIDlwMjUwODEyKQ%3d%3d>

<sup>13</sup> <https://losaltoshills.ca.gov/571/Reach-Codes>

<sup>14</sup> Draft not publicly available as of the date of this report’s publication.

<sup>15</sup> Draft not publicly available as of the date of this report’s publication.

<sup>16</sup> <https://bayareareachcodes.org>

<sup>17</sup> On October 28, 2025, the Berkeley City Council adopted the first reading of an Ordinance repealing and reenacting the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy, and Green Building Standards Codes in BMC Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions and scheduled a Public Hearing, pursuant to state law, for the second reading on November 18, 2025. While the adoption of these codes constitutes an update from the 2022 to the 2025 Building Standards Code, with certain local amendments, the Green Building reach codes under discussion were not included in the ordinance. Staff anticipates advancing those codes for City Council review in early 2026.

options including a Zero NOx CALGreen reach code and a Single Margin Energy reach code. Several commissioners indicated support for a Zero NOx CALGreen reach code, without an exception for cooking equipment used in commercial kitchens, citing potential benefits including alignment with BAAD's Zero NOx appliance rules, appreciation of future preparedness that a reach code brings, and facilitation of neighborhood decarbonization efforts tied to seismic safety and other health and safety benefits.

On May 7, 2024, City Council referred to the Health, Life Enrichment, Equity & Community (HLEEC) Policy Committee to consider local amendments to CALGreen to require all newly constructed buildings to be Zero NOx Emission Buildings. On July 29, 2024, the HLEEC Policy Committee unanimously voted to send Council a qualified, positive recommendation for the Zero NOx CALGreen reach code, noting also that Council should consider a commercial kitchen exemption, or as an alternative, consider a single margin energy reach code.

The item was removed from the October 15, 2024, Council agenda in order to evaluate recommendations submitted by several environmental organizations to adopt a single margin energy reach code.

#### **CODE AMENDMENTS**

The California Building Standards Code (Title 24 of the State of California Code of Regulations) is updated and published on a three-year cycle. After the California Building Standards Commission publishes the triennial codes, they become effective statewide. The current (2022) cycle of State building codes became effective on January 1, 2023. Local jurisdictions may amend the published codes to address local climatic, geological, or topographical conditions.

The current three-year building code cycle and any effective amendments thereto are effective through December 31, 2025. The local amendments proposed with a green building reach code ordinance would not negate or otherwise affect previously adopted amendments; they introduce new amendments to the 2022 and California Green Building Standards Code. Under state law local jurisdictions may adopt stricter building code provisions if justified by findings of local climatic, geological or topographical conditions.

In Fall 2025, the Berkeley City Council adopted an Ordinance repealing and reenacting the Berkeley Building, Residential, Electrical, Mechanical, Plumbing, Energy, and Green Building Standards Codes in BMC Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions and scheduled a Public Hearing, pursuant to state law, for the second reading on November 18, 2025. While the adoption of these codes constitutes an update from the 2022 to the 2025 Building Standards Code, with certain local amendments, the Green Building reach codes under discussion were not included in the ordinance.

A green building reach code ordinance supports the City's Strategic Plan Goals to create a resilient, safe, connected, and prepared city, and to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment. The

ordinance also supports City Council directives and policies related to fire and life safety, resilience, and climate protection, and is supported by the resolution adopting findings of local conditions.

### **RECENT STATE LAW DEVELOPMENTS**

On June 30, 2025, Governor Newsom signed AB 130 (Committee on Budget, 2025), which enacted into statute provisions that limited the ability of local jurisdictions to adopt certain performance standards that are higher than those prescribed in the California Building Standards Code, with certain stated exceptions.<sup>18</sup> Per discussion with the Berkeley City Attorney’s Office and the solicitation of other professional opinions as well as dialogue with applicable state legislative offices as to AB 130’s intent, AB 130 either does not apply or one of AB 130’s exemptions is likely to apply to the recommendations.

### **ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

The recommendations contemplated through this referral align with Berkeley’s health, safety, and climate goals. It supports the Climate Action Plan, Berkeley Resilience Strategy, and Fossil Fuel Free Berkeley goals. Green building reach codes reduce the human health, environmental, and climate impacts of emissions associated with occupying and using the new and existing buildings.

This action is exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3) because there is no possibility that this action may have a significant effect on the environment; the referral will result in standards that are more protective of the environment than existing state standards. Further, the referral will result in standards that are exempt from the requirements of CEQA pursuant to CEQA Guidelines sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

### **RATIONALE FOR RECOMMENDATION**

Local green building reach codes provide a higher level of safety than are achieved through the State’s Building Codes and Energy Codes. Fire risk, risks to the health of building occupants, the accumulating and compounding risks of climate change to the San Francisco Bay Area, its residents, its coastal and littoral zones, and broader risks of degraded air quality justify adoption of Berkeley code amendments that are stricter than the California Building Standards Code and Energy Code.

In addition to the climate benefits discussed elsewhere in the report, the recommendations would align with Berkeley’s Building Emissions Savings Ordinance, which provides a compliance pathway for properties with heat pumps. “Time-of-replacement” policies such as AC2HP are considered among the most cost-effective policies for decarbonizing buildings. According to the Berkeley Existing Buildings Electrification Strategy (BEBES), adopted by Council in 2021, “the marginal cost—[the] difference between installing electric equipment and replacing with new gas equipment—

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<sup>18</sup> [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202520260AB130](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202520260AB130)

at this time is smaller than the full cost of installing electric equipment.”

Yet the economics of AC2HP are even more favorable than gas-to-electric conversions. While furnace-to-heat pump conversions typically incur added costs due to electrical work, the electrical and ducting requirements of an air conditioner are typically identical to those of a heat pump. For this reason, BEBES lists AC2HP as a Phase 1 strategy for implementation by 2025.

### **ALTERNATIVES CONSIDERED**

A wide array of other green building reach code types (e.g., Zero NOx, Ultra-Low NOx, and Flex Path and electric readiness reach codes) and scope of applicability (e.g., industrial and mixed-use buildings beyond residential-over-ground-floor-commercial) were considered by the District 4 Council office but were ultimately deemed to be less feasible than the recommended approaches, potentially preempted by federal and/or state law, less applicable to Berkeley’s climatological characteristics, or potentially already accomplished through prior adoption of other ordinances.<sup>19</sup> As such, the office supports the ongoing efforts of City of Berkeley staff under recommendations 1 and 2 as bolstered by recommendation 3.

### **CONTACT PERSON**

Igor Tregub, Councilmember, District 4, 510-981-7140  
[itregub@berkeleyca.gov](mailto:itregub@berkeleyca.gov)

Olga Bolotina, Chief of Staff, District 4  
[obolotina@berkeleyca.gov](mailto:obolotina@berkeleyca.gov)

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<sup>19</sup> For example, Berkeley’s recently updated Building Emissions Savings Ordinance already may accomplish certain Flex Path objectives through a similar mechanism for certain types of existing residential construction prior to or shortly following time of sale. See <https://berkeleyca.gov/construction-development/green-building/building-emissions-saving-ordinance-beso>



Office of the City Manager

CONSENT CALENDAR

April 14, 2026

*(Continued from March 24, 2026)*

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Mills Act Contract – 2845 Woolsey Street

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to enter into a Mills Act contract with Michael Pearson and Annette Blum Pearson for the maintenance and restoration of a City Landmark property at 2845 Woolsey Street.

FISCAL IMPACTS OF RECOMMENDATION

The Mills Act tax relief is calculated by valuing the income producing potential through a review of market rents, and a capitalization rate that is provided annually by the Board of Equalization. The capitalization rate is the same as the established mortgage interest rates through the Federal Reserve, rounded to the nearest quarter percent for calculation purposes. There is variability each year in the tax reduction depending on the interest rate and market rate rents.

The estimated decrease in City property tax revenue in the first year will be \$6,558. Final amounts are determined by the Alameda County Assessor's Office after contract execution. This will be an annual impact to the City's tax revenue, as the contract runs for ten years, in comparable annual amounts.

Council approval will allow property tax reduction for this property to begin in the 2027-2028 fiscal year.

CURRENT SITUATION AND ITS EFFECTS

On April 3, 2025, the property 2845 Woolsey Street was designated as a Structure of Merit allowing the property to be eligible for the Mills Act (see Attachment 2).

On September 4, 2025, the Landmarks Preservation Commission (LPC) reviewed the proposal by the present owners and continued the matter to a date certain of October 6, 2025, pending the resubmittal of a corrected work sheet.

On October 6, 2025, the LPC continued the matter to a date certain of November 6, 2025.

On November 6, 2025, the LPC continued the matter to a date certain of December 4, 2025.

On December 4, 2025, the LPC reviewed the proposal by the present owners, Michael Pearson and Annette Blum Pearson, to enter into a Mills Act contract for 2845 Woolsey, including a proposed scope of work and maintenance schedule, and failed to approve the Mills Act Contract by a 3-1-2-1 vote (Moved/Second: Finacom/Orbuch; Yes: Finacom, Orbuch, Montgomery; No: Schwartz; Abstain: Montilla, Leuschner; Absent: Crandall). After the motion failed, the LPC did not reconsider the motion, nor did LPC make any findings for denial of the contract. Any contract for the Mills Act program is subject to review and approval of the Landmarks Preservation Commission, the City Manager, and City Council. Therefore, the City Council can act to approve or deny the contract. Since there are no findings for denial, staff recommends the City Council act to approve the Mills Act contract.

#### BACKGROUND

The Mills Act allows owners of historic properties to voluntarily enter into individual contracts with the City to obtain limited ad valorem tax relief, at the discretion of the host jurisdiction, in exchange for maintaining and restoring their historic property. These property tax savings are offered as an incentive for owners to maintain their historic properties, designate currently unprotected historic properties, and purchase and rehabilitate dilapidated historic properties. In Berkeley, owners of properties designated by the LPC as a Landmark or a Structure of Merit may apply for a Mills Act contract.

The Mills Act application includes a ten-year work plan to restore and maintain the subject property. The total investment in the work plan is intended to equal or exceed the total amount of the property tax relief over the contract period.

On February 24, 1998, the Berkeley City Council passed Resolution No. 59,355-N.S., which authorizes the local use of the Mills Act of 1972, as amended, which is codified in California Government Code Section 50280-90 and Revenue and Taxation Code Section 439.

In 2011, the Mills Act was amended to include more specific requirements regarding fees, inspections, and cancellation. The amendments clarified that the local legislative body may require fees for providing services pursuant to the Mills Act; shall inspect the property prior to a new agreement and then every five years thereafter; and shall cancel the contract if it determines that the owner has breached the conditions of the contract. As a result of these amendments, Land Use Planning fees for the approval and monitoring of Mills Act contracts were added in July 2012, with fee rates periodically adjusted to keep up with staff costs.

On November 18, 2025, the Berkeley City Council adopted Resolution No. 72,048-N.S., which paused the City of Berkeley’s Mills Act program including the processing of new contract applications submitted after November 19, 2025. This application was filed prior to the enactment date of November 19, 2025.

RATIONALE FOR RECOMMENDATION

In order to qualify for Mills Act consideration, 1) the property must qualify as historic; 2) the contract must adequately meet the requirements for Mills Act contracts; and 3) the type of improvements outlined in the work plan must meet the City standards, which require that tax savings be used according to the rules and regulations outlined in the Act.

The property located at 2845 Woolsey Street is eligible for the Mills Act contract because it was designated as Structure of Merit on April 3, 2025. The contract template has been reviewed by the City Attorney's Office for conformance to all relevant City and State regulations. The contract includes a comprehensive work plan that the property owner has agreed to complete within the ten-year contract period (see Attachment 3). The work plan provides for the “preservation of the qualified historical property and, when necessary, restoration and rehabilitation of the property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior’s Standards for Rehabilitation, and the State Historical Building Code” (California Government Code Section 50281(b)(1)).

After contracts are recorded, monitoring is required to occur at least every five years to verify progress on the approved work plan. Monitoring includes an examination of the exterior and interior (if necessary based on the work plan) of the property.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

Approval of the contract would encourage historic resource rehabilitation, materials conservation, and construction and demolition waste diversion.

ALTERNATIVE ACTIONS CONSIDERED

The Council may choose to approve the contract or deny the contract approval if it determined that it did not satisfy the requirements of the Mills Act.

CONTACT PERSON

Jordan Klein, Director, Planning and Development Department, 510-981-7534  
Sarah Price, Principal Planner/LPC Interim-Secretary, 510-981-7414

Mills Act Contract – 2845 Woolsey Street

CONSENT CALENDAR  
April 14, 2026  
(Continued from March 24, 2026)

Attachments:

1. Resolution
2. Notice of Decision, Landmark Designation for 2845 Woolsey Street, effective date June 18, 2025
3. Rehabilitation Plan, dated May 30, 2025
4. LPC Staff Report, September 4, 2025

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

AUTHORIZING THE CITY MANAGER TO EXECUTE A MILLS ACT CONTRACT AND ANY NECESSARY AMENDMENTS WITH MICHAEL PEARSON AND ANNETTE BLUM PEARSON, FOR THE MAINTENANCE AND RESTORATION OF A HISTORIC PROPERTY LOCATED AT 2845 WOOLSEY, IN RETURN FOR THE OWNER TO OBTAIN A PROPERTY TAX REDUCTION

WHEREAS, on February 24, 1998, the Berkeley City Council adopted Resolution No. 59,355-N.S. which authorized the use of Mills Act contracts; and

WHEREAS, on April 3, 2025, the property at 2845 Woolsey was designated as a City of Berkeley Structure of Merit, which renders it eligible to take advantage of the Mills Act; and

WHEREAS, on September 4, October 6, and November 6, 2025, the Landmarks Preservation Commission reviewed the proposed projects listed in the Mills Act Contract Application for 2845 Woolsey, and failed to make a motion recommending that the City Council enter into a Mills Act contract with the property owner; and

WHEREAS, the City of Berkeley Mills Act program requires each contract to receive final approval of the City Council and signed by the City Manager; and

WHEREAS, the City Council, in light of all evidence, finds that the contract is consistent with the purposes of the Mills Act program.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Manager is authorized to execute a Mills Act Contract and any necessary amendments with Michael Pearson and Annette Blum Pearson for the maintenance and restoration of the historic property located at 2845 Woolsey and in return offer a property tax reduction for a period of at least ten years, with a recorded copy of such contract and amendments to be on file in the Office of the City Clerk and Alameda County Clerk- Recorder.



LANDMARKS  
PRESERVATION  
COMMISSION  
NOTICE OF DECISION

**DATE OF BOARD DECISION: April 3, 2025**  
**DATE NOTICE MAILED: June 2, 2025**  
**APPEAL PERIOD EXPIRATION: June 17, 2025**  
**EFFECTIVE DATE (Barring Appeal or Certification): June 18, 2025<sup>1</sup>**

## 2845 Woolsey Street – Norton Family House

**Landmark application #LMIN2024-0008 for the consideration of City Landmark or Structure of Merit designation status for a residential property constructed in 1908 (APN 052-1563-006-00).**

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following designation:

- **Structure of Merit designation**
  - **Applicant:** Caitlin Hibma  
Left Coast Architectural History  
P.O. Box 70415  
Richmond, CA 94807
  - **Property Owner:** Michael Pearson  
2169 Folsom Street M301  
San Francisco, CA 94110

**ZONING DISTRICT:** Restricted Two-Family Residential District (R-2)

**ENVIRONMENTAL REVIEW STATUS:** Categorically exempt from further environmental review pursuant to CEQA Guidelines Section 15061.(b)(3) Review for Exemptions.

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<sup>1</sup> Pursuant to BMC Chapter 3.24, the City Council may “certify” any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Permit becomes effective the day after the certification deadline has passed.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMIN2025-0001  
2845 Woolsey Street

June 2, 2025

Page 2 of 4

The application materials for this project is available online at:

<https://berkeleyca.gov/construction-development/land-use-development/zoning-projects> or  
<https://permits.cityofberkeley.info/CitizenAccess/Default.aspx>

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**FINDINGS AND CONDITIONS OF APPROVAL AND APPLICATION MATERIALS ARE ATTACHED TO THIS NOTICE**

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**COMMISSION VOTE: 7-0-0-1 (Note: one vacancy)**

**YES:** CRANDALL, ENCHILL, FINACOM, GREENE, MONTGOMERY, ORBUCH, SCHWARTZ

**NO:** NONE

**ABSTAIN:** NONE

**ABSENT:** PLEASE

**TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):**

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
  - a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of Chapter 3.24.
2. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for persons other than the applicant is \$1,500. This fee may be reduced to \$500 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less. Signatures collected per the filing requirement in BMC Section 3.24.300.A may be counted towards qualifying for the reduced fee, so long as the signers are qualified. The individual filing the appeal must clearly denote which signatures are to be counted towards qualifying for the reduced fee.
  - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for all appeals by Applicants is \$6,000.

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
**#LMIN2025-0001**  
**2845 Woolsey Street**

June 2, 2025

Page 3 of 4

3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the landmark permit will be final on the first business day following expiration of the appeal period.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
  - A. That this belief is a basis of your appeal.
  - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

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

LANDMARKS PRESERVATION COMMISSION  
NOTICE OF DECISION  
#LMIN2025-0001  
2845 Woolsey Street  
June 2, 2025  
Page 4 of 4

**PUBLIC COMMENT:**

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Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 or in person to the secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

**FURTHER INFORMATION:**

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Questions about the project should be directed to the Commission Secretary at (510) 981-7410 or [lpc@berkeleyca.gov](mailto:lpc@berkeleyca.gov). All project application materials may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, 3<sup>rd</sup> Fl., during regular business hours.

**ATTACHMENTS:**

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1. Findings for Approval
2. Application Materials

**ATTEST:**



Anne Hersch, Secretary  
Landmarks Preservation Commission

cc: City Clerk  
Caitlin Hibma, Left Coast Architectural History, P.O. Box 70415, Richmond, CA 94807  
Michael Pearson, 2169 Folsom Street M301, San Francisco, CA 94110

# ATTACHMENT 1, PART 2

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## FINDINGS FOR DESIGNATION

APRIL 3, 2025

### **2845 Woolsey Street – Norton Family House**

**Landmark application #LMIN2025-0001 for the consideration of City Landmark or Structure of Merit designation status for a residential property constructed in 1908 (APN 052-1563-006-00)**

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#### PROJECT DESCRIPTION

Structure of Merit designation of the property at 2845 Woolsey Street.

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#### CEQA FINDINGS

1. The project is found to be exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15061.b.3 of the CEQA Guidelines (activities that can be seen with certainty to have no significant effect on the environment).

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#### LANDMARK PRESERVATION ORDINANCE FINDINGS

1. Pursuant to Berkeley Municipal Code (BMC) Section 3.24.110(B)(2)(c) of the Landmarks Preservation Ordinance (LPO), the Landmarks Preservation Commission of the City of Berkeley (Commission) finds that the property at 2845 Woolsey Street meets the designation criterion for Structure of Merit because it is a good example of architectural design in the First Bay Tradition style. It also exemplifies one of the best surviving examples of the prominent Bay Area architecture firm Newsom & Newsom. The house retains a sufficient degree of architectural features representative of its historical design including: plan, form, exterior materials, detailing, and fenestration pattern that represent distinctive aspects of First Bay Tradition architecture and the work of Newsom & Newsom.

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#### FEATURES TO BE PRESERVED

This designation shall apply to the subject property and the following distinguishing features of the property shall be preserved, and missing features shall be restored to the extent possible:

##### Property

- Location at northwest corner of Woolsey Street and Claremont Avenue.
- Cast stone (concrete) perimeter retaining wall.

##### Residence

- Large front setback at northeast corner of the lot.
- Two-story height.
- Hip roof with flared, overhanging eaves.

- Second story overhang with sloped profile.
- Wood architectural features expressing structure:
  - Rafter tails;
  - Molded rafter ends;
  - Molded modillions beneath eaves.
- Wood architectural details:
  - Wood trim at second story and cornice line;
  - Exterior wood trim at windows.
- Original window openings on south, east, and elevations.
- Original leaded-glass windows.
- Projecting bays and associated three-part window openings.
- Wood planter boxes at second-story windows fronting Woolsey Street.



Landmarks
Application Form

For: Alteration / Sign Permit
[X] Landmark Designation

Effective April 3, 2013

Intake Planner

Project Address: 2845 Woolsey Street Zone:

Project Description: Application for Landmark designation.

Date Use Permit or Zoning Permit was applied for: n/a

Associated Permit number: n/a

Property Owner Name (Print) Michael Pearson

Owner's Mailing Address: 2169 Folsom St M301

San Francisco, CA. 94110

Daytime Phone # 415.832.9160 E-mail: michael.a.pearson@gmail.com

Applicant Name (Print) [ ] SAME as Above: Caitlin Hibma, Left Coast Architectural History

Applicant's Mailing Address: PO Box 70415

Richmond, CA. 94807

Daytime Phone # (415) 745-1906 E-mail: caitlin@leftcoastarchitecturalhistory.com

Under penalties of perjury, I certify that the information above and in any attachments hereto, is true and accurate to the best of my knowledge.

Applicant Signature: Caitlin Paige Hibma

Date: 12/16/2024

Owner's Signature: [Signature]

Date: 12/16/2024

Table with 3 columns: Does the project include:, No, Yes, Handout / Application Requirement. Row 1: Demolition of, or exterior modifications to, a designated City of Berkeley landmark... Row 2: Application to designate a landmark, structure of merit or historic district?

City of Berkeley  
Ordinance #4694 N.S.  
**LANDMARK APPLICATION**

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**1. Street Address** 2845 Woolsey Street

**City** Berkeley

**County** Alameda

**Zip** 94705

**2. Assessor's Parcel Number:** 52-1563-15

**Block and Lot:** Block 1563, Lot 15

**Tract:** Parkside Claremont

**Dimensions:** 100' (southwest) x 95' (southeast) x 113' (northeast) x 99.65' (northwest)

**Cross Streets:** Woolsey Street and Claremont Avenue

**3. Is property on the State Historic Resource Inventory?** No

**Is property on the Berkeley Urban Conservation Survey?** Yes

**Form #** 11425

**4. Application for Landmark includes:**

**a. Building:** Yes (1)      **Garden:** No      **Other features:** No

**b. Landscape or Open Space:** No

**c. Historic Site:** No

**d. District:** No

**e. Other:** No

**5. Historic Name:** F.B. Norton House

**Commonly Known Name:** None

**6. Date of Construction:** 1908

**a. Factual:** Yes

**Source of Information:** *Daily Pacific Builder*, 18 May 1908

## 7. Architects: Newsom & Newsom (Samuel, Sidney, and Noble Newsom)

Architecture was the Newsom family trade, with two generations of brothers and sons collaborating on some of the Bay Area's, and California's, best know architecture of the late-19<sup>th</sup> and early-20<sup>th</sup> centuries.

The Newsom family came to Oakland from Canada in 1860; a horticultural nurseryman, his wife, and eight children. Eldest son, John, was apprenticed to an architect by 1870<sup>1</sup> and, eventually, four of the five Newsom sons gravitated toward that profession. By 1880, Thomas, Samuel, and Joseph C. Newsom were all listed as architects in census records. None of the Newsom brothers appear to have been formally educated as architects, but gained their training through apprenticeships and from each other.

The four Newsom brothers initially worked together, but in 1878, Samuel and Joseph went out on their own, naming their practice Newsom & Newsom, which became a much better-known and widely-respected firm than that of their brothers'.<sup>2</sup> They began in San Francisco, but by 1884, had moved their practice back to their hometown of Oakland. A few years later, they opened an office in Los Angeles and Joseph C. Newsom relocated to Southern California to lead it.

Newsom & Newsom's work initially focused on Victorian architectural styles, especially Queen Anne, and was known for being elaborately decorative, although it was primarily designed for middle-class clients. They designed around 650 buildings ranging from single-family houses to apartments and hotels. They designed the iconic Carson Mansion in Eureka, California (1884-1886), the original Berkeley City Hall (1884), the T.H. Boyd House in Eureka (1884), the 30-room Pinney House hotel in Sierra Madre (1887), and the Sessions House in Los Angeles (1888).<sup>3</sup> A number of their works are listed on the National Register of Historic Places or otherwise designated as significant historical landmarks.

Maintaining offices at opposite ends of the state ultimately resulted in Samuel and Joseph parting ways professionally in 1888, with Joseph continuing his own solo-practice in Los Angeles. For a time, from 1889 to 1901, Samuel partnered with Frederick Herman Meyer, under the name of Newsom & Meyer. During that time, in 1893, Samuel's son Sidney joined his father's practice, becoming the second generation of Newsoms in architecture. He was 16 years old at the time and the initial arrangement was likely an apprenticeship of sorts, as he also trained with various architecture firms on the East Coast before returning to the Newsom firm full-time.<sup>4</sup> In 1906, after graduating from U.C. Berkeley's school of architecture, Samuel's second son, Noble Newsom, joined the firm, which had returned to being known as Newsom & Newsom.

As father and sons worked together around the turn of the twentieth century, the firm's design aesthetics evolved along with prevailing architectural fashions, away from the Victorian and toward newly popular styles like Spanish Colonial and Mediterranean Revival, French Provincial, Tudor Revival, Colonial Revival, and Craftsman. In 1905, their wildly fanciful and overstated design of Gilroy City Hall seems to illustrate this transition, while also symbolizing a "last hurrah" as they moved away from the decorative exuberance of the Victorian period and toward more quietly understated houses of high quality and

1 U.S. Federal Census, 1870.

2 Daniella Thompson, "Berkeley's City Hall Was Inspired by a Mairie on the Loire," [http://www.berkeleyheritage.com/berkeley\\_landmarks/city\\_hall.html](http://www.berkeleyheritage.com/berkeley_landmarks/city_hall.html).

3 Pacific Coast Architecture Database (PCAD), "Newsom and Newsom, Architects," <https://digital.lib.washington.edu/architect/partners/446/>.

4 David Weinstein, "Quiet Pleasures, Newsom brothers created homes with a timeless appeal," *San Francisco Chronicle*, 5 February 2005.

highly-livable designs. By then, the Newsom & Newsom name had become prominent and popular. Their clients included the affluent as much as the middle-class.<sup>5</sup>

Samuel Newsom died of a coronary while onboard a ferry from San Francisco to Alameda on the first of September 1908; just three and a half months after the building contract for the house at 2845 Woolsey Street was published.<sup>6</sup> Presumably, he never saw the finished house. Sidney and Noble continued in business without their father and Newsom & Newsom continued to be known for high-quality residential design that followed current architectural tastes, but often playfully mixed styles while using restraint in applying historical details. Later Newsom & Newsom buildings were noted to have relatively symmetrical forms and simple rooflines, lending to the sense of understated luxury that became the firm's signature aesthetic.<sup>7</sup>

In 1911, Newsom & Newsom designed the Berkeley Inn at 2501 Haste Street, a four-story brick Classical Revival building, which was damaged by fires and eventually demolished in 1990. Prior to its destruction it was the only Newsom & Newsom building to be designated as a City of Berkeley Landmark (#118).

Both Newsom brothers served in World War I, applying their building expertise in the Army Corps of Engineers. Like many other architects and builders, they brought back a new appreciation for Old World architecture that inspired further design work in European-influenced revival styles. Post-War, Archie Newsom (no relation) joined the firm as an interior architect and designer. With skyrocketing reputations, the Newsoms were in demand by clients like the Ghirardellis (of chocolate fame) and the Hills (of Hills Coffee), many of whom commissioned houses in wealthy enclaves like Piedmont. Both brothers eventually designed houses for themselves in or near Piedmont.<sup>8</sup>

Sidney was a partner in the firm until the Depression, when business slowed drastically and he retired to Walnut Creek. Noble and Archie Newsom continued the firm, designing some grand houses that belied the economic hardships of the 1930s. In 1933, Noble fractured his skull in a car accident, but survived. When World War II erupted, he joined the war effort as a designer at the Kaiser Shipyards in Richmond. During the war years, Sidney died of a stroke at the age of 65. Noble had hopes of reopening a Newsom & Newsom office in San Francisco after the war, but died only a few short days after the Kaiser Shipyards closed in 1945 and never got back to private practice. He was 58.<sup>9</sup>

The house at 2845 Woolsey Street, built in 1908, was designed during a brief period when the Newsom & Newsom firm consisted of both generations of the Newsom family (from 1893 to 1908); father Samuel, and sons Sidney and Noble. One or all three of the Newsoms may have had input in the house's design.

Other Berkeley residential buildings designed by Newsom & Newsom during that period or later (when Sidney and Noble made up the partnership, 1908 to the 1930s), include:

- 45 El Camino Real; 1907, First Bay Tradition
- 2540 (2538) Ellsworth; 1908, First Bay Tradition
- 2241 Parker Street; 1908, First Bay Tradition
- 2815 Benvenue Ave.; 1908, Craftsman Bungalow

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5 David Weinstein.

6 *Daily Pacific Builder*, 18 May 1908.

7 David Weinstein.

8 David Weinstein.

9 David Weinstein. Pacific Coast Architecture Database (PCAD).

- 3121 Claremont Ave.; 1909, First Bay Tradition
- 20 Hillcrest Road; 1909, First Bay Tradition/Craftsman
- 1749 Allston Way; 1912, Craftsman
- 2610-1612 Parker St.; 1913, altered, possibly First Bay Tradition
- 3201 Claremont Ave.; 1914, Classical Revival
- 1924 Yosemite Road; 1916, Tudor Revival
- 1923 Thousand Oaks Blvd.; 1922, Classical Revival
- 1963 Yosemite Road; 1925, Tudor Revival, altered
- 38 Somerset Place; 1925, Spanish Colonial Revival
- 1430 Le Roy Ave.; 1928, Spanish Colonial/Monterey Colonial Revival
- 686 San Fernando Ave.; 1930, Tudor Revival
- 702 San Luis Road; 1931, style unknown<sup>10</sup>

Three of these houses were built the same year as the house at 2845 Woolsey Street and in the First Bay Tradition style, but with markedly different character. The following year and in 1914, Newsom & Newsom designed three houses within the same neighborhood as the subject house; two in a First Bay Tradition aesthetic, the latter in the Classical Revival style. This suggests that the house at 2845 Woolsey Street could have influenced some nearby neighbors to commission Newsom & Newsom for their Parkside Claremont or Uplands neighborhood homes. From 1913 onward, Newsom & Newsom's designs began a marked move away from the First Bay Tradition and Craftsman aesthetics, toward Revival styles of later popularity.

#### 8. Builder: Henry Newton

In addition to identifying the house's architects, the *Daily Pacific Builder* building contract notice for the property identifies the builder; Henry Newton. The notice and a 1909 Oakland city directory indicate that Newton was based in downtown Oakland, with an office in the Bacon Building. A city directory from 1908 specifies that he was employed as the manager of the Newton-Sanford Construction Company. No census records or other vital information were found to provide a biographical account of Newton.

Around the time that he was building the house at 2845 Woolsey Street, the *Daily Pacific Builder* notes a few other projects that the Newton-Sanford Construction Company completed, including two four- and five-room bungalows in Berkeley (10 January 1907); a 24 bungalow tract in Fruitvale (11 April 1908); and a two-story mixed use building containing three shops and 15-room flats on San Pablo Avenue in Oakland (1 June 1908). In February 1908, they built a house at 81 Hillcrest Road, nearby the subject house.

#### 9. Style: First Bay Tradition

Stylistically, the house at 2845 Woolsey Street can be classified as First Bay Tradition. The

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<sup>10</sup> This list represents a sampling of properties designed by Newsom & Newsom, as identified on Berkeley Architectural Heritage's "41 Walking Tours" (2009) index; [https://berkeleyheritage.com/docs/41\\_Walking\\_Tours.index.pdf](https://berkeleyheritage.com/docs/41_Walking_Tours.index.pdf)  
Other Newsom & Newsom designs likely exist in Berkeley beyond what is listed here.

Bay Tradition was an ongoing regional architectural trend spanning from around 1880 through the 1960s, and was the only dominant regional style of architecture to emerge in the San Francisco Bay Area. Buildings of the Bay Tradition can be classified within three different periods, but the designs of each period tended to perpetuate the common characteristics of modest, straightforward, distinctive design that responded to the Bay Area's climate, geography, and relatively informal cultural attitudes. The First Bay Tradition style was a derivation of the East Coast's Shingle style, while the Second Bay Tradition style was inspired by the International and Ranch styles, and the Third Bay Tradition style was a synthesis of the earlier two that combined rustic materials with strikingly modern forms. The stylistic trend as a whole was noted and perpetuated by publications of the day, such as *Architect and Engineer*, *Sunset* magazine, *California's Arts & Architecture*, *Magazine of Art*, and *Pencil Points*.<sup>11</sup>

The First Bay Tradition style was popular around the turn of the twentieth century, between about 1880 and 1917. "The houses of the Eastern Shingle Style with their large living areas and wide openings between rooms, when mixed with the Craftsmen [sic], Swiss Chalet, some Queen Anne and Art Nouveau Styles with a Japanese influence in detailing, formed the basis of the work of early practitioners in the San Francisco Bay region."<sup>12</sup> Bay Area architects such as Ernest Coxhead, Willis Polk, John Galen Howard, Bernard Maybeck, and Julia Morgan were known for honing the style. The aesthetic is in great evidence and beloved in Berkeley, where it is commonly referred to using the "brown shingle" moniker, which simply referenced the often unpainted wood shingle cladding, although painted shingle can also qualify for the First Bay Tradition classification. Houses of the First Bay Tradition style are characterized by:

- Tall narrow profiles of 2-3 stories
- Asymmetrical plans and facade organization that includes projecting and recessed bays and porches
- Prominent porches
- Steeply pitched roofs with gable and gambrel forms, often with cross-gables and dormers
- Wood windows with small divided lights and double-hung or casement sashes
- Wood shingle cladding, sometimes incorporating wavy patterns or diamonds
- Wall planes that flare and/or overhang at the bottom, especially between stories; or that bulge or bow above windows
- Tall, prominent brick chimneys and other brick elements; brick is often of the clinker variety
- Ornamentation that tends toward the Classical or Gothic, applied in an eclectic way that referenced no style directly but created an overarching historical sense

At 2845 Woolsey Street, the house's mixture of shingled aesthetics dating to 1908, places it within the appropriate time period and stylistic genres to be considered First Bay Tradition. As is said of Bay Tradition buildings of all sub-types, "although they have certain common characteristics... every good Bay Region house is unique in design. This is because each one, unlike most U.S. homes, represents a tailor-made solution to the particular living problems of the owner."<sup>13</sup> Therefore, a wide range of aesthetic influences are typically present in Bay Tradition buildings and can account for the subject house's mixture of Shingle, Craftsman, Tudor, Classical Revival, American Four Square, even

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11 San Francisco Planning Department, *San Francisco Modern Architecture and Landscape Design, 1935-1970, Context Statement* (2010)

12 Lester Walker, *American Shelter* (New York: Overlook Press, 1996) 192.

13 "San Francisco Houses: They embody a new U.S. Regional architecture," *Life Magazine*, 5 September 1949.

Prairie styles, all of which amount to an eclectic and unique First Bay Tradition design that Newsom & Newsom likely crafted with strong input of the Norton family who would live in it.

The form of the house differs somewhat from the identified tall narrow profile, but does not detract substantially from the overall aesthetic. It is two stories high and has a regular, rectangular plan that results in a less asymmetrical plan and less articulated facades. The more boxy massing can be attributed to Classical and American Four Square influences, however. Projecting bays, bay windows, the (original but currently not-extant) recessed second story balcony/porch at the northeast corner, and the main entry porch all lend to subtle articulations that are typical to the First Bay Tradition style. The entry porch's prominent and obvious visual indication of a formal entrance to the house is also characteristically First Bay Tradition.

The hip roof, though relatively shallowly pitched, has distinctly flared eaves that make strong reference to the Japanese influences described, and the prominent, decoratively shaped, exposed rafter tails at the eaves are either – or both – distinctly Craftsman and referential to Classical modillions, as are the projecting shaped beam ends between stories.

Most of the current windows are not original, but maintain a double-hung configuration typical of the style. Original windows are known to have been multi-lite-over-one double hung sashes with vertical muntins, extremely appropriate to the First Bay Tradition style. Also extremely appropriate to the aesthetic is the three-part, diamond pattern, leaded glass feature window on the rear (west) facade that relates to the interior stair.

Of course, the house's wood shingle siding is a strong indicator its First Bay Tradition identity, and includes the characteristic flared shingle-work at the base of the second story walls. Other typical ornamental elements include traditional wood moldings; pronounced trim around openings, especially with prominent hoods and projecting sills; decorative flower boxes, which were an often-borrowed signature of Maybeck's work; and original but no longer extant Classical balustrades and diamond pattern railings at the porch. A clinker brick chimney is also present, tall and slender, and although placed less prominently on the rear facade, is quite visible from the street.

**10. Original Owners:** F.B. Norton

**Original Use:** Single-family residence

**11. Present Owners:** Michael A. Pearson & Annette Blum

**12. Present Use:** Single-family residence

**Current Zoning:** R-2

**Adjacent Property Zoning:** C-N (to northeast), and R-2 (to northwest, west, and southwest), RH-1 (across Claremont Ave. to east)

**13. Present Condition of Property:****Exterior:** Good**Interior:** Good**Grounds:** Good**Has the property's exterior been altered? Yes**

Building permit records indicate the following exterior alterations:

| <b>Date</b> | <b>Permit #</b>         | <b>Description of Work/Notes</b>                                                                                                                                                                      |
|-------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10/10/1945  | 57983                   | Reroof entire house with composition shingles.                                                                                                                                                        |
| 12/31/1958  | 85721                   | Replace front steps (4) with brick steps on 8" slab. [Altered again at a later date; steps now concrete and located on east side of porch.]                                                           |
| 1/22/1969   | 113371                  | Add new stairway and exit door, close front porch. [Stairway and exit may refer to western portion of northern addition.]                                                                             |
| 5/30/1973   | ID# 053073839           | Deck addition for exiting door, 6 x 14. [Located at second story, east side of north facade; associated with the two-story addition already located on west side of north facade. All since removed.] |
| 12/30/1980  | 0130807340/<br>UP# 9109 | Close in porch.                                                                                                                                                                                       |
| 7/20/1987   | 720874645               | Repair rear stairway.                                                                                                                                                                                 |
| 11/30/2000  | 00-00005015             | Reroof with composition shingle.                                                                                                                                                                      |
| 7/14/2021   | B2021-03100             | Removal of dry-rot shingles, installation of vapor barrier, and installation of new cedar shingles.                                                                                                   |
| 12/1/2021   | B2021-04972             | Dry rot repair. Roofing repair, shingles, and chimney removal. [Main chimney remains, may have referred to a secondary kitchen chimney.]                                                              |
| 1/04/2022   | B2022-00014             | Replace windows in like kind (26). [Current vinyl sash]                                                                                                                                               |

Other substantial alterations that have been observed, but which are not reflected or fully elaborated upon by above records, include:

- The house originally had an integral open balcony at the northeast corner of second story. At some point, a large opening related to the balcony, at the right side of the second story of the primary facade, was fitted with an aluminum sliding sash window. Openings on the left side of north facade were also altered by an addition to the north facade. In 2021-2022, the opening on the primary facade was infilled entirely.
- A shallow, shed-roofed, two-story addition with a substantial exterior stair, was made to the north facade, possibly in 1969. In 1973, an additional deck was added to the east side of the addition, which itself was, or became, enclosed. The entire addition was

removed in 2021-2022, but all fenestration on the north facade remains altered and non-original.

- The front porch was originally open with brick entry steps oriented toward Woolsey Street to the south. There were three thick square porch posts along the east side and the railings in between were Classical balustrades. A diamond-patterned railing surrounded the roof deck. The porch was later enclosed, in 1969 and/or 1980, new brick steps and an exterior door were installed on the south side, while the rest was enclosed with glazing. The roof deck railing remained. In 2021-2022, the porch was reopened, but oriented to the east. Three original porch posts were replaced with four of somewhat smaller dimension, while concrete steps, non-original railings, interior finishing, and a new entry door were added (original leaded glass sidelights appear to remain). The roof deck railing was removed and the integral hip roof over the projecting bay to the right of the porch appears to have been extended across the width of the porch. Structural beams may have been altered, as the porch roof now exhibits a distinct slope to one side.

#### 14. Description:

The parcel and house are oriented on a diagonal axis, with Woolsey Street to the southwest and Claremont Avenue to the southeast. For the purposes of this report, the primary facade, which faces Claremont Avenue will be referred to as facing east, the rear facade facing west, etc.

##### *Site*

The property is located in a densely developed residential setting of large-scale houses, with a row of commercial buildings located to the immediate north, along Claremont Avenue. It is set in close proximity to neighboring buildings on an almost square lot, measuring 100 feet along Woolsey Street and 95 feet along Claremont Avenue. The lot is flat and elevated slightly above street level, with a cast stone site wall bordering it on the south and east. The house is set back from Claremont Avenue with a large front yard, and sits very close to the western lot line, resulting in no rear yard. Narrow margins exist between the house and the north and south lot lines. The lot is landscaped with hardscaping and small plantings. Four mature trees stand at the eastern edge of the lot, while others surround the house but are not located on the property, itself.

##### *House*

The house has a rectangular plan, sits on a concrete foundation, is two stories high, and topped by a hip roof. The roof is clad with composition shingle and features broad flared eaves with closely-spaced, decoratively shaped rafter tails on all sides. Exterior wall cladding is wood shingle that flares out at the base of the second story wall, creating a small overhang that is ornamented with a horizontal wood molding and/or block modillions in most locations. Current fenestration consists of vinyl-sash, double-hung windows with vertical faux muntins in the upper sashes. Most windows and other openings have wide flat wood trim, projecting sills, and simply molded hoods.

The primary facade faces east toward Claremont Avenue and represents the long side of the house's rectangular plan. It features an entry porch to the left of center and a projecting bay to its immediate right. Both are topped by an intermediate hip roof with slightly flaring eaves, while a flat roof projects to cover the balance of the porch. The porch is accessed from the east by concrete steps. It has a shingled base, metal railings with solid shingled

railings at the sides, and thick square wood posts that support the flat roof that extends from the intermediate hip roof. The flat porch roof features decorative rafter tails with shaped ends, supported in turn by cross beams with shaped ends. Within the porch, the ceiling, back wall, and interior of the solid side railings are clad with simple wood paneling and battens. The entry door is paneled and has a leaded glass oval window at its center. It is flanked by partial height, diamond-pattern, leaded glass sidelights. The projecting bay to the right of the porch features a three-part window, with a narrow middle sash flanked by wider sashes, all separated by wood mullions. Standard windows are located at the far left and right sides of the facade and at the second story level, where a three-part window (wide sash flanked by narrower sashes) is flanked by single windows. These three openings are regularly spaced from one another, but set off-center to the left, leaving a blank wall plane at the far right side of the second story.

The south facade, facing Woolsey Street, represents the short side of the rectangular plan. It features a shallow projecting square bay fenestrated with a pair of standard windows at the far left side, while a shallow angled bay window with three standard sashes is located on the right side. Two symmetrically placed standard windows at the second story have decorative paneled wood flower boxes beneath that are supported by projecting beams and short cross beams.

The north facade also represents the short side of the rectangular plan and faces a small side yard and neighboring property. It features two fully-glazed wood doors spaced widely at the first story. At the second story there is one large window on the right side that has a single-lite, fixed sash.

The east facade represents the long side of the rectangular plan and faces a narrow passage between the house and the neighboring property. There are three irregularly placed windows on the first story, one of which has a sliding aluminum sash. The second story features a shallow, flat topped, projecting rectangular bay that is located to the right of center. The bay is supported by decoratively shaped projecting beam ends and is fenestrated with a large three-part window that has diamond-pattern leaded glass. Elsewhere on the second story are three standard windows. A narrow clinker brick chimney rises up the right side of the facade and projects through the eaves to rise above the roofline.

## 15. History:

The first owners and residents of the house at 2845 Woolsey Street were the Frank Butler Norton family. Frank Norton was born in Martha's Vineyard, Massachusetts, in 1849, the son of a New Bedford whaling ship captain. In 1870, he went west to San Francisco at the age of 21, where he found work as a bookkeeper in the offices of a provisions wholesaler. By 1884, he had started his own provisions wholesale business and had a number of partners over the years, until the the firm finally became known as Norton, Teller & Company. The company sold wholesale produce, meat, and dairy products and acted as a commission merchant, selling goods for other purveyors. Its offices were in San Francisco.<sup>14</sup>

In July 1877, Frank married Eliza J. Mayhew in Santa Barbara.<sup>15</sup> They had three children: Mayhew, Frances Amelia, and Charles Worth. Eliza died in 1886 at the age of 31, and the

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<sup>14</sup> "F.B. Norton, Pioneer, Dies," *San Francisco Examiner*, 9 December 1931. San Francisco city directories.

<sup>15</sup> Ancestry.com; California, U.S., County Birth, Marriage, and Death Records, 1849-1980.

following year Frank remarried. His second wife was Cora B. Wightman of Sonoma.<sup>16</sup> Cora was born in Plainfield, Illinois in 1862 and grew up in Sebastapol, where her father was a bank president. The couple had three children of their own: May Elizabeth, Frank B. Jr., and William Wightman (often known as Wightman). Frank's three oldest children were grown and living on their own by the time that Frank and Cora built and moved into the house on Woolsey Street. Prior to living at 2845 Woolsey Street, the family had lived only a few blocks from the subject property, at 6441 Benvenue Avenue and had addresses in Oakland and San Francisco prior to that.<sup>17</sup>

In 1908, the Nortons commissioned the architecture firm of Newsom & Newsom to design a handsome residence for them at 2845 Woolsey Street. Living nearby on Benvenue Avenue likely led to their purchase of the large empty parcel at the corner of Claremont Avenue and Woolsey Street. There appears to be no documentation of how or why the Nortons came to select the Newsoms' firm or any of the client-architect interactions that likely went into the design of the house. An article and illustration (see attached) ran in the 19 April 1908 edition of the *Oakland Tribune*, however; which reported on F.B. Norton "putting up a pretty house." The article noted that the "home will be roomy and have all the latest improvements." It went on to say:

F.B. Norton, of Norton & Teller Co., San Francisco, is building a two-story residence... It is to be located on the north side of Woolsey Street, sixty feet west of Claremont avenue, Berkeley. Newsom & Newsom, 526 Larkin Street, San Francisco, are the architects. The house will cost about \$6,000, complete.

The feature of the exterior will be heavy beam work on the front porch and cornice. The house is to be shingled. The living-room and library will face the south and are to be paneled with burnt board and batten. A large open fireplace is in the library. The vestibule and dining-room are to have heavily beamed ceilings. A large kitchen, pass pantry, laundry and servant's room are in the rear.

On the second story are five large sunny bedrooms, all having large closets. There are also linen closets and cases which are always needed. Facing the north is a balcony, commanding and excellent view of the Berkeley hills.

Two years after the house was built, the 1910 federal census recorded the Nortons at 2827 Woolsey Street, as the property was originally addressed. Frank was 61 and employed as a commission merchant. Cora was 48, and their three children – Wightman, May, and Frank Jr. – lived at home. Their ages ranged from 12 to 22. Wightman was old enough to work and was employed as a commission merchant, likely by his father's firm. The family employed Mary Anderson, a 40 year old household servant from Sweden, although in late 1911, numerous want ads for a new "girl for general housework," ran in the newspaper.<sup>18</sup>

Ten years later, in 1920, the occupancy of 2845 Woolsey Street (then still 2827) was much the same. Wightman had married and moved away from home, but May and Frank Jr. remained. Both in their early 20s, May worked as a school teacher, while Frank was not

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16 Ancestry.com; U.S. Select Marriages, 1850-1945.

17 Oakland city directory, 1908.

18 *Berkeley Daily Gazette*, October 1911.

employed. The Norton's household servant was Nellie Haupt, a 40 year old woman from California.

In 1930, the address of the house remained 2827 Woolsey Street on census records, and the property was valued at \$20,000 (about \$380,000 today). Frank Norton, at age 81, was retired. Cora was 63. The Norton's three children still lived at home or had returned. Wightman, age 41, had divorced and moved back home. He worked as a distributing agent for a furnace manufacturer. May, 31, remained unmarried and continued to work as a public school teacher. Frank Jr., 30, was also unmarried and was a dentist in general practice. The family employed Marie Moen, a 19 year old servant from Norway.

Frank Norton died in 1931. His obituary noted that he had retired several years before his death, but at one time had served as president of the San Francisco Dairy Exchange. In his personal time, he was active in the Alameda County Sportsmen's Club, the oldest duck hunting club in the West, and was a member of the Sons of the American Revolution.<sup>19</sup>

In the late 1930s, address renumbering occurred in the neighborhood and 2845 Woolsey Street was finally assigned its current address. In 1940, the house was occupied by Cora, then a 77 year old widow. Daughter May, who never married, lived with her. She was 40 and employed as a kindergarten teacher. The census also shows that Wightman Norton had remarried and lived next door with his wife, Violet, and daughter, Nancy. The Wightman Norton house (presumably built 1937<sup>20</sup>) was located to the rear (northwest) of 2845 Woolsey Street and had been assigned the subject house's old address, 2827 Woolsey Street. The Nortons also appear to have owned the house at 2823-2825 Woolsey Street (now 2823 Woolsey Street), which was a duplex that they rented out.<sup>21</sup>

In August 1944 a one-alarm fire was reported at 2845 Woolsey Street. It was caused by an electric heater and caused \$100 in damages.<sup>22</sup>

Cora Norton died in February 1950 at age 90. Later the same year, the census indicates that May Norton was living at the subject house by herself, still working as a public school kindergarten teacher. Her brother and sister-in-law continued to live next door and eventually had three children.

Around 1951, May Norton moved to 2844 Woolsey Street, directly across Woolsey Street from the subject property. The details of her move are unclear, but Planning Department records indicate that she petitioned to have the zoning of the subject house changed a couple of times without success. As early as November 1950, Rhoda Nichols, a playground director for Berkeley city schools, and very likely a professional acquaintance of May's, was associated with the rezoning attempts and change of use converting property to a nursery school. It may be that May Norton's professional interests as a kindergarten teacher led her to devote her family home to become a nursery school, with her associate Rhoda Nichols heading the establishment. May Norton died shortly thereafter, in 1953. She was 59 years old and succumbed to a month-long illness in an Oakland hospital.<sup>23</sup> Ownership of the house presumably passed to Luther and Rhoda

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19 "F.B. Norton, Pioneer, Dies," *San Francisco Examiner*, 9 December 1931.

20 Alameda County Assessor.

21 "Houses for Rent," *Berkeley Daily Gazette*, 2 May 1936.

22 "Heater fire causes \$100 damage here," *Berkeley Daily Gazette*, 2 August 1944.

23 "May E. Norton" (obituary), *Berkeley Gazette*, 24 August 1953.

Nichols around this time.

In 1952, use permit records indicate that Rhoda Nichols was granted the change-of-use for the property and permission to create a playground area in the front yard. Later records indicate that part of the house was retained as the Nichols' residence; occupied by Rhoda, her husband Luther, and at some point her elderly father. Rhoda Nichols grew up in Petaluma and attended U.C. Berkeley. Luther had grown up in Berkeley and also attended U.C. Berkeley, then went to work as a newspaper reporter for the *San Francisco Chronicle*. The couple were married in 1950.<sup>24</sup>

On 16 December 1952, an announcement ran in the *Berkeley Daily Gazette* that the Rhoda Reed Nichols Nursery School, located on Prince Street, had moved around the corner to 3090 Claremont Avenue (an alternate address for 2845 Woolsey Street) and would be known as the Claremont Day Nursery. It was noted that “the lovely garden is much larger and the play area inside and out, is more spacious.” It has “pleasant surroundings and thoroughly trained and experienced supervision.” By 1958, Rhoda Nichols had opened another branch of the Claremont Day Nursery at 5830 College Avenue, and in 1962, she opened yet another at 912 Ensenada Avenue.

Rhoda Nichols owned the property and ran the nursery school until 1976, when both the property and the nursery school business were sold to Tom and Frances Morabito. Tom Morabito was a teacher, who worked in private and public schools prior to taking over the Claremont Day Nurseries.<sup>25</sup> Around 2021, due to failing health, the Morabitos decided to close the nursery school. At that time, they remodeled the house prior to selling it, which resulted in a number of the recent changes noted under item 17, above. In June 2022, the property was sold to the current owners, Michael A. and Annette Pearson, who will return it to single-family residential use and wish to reverse a number of the earlier incompatible alterations.

**Chain of Title**

| <b>Dates</b>   | <b>Owners</b>                | <b>Occupants</b>                        |
|----------------|------------------------------|-----------------------------------------|
| 1908 – 1950    | Frank B. & Cora Norton       | Norton family                           |
| 1950 – ca.1952 | Mary Elizabeth Norton        | Mary Elizabeth Norton                   |
| ca.1952 – 1976 | Luther & Rhoda Nichols       | Nichols family<br>Claremont Day Nursery |
| 1976 – 2022    | Tom & Frances Morabito       | Claremont Day Nursery                   |
| 2022 - present | Michael A. & Annette Pearson | Michael A. & Annette Pearson            |

<sup>24</sup> “Marriage of Rhoda Reed to Berkeley man is announced,” *Petaluma Argus Courier*, 13 February 1950.

<sup>25</sup> “Owner to close beloved day care schools because of failing health,” *Berkeleyside*, 28 June 2021; <https://www.berkeleyside.org/2021/06/28/tom-morabito-owner-child-care-claremont-day-nurseries-to-close>

## 16. Significance:

**Historic Value:** City and neighborhood

**Architectural Value:** City and neighborhood

The property at 2845 Woolsey Street is eligible for designation as a Berkeley Landmark; meeting Landmark criteria 1B and 1C in relation to its architectural merit.<sup>26</sup> The following provides an evaluation of the significance of 2845 Woolsey Street.

In accordance with Landmark criterion 1B, 2845 Woolsey Street is an outstanding example of early-twentieth century residential architecture in the First Bay Tradition style and is a notable example of design by the renowned Bay Area architecture firm of Newsom & Newsom.

The house presents a unique and complexly crafted example of the First Bay Tradition style. The style has certain typical traits (especially wood shingle exterior cladding), but is intrinsically varied in individual design and stylistic influence, often responding to customization for the specific homeowner-client and resulting an eclectic presentation of form and ornament. The house at 2845 Woolsey Street is most strongly identified as First Bay Tradition by its wood shingle cladding and Classical Revival ornamentation; however ornamentation and other features also hint at Craftsman, Tudor Revival, American Four Square, and Prairie aesthetics, and even some Japanese influence. The mixture of popular styles of the day and their amalgam into a completely unique iteration of the locally significant First Bay Tradition style makes 2845 Woolsey Street a significant example of the style. The deft adaptation of the style by architects Newsom & Newsom, presumably with the input of the Norton family who commissioned the house, makes it a prime example not only of the style but the way the style was made unique to every project.

The firm of Newsom & Newsom consisted of two generations of the Newsom family and, as it was built in 1908, 2845 Woolsey Street falls within the brief period when both Samuel Newsom and his two sons were designing together. A transitional period in the firm's history, this was also a time when the firm's design aesthetics shifted with prevailing architectural fashions, away from the exuberant Victorian and toward newly popular styles that included the increasingly popular First Bay Tradition style and its many eclectic aesthetic influences. The house at 2845 Woolsey Street showcases the evolution that the Newsoms' work took toward more quietly understated houses of high quality and highly-livable designs during this period. While the Newsoms worked throughout the Bay Area, their most recognized work is primarily found in San Francisco and Piedmont. They were active in Berkeley, however; and a selection of their residential designs illustrate both the progression of their stylistic aesthetics and their work in particular areas of the city as they became known and presumably referred among clients. The house at 2845 Woolsey Street represents a time during the first decade of the twentieth century when the Newsoms adhered strongly to the First Bay Tradition style, while making each house unique. It stands out from their earlier houses of the style in having more Classical overtones and influences from a wide variety of other styles, perhaps indicating the shift the Newsoms would make toward later Revival styles. It was also the first of three Newsom & Newsom projects in the Parkside Claremont and Uplands neighborhood, suggesting that the firm may have been introduced to the area with their work at 2845 Woolsey Street and then

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<sup>26</sup> City of Berkeley Municipal Code, Chapter 3.24.110, Landmarks, historic districts and structures of merit – Designation – Criteria for consideration.

were eagerly hired by nearby neighbors.

In accordance with Landmark criteria 1C, the house at 2845 Woolsey Street is worth recognizing and preserving for its exceptional contribution to the historic and aesthetic fabric of the Parkside Claremont neighborhood. The house is sited on a prominent corner, at the intersection of Woolsey Street and Claremont Avenue; surrounded by other architecturally interesting houses, adjacent to a bustling neighborhood commercial row, and opposite the entrance to the Uplands neighborhood which is enhanced by historic stone pillars and transit shelters, creating a rich surrounding built-environment. The house is a highly visible and noteworthy element of a residential neighborhood that has many good and varied examples of early-twentieth century architecture, including similar, but always unique, examples of what is colloquially and fondly referred to as Berkeley's "brown shingle" architecture (i.e. the First Bay Tradition style identified by its ubiquitous siding material). The house represents the First Bay Tradition style, designed by renowned architects, that contributes strongly to both the visual and historical context of the area.

#### 17. Is the property endangered?

No. On the contrary, Landmark designation will make the property eligible for Mills Act benefits that will facilitate rehabilitation and restoration of the house, including the reversal of a number of previous inappropriate alterations.

#### 18. Photographs:

**Date:** 7 November 2024

**Repository:** Left Coast Architectural History

**Photographer:** Caitlin Hibma, Left Coast Architectural History

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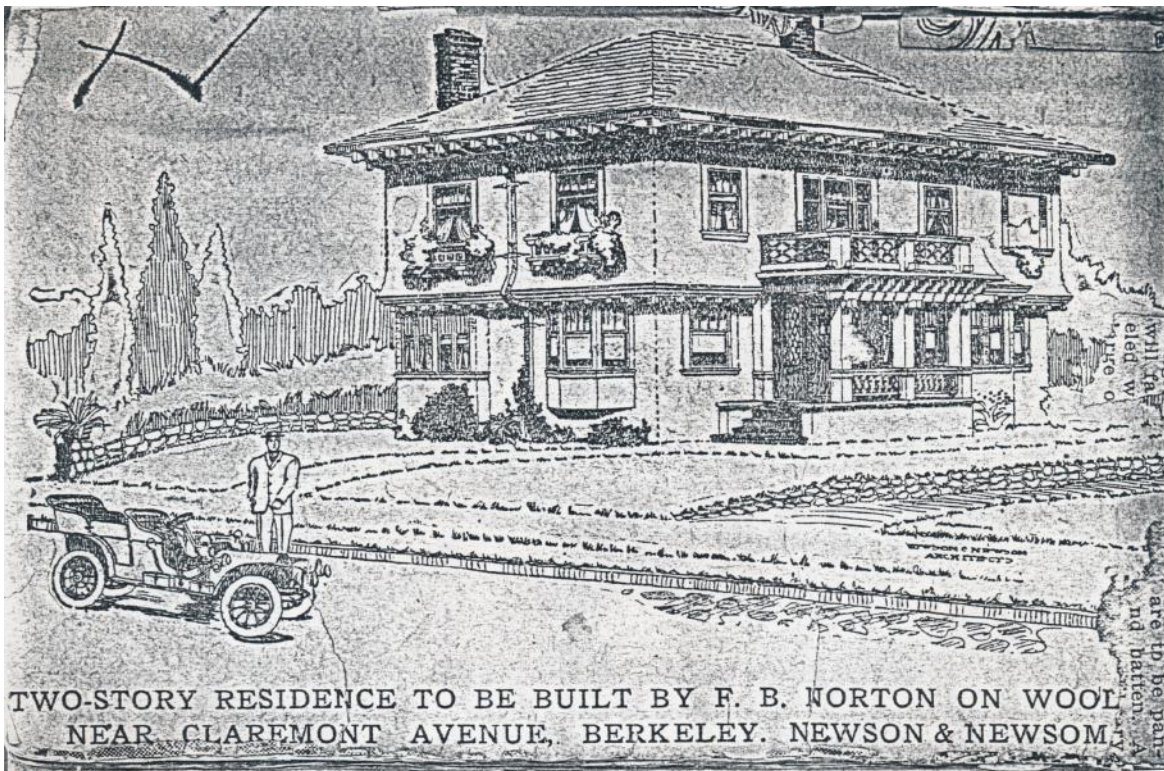
Weinstein, David. "Quiet Pleasures, Newsom brothers created homes with a timeless appeal," *San Francisco Chronicle*, 5 February 2005.

**20. Recorder:** Caitlin Hibma

**Date:** 12 December 2024

**Organization:** Left Coast Architectural History

Historical Images



TWO-STORY RESIDENCE TO BE BUILT BY F. B. NORTON ON WOOLSEY STREET NEAR CLAREMONT AVENUE, BERKELEY. NEWSON & NEWSOM, ARCHT. & ENGRS.

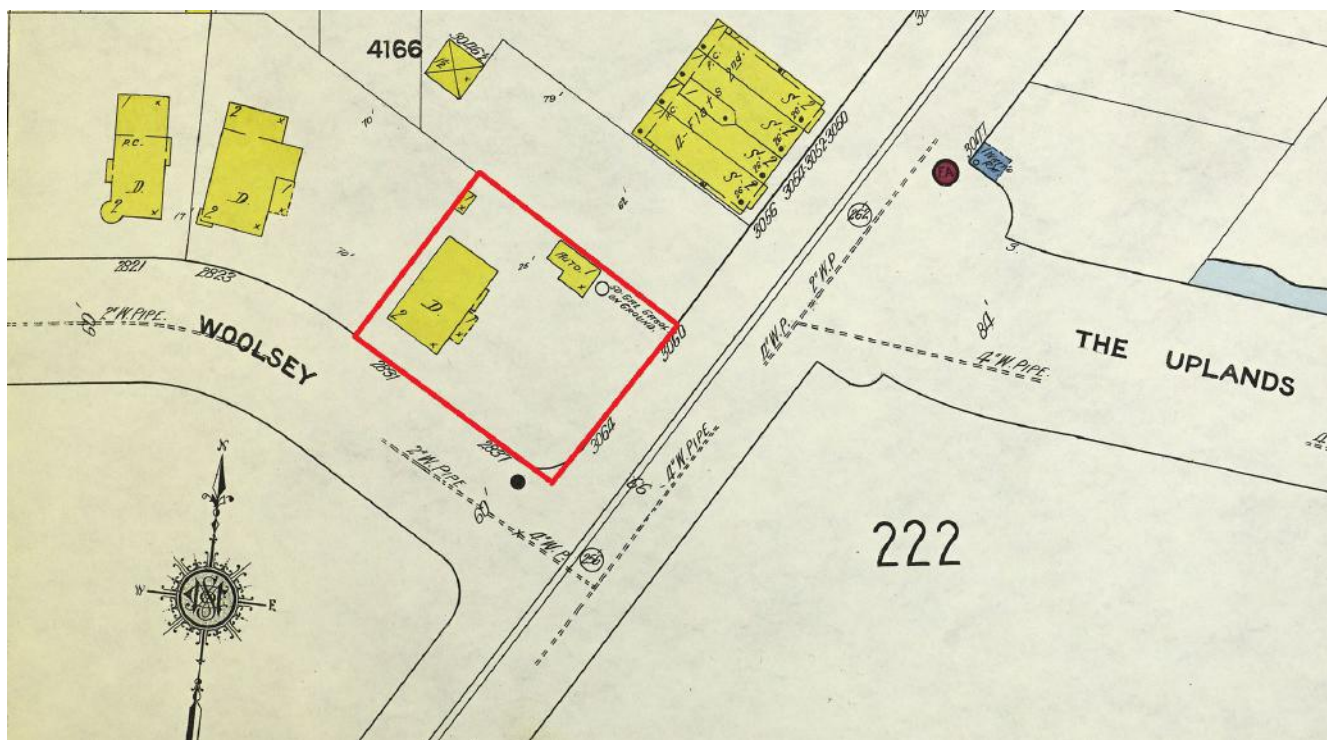
Illustration of F.B. Norton House, 1908. (*Oakland Tribune*, 19 April 1908.)



Interior of 2845 Woolsey Street, 1908; library looking (north) into dining room. (Berkeley Architectural History Assoc.)



Interior of 2845 Woolsey Street, 1908; library looking northwest into stair hall.  
(Berkeley Architectural Heritage Assoc.)



Sanborn Fire Insurance map, 1911. Subject property outlined in red.  
(Historical Information Gatherers)



Aerial photograph, 1931. Subject property circled in red.  
(UCSB Library)



Aerial photograph, 1946. Subject property circled in red.  
(UCSB Library)



Sanborn Fire Insurance map, 1950. Subject property outlined in red.  
(Historical Information Gatherers)



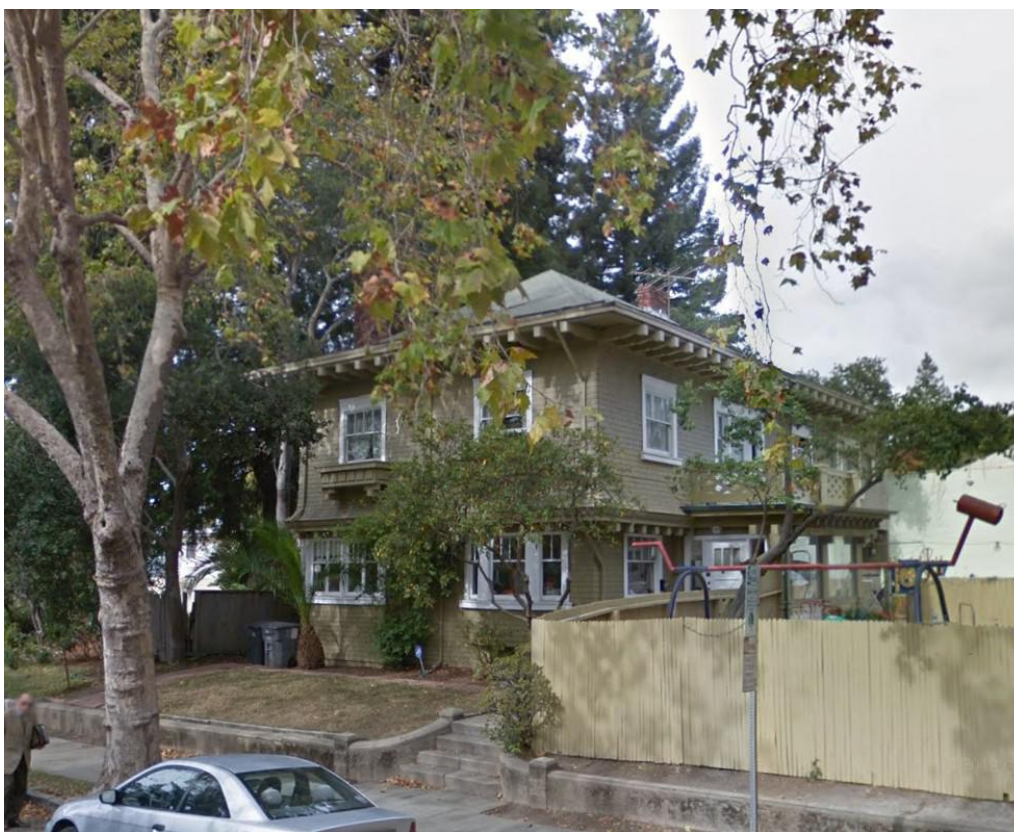
View of Woolsey Street (south) facade; 1950s.  
(Berkeley Architectural Heritage Assoc., Donough Collection)



Aerial photograph, 1965. Subject property circled in red.  
(UCSB Library)



View of Woolsey Street (south) facade; recent nursery school era, 2000s.  
(Berkeley Architectural Heritage Assoc.)

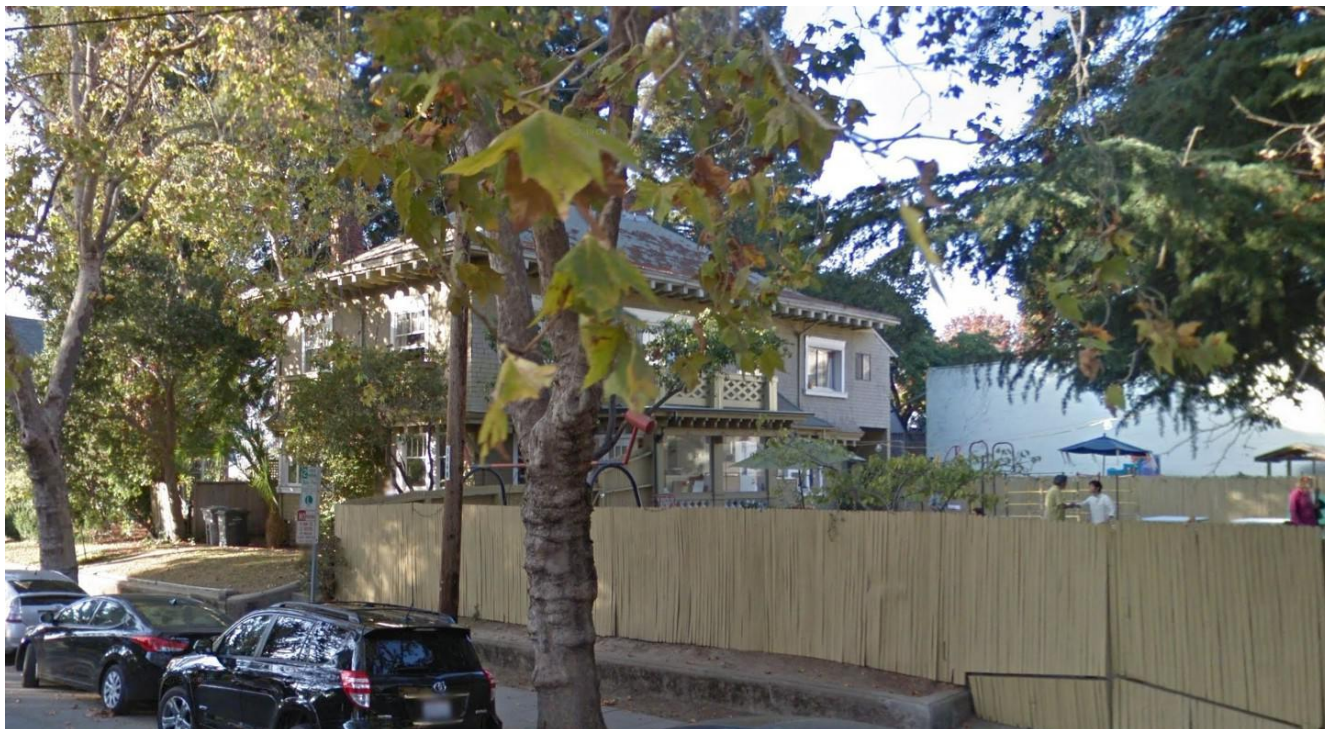


2845 Woolsey St. south and east facades, looking northwest from Woolsey St., ca. 2014.  
Note original windows and enclosed porch with upper railing intact.  
(Google Streetview)



2845 Woolsey St. south facade, looking north from Woolsey St., ca. 2014.

Note original windows and enclosed porch with upper railing intact.  
(Google Streetview)



2845 Woolsey St. south and east facades, looking northwest from Woolsey St., ca. 2014.  
Note original balcony opening (glazed) and later northern addition at right side of second story.  
(Google Streetview)

**Current Images**



View of primary (east) facade from Claremont Avenue, looking west.



View of south and primary (east) facades from Woolsey Street, looking northwest.



View of rear (west) and south facades from Woolsey Street, looking northeast.



View of primary (east) facade from front of property, looking west.



Detail of entry porch, primary (east) facade, looking west.



View of south facade from Woolsey Street, looking north.



View of primary (east) and north facade from yard, looking southwest.



View of north side of rear (west) facade, looking north.



View along rear facade from southwest corner of house, looking north.



Detail of upper south facade, showing flower boxes, looking northwest.



Detail of eaves, southeast corner of house.



Detail of cast stone site wall along south and east sides of property; near corner, looking northwest.

**REHABILITATION WORK PLAN**

| Work Item | Feature                                            | Character Defining?                                                  | Condition                             | Recommended Treatment                                                                                                                                                                                                                                                                   | Schedule                                   | Budget (From bids)                |
|-----------|----------------------------------------------------|----------------------------------------------------------------------|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-----------------------------------|
| 1         | Wood shingle siding                                | No<br>(But contributes to historic architectural character)          | Poor<br>(deteriorated)                | Replace existing wood shingle siding with new fire-resistant wood shingles, installed over new weather resistant barrier and drainage mat.<br><br>Removes deteriorated fabric and installs a safer but visually similar alternative.                                                    | 2026 (Replace);<br>2027-2036<br>(Maintain) | \$87,048.50                       |
| 2         | Window sashes                                      | Yes<br>(Openings are character defining; sashes would be if intact.) | Poor<br>(original feature not intact) | Replace existing non-original vinyl window sashes on south, east, and west facades with wood sash windows in original configurations. Original character defining openings will be maintained.<br><br>Removes inappropriate modern fabric and restores historically appropriate fabric. | 2026 (Replace);<br>2027-2036<br>(Maintain) | \$121,686.58                      |
| 3         | Integral balcony at second story, northeast corner | No<br>(Would be, if intact)                                          | Poor<br>(original feature not intact) | Restore original openings of integral balcony at northeast corner of second story and infill with historically appropriate windows.<br><br>Restores a noteworthy original feature of the house, while making                                                                            | 2026 (Restore);<br>2027-2036<br>(Maintain) | Included in window estimate above |

|   |                                            |                             |                                       |                                                                                                                                                                                                                                                                                                        |                                            |                                   |
|---|--------------------------------------------|-----------------------------|---------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|-----------------------------------|
|   |                                            |                             |                                       | the space useful for modern habitation.                                                                                                                                                                                                                                                                |                                            |                                   |
| 4 | Entry porch                                | No<br>(Would be, if intact) | Poor<br>(original feature not intact) | Deconstruct existing non-original porch and restore original porch configuration with south-facing entry stairs (salvage existing beams and rafters for reuse).<br><br>Removes inappropriate modern fabric and design and restores the porch to historically appropriate configuration and appearance. | 2026 (Restore);<br>2027-2036<br>(Maintain) | \$37,772.50                       |
| 5 | Entry porch balcony                        | No<br>(Would be, if intact) | Poor<br>(original feature not intact) | Restore original balcony above entry porch including installation of a new code compliant guardrail.<br><br>Restores a noteworthy original feature of the house.                                                                                                                                       | 2026 (Restore);<br>2027-2036<br>(Maintain) | \$20,440.00                       |
| 6 | Door and sidelights at entry porch balcony | No<br>(Would be, if intact) | Poor<br>(original feature not intact) | Restore original door and sidelights at second story, east facade, to access restored balcony above entry porch.<br><br>Restores a noteworthy original feature of the house.                                                                                                                           | 2026 (Restore);<br>2027-2036<br>(Maintain) | Included in window estimate above |
| 7 | Roof                                       | No                          | Poor                                  | Remove existing composition shingles, install new plywood sheathing, underlayment, and new visually similar shingles.<br><br>Removes deteriorated fabric and installs a functional and visually                                                                                                        | 2026 (Replace);<br>2027-2036<br>(Maintain) | \$59,011.50                       |

|    |                                                                        |                                                             |      |                                                                                                                                                                                                                                                                                                                                                                                 |                                                |                                 |
|----|------------------------------------------------------------------------|-------------------------------------------------------------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|---------------------------------|
|    |                                                                        |                                                             |      | compatible alternative.                                                                                                                                                                                                                                                                                                                                                         |                                                |                                 |
| 8  | Gutters and downspouts                                                 | No                                                          | Poor | <p>Replace existing painted aluminum gutters with new gutters, downspouts, and leader boxes. Repair related dry rot at eaves and rafter tails.</p> <p>Replaces a deteriorated and non-functional system with compatible new components that will ensure proper shedding of water away from the structure.</p>                                                                   | 2026 (Replace);<br>2027-2036 (Maintain)        | Included in roof estimate above |
| 9  | Chimney                                                                | No<br>(but contributes to historic architectural character) | Fair | <p>Repair and re-seal original clinker brick chimney on west facade.</p> <p>Repairs an original feature and increases its resilience against further deterioration.</p>                                                                                                                                                                                                         | 2030 (Repair);<br>2031-2036 (Maintain)         | \$4,500.00                      |
| 10 | Wood architectural features expressing structure and ornamental motifs | Yes                                                         | Fair | <p>Repair and replace missing and damaged corbels at the second story cornice line and modillions at the eaves. Includes repairing dry rot at eaves related to gutters (see work item 8) and replacing existing window and door trim in kind.</p> <p>Removes and reinstates deteriorated and missing fabric in-kind to preserve the characteristic appearance of the house.</p> | 2026 (Repair/Replace);<br>2027-2036 (Maintain) | \$15,540.00                     |

|    |                                                |     |      |                                                                                                                                                                                                                         |                                          |             |
|----|------------------------------------------------|-----|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------|
| 11 | Planter boxes, second story south facade       | Yes | Fair | Repair or replace deteriorated wood planter boxes, including waterproofing.<br><br>Repairs or replaces this feature in-kind to preserve the characteristic appearance of the house.                                     | 2030 (Repair);<br>2031-2036 (Maintain)   | \$5,500.00  |
| 12 | Cast stone (concrete) perimeter retaining wall | Yes | Fair | Repair cracks in existing site wall at south and east perimeter of property.<br><br>Repairs and strengthens a feature that interfaces with the public realm and lends to the characteristic appearance of the property. | 2030 (Repair);<br>2031-2036 (Maintain)   | \$12,300.00 |
| 13 | Exterior Paint and Stain                       | No  | Fair | Apply stain over new wood shingle siding (see work item 1) and paint architectural woodwork and trim.<br><br>Preserves the longevity of the building envelope.                                                          | 2026 (Complete);<br>2027-2036 (Maintain) | \$15,372.00 |
| 14 | Scaffolding                                    | -   | -    | Install temporary scaffolding to complete exterior work noted above.<br><br>Required to execute work plan.                                                                                                              | 2026                                     | \$3,800.00  |
| 15 | Electrical Systems                             | No  | Poor | Upgrade outdated knob-and-tube wiring to modern wiring.<br><br>Replaces a deteriorated and unsafe                                                                                                                       | 2026 (Upgrade);<br>2027-2036 (Maintain)  | \$27,440.00 |

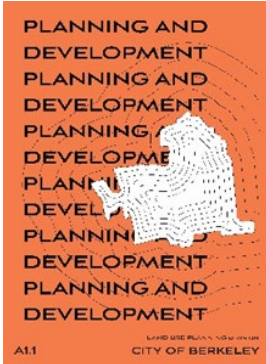
|                                        |                  |    |      |                                                                                                                                          |                                            |                     |
|----------------------------------------|------------------|----|------|------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|---------------------|
|                                        |                  |    |      | system with compatible new components that will eliminate fire danger.                                                                   |                                            |                     |
| 16                                     | Plumbing Systems | No | Poor | Upgrade existing plumbing piping to modern copper piping.<br><br>Replaces unsafe piping and ensures safe and healthy water distribution. | 2026 (Upgrade);<br>2027-2036<br>(Maintain) | \$42,568.00         |
| Subtotal:                              |                  |    |      |                                                                                                                                          |                                            | <b>\$452,979.08</b> |
| Contractor's General Conditions (18%): |                  |    |      |                                                                                                                                          |                                            | <b>\$81,536.23</b>  |
| <b>Total Estimated Budget:</b>         |                  |    |      |                                                                                                                                          |                                            | <b>\$534,515.31</b> |

# Landmarks Preservation Commission Staff Report

App #LMMA2025-0003

September 4, 2025

Mills Act Contract Application at 2845 Woolsey Street  
Norton Family House



| Quick Facts                                                                                                   | Project Description:                                                                                |
|---------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| <p><b>Applicant:</b> Caitlin Hibma</p> <p><b>Property Owner:</b> Michael Pearson and Annette Blum Pearson</p> | <p>The applicant is seeking a Mills Act contract for a Structure of Merit residential property.</p> |
| <p><b>Project Address:</b> 2845 Woolsey Street</p>                                                            | <p><b>Permits Requested:</b></p>                                                                    |
| <p><b>GP Land Use:</b> Low Medium Density Residential (LMDR)</p>                                              | <p>N/A</p>                                                                                          |
| <p><b>Zoning:</b> Restricted Two-Family Residential (R-2)</p>                                                 | <p><b>Staff Recommendation:</b></p>                                                                 |
| <p><b>Historic District:</b> No</p>                                                                           | <p>Approve the proposed rehabilitation schedule and recommend favorable action to City Council.</p> |
| <p><b>CEQA:</b> N/A</p>                                                                                       |                                                                                                     |
| <p><b>Submittal Date:</b> June 3, 2025</p>                                                                    |                                                                                                     |
| <p><b>Date Deemed Complete:</b> July 3, 2025</p>                                                              |                                                                                                     |
| <p><b>Project Planner:</b> Allison Riemer</p>                                                                 |                                                                                                     |

**VICINITY MAP SHOWING NEARBY CITY LANDMARKS & DISTRICTS**



**Figure 1:** Vicinity and Zoning Districts Map

**AERIAL**



**Figure 2:** Aerial Image (Source: GoogleEarth 2025)

**ELEVATION**



**Figure 3:** East elevation (Source: Mills Act application)

## **BACKGROUND**

The building at 2845 Woolsey Street was built in 1908, and features elements of the First Bay Tradition style, including wood shingle exterior cladding, and Classical Revival ornamentation. The building was designed by the renowned architecture firm Newsom & Newsom. The primary façade faces Claremont Avenue. It is two stories and features broad flared eaves with rafter tails on all sides. Several original features are now missing due to previous alterations. The wood shingle siding and clinker brick chimney are original to the house but were not included in the Features to Preserved when the property was designated. Additional architectural details can be found in Attachment 1.

The subject property was designated a City Structure of Merit on April 3, 2025; see Attachment 4. On June 3, 2025, the applicant, on behalf of the property owner, submitted a Mills Act Contract Application for the property.

## **ANALYSIS**

The applicant's historic resource consultant prepared the Mills Act submittal in line with the City's program requirements. The Mills Act application includes the following components:

- 1) Historic Architectural Summary for the subject property (Attachment 1), which includes a list of the character-defining features.
- 2) A Rehabilitation Plan (Attachment 2), which outlines the projects identified for restoration, rehabilitation, and maintenance of the property over the ten-year contract period; and
- 3) A financial analysis spreadsheet for estimating the potential Mills Act tax savings for this request, based on property-specific figures calculated using standard formulas.

The purpose of this review is to confirm the eligibility of the property to participate in the program and verify the validity of the identified work plan items. Should the City enter into a Mills Act Contract with the property owner, the Alameda County Assessor's Office will be responsible for verifying the figures provided by the applicant, conducting calculations, and applying actual property tax reductions on future tax bills beginning in 2026.

All improvements included in the Rehabilitation Plan (Attachment 2) relate to restoring the historic, character-defining features of the building and site, or extending the Structure of Merit's useful life. Some of the proposed work involves restoring previously removed exterior features, which would require a Structural Alteration Permit (SAP), pursuant to the Landmarks Preservation Ordinance (Berkeley Municipal Code Section 3.24.260), because exterior changes to the current building would be proposed. Some of the proposed work items can be considered "ordinary maintenance and repair" since they do not include a

change to the character of any of the exterior features, and therefore, would be exempt from the SAP requirements.

The work plan items appear to be justifiable in that they constitute restoration, repair, rehabilitation, and continued maintenance of the subject property. Further, the work plan would provide for the property’s “use, maintenance and restoration as to retain its characteristics as property of historical significance,” as provided for in the Mills Act, Government Code Sections 50280 et. Seq., as authorized by the Berkeley City Council per Resolution No. 59,355 – N.S. For these reasons, staff concludes that the proposed rehabilitation plan items represent improvements that are consistent with the requirements of the Mills Act.

**MILLS ACT CONTRACT PROPOSAL**

The intent of the Mills Act is to provide property tax relief so that the property owners entering into Mills Act Contracts with the City will reinvest a significant portion of the property tax savings resulting from the Contract into preserving and/or restoring their property. The applicant’s proposed 10-year plan of improvements is provided in Attachment 2, and summarized in Table 1, below.

Table 1. Summary of Rehabilitation Schedule & Recommended Treatments

| Feature                                            | Treatment<br><br>(as recommended by historic resource consultant)                                                                                 | Estimated<br><br>Year of<br><br>completion |
|----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| Wood shingle siding                                | Replace with fire-resistant wood shingles installed over new weather resistant barrier and drainage mat.                                          | 2026                                       |
| Window sashes                                      | Replace vinyl window sashes on south, east, and west facades with wood sash windows in original configurations.                                   | 2026                                       |
| Integral balcony at second story, northeast corner | Restore original openings of balcony and infill with historically appropriate windows.                                                            | 2026                                       |
| Entry porch                                        | Deconstruct existing non-original porch and restore original porch with south-facing entry stairs (salvage existing beams and rafters for reuse). | 2026                                       |

|                                                |                                                                                                                                                                                                             |      |
|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Entry porch balcony                            | Restore original balcony above entry porch, including new code-compliant guardrail.                                                                                                                         | 2026 |
| Door and sidelights at entry porch balcony     | Restore original door and sidelights at second story, east façade.                                                                                                                                          | 2026 |
| Roof                                           | Remove composition shingles, install new plywood sheathing, and new visually similar shingles.                                                                                                              | 2026 |
| Gutters and downspouts                         | Replace painted aluminum gutters with new gutters, downspouts, and leader boxes. Repair related dry rot at eaves and rafter tails.                                                                          | 2026 |
| Chimney                                        | Repair and re-set original clinker brick chimney on west façade.                                                                                                                                            | 2030 |
| Wood architectural features                    | Repair and replace missing and damaged corbels at the second story cornice line and modillions at the eaves. Repair dry rot at eaves related to gutters, and replace existing window and door trim in kind. | 2026 |
| Planter boxes, second story south façade       | Repair or replace deteriorated wood planter boxes, including waterproofing.                                                                                                                                 | 2030 |
| Cast stone (concrete) perimeter retaining wall | Repair cracks in existing site wall at south and east perimeter of property.                                                                                                                                | 2030 |
| Exterior paint and stain                       | Apply stain over new wood shingle siding and paint architectural woodwork and trim.                                                                                                                         | 2026 |
| Scaffolding                                    | Install temporary scaffolding to complete exterior work.                                                                                                                                                    | 2026 |
| Electrical systems                             | Upgrade outdated knob-and-tube wiring to modern wiring.                                                                                                                                                     | 2026 |
| Plumbing systems                               | Upgrade existing plumbing piping to modern copper piping.                                                                                                                                                   | 2026 |

Per the applicant’s calculations in Attachments 2 and 3, the owner’s work plan would be \$27,979 less than the tax savings received (i.e. spending \$534,515 on the 10-year work plan,

while saving \$562,494 in property tax reduction over the 10-year period).

### **RECOMMENDATION**

Staff has determined that all work proposed in the Mills Act Contract work plan provides for the property’s “use, maintenance and restoration as to retain its characteristics as property of historical significance,” and advises the Commission to recommend that City Council approve the Mills Act Contract request for the subject property.

### **Environmental Review**

The review of the Mills Act contract is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) “Review for Exemptions.”

### **Attachments**

1. Historic Architectural Summary, dated May 30, 2025
2. Rehabilitation Plan, dated May 30, 2025
3. Financial Analysis Spreadsheet, dated August 26, 2025
4. Notice of Decision – Structure of Merit Designation, April 3, 2025
5. Project Estimates, received June 30 ,2025



Office of the City Attorney

ACTION CALENDAR  
April 14, 2026

To: Honorable Members of the City Council  
 From: Farimah Brown, City Attorney (Author)  
 Subject: Proposed Resolution Limiting Use of City Property to Authorized Uses That Further City Purposes and Protect Access to City Services

RECOMMENDATION

Adopt a resolution limiting the use of City property to authorized uses that further City purposes and protect access to City services. This policy will ensure that City assets are not misappropriated in a manner that inhibits access to City services and interferes with City programs and other purposes.

BACKGROUND

On October 27, 2025, the Council directed the City Manager to identify City-owned and controlled properties, and to coordinate with the City Attorney to develop a policy or ordinance that would ensure City properties and facilities are only used for City purposes and those other purposes approved by the City Manager, or their designee, to ensure that City assets are not used in a manner that interferes with the City's own use and inhibits access to City services. The referral emphasized the need for the City to protect its limited resources, finding that the use of City property for federal immigration enforcement operations bases, staging or surveillance without permission would ignore the intended purposes of such assets, and interfere with the City's use of its own property.

Accordingly, the City Attorney's Office reviewed the City's existing ordinances and policies, the policies of comparable jurisdictions, and relevant legal developments to develop a draft resolution for review and potential adoption by the City Council. The City Attorney's Office also consulted with the Mayor to ensure alignment with desired policy outcomes and the City Manager to facilitate operationalizing the policy.

After conducting this review and consultation, the City Attorney's Office drafted a proposed resolution (Attachment 1). The proposed resolution ensures that City property is used only to advance or promote public programs or other purposes authorized by the City, and consistent with City purposes. Specifically, the resolution would prohibit the exclusive use of City property without the City's authorization, except for uses traditionally available to the public without such authorization. It would also prohibit any City official or employee from authorizing the use of City property if that use would disrupt City operations or discourage access to City services, unless the use furthers a City purpose, and declares that civil immigration enforcement is not a City purpose. In

effect, the resolution would restrict exclusive use of City property for certain non-City purposes, which include, but are not limited to, taking over City property for use in civil immigration enforcement.

Finally, the resolution would direct the City Manager to ensure that all non-access restricted City lots have clear signage designating that the property is owned or controlled by the City and cannot be used for any purpose not expressly authorized by the City.

RATIONALE FOR RECOMMENDATION

The City Attorney’s Office makes this recommendation at the request of the City Council per its referral on October 27, 2025.

FINANCIAL IMPLICATIONS

There may be modest costs associated with posting new signage.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects from taking this action.

CONTACT PERSON

Farimah Brown 510-981-6998

Attachments:

1. RESOLUTION NO. \_\_\_\_\_ –N.S. LIMITING USE OF CITY PROPERTY TO AUTHORIZED USES THAT FURTHER CITY PURPOSES AND PROTECT ACCESS TO CITY SERVICES

RESOLUTION NO. \_\_\_\_\_-N.S.

A RESOLUTION LIMITING USE OF CITY PROPERTY TO AUTHORIZED USES THAT FURTHER CITY PURPOSES AND PROTECT ACCESS TO CITY SERVICES

WHEREAS, the City of Berkeley's ("Berkeley" or the "City") mission is to provide quality service to our diverse community; promote an accessible, safe, healthy, environmentally sound, and culturally rich city; initiate innovative solutions; embrace respectful democratic participation; respond quickly and effectively to neighborhood and commercial concerns, and do so in a fiscally sound manner; and

WHEREAS, the City is committed to fostering an inclusive, safe, and equitable community for all residents, regardless of national origin or immigration status; and

WHEREAS, to further these goals, the City invests in and maintains substantial resources, including real and personal property, to administer public programs and services, such as health care, library services, emergency response, housing, public safety, economic development, and other essential municipal services; and

WHEREAS, the City's facilities and other property are critical access points relied upon by all residents, and preserving their safety, accessibility, and operational continuity is a matter of practical necessity and fiscal responsibility; and

WHEREAS, the City has a compelling interest in preserving City resources for programs and services that further the City's mission; and

WHEREAS, the City must ensure that all uses of City-owned and City-controlled property are authorized, used in a manner that furthers City purposes, and do not interfere with the City's mission to serve its residents effectively and equitably; and

WHEREAS, the unauthorized appropriation of City property by non-City actors in ways that conflict with City purposes may undermine public trust, disrupt municipal operations, and discourage access to essential services; and

WHEREAS, in recent weeks and months, the City has observed the commandeering of local government-owned facilities for immigration enforcement across the country; and

WHEREAS, the City has long prohibited City officials from using City resources to assist in the enforcement of federal immigration laws, except in narrowly defined circumstances required by law; and

WHEREAS, if the City were to authorize the use of City property to conduct immigration enforcement, such enforcement would unquestionably interfere with the City's ability to use its own resources effectively and equitably provide programs and services to all residents. This conclusion is based on substantial evidence from major cities across the country demonstrating that recent surges in immigration enforcement activity discourage participation in the affairs of those cities, which disrupts municipal operations, creates public health and safety risks, and depresses commercial activity; and

WHEREAS, the unauthorized use of City property to assist in federal civil immigration enforcement does not further a City purpose and is inconsistent with the City's values and operational priorities; and

WHEREAS, access to non-public areas of City property by federal immigration authorities is already governed by the City's existing Sanctuary City Ordinance, which requires judicial authorization for such access; and

WHEREAS, the City has a strong interest in ensuring its policies concerning the use of its property are clear and unambiguous, including to prevent takeover of such property for federal civil immigration enforcement activity or for any other purpose not expressly authorized by the City and inconsistent with the City's own use of its limited discretionary resources; and

WHEREAS, the City does not interfere with or obstruct lawful immigration enforcement. Federal immigration enforcement officers currently carry out immigration enforcement in the City. The purpose of this policy is to preserve City resources for programs and services that further the City's mission and to ensure that the unauthorized use of City property does not undermine that mission by discouraging residents' participation in City's affairs.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:

SECTION 1. Authorized Use of City Property

- A. As used herein, the use of City real or personal property shall mean the right to occupy or use the property, to the exclusion of others, and shall include but not be limited to uses that require a license, permit to enter, use permit, or other similar instrument. It shall not mean non-exclusive access or use of the City's property traditionally open and available to the public where that access or use is on the same terms as members of the public and does not infringe on the City's own use.
- B. No person or entity may use real or personal property owned or controlled by the City

of Berkeley (“City”), including by any City board or commission, unless such use advances or promotes public programs or other purposes authorized by the City and the City has authorized the use.

- C. No City department, officer, or employee shall authorize the use of City real or personal property if such use would disrupt City operations or discourage access to City services, unless the use furthers a City purpose.
- D. The use of City real or personal property to assist in federal civil immigration enforcement is a use that does not further a City purpose.
- E. The City Manager shall ensure that all City-owned or controlled parking lots, vacant lots, and parking garages that are not access restricted have clear signage designating that the property is owned and/or controlled by the City and cannot be used for any purpose not expressly authorized by the City.
- F. The City Manager shall oversee implementation and staff training regarding this policy in coordination with the City Attorney.
- G. Nothing in this Section shall be construed to interfere with or inhibit any exercise of the constitutionally protected rights of freedom of speech or assembly or to prevent the use of, or access to, City property as required by law.
- H. The examples provided herein are illustrative and not exhaustive; this policy applies equally to all proposed uses of City property that do not further City purposes, regardless of the identity of the user.
- I. This policy is not intended to and does not alter any existing City laws governing permitting or licensing of City property.

SECTION 2. No Conflict with Federal or State Law.

Nothing in this resolution shall be interpreted or applied to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 3. No Conflict with Existing Property Interest or Agreements.

Nothing in this resolution shall be interpreted or applied to affect or interfere with any property interest or agreement, including but not limited to amendments to those agreements, deeds, easements, leases, licenses, or permits, to occupy or use City real or personal property that is entered into or effective before the effective date of this resolution.

SECTION 4. Severability

If any provision of this resolution is found invalid, the remaining provisions shall remain in full force and effect.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon adoption.



Office of the City Manager

ACTION CALENDAR  
April 14, 2026

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: Amendments to BMC Title 3.24 (Landmarks Preservation Commission) to Revise Procedures for Designating Landmarks, Historic Districts and Structures of Merit and Incorporate Technical Edits.

RECOMMENDATION

Adopt the first reading of an ordinance amending BMC Title 3.24 (Landmarks Preservation Commission) to revise procedures for designating landmarks, historic districts and structures of merit, and to incorporate technical edits.

SUMMARY

The amendments to the Landmarks Preservation Ordinance (LPO) are proposed in response to the Council referral and subsequent supplemental materials adopted on November 10, 2025 (**Attachment 2**). The proposed amendments to Title 3.24 consist of substantive changes to BMC Section 3.24.120 and 3.24.300 as well as technical edits to other sections (**Attachment 1**). The proposed amendments revise the designation initiation and appeals procedures for landmarks, historic districts and structures of merit by increasing the signature thresholds for initiation. The amendments also propose delaying landmark initiation procedures for five years following the receipt of a Preliminary Development Application under SB 330. The technical edits update noticing, certification, and appeals procedures for consistency with current City practices.

FISCAL IMPACTS OF RECOMMENDATION

Adoption of the recommended amendments would reduce staff expenses, with fewer expected applications to landmark structures, and fewer appeals of landmark designations of properties under SB 330 Preliminary Development Applications.

CURRENT SITUATION AND ITS EFFECTS

Currently, under BMC Section 3.24.120, a landmark designation can be initiated by the Landmarks Preservation Commission; City Council; the Planning Commission; the Civic Arts Commission; a verified application from the owners of the property to be

designated or their authorized agents; or a verified application from at least fifty residents of the City.

Similarly, BMC Section 3.24.300(A)(1) allows appeals to be taken to City Council by the City Council on its own motion; a motion of the Planning Commission; a motion of the Civic Arts Commission; a verified application from the owners of the property or their authorized agents; or a verified application from at least fifty residents of the City.

The Council referral states that these provisions provide an unduly low threshold for landmark initiation and appeal. The ease of initiation and appeal can lead to neighborhood disputes and delays, uncertainty for property owners and project applicants, and significant expenditure of resources and staff time to process landmark designation applications that are often unmeritorious. The Council referral notes that several of the landmark designations and appeals initiated by 50 signatures were ultimately denied by LPC or City Council; a higher threshold will better ensure the integrity of the landmark designation process.

The Council referral also notes that some landmark designation attempts conflict with the intent of State housing laws meant to streamline the approval of housing projects. SB 330, known as the Housing Crisis Act of 2019, locks in the zoning, design and preservation standards that are applicable at the time of the receipt of a complete application for a housing development project. Once the application is submitted and deemed complete, future changes to landmark status, zoning and other regulations are not permitted because the developer's rights have "vested" as a matter of state law. This prevents local jurisdictions from imposing new regulations that would reduce the development capacity or density of the project or introduce new discretionary barriers to a proposed housing development project. Since the passing of SB 330 in 2019, nearly one third of Berkeley's landmark initiation applications were in response to an SB 330 application filing.

Administratively, the current LPO poses some implementation challenges. Procedural details relating to public hearing notice requirements, notice of decision issuance, Council certification, permit review, and the filing, noticing and processing of appeals are outdated and out of line with the current practices of other quasi-judicial bodies such as the Zoning Adjustments Board (ZAB). One of the aforementioned amendments for procedural consistency in Section 3.24.190 extends the City Council's certification timeline to from 15 to 90 days. This change aligns the noticing requirements for the LPO with the City's current requirements for publication of City Council agendas which in large part are constrained by the Brown Act, a state law ensuring transparency in government decision-making. This change to the Notice of Decision publication timeline allows the City Council and the public full public notice of the action while meeting the City's agenda preparation guidelines.

The proposed amendments would also update language related to fees, which currently include a dollar amount set in the LPO which has been unchanged since at least 1985. The proposed amendment would implement fees through the Council-adopted Fee Schedule, the same as all other fees administered by the Land Use Planning Division. This would bring LPO-related fees in line with the current practice for most other City fees.

This practice is also consistent with that of other jurisdictions. Many other California cities utilize a cost recovery model for fees related to historic landmark designation. The City of Oakland, for example, assesses a fee for rezoning associated with landmark designation. The City and County of San Francisco, the City of Alameda, and the City of Santa Monica all assess fees for individual landmark and historic district designation.

## Discussion

The proposed amendments to Title 3.24 reflect the changes put forth in the Council referral adopted on November 10, 2025, as well as additional technical edits identified by staff. The referrals pose two options for revising the signature threshold for landmark initiation, and both options are presented below.

Supplemental Referral 1 (Kesarwani – **Attachment 2**) includes two different signature thresholds, depending upon the consent of the property owner. With owner consent, landmark initiation by the public would require the signatures of 200 Berkeley residents. Without owner consent, 400 signatures would be needed. Staff defined owner consent as a written Letter of Authorization from the property owner to the landmark initiation. Under BMC Section 3.24.120, an owner is also permitted to initiate a designation on their own through a verified application.

Supplemental Referral 2 (Tregub – **Attachment 2**) proposes an increased signature threshold to 200 signatures, regardless of owner consent. It also proposes a provision to include a five year stay of landmark initiation for development proposals vested under SB 330. At the November 10, 2025 regular meeting, Councilmember Kesarwani made a friendly amendment to support the inclusion of the SB 330 provision.

At its November 10, 2025 meeting, the City Council referred both options to staff to consider. Accordingly, staff have proposed two versions of BMC Sections 3.24.120 and 3.24.300 to reflect the two policy options for signature thresholds put forward in the Council's action. Both versions of Section 3.24.120 include the provisions for the five year stay of landmark initiation for SB 330 projects.

Staff excluded the SB 330 provisions from the proposed amendments to 3.24.300 (Appeals) to avoid redundancy. Because the proposed amendments to 3.24.120 preclude projects vested under SB 330 from landmark designation, separate provisions for a delay of appeals are unnecessary, as a vested property under SB 330 cannot be landmarked in the first place.

The amendments to BMC Sections 3.24.120 and 3.24.300 as well as the technical amendments are summarized in the table below. As the table explains, these changes are technical and/or procedural in nature and do not alter the criteria for the designation or potential alteration of landmarks:

**Title 3.24 (Landmarks Preservation Commission) Proposed Amendments**

| <b>Ord. Sec.</b> | <b>BMC Code Section</b>                                                                                                             | <b>Proposed Change Rationale</b>                                                                             |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| 1                | 3.24.030 (B) Membership-Appointments-Organization and officers.                                                                     | Error correction.                                                                                            |
|                  | 3.24.030 (C) Membership-Appointments-Organization and officers.                                                                     | Deletion of provisions covered in the City’s Commissioners’ & Board Members’ Manual.                         |
| 2                | 3.24.050 List of structures and sites--To be established and maintained--Contents.                                                  | Typo correction.                                                                                             |
| 3                | 3.24.060 List of structures and sites--Landmarks, historic districts and structures of merit designated--Permit application review. | Deletion of initial list establishment language, as this task has been completed.                            |
|                  | 3.24.060 (B)                                                                                                                        | Language clarification.                                                                                      |
|                  | 3.24.060 (A)(1)                                                                                                                     | Language clarification.                                                                                      |
| 4                | 3.24.080 Permit application--Suspension authorized when.                                                                            | Error correction.                                                                                            |
| 5                | 3.24.100 Landmarks, historic districts and structures of merit--Designation--Procedures required--Control and standards.            | Organizational change for consistency and language edits only for clarity                                    |
| 6                | 3.24.110 Landmarks, historic districts and structures of merit--Designation--Criteria for consideration.                            | Organizational change only.                                                                                  |
| 7                | 3.24.120 Landmarks, historic districts and structures of merit--Designation--                                                       | Increased signature threshold from 50 to 200 with owner consent through a Letter of Authorization. Increased |

|    |                                                                                                                               |                                                                                                                                                                        |
|----|-------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | Initiation procedures. (Supplemental Referral 1)                                                                              | signature threshold from 50 to 400 without owner consent. Exemption for SB 330 projects for 5 years, and organization change for clarity.                              |
|    | 3.24.120 Landmarks, historic districts and structures of merit--Designation--Initiation procedures. (Supplemental Referral 2) | Increased signature threshold from 50 to 200. Exemption for SB 330 projects for 5 years, and organization change for clarity.                                          |
| 8  | 3.24.140 Designation proposal--Public hearing notice requirements.                                                            | Public hearing notice posting updated for consistency with 23.404.040(B)(3) and ZAB procedures.                                                                        |
| 9  | 3.24.150 Designation proposal--Time limit for determination.                                                                  | Technical edit, numerical value added for clarity.                                                                                                                     |
| 10 | 3.24.160 Designation proposal--Notice of decision required.                                                                   | Language mirrored after 23.404.050 (L) <i>Notice of ZAB Decision</i> for consistency and process improvements.                                                         |
| 11 | 3.24.180 Landmarks, historic districts and structures of merit--Designation--Recording required--Termination of designation.  | Typo corrections.                                                                                                                                                      |
| 12 | 3.24.190 Council certification required                                                                                       | Codification of existing practice.                                                                                                                                     |
| 13 | 3.24.210 Review of permit applications.                                                                                       | Error correction, codification of existing practice.                                                                                                                   |
| 14 | 3.24.220-270 Alteration Permit application--Data and public hearing required--Exceptions.                                     | Title update to clarify requirements for Structural Alteration Permits (SAPs).                                                                                         |
| 15 | 3.24.280 Landmarks, historic districts or structures of merit--Unsafe or dangerous conditions--Effect.                        | Error correction. Fees are to be set and updated through the Council-adopted Fee Schedule.                                                                             |
| 16 | 3.24.300(A) Appeals--Procedures required--City Council authority. (Supplemental 1)                                            | Increased signature threshold from 50 to 200 with owner consent through a Letter of Authorization. Increased signature threshold from 50 to 400 without owner consent. |
|    | 3.24.300(A) Appeals--Procedures required--City Council authority (Supplemental 2)                                             | Increased signature threshold from 50 to 200.                                                                                                                          |
| 17 | 3.24.300(B-E) Appeals--Procedures required--City Council authority.                                                           | Alignment with ZAB procedures for appeals found in 23.410.030.                                                                                                         |

|    |                                                                                           |                                                                          |
|----|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| 18 | 3.24.340 Landmarks, historic districts or structures of merit--Filing fees required when. | Fees are to be set and updated through the Council-adopted Fee Schedule. |
|----|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|

Two alternatives for sections 3.24.120 and 3.24.300 are included in the proposed Ordinance for consideration. The primary differences between Alternative 1 and Alternative 2 are written owner consent for landmark initiation, and a total of 400 signatures if the owner does not provide written consent. In both proposed alternatives the five year stay of landmark initiation is included for projects vested under SB 330.

**BACKGROUND**

BMC Section 3.24 (Landmarks Preservation Commission), known as the Landmarks Preservation Ordinance (LPO), was adopted in 1974. The purpose of the LPO is to recognize and protect sites and areas of special character or special historical, architectural, or aesthetic interests. The LPO establishes the Landmarks Preservation Commission (LPC) and outlines procedures for nomination, designation, alteration, and appeals. The LPO has seen few updates since its adoption in the mid-1970s and retains factual and procedural inconsistencies that make implementation challenging.

As discussed above, the Council referral states that the current procedures for initiating landmark designation have been used to obstruct neighborhood change and delay housing developments. In several case studies mentioned, the landmark attempts have imposed processes that conflict with state housing law and result in significant delays for housing development projects.

On February 5, 2026, staff brought the Council referrals to the LPC for its consideration. At that meeting an Ad-Hoc Committee was formed. At its March 5 meeting, the Ad-Hoc Committee shared its recommendations, and the Commission took the following action:

Action: M/S/C (Crandall/Montilla) to adopt the supplemental communication to be forwarded to City staff (Ayes – Montilla, Crandall, Finacom, Schwartz, Orbuch, Hall Montgomery; Noes – None; Abstain – None; Absent – Greene).

The Ad-Hoc Committee’s approved recommendations are included in **Attachment 3**.

*California Office of Historic Preservation and its Certified Local Government Program*  
The California Office of Historic Preservation (SHPO) offers guidance on the development of landmarks ordinances. Staff have not identified any conflicts in the proposed amendments with SHPO’s guidelines. The LPO does not require review or approval by SHPO.

The City of Berkeley is a Certified Local Government (CLG) under SHPO's Certified Local Government Program. Jurisdictions that are CLGs can receive special technical assistance and are eligible for preservation-related funding from the State. Among other requirements, CLG's must enforce state and local regulations for the designation and protection of historic properties, establish an historic preservation commission, maintain a system for the survey and inventory of historic properties, and provide for adequate public participation in the local historic preservation program. The proposed amendments do not include the amendment or removal of any of these qualifying criteria.

#### RATIONALE FOR RECOMMENDATION

The proposed amendments to BMC Title 3.24 fulfill the City Council's November 10, 2025 referral to revise procedures for designating landmarks, historic districts and structures of merit, and include necessary technical edits to align LPC procedures with existing practices. By increasing thresholds for landmark initiation and exempting SB 330 projects from landmark eligibility for five years, the proposed amendments could reduce the number of landmark designation initiations. The proposed amendments retain pathways for the identification, designation and protection of historic landmarks.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed Zoning Ordinance amendments do not change any development standards or provide for additional development capacity or any other new physical changes to the environment that are not already permitted and previously evaluated under CEQA. Because the proposed amendments relate only to the procedures governing the landmark designation and appeals process but not to any physical development characteristics, they do not constitute a "project" under CEQA. (CEQA Guidelines Section 15378(b)(2) ("Continuing administrative or maintenance activities such as... general policy or procedure making..." do not constitute a project for the purposes of CEQA.) Further, because there is no possibility that adoption of the proposed amendments may have a significant effect on the environment, they are exempt from CEQA. (CEQA Guidelines Section 15061(b)(3), Common Sense Exemption).

The proposed amendments aim to remove barriers to housing development while maintaining pathways for the protection of Berkeley's historic places. Such housing development is associated with fewer transportation-related emissions and greater overall energy efficiency, helping the City meet the goals of its Climate Action Plan. The proposed pathways for landmark designation retain protections for places of historic value which can lead to fewer demolitions and waste as well as adaptive reuse of historic structures.

CONTACT PERSON

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Attachments:

- 1: Ordinance
- 2: Council Referrals
- 3: Landmarks Preservation Ad-Hoc Committee Recommendation

ORDINANCE NO. -N.S.  
AMENDMENTS TO BMC TITLE 3.24 (LANDMARKS PRESERVATION COMMISSION)  
TO IMPROVE PROCEDURES FOR DESIGNATING LANDMARKS, HISTORIC  
DISTRICTS AND STRUCTURES OF MERIT AND INCORPORATE TECHNICAL  
EDITS.

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

Section 1. That section 3.24.030 be amended to read as follows:

A. The commission shall consist of nine members. Appointments to the commission shall be made by councilmembers and vacancies on the commission shall be filled by councilmembers in accordance with the provisions of Sections 2.04.030 through 2.04.120, enacted as Ordinance 4780-N.S. by the voters of the City.

B. The ~~Assistant City Manager for~~Director of Planning and ~~Community~~ Development, or their representative, shall serve as secretary of the commission, without vote. The ~~Department of Planning and Community Development~~Planning and Development Department shall provide staff assistance to the commission.

C. The commission shall elect annually ~~in July~~ a chairperson from among its members, and shall establish rules and regulations for its own organization and procedure. ~~Three successive unexcused absences from regular meetings by a member shall constitute automatic termination of membership.~~

Section 2. That section 3.24.050(A) be amended to read as follows:

The commission shall:

A. After June 6, 1974, undertake to establish and maintain a list of structures, sites and areas having a special historical, architectural or aesthetic interest or value. This list may include single structures or sites, portions of structures, groups of structures, human-made or natural landscape elements, works of art, or integrated combinations thereof. After public hearings, the commission may designate landmarks and historic districts from the list. In the establishment of the foregoing list, the commission shall notify and solicit the views of property owners and residents of structures, sites and

areas proposed by the commission to be included in such a list.

Section 3. That section 3.24.060 be amended to read as follows:

~~From and after six months from the first meeting of the commission, or upon the completion of the foregoing initial list of structures, sites and areas, or in the event such list is completed by the commission prior to six months from the first meeting of the commission,~~ The commission may:

A. Designate, after public hearings, structures, sites and areas including single structures or sites, portions of structures, groups of structures, human-made or natural landscape elements, works of art, or integrated combinations thereof, having a special character, or special historical, architectural, or aesthetic interest or value, as:

1. A landmark, ~~and shall designate a landmark~~ site for each ~~landmarksite, area, structure, element, work of art,~~ or;
2. An historic district constituting a specific designated section of the City;

B. ~~Identify For the purposes of this chapter,~~ a structure of merit including ~~ing~~ structures, sites and areas, including single structures or sites, portions of structures, groups of structures, man-made or natural landscape elements, works of art, or integrated combinations thereof, having a special character, or special historical, architectural or aesthetic interest or value;

C. Review and decide on permit applications for construction, alteration and demolition on landmark sites, in historic districts and on structure of merit sites and on initiated landmark sites, initiated historic districts and initiated structure of merit sites, as more fully set forth in Sections 3.24.220 through 3.24.250 and 3.24.350A below;

D. Take steps to encourage or bring about preservation of structures, sites and areas where the commission has decided to suspend action on a permit application, as more fully set forth in Sections 3.24.220 through 3.24.250 below.

Section 4. That section 3.24.080 be amended to read as follows:

The ~~Assistant City Manager for~~ Director of Planning and ~~Community~~ Development, prior to completion of the initial list of structures, sites and areas, shall have the authority to recommend to the City Council suspension of permit application for a maximum of one

hundred eighty days, if in the judgment of the ~~Director of Assistant City Manager for Planning and Community Development~~, an emergency is deemed to exist and a structure, site or area appropriate for landmark status is threatened with imminent destruction or substantial alteration.

Section 5. That section 3.24.100 be amended to read as follows:

A. Each designation of a landmark, historic districts or structure of merit by the commission shall include:

1. Aa description of the characteristics which justify its designation;
2. and Aa description of the particular features that should be preserved;
3. and shall include Tthe location and boundaries of the landmark site, historic district or structure of merit site.

~~Any such designation shall be in furtherance of and in conformance with the purposes of this chapter and the standards set forth herein.~~

B. The property included in any such designation shall upon designation be subject to the controls and standards set forth in this chapter. ~~In addition, the said property shall be subject to and~~ the following ~~further~~ controls and standards if imposed by the designation:

1. For a publicly owned landmark or structure of merit, review of proposed changes in major interior architectural features;
2. For an historic district, such further controls and standards as the commission deems necessary or desirable, including but not limited to facade, setback, height controls, signs and public improvements.

The commission may, upon receipt of any significant new information, reconsider after two years any structure of merit and designate it as a landmark, subject to all the procedures set forth in this section for an original landmark designation.

Section 6. BMC Section 3.24.110(A) be amended to read as follows:

A. Landmarks and historic districts. General criteria which the commission shall use when considering structures, sites and areas for landmark or historic district designation are as follows:

1. Architectural merit:

(a) Property that is the first, last, only or most significant architectural property of its type in the region;

(b) Properties that are prototypes of or outstanding examples of periods, styles, architectural movements or construction, or examples of the more notable works of the best surviving work in a region of an architect, designer or master builder; or

(c) Architectural examples worth preserving for the exceptional values they add as part of the neighborhood fabric.

2. Cultural value: Structures, sites and areas associated with the movement or evolution of religious, cultural, governmental, social and economic developments of the City;

3. Educational value: Structures worth preserving for their usefulness as an educational force;

4. Historic value: Preservation and enhancement of structures, sites and areas that embody and express the history of Berkeley/Alameda County/California/United States. ~~History may be social, cultural, economic, political, religious or military;~~

~~History may be social, cultural, economic, political, religious or military;~~

5. Any property which is listed on the National Register described in Section 470A of Title 16 of the United States Code.

**Section 7.** BMC Chapter 3.24.120 be amended to read as follows:

**Alternative 1 (Kesarwani):**

**A.** Initiation of designation shall be made by the following:

1. The Landmarks Preservation Commission; by the commission;

2. or by Aa resolution of intention of the City Council;

3. or by Tthe Planning Commission;

~~4. or by T~~the Civic Arts Commission;

~~5. or by T~~the verified application of the owners of the property to be designated or their authorized agents;

~~6. , or by t~~The verified application of at least ~~200~~ifty residents of the City ~~and the consent of the property owner~~, expressed through a Letter of Authorization;- or

~~7. or, by T~~the verified-d application of at least 400 residents if the property owner has not consented to the designation ~~provided~~through a Letter of Authorization.-~~consent of the designation process.~~

**B.** Any such application shall be filed with the commission upon forms prescribed by the ~~commission~~-City and shall be accompanied by all data required by the commission.

**C.** ~~Further, a Exception.~~ Any such designation shall not be processed for five (5) years following the receipt of a Preliminary Development application under SB330 (the Housing Crisis Act of 2019) by the City of Berkeley, unless ~~initiated by the property owner-of record.~~

**D. Historic Districts.** Where such application is submitted for designation of an historic district, the application must be subscribed by or on behalf of a majority of the property owners or residents of the proposed district.

### **Alternative 2 (Tregub):**

**A.** Initiation of designation shall be made by the following:

1. The Landmarks Preservation Commission;

~~2. by the commission, or by A~~a resolution of intention of the City Council;

~~3. or by T~~the Planning Commission;

~~4. or by T~~the Civic Arts Commission;

~~5. or by T~~the verified application of the owners of the property to be designated or their authorized agents;

~~6. T~~the verified application of at least 200 residents of the City.

**B.** Any such application shall be filed with the commission upon forms prescribed by the

~~commission~~ City and shall be accompanied by all data required by the commission.

C. Further, a Exception. Any such designation shall not be processed for five (5) years following the receipt of a Preliminary Development application under SB330 (the Housing Crisis Act of 2019) by the City of Berkeley, unless initiated by the property owner-of record.

D. Historic Districts. Where such application is submitted for designation of an historic district, the application must be subscribed by or on behalf of a majority of the property owners or residents of the proposed district.

Section 8. That BMC Section 3.24.140(A) be amended to read as follows:

A. Notice of the public hearing shall be given by posting thereof on or adjacent to the property involved not less than 14 ~~ten~~ days prior to the date of the hearing.

Section 9. That BMC Section 3.24.150 be amended to read as follows:

The commission shall approve, disapprove or modify the proposal within one hundred eighty (180) days after the conclusion of the public hearing; failure to act within said time shall constitute disapproval.

Section 10. That BMC Section 3.24.160 be amended to read as follows:

A. A Notice of Decision shall be issued afterwhen the LPC:

(a) 1. Approves, modifies, or denies a Landmark Designation; or

(b) 2. Takes action on an appealed decision.

B. The Notice of Decision shall be issued before the LPC's next regular meeting and shall describe the LPC's action.

C. The Notice of Decision shall be posted in the lobby of the Permit Service Center and shall be mailed to:

1. The applicant;

2. The appellant, if applicable;

3. Any person who has filed a written request for notice; and

4. The City of Berkeley Central Library.

D. The Notice of Decision shall be filed with the City Clerk and provided to the LPC. The City Clerk shall make the notice available to interested members of the City Council and the public.

~~The commission shall promptly notify in writing the applicant, owner and residents of the property of action taken. The commission shall also mail a notice of its decision to persons requesting such notification. A copy of the notice of decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.~~

Section 11. That section 3.24.180 be amended to read as follows:

A. When a landmark, historic district or structure of merit has been designated by the commission as provided above, in addition to the notification required in Section 3.24.160 above, the commission shall cause a copy of the designation, or notice thereof, to be recorded in the Office of the County Recorder.

B. When a building or structure that has been designated a landmark or structure of merit has been legally demolished as permitted by this Code, its designation shall automatically be terminated if:

1. The designation was based on the characteristics of that building or structure, and not on any findings related to the site or parcel where the building or structure was located; and
2. All features to be preserved as specified pursuant to Section 3.24.100 have been eliminated as a result of the demolition.

In such cases, the City shall promptly record a notice in the Office of the County Recorder that the designation has been terminated.

Section 12. That BMC Section 3.24.190 be amended to read as follows:

**3.24.190** City Council certification ~~authorized when--Effect~~required.

Notwithstanding any of the provisions of this chapter, the ~~council~~City Council may certify ~~to the council~~ any action of the commission in granting or denying an application for designation as a landmark or an historic district, ~~but such action of the council shall be taken~~ within ~~fifteen (15)~~ninety (90) days from the mailing of the ~~notice~~Notice of the ~~decision~~Decision of the commission. Such certification ~~by~~ the City Council shall stay all proceedings in the same manner as the filing of a notice of appeal.

Section 13. That BMC Section 3.24.210 be amended to read as follows:

**3.24.210** **Review of permit applications.**

A. The commission shall maintain with the Department of Planning and Community Development and the department's zoning and codes and inspection division a current record of designated landmarks, historic districts and structures of merit, as well as a record of those having been initiated and undergoing consideration. Upon receipt of any application for a permit to carry out any construction, alteration or demolition on a landmark site, in an historic district or on a structure of merit site, or on an initiated landmark site, in an initiated historic district or on an initiated structure of merit site, the Department of Planning and Community Development shall, unless the structure or feature concerned has been declared unsafe or dangerous pursuant to Section 3.24.280 of this chapter, promptly forward such permit application to the commission for review.

B. The City Council shall set by resolution the fees for Landmarks Preservation Commission review of any application for a permit to carry out any construction, alteration or demolition on an initiated or designated ~~nonresidential~~ landmark site, ~~(or nonresidential portion thereof), in an initiated or designated historic nonresidential district (or nonresidential portion thereof), or on an initiated or designated nonresidential structure of merit, or historic district. (or nonresidential portion thereof.)~~

~~Landmarks Preservation Commission review of applications for permits to carry out any construction, alteration, or demolition on residential initiated or designated landmarks, residential initiated or designated historic districts and residential initiated or designated residential structures of merit, located in any zoning district and nonresidential initiated or designated landmarks, nonresidential initiated or designated historic districts and~~

~~nonresidential initiated or designated structures of merit located in residential zoning districts, are not subject to the landmarks review fees.~~

Applicants who are qualified non-profits and other applicants with projects valued at less than three hundred fifty thousand dollars may apply to the City Manager for a fee waiver if it can be demonstrated that the payment of the fee would pose a hardship.

Section 14. That the titles of BMC Sections 3.24.220, 3.24.230, 3.24.240, 3.24.250, 3.24.260 and 3.24.270 be amended to read as follows:

- 3.24.220**     Alteration Permit application--Data and public hearing required--  
Exceptions.
- 3.24.230**     Alteration Permit application--Public hearing notice requirements.
- 3.24.240**     Alteration Permit application--Decision--Procedure and time  
limitations--Notification required.
- 3.24.250**     Alteration Permit application--Effect of suspended action.
- 3.24.260**     Alteration Permit application--Review standards and criteria.
- 3.24.270**     Alteration Permit application--Finding of hardship authorized when--  
Effect.

Section 15. That BMC Section 3.24.280 be amended to read as follows:

None of the provisions of this chapter shall be construed to prevent any measures of construction, alteration or demolition necessary to correct or abate the unsafe or dangerous condition of any structure, other feature, or part thereof, which such condition has been declared unsafe or dangerous by the Planning and Community Development Department or the Fire Department, and where the proposed measures have been declared necessary, by such department or departments, to correct the said condition; provided, however, that only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event any structure or other feature is damaged by fire or other calamity or by act of God, or by the public enemy to such an extent that in the opinion of the aforesaid

department or departments it cannot reasonably be repaired or restored, it may be removed in conformity with normal permit procedures and applicable laws.

Section 16. That BMC Section 3.24.300 (A) be amended to read as follows:

**Alternative 1 (Kesarwani):**

A. 4.—An appeal may be taken to the City Council by the following:

1. the City Council on A motion of the City Councilits own motion;

2. A by motion of the Planning Commission;

3. A by motion of the Civic Art Commission;

4. Tby the verified application of the owners of the property or their authorized agents;

5. or byT the verified application of at least 200fifty residents of the City and the consent of the property owner, expressed through a Letter of Authorization;

6. T; or, if the property owner has not provided consent, by the verified application of at least 400 residents of the City aggrieved, if the property owner has not provided consent through a Letter of Authorization; or

7. or affected by Aany determination of the commission made under the provisions of this chapter.

**Alternative 2 (Tregub):**

A. 4.—An appeal may be taken to the City Council by the following:

1. the City Council on A motion of the City Councilits own motion;

2. A by motion of the Planning Commission;

3. A by motion of the Civic Art Commission;

4. Tby the verified application of the owners of the property or their authorized

agents;

5. ~~or by~~ the verified application of at least ~~200~~<sup>fifty</sup> residents of the City aggrieved;

or

6. ~~affected by a~~Any determination of the commission made under the provisions of this chapter.

~~2.— Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen days after the mailing of the notice of the decision of the commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission's decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.~~

~~3.— The City Clerk shall provide the Council with the written appeal or appeals, set the matter for a public hearing before the Council in consultation with the Secretary of the Commission, and give notice of the time and place of said hearing in the same manner and to the same recipients as for the Commission hearing.~~

Section 17. That BMC Section 3.24.300 (B)-(H) be amended to read as follows:

B. General. Appeals shall be filed and processed consistent with Chapter 23.404 (Common Permit Requirements) except as otherwise specified in this chapter.

1. Timing of Appeal: An appeal must be filed within fourteen (14) days of mailing

the Notice of Decision.

C. Appeal Fees.

1. Appeal fees shall be paid by the person filing the appeal (the appellant) except as provided in Paragraph (2) below.

2. The City shall not charge a fee for appeals of projects denied due to conflicting decisions of the Zoning Adjustments Board (ZAB) and Landmarks Preservation Commission as described in Sections 3.24.200 through 3.24.240.

DB. The filing of a notice of appeal within the time and in the manner specified in subdivision A above shall stay all proceedings by all parties in connection with the matter upon which the appeal is taken until the determination of the appeal, as provided herein.

EG. Before the hearing, ~~the Secretary of the Commission shall forward the documents constituting the record on the matter to the Council. These shall include: copies of the Notice of Decision, indicating the Commission's vote, and the findings and conditions approved by the Commission; the Public Hearing notice; any and all reports made by the Secretary to the Commission; correspondence and letters received both by the Commission or the Council submitted during the appeal process; and the application to the Commission and attachments.~~ department staff shall prepare a staff report describing the appeal with relevant supporting materials.

~~The Secretary shall also make a report to the Council on the Commission's action, including the issues raised at the Commission's public hearing.~~

FD. Each hearing shall be open to the public, which shall be given the opportunity to present their views and to be heard in accordance with established procedures.

GE. After opening the public hearing on the appeal, the Council may take one of the following actions:

1. Continue the public hearing;
2. Based on the record of the Council's consideration and hearing, reverse or affirm, wholly or partly, or modify any decision, determination, condition or requirement of the Commission's original action; or

3. Remand the matter to the Commission to reconsider the application, or any revisions thereto submitted after the Commission's action, in which case the Council shall specify which issues the Commission is directed to reconsider.

HF. Except in the case of a remand to the Commission, when reviewing any decision of the Commission on appeal, the Council shall use the same standards for decision making and is required to make the same findings as the Commission with respect to the matter on appeal. The Council may adopt the Commission's decision and findings as its own. In either case, the City Clerk shall prepare a resolution stating the Council's decision.

If the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council, then the decision of the Commission shall be deemed affirmed and the appeal deemed denied.

IG. The City Clerk shall promptly notify in writing the appellant, owners or authorized agents of affected property, and residents of such property of the action taken.

JH. Payment of fees for an appeal from the decision of the Landmarks Preservation Commission shall be set by resolution of the City Council. (Ord. 7461-NS § 1, 2016: Ord. 6243-NS § 1, 1994: Ord. 5620-NS § 1, 1984: Ord. 4694-NS § 9, 1974)

Section 18. That BMC Section 3.24.340 be amended to read as follows:

Before accepting for filing any application hereinafter mentioned, the commission shall charge and collect the fees herein specified:

A. An application shall be accompanied by all required fees listed in the current Fee Schedule approved by the City Council. For each application for designation of a landmark or a structure of merit, the fee shall be fifty dollars;

B. For each application for designation of an historic district, the fee shall be one hundred dollars;

BG. There shall be no fee for each application for designation of a landmark, an historic district or a structure of merit, if such application is initiated by the commission, or by resolution of intention of the City Council, or by the Planning Commission, or by the Civic Arts Commission. (Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 13, 1974)

Section 19. 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.



Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR  
November 10, 2025

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author) and Councilmember Mark Humbert (Co-Sponsor)

SUBJECT: Referral to Amend Berkeley Municipal Codes 3.24.120 and 3.24.300 to Improve Procedure for Designating Landmarks, Historic Districts and Structures of Merit

**RECOMMENDATION**

Refer to the City Manager and City Attorney to amend two related Berkeley Municipal Code (BMC) sections: 3.24.120, "Landmarks, Historic Districts and Structures of Merit-Designation-Initiation Procedures," and its related BMC section 3.24.300, "Appeals-Procedures Required-City Council Authority."

This referral recommends refinements to the procedure for designating landmarks, historic districts, and structures of merit to discourage frivolous designations, often of sites that are planned to be redeveloped to address our City's housing shortage.

Proposed amendments include the following two changes to the BMC:

- 1) Raising the threshold for the number of residents needed to sign the verified application of initiation of designation from 50 to 200; and
- 2) For properties located in residential zoning districts,<sup>1</sup> require 51 percent of the residents within a 300-foot radius of the subject building/structure to be among the applicants signing on to initiate the landmark / structure of merit designation, similar to the threshold used for other City procedures by the Planning and Public Works departments.<sup>2</sup> We note that this second requirement may necessitate the collection of more than 200 signatures.

<sup>1</sup> As defined in Berkeley Municipal Code section 23.202 - <https://berkeley.municipal.codes/BMC/23.202>

<sup>2</sup> These numbers were chosen to be congruent with other criteria used within the city regarding community outreach and involvement. Our Planning Department, for instance, requires that Projects of Community or Neighborhood Interest meet with owners, residents and community groups within

Specifically, the proposed amendments to the Berkeley Municipal Code (BMC) 3.24.120, "Landmarks, Historic Districts and Structures of Merit-Designation-Initiation Procedures" would read as follows:

Initiation of designation shall be by the commission, or by a resolution of intention of the City Council, or by the Planning Commission, or by the Civic Arts Commission, or by the verified application of the owners of the property to be designated or their authorized agents, or by the verified application of at least fifty 200 residents of the City and, for properties located in residential zoning districts, requiring 51 percent of the residents residing within a 300 foot radius of the subject property. Any such application shall be filed with the commission upon forms prescribed by the commission and shall be accompanied by all data required by the commission. Where such application is submitted for designation of an historic district, the application must be subscribed by or on behalf of a majority of the property owners or residents of the proposed district. (Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 4, 1974)<sup>3</sup>

Similarly, BMC 3.24.300(A)(1) is proposed to read as follows:

An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty 200 residents and, for properties located in residential zoning districts, requiring 51 percent of the residents residing within a 300-foot radius of the subject property of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.<sup>4</sup>

## **CURRENT SITUATION AND ITS EFFECTS**

### ***A Low Threshold for Residents to Seek a Landmark / Structure of Merit Designation Leads to Frivolous Applications That Create Delay and Uncertainty.*** . . .

Currently, individuals at liberty to initiate and appeal the process of designating a home, building, structure or district as an historic landmark or structure of merit are City Council members; appointed commissioners of the Landmarks Preservation Commission, Planning Commission, or Civic Arts Commission; property owner(s) of the subject property; and any random group of at least 50 residents living

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300 feet of the project (<https://berkeleyca.gov/sites/default/files/2022-02/Instructions-Regarding-Community-Outreach.pdf>) and our Transportation Division requires that 51 percent of residents on a given block sign the petition to adopt the Residential Preferential Parking (RPP) program (see RPP opt-in guide, page 3): <https://berkeleyca.gov/sites/default/files/documents/RPP%20Opt-In%20How-To%20Guide.pdf>

<sup>3</sup> Berkeley Municipal Code section 3.24.120: <https://berkeley.municipal.codes/BMC/3.24.120>

<sup>4</sup> Berkeley Municipal Code section 3.24.300(A)(1): <https://berkeley.municipal.codes/BMC/3.24.300>

anywhere in the City. The relatively low bar for residents to initiate designation of a landmark / structure of merit for property that they do not own—by simply collecting the signatures of 50 people—has led to disputes between neighbors and homeowners, and—for larger proposed developments—uncertainty and delay as well as a significant amount of work for City staff.<sup>5</sup> In the background section below, we describe two notable cases in which at least 50 residents submitted a petition to initiate a landmark / structure of merit designation after the subject property was proposed for development or demolition. In both cases, the landmark designation was found to be inappropriate.

*... And Can Be In Tension with the Spirit of State Housing Law.* In two other cases presented as background below, the Landmarks Preservation Commission approved landmark designations after proposed development projects had already vested—meaning a developer had submitted a preliminary housing application deemed complete, which locks in the zoning, design, and preservation standards that were in place at the time of the application’s submission—under state law Chapter 654, Statutes of 2019 (SB 330, Skinner).<sup>6</sup> Known as the Housing Crisis Act of 2019, SB 330 is intended to safeguard housing projects from shifting local rules. Local governments are limited from imposing new regulations retroactively if those rules would reduce housing capacity or introduce additional discretionary barriers.<sup>7</sup> In essence, state law SB 330 renders the landmark designation unenforceable, but the process still causes months of delay and creates uncertainty related to financing.

## **BACKGROUND**

In the following four case studies, we show how the current procedure for initiating a landmark or structure of merit has been weaponized by opponents of neighborhood change.

***Case Study #1: Neighbors’ Attempt to Landmark Unremarkable House to Block High-Density Development at 1915 Berryman Street.*** In May 2020, a development application to construct a ten-unit residential project at 1915 Berryman Street in North Berkeley was submitted to Berkeley’s Planning Department. The property, known as the Payson House, was originally built in 1889 for First Unitarian Church co-founder William Payson. The proposed project would expand the property by constructing six townhouses containing ten units. Close to two weeks after the construction application was submitted, a neighbor submitted an application to designate the

<sup>5</sup> We note that a property owner who believes their property is worthy of landmark / structure of merit status will continue to have the option of contacting the Landmarks Preservation Commission to request that the body initiate the landmark / structure of merit designation proceedings.

<sup>6</sup> SB 330, Skinner. Housing Crisis Act of 2019 -

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=20190200SB330](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20190200SB330)

<sup>7</sup> California Government Code § 65589.5(o)(1) “...a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted.”

structure a city landmark or structure of merit in accordance with Berkeley Municipal Code Section 3.24.120. The neighbor was joined by 65 other residents, and the group was represented by the Berkeley Architectural Heritage Association. In August 2020, the Landmarks Preservation Commission conducted a public hearing on the designation request; the staff report concluded that there was not enough evidence showing the property to have historical value nor was it representative of exemplary design or the notable accomplishments of persons important to history.<sup>8</sup> Nearby neighbors who supported the landmark designation wanted to preserve the “aesthetic of their street,” and felt that the Payson House was historically significant to the neighborhood while those in support of staff’s finding saw the landmark designation process as an attempt to preempt a larger development proposed to replace the current house. In the end, the Landmarks Preservation Commission voted 7-2 in support of the staff report opposing the designation of landmark status.<sup>9</sup> Two months later, the commission’s decision was appealed to the City Council, and the City Council upheld the Landmark Preservation Commission’s decision.<sup>10</sup> In October 2021, the Zoning Adjustments Board approved the redesigned 11-unit project under the state’s density bonus law, which included three low-income units to meet affordability requirements. The failed effort to halt redevelopment of the Payson House took approximately 18 months, and significant staff time was devoted to this attempt at maintaining the “aesthetic of the street” and the low density neighborhood.

***Case Study #2: Neighbors Attempt to Landmark Property to Maintain Neighborhood Feel at 910 Indian Rock Avenue.*** The single-family home at 910 Indian Rock Avenue, known as the Marrenner House, was built in 1916. It became the subject of a landmark designation effort after its owners, the Emersons, submitted plans to demolish it to build a larger home to accommodate Mrs. Emerson’s aging and disabled mother. Concerned neighbors submitted a landmark structure of merit application,<sup>11</sup> which included a petition and a group letter signed by 57 residents. The group suggested preserving the existing character of the house by constructing a suitable addition at the rear of the property, rather than the demolition that the property owner sought, as a way to maintain the neighborhood character.

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<sup>8</sup> Public Hearing during January 21, 2021 Special City Council Meeting: “Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street”

<https://records.cityofberkeley.info/PublicAccess/api/Document/Af5kp6E4KrPvxdHVNpBjf2CjOz0IX%3%81ewE6%C3%81X1jBcBbjMKWpiv7zIL1A6iB0BFLH6J4fTxFwPsUIhnlSQplixfY%3D/>

<sup>9</sup> Minutes from the August 6, 2020 Landmarks Preservation Commission Meeting:

[https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2020-08-06\\_LPC\\_Minutes\\_FINAL.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2020-08-06_LPC_Minutes_FINAL.pdf)

<sup>10</sup> Public Hearing during January 21, 2021 Special City Council Meeting: “Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street”

<https://records.cityofberkeley.info/PublicAccess/api/Document/Af5kp6E4KrPvxdHVNpBjf2CjOz0IX%3%81ewE6%C3%81X1jBcBbjMKWpiv7zIL1A6iB0BFLH6J4fTxFwPsUIhnlSQplixfY%3D/>

<sup>11</sup> 910 Indian Rock Avenue Landmark Support Letters sent to the Landmarks Preservation Commission, May 4, 2023 [https://berkeleyca.gov/sites/default/files/documents/2023-05-04\\_Item%207\\_910%20Indian%20Rock%20.pdf](https://berkeleyca.gov/sites/default/files/documents/2023-05-04_Item%207_910%20Indian%20Rock%20.pdf)

The Landmarks Preservation Commission reviewed the matter over several meetings in May, July, and November 2023.<sup>12</sup> During the November 2023 meeting, the commission voted not to approve the designation application. The Emersons had argued all along that their house did not satisfy the requirements to designate it as a landmark or structure of merit, contrary to the neighbors' assertions. However, well into the petition process, and following an offer from Kit Ratcliff, grandson of the home's original architect, the Emersons agreed to renovate the property, maintain the street facing facade and partner with Kit Ratcliff who would oversee a remodel and rear addition to the home. The Emersons themselves wrote a letter to the Landmarks Preservation Commission requesting they take no action on designating their house as a landmark or structure of merit, emphasizing that the original petitioners also no longer supported the designation as demolition was no longer an issue and the front facade of the house would remain intact.<sup>13</sup> In the end, all stakeholders were satisfied as the Emersons could renovate their home to accommodate the growing needs of their family, Kit Ratcliff could honor the architectural work of his grandfather, and the surrounding neighbors would not have to see the newly constructed addition. This reveals yet again how the subject property's merit as a historical landmark was secondary to preserving a neighborhood context as perceived through the eyes of some of the neighbors.

**Case Study #3: Landmarking Attempt in Tension With Spirit of State Law SB 330 at 2425 Durant Avenue.** The landmark dispute over 2425 Durant Avenue emerged not from long-standing recognition of historic value but from a petition filed only after a housing project was already in motion. The property, part of Berkeley's early College Homestead and Beaver Tracts, had no prior designation on state or national registers and had not been the subject of preservation campaigns before. In November 2024, the developer filed a Preliminary Use Permit application under SB 330 (the Housing Crisis Act of 2019), which the City deemed complete on November 21, vesting the project under the rules then in effect. Weeks later, in December 2024, the Berkeley Architectural Heritage Association filed to landmark 2421 Durant Avenue, initiating a process that culminated in the Landmarks Preservation Commission's March 6, 2025 vote to designate the property as a landmark.<sup>14</sup> This sequence created an immediate legal and procedural conflict. Under SB 330, once a housing project vests, local governments cannot impose new standards, including

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<sup>12</sup> Landmarks Preservation Commission Meeting Agenda, Thursday May 4, 2023, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-05-04\\_LPC\\_Agenda\\_linked.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-05-04_LPC_Agenda_linked.pdf); July 6 Landmark Preservation Commission meeting, item #7: [https://berkeleyca.gov/sites/default/files/documents/2023-07-06\\_LPC\\_Item%207\\_910%20Indian%20Rock\\_Packet.pdf](https://berkeleyca.gov/sites/default/files/documents/2023-07-06_LPC_Item%207_910%20Indian%20Rock_Packet.pdf); Agenda packet for November 2, 2023 Landmarks Preservation Commission meeting: [https://berkeleyca.gov/sites/default/files/documents/2023-11-02\\_LPC\\_Item%207\\_910%20Indian%20Rock\\_Staff%20Report%20and%20Attachments.pdf](https://berkeleyca.gov/sites/default/files/documents/2023-11-02_LPC_Item%207_910%20Indian%20Rock_Staff%20Report%20and%20Attachments.pdf)

<sup>13</sup> November 2, 2023 LPC agenda packet (see above), page 41 of 43.

<sup>14</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-07-23%20Special%20Item%20001%20Landmarks%20Preservation%20Commission%20Appeal%202425%20Durant.pdf>

landmark protections, on the housing project. The developer argued that the late-filed petition and subsequent Landmarks Preservation Commission designation had no legal effect, but nonetheless imposed significant practical burdens. In their appeal, filed in April 2025, the developer emphasized that the designation had already caused four months of delay, introduced uncertainty for lenders and insurers, and jeopardized the project's financing<sup>15</sup>—exactly the types of obstacles state law sought to eliminate.

In the public hearing of the appeal on July 23, 2025,<sup>16</sup> Planning staff recommended reversing the Landmarks Preservation Commission decision, noting that while the designation technically existed, it could not be applied to the vested housing project. Staff also noted that this would be purely a symbolic landmark. Preservation advocates, including BAHA, urged the City Council to uphold the designation, citing the property's role in illustrating the layered history of the Southside neighborhood. They argued that even symbolic landmarking could have educational value and underscored the City's failure to complete a comprehensive historic survey. But Councilmembers highlighted broader concerns, including the applicability of SB 330. Keeping the designation in place risked exposing the City to legal liability and would further chill housing development at a time when Berkeley already faces a housing shortage. Ultimately, staff concluded that state housing law precluded applying the designation to the housing project, and the matter presented a broader conflict between housing production mandates and preservation priorities. The Council ultimately voted unanimously to uphold the appeal and reverse the Landmarks Preservation Commission designation.<sup>17</sup>

**Case Study #4: Landmarking Attempt in Tension With Spirit of State Law SB 330 at 2138 Kittredge Street.** The dispute over 2138 Kittredge Street followed a familiar pattern in Berkeley's ongoing tension between housing production and historic preservation. The property, associated with the Fitzpatrick House and later the Pepper Tree Tea Room, had long been noted in neighborhood surveys but was never designated at the state, federal, or local level as a landmark. In April 2024, the developer submitted a Preliminary Use Permit application under SB 330, which was deemed complete that same month, vesting the project under existing planning and zoning standards. Several months later, in February 2025, the Berkeley Architectural Heritage Association filed an application to landmark the property.<sup>18</sup> Similar to the

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<sup>15</sup> As per comments by the appellant as part of the City Council meeting, held on July 23, 2025 [https://berkeley.granicus.com/player/clip/5488?publish\\_id=6b79d3c7-68a7-11f0-b7f5-005056a89546&redirect=true](https://berkeley.granicus.com/player/clip/5488?publish_id=6b79d3c7-68a7-11f0-b7f5-005056a89546&redirect=true)

<sup>16</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-07-23%20Special%20Item%20001%20Landmarks%20Preservation%20Commission%20Appeal%202425%20Durant.pdf>

<sup>17</sup> Agenda packet for July 23, 2025 City Council meeting <https://berkeleyca.gov/sites/default/files/city-council-meetings/2025-07-23%20Annotated%20Agenda%20-%20Council.pdf>

<sup>18</sup> [https://berkeleyca.gov/sites/default/files/documents/2025-02-06\\_LPC\\_Item%207\\_2138%20Kittredge\\_Staff%20Report%20and%20Attachments.pdf](https://berkeleyca.gov/sites/default/files/documents/2025-02-06_LPC_Item%207_2138%20Kittredge_Staff%20Report%20and%20Attachments.pdf)

case of Durant Avenue, the Landmarks Preservation Commission voted to approve the designation, citing architectural features and the property being present in the downtown area surrounded by other historic structures.

City planning staff recommended overturning the Landmarks Preservation Commission's designation due to the same application of state housing law—under SB 330, once a housing application is deemed complete, new regulations, including landmark designations cannot be imposed retroactively on the housing project. The City Council grappled with the same tension that had defined the Durant Avenue case. They acknowledged the symbolic intent of the petition but underscored that the designation carried no enforceable weight and introduced costly delays and economic uncertainty. The Council voted unanimously to uphold the appeal and overturn the Landmarks Preservation Commission designation,<sup>19</sup> and reinforced the same conclusion reached in the Durant case.

### **FISCAL IMPACTS**

Staff time on a one-time basis to amend and incorporate the re-worded code sections into the BMC, and ongoing savings to staff time due to anticipated fewer landmark attempts that turn out to be frivolous.

### **ALTERNATIVE ACTIONS CONSIDERED**

The city could reconsider funding a historic context statement. A historic context statement is a document that includes a comprehensive understanding and structure for grouping information about the City's history, historic properties and the built environment. An historic context statement would provide transparency by providing a planning document with guidance on identifying and evaluating historic buildings and resources. It would include an evaluative framework and guidance for staff and Landmarks Preservation Commission decisions regarding historic resources thus decreasing staff time involved in researching each property initiated for landmark designation and ad hoc decisions about properties based on commissioners' and residents' comfort with growth. The requested funding for an historic context statement was projected to be between \$250,000 to \$275,000 and was not approved in FY 2024-25 or in FY 2025-26. Given this relatively high one-time cost, it is unclear whether Council would have the funding available to pursue a historic context statement in the near future.

Despite the relatively high one-time cost, there is broad recognition that the benefits of an historic context statement could outweigh the expense. It would not only generate a vetted list of potential landmarks and structures of merit but would also

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<sup>19</sup> Agenda packet for July 23, 2025 City Council meeting <https://berkeleyca.gov/sites/default/files/city-council-meetings/2025-07-23%20Annotated%20Agenda%20-%20Council.pdf>

provide greater predictability for developers, staff, and residents alike. Other cities, such as San Francisco<sup>20</sup> and Los Angeles<sup>21</sup> have already commissioned historic context statements that serve as standard references for preservation planning and environmental review. While a citywide context study in Berkeley may take considerable time to complete, the recommendations in this ordinance can provide a practical framework in the interim - tiding the City over until a formal survey is adopted.

### **RATIONALE FOR RECOMMENDATION**

This referral is submitted in the spirit of eliminating one particular way people have used our municipal code to delay the construction of much-needed homes. It would also help address conflicts among neighbors that pit “maintaining the feel of a neighborhood” against property owners’ interests in renovating their own homes. Berkeley has successfully adopted a Housing Element and has received the state’s Prohousing Designation; the referred BMC amendment would be an additional step furthering our commitment to this designation and our efforts to provide more housing.

### **CONTACT PERSON**

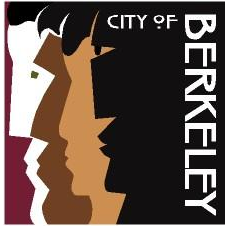
Councilmember Rashi Kesarwani, District 1

(510) 981-7110

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<sup>20</sup> <https://sfplanning.org/project/citywide-historic-context-statement>

<sup>21</sup> <https://planning.lacity.gov/preservation-design/historic-resources/historic-themes>



Rashi Kesarwani  
Councilmember District 1

## **REVISED AGENDA MATERIAL for Supplemental Packet 1**

**Meeting Date:** November 10, 2025

**Item Number:** 12

**Item Description:** Referral to Amend Berkeley Municipal Codes 3.24.120 and 3.24.300 to Improve Procedure for Designating Landmarks, Historic Districts and Structures of Merit

**Submitted by:** Councilmember Rashi Kesarwani

The revised material amends the second recommendation and adds Councilmembers Blackaby and Lunaparra as co-sponsors.

The second recommendation now suggests raising the threshold for the number of residents needed to sign the verified application of initiation of designation from 50 to 200 if the resource property owner has consented to the Landmark/Structure of Merit designation; or raising the threshold for the number of residents needed to sign the verified application of initiation to 400 if the resource property owner has not consented to the process. The second recommendation was amended out of concern for the increased administrative burden to staff in determining 51 percent of residential units within a 300 foot radius of the subject property and concern over unintended consequences that would treat distinct areas of the city differently.



Rashi Kesarwani  
Councilmember, District 1

CONSENT CALENDAR  
November 10, 2025

TO: Honorable Mayor and Members of the City Council

FROM: Councilmember Rashi Kesarwani (Author) and Councilmember Brent Blackaby (Co-Sponsor), Councilmember Mark Humbert (Co-Sponsor), and Councilmember Cecilia Lunaparra (Co-Sponsor)

SUBJECT: Referral to Amend Berkeley Municipal Codes 3.24.120 and 3.24.300 to Improve Procedure for Designating Landmarks, Historic Districts and Structures of Merit

**RECOMMENDATION**

Refer to the City Manager and City Attorney to amend two related Berkeley Municipal Code (BMC) sections: 3.24.120, “Landmarks, Historic Districts and Structures of Merit-Designation-Initiation Procedures,” and its related BMC section 3.24.300, “Appeals-Procedures Required-City Council Authority.”

This referral recommends refinements to the procedure for designating landmarks, historic districts, and structures of merit to discourage frivolous designations, often of sites that are planned to be redeveloped to address our City’s housing shortage.

Proposed amendments include the following two changes to the BMC:

- 1) Raising the threshold for the number of residents needed to sign the verified application of initiation of designation from 50 to 200; and requiring the property owner’s approval of the designation; or
- 2) ~~For properties located in residential zoning districts,<sup>4</sup> require 51 percent of the residents within a 300-foot radius of the subject building/structure to be among the applicants signing on to initiate the landmark / structure of merit designation, similar to the threshold used for other City procedures by the~~

<sup>4</sup> As defined in Berkeley Municipal Code section 23.202 – <https://berkeley.municipal.codes/BMC/23.202>

- ~~Planning and Public Works departments.<sup>2</sup> We note that this second requirement may necessitate the collection of more than 200 signatures.~~
- 2) ~~For those properties that do not have the owner's approval to designate as a landmark, historic district, or structure of merit, raising the threshold for the number of residents needed to sign the verified application of initiation of designation to 400.~~

Specifically, the proposed amendments to the Berkeley Municipal Code (BMC) 3.24.120, "Landmarks, Historic Districts and Structures of Merit-Designation-Initiation Procedures" would read as follows:

Initiation of designation shall be by the commission, or by a resolution of intention of the City Council, or by the Planning Commission, or by the Civic Arts Commission, or by the verified application of the owners of the property to be designated or their authorized agents, or by the verified application of at least ~~fifty~~ 200 residents of the City ~~and the consent of the property owner; and, for properties located in residential zoning districts, requiring 51 percent of the residents residing within a 300 foot radius of the subject property;~~ or, by the verified application of at least 400 residents if the property owner has not provided consent of the designation process.<sup>3</sup> Any such application shall be filed with the commission upon forms prescribed by the commission and shall be accompanied by all data required by the commission. Where such application is submitted for designation of an historic district, the application must be subscribed by or on behalf of a majority of the property owners or residents of the proposed district. (Ord. 5686-NS § 1 (part), 1985; Ord. 4694-NS § 4, 1974)<sup>4</sup>

Similarly, BMC 3.24.300(A)(1) is proposed to read as follows:

An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least ~~fifty~~ 200 residents ~~and the consent of the property owner; or, if the property owner has not provided consent, by the verified application of at least 400 residents, for properties located in residential zoning districts, requiring 51 percent of the~~

<sup>2</sup> ~~These numbers were chosen to be congruent with other criteria used within the city regarding community outreach and involvement. Our Planning Department, for instance, requires that Projects of Community or Neighborhood Interest meet with owners, residents and community groups within 300 feet of the project (<https://berkeleyca.gov/sites/default/files/2022-02/Instructions-Regarding-Community-Outreach.pdf>) and our Transportation Division requires that 51 percent of residents on a given block sign the petition to adopt the Residential Preferential Parking (RPP) program (see RPP opt in guide, page 3): <https://berkeleyca.gov/sites/default/files/documents/RPP%20Opt-In%20How-To%20Guide.pdf>~~

<sup>3</sup> ~~This provision is congruent with the California Register of Historical Resources requiring the resource owner's consent prior to being listed on the California Register: [https://ohp.parks.ca.gov/?page\\_id=21238](https://ohp.parks.ca.gov/?page_id=21238)~~

<sup>4</sup> Berkeley Municipal Code section 3.24.120: <https://berkeley.municipal.codes/BMC/3.24.120>

~~residents residing within a 300-foot radius of the subject property~~ of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.<sup>5</sup>

## **CURRENT SITUATION AND ITS EFFECTS**

### ***A Low Threshold for Residents to Seek a Landmark / Structure of Merit Designation Leads to Frivolous Applications That Create Delay and Uncertainty.***

Currently, individuals at liberty to initiate and appeal the process of designating a home, building, structure or district as an historic landmark or structure of merit are City Council members; appointed commissioners of the Landmarks Preservation Commission, Planning Commission, or Civic Arts Commission; property owner(s) of the subject property; and any random group of at least 50 residents living anywhere in the City. The relatively low bar for residents to initiate designation of a landmark / structure of merit for property that they do not own—by simply collecting the signatures of 50 people—has led to disputes between neighbors and homeowners, and—for larger proposed developments—uncertainty and delay as well as a significant amount of work for City staff.<sup>6</sup> In the background section below, we describe two notable cases in which at least 50 residents submitted a petition to initiate a landmark / structure of merit designation after the subject property was proposed for development or demolition. In both cases, the landmark designation was found to be inappropriate.

***... And Can Be In Tension with the Spirit of State Housing Law.*** In two other cases presented as background below, the Landmarks Preservation Commission approved landmark designations after proposed development projects had already vested—meaning a developer had submitted a preliminary housing application deemed complete, which locks in the zoning, design, and preservation standards that were in place at the time of the application’s submission—under state law Chapter 654, Statutes of 2019 (SB 330, Skinner).<sup>7</sup> Known as the Housing Crisis Act of 2019, SB 330 is intended to safeguard housing projects from shifting local rules. Local governments are limited from imposing new regulations retroactively if those rules would reduce housing capacity or introduce additional discretionary barriers.<sup>8</sup> In essence, state law SB 330 renders the landmark designation unenforceable, but the process still causes months of delay and creates uncertainty related to financing.

<sup>5</sup> Berkeley Municipal Code section 3.24.300(A)(1): <https://berkeley.municipal.codes/BMC/3.24.300>

<sup>6</sup> We note that a property owner who believes their property is worthy of landmark / structure of merit status will continue to have the option of contacting the Landmarks Preservation Commission to request that the body initiate the landmark / structure of merit designation proceedings.

<sup>7</sup> SB 330, Skinner. Housing Crisis Act of 2019 -

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=20190200SB330](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=20190200SB330)

<sup>8</sup> California Government Code § 65589.5(o)(1) “...a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted.”

## **BACKGROUND**

In the following four case studies, we show how the current procedure for initiating a landmark or structure of merit has been weaponized by opponents of neighborhood change.

***Case Study #1: Neighbors' Attempt to Landmark Unremarkable House to Block High-Density Development at 1915 Berryman Street.*** In May 2020, a development application to construct a ten-unit residential project at 1915 Berryman Street in North Berkeley was submitted to Berkeley's Planning Department. The property, known as the Payson House, was originally built in 1889 for First Unitarian Church co-founder William Payson. The proposed project would expand the property by constructing six townhouses containing ten units. Close to two weeks after the construction application was submitted, a neighbor submitted an application to designate the structure a city landmark or structure of merit in accordance with Berkeley Municipal Code Section 3.24.120. The neighbor was joined by 65 other residents, and the group was represented by the Berkeley Architectural Heritage Association. In August 2020, the Landmarks Preservation Commission conducted a public hearing on the designation request; the staff report concluded that there was not enough evidence showing the property to have historical value nor was it representative of exemplary design or the notable accomplishments of persons important to history.<sup>9</sup> Nearby neighbors who supported the landmark designation wanted to preserve the "aesthetic of their street," and felt that the Payson House was historically significant to the neighborhood while those in support of staff's finding saw the landmark designation process as an attempt to preempt a larger development proposed to replace the current house. In the end, the Landmarks Preservation Commission voted 7-2 in support of the staff report opposing the designation of landmark status.<sup>10</sup> Two months later, the commission's decision was appealed to the City Council, and the City Council upheld the Landmark Preservation Commission's decision.<sup>11</sup> In October 2021, the Zoning Adjustments Board approved the redesigned 11-unit project under the state's density bonus law, which included three low-income units to meet affordability requirements. The failed effort to halt redevelopment of the Payson

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<sup>9</sup> Public Hearing during January 21, 2021 Special City Council Meeting: "Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street"

<https://records.cityofberkeley.info/PublicAccess/api/Document/Af5kp6E4KrPvxdHVNpBjf2CjOz0IX%C3%81ewE6%C3%81X1jBcBbjMKWpiv7zIL1A6iB0BFLH6J4fTxFwPsUIhnlSQplixfY%3D/>

<sup>10</sup> Minutes from the August 6, 2020 Landmarks Preservation Commission Meeting: [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2020-08-06\\_LPC\\_Minutes\\_FINAL.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/2020-08-06_LPC_Minutes_FINAL.pdf)

<sup>11</sup> Public Hearing during January 21, 2021 Special City Council Meeting: "Appeal of Landmarks Preservation Commission Decision – Denial of City Landmark or Structure of Merit Designation for 1915 Berryman Street"

<https://records.cityofberkeley.info/PublicAccess/api/Document/Af5kp6E4KrPvxdHVNpBjf2CjOz0IX%C3%81ewE6%C3%81X1jBcBbjMKWpiv7zIL1A6iB0BFLH6J4fTxFwPsUIhnlSQplixfY%3D/>

House took approximately 18 months, and significant staff time was devoted to this attempt at maintaining the “aesthetic of the street” and the low density neighborhood.

**Case Study #2: Neighbors Attempt to Landmark Property to Maintain Neighborhood Feel at 910 Indian Rock Avenue.** The single-family home at 910 Indian Rock Avenue, known as the Marrenner House, was built in 1916. It became the subject of a landmark designation effort after its owners, the Emersons, submitted plans to demolish it to build a larger home to accommodate Mrs. Emerson's aging and disabled mother. Concerned neighbors submitted a landmark structure of merit application,<sup>12</sup> which included a petition and a group letter signed by 57 residents. The group suggested preserving the existing character of the house by constructing a suitable addition at the rear of the property, rather than the demolition that the property owner sought, as a way to maintain the neighborhood character. The Landmarks Preservation Commission reviewed the matter over several meetings in May, July, and November 2023.<sup>13</sup> During the November 2023 meeting, the commission voted not to approve the designation application. The Emersons had argued all along that their house did not satisfy the requirements to designate it as a landmark or structure of merit, contrary to the neighbors' assertions. However, well into the petition process, and following an offer from Kit Ratcliff, grandson of the home's original architect, the Emersons agreed to renovate the property, maintain the street facing facade and partner with Kit Ratcliff who would oversee a remodel and rear addition to the home. The Emersons themselves wrote a letter to the Landmarks Preservation Commission requesting they take no action on designating their house as a landmark or structure of merit, emphasizing that the original petitioners also now no longer supported the designation as demolition was no longer an issue and the front facade of the house would remain intact.<sup>14</sup> In the end, all stakeholders were satisfied as the Emersons could renovate their home to accommodate the growing needs of their family, Kit Ratcliff could honor the architectural work of his grandfather, and the surrounding neighbors would not have to see the newly constructed addition. This reveals yet again how the subject property's merit as a historical landmark was secondary to preserving a neighborhood context as perceived through the eyes of some of the neighbors.

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<sup>12</sup> 910 Indian Rock Avenue Landmark Support Letters sent to the Landmarks Preservation Commission, May 4, 2023 [https://berkeleyca.gov/sites/default/files/documents/2023-05-04\\_Item%207\\_910%20Indian%20Rock%20.pdf](https://berkeleyca.gov/sites/default/files/documents/2023-05-04_Item%207_910%20Indian%20Rock%20.pdf)

<sup>13</sup> Landmarks Preservation Commission Meeting Agenda, Thursday May 4, 2023, [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-05-04\\_LPC\\_Agenda\\_linked.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-05-04_LPC_Agenda_linked.pdf); July 6 Landmark Preservation Commission meeting, item #7: [https://berkeleyca.gov/sites/default/files/documents/2023-07-06\\_LPC\\_Item%207\\_910%20Indian%20Rock\\_Packet.pdf](https://berkeleyca.gov/sites/default/files/documents/2023-07-06_LPC_Item%207_910%20Indian%20Rock_Packet.pdf); Agenda packet for November 2, 2023 Landmarks Preservation Commission meeting: [https://berkeleyca.gov/sites/default/files/documents/2023-11-02\\_LPC\\_Item%207\\_910%20Indian%20Rock\\_Staff%20Report%20and%20Attachments.pdf](https://berkeleyca.gov/sites/default/files/documents/2023-11-02_LPC_Item%207_910%20Indian%20Rock_Staff%20Report%20and%20Attachments.pdf)

<sup>14</sup> November 2, 2023 LPC agenda packet (see above), page 41 of 43.

**Case Study #3: Landmarking Attempt in Tension With Spirit of State Law SB 330 at 2425 Durant Avenue.** The landmark dispute over 2425 Durant Avenue emerged not from long-standing recognition of historic value but from a petition filed only after a housing project was already in motion. The property, part of Berkeley's early College Homestead and Beaver Tracts, had no prior designation on state or national registers and had not been the subject of preservation campaigns before. In November 2024, the developer filed a Preliminary Use Permit application under SB 330 (the Housing Crisis Act of 2019), which the City deemed complete on November 21, vesting the project under the rules then in effect. Weeks later, in December 2024, the Berkeley Architectural Heritage Association filed to landmark 2421 Durant Avenue, initiating a process that culminated in the Landmarks Preservation Commission's March 6, 2025 vote to designate the property as a landmark.<sup>15</sup> This sequence created an immediate legal and procedural conflict. Under SB 330, once a housing project vests, local governments cannot impose new standards, including landmark protections, on the housing project. The developer argued that the late-filed petition and subsequent Landmarks Preservation Commission designation had no legal effect, but nonetheless imposed significant practical burdens. In their appeal, filed in April 2025, the developer emphasized that the designation had already caused four months of delay, introduced uncertainty for lenders and insurers, and jeopardized the project's financing<sup>16</sup>—exactly the types of obstacles state law sought to eliminate.

In the public hearing of the appeal on July 23, 2025,<sup>17</sup> Planning staff recommended reversing the Landmarks Preservation Commission decision, noting that while the designation technically existed, it could not be applied to the vested housing project. Staff also noted that this would be purely a symbolic landmark. Preservation advocates, including BAHA, urged the City Council to uphold the designation, citing the property's role in illustrating the layered history of the Southside neighborhood. They argued that even symbolic landmarking could have educational value and underscored the City's failure to complete a comprehensive historic survey. But Councilmembers highlighted broader concerns, including the applicability of SB 330. Keeping the designation in place risked exposing the City to legal liability and would further chill housing development at a time when Berkeley already faces a housing shortage. Ultimately, staff concluded that state housing law precluded applying the designation to the housing project, and the matter presented a broader conflict between housing production mandates and preservation priorities. The Council

<sup>15</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-07-23%20Special%20Item%20001%20Landmarks%20Preservation%20Commission%20Appeal%202425%20Durant.pdf>

<sup>16</sup> As per comments by the appellant as part of the City Council meeting, held on July 23, 2025 [https://berkeley.granicus.com/player/clip/5488?publish\\_id=6b79d3c7-68a7-11f0-b7f5-005056a89546&redirect=true](https://berkeley.granicus.com/player/clip/5488?publish_id=6b79d3c7-68a7-11f0-b7f5-005056a89546&redirect=true)

<sup>17</sup> <https://berkeleyca.gov/sites/default/files/documents/2025-07-23%20Special%20Item%20001%20Landmarks%20Preservation%20Commission%20Appeal%202425%20Durant.pdf>

ultimately voted unanimously to uphold the appeal and reverse the Landmarks Preservation Commission designation.<sup>18</sup>

**Case Study #4: Landmarking Attempt in Tension With Spirit of State Law SB 330 at 2138 Kittredge Street.** The dispute over 2138 Kittredge Street followed a familiar pattern in Berkeley's ongoing tension between housing production and historic preservation. The property, associated with the Fitzpatrick House and later the Pepper Tree Tea Room, had long been noted in neighborhood surveys but was never designated at the state, federal, or local level as a landmark. In April 2024, the developer submitted a Preliminary Use Permit application under SB 330, which was deemed complete that same month, vesting the project under existing planning and zoning standards. Several months later, in February 2025, the Berkeley Architectural Heritage Association filed an application to landmark the property.<sup>19</sup> Similar to the case of Durant Avenue, the Landmarks Preservation Commission voted to approve the designation, citing architectural features and the property being present in the downtown area surrounded by other historic structures.

City planning staff recommended overturning the Landmarks Preservation Commission's designation due to the same application of state housing law—under SB 330, once a housing application is deemed complete, new regulations, including landmark designations cannot be imposed retroactively on the housing project. The City Council grappled with the same tension that had defined the Durant Avenue case. They acknowledged the symbolic intent of the petition but underscored that the designation carried no enforceable weight and introduced costly delays and economic uncertainty. The Council voted unanimously to uphold the appeal and overturn the Landmarks Preservation Commission designation,<sup>20</sup> and reinforced the same conclusion reached in the Durant case.

### **FISCAL IMPACTS**

Staff time on a one-time basis to amend and incorporate the re-worded code sections into the BMC, and ongoing savings to staff time due to anticipated fewer landmark attempts that turn out to be frivolous.

### **ALTERNATIVE ACTIONS CONSIDERED**

The city could reconsider funding a historic context statement. A historic context statement is a document that includes a comprehensive understanding and structure

<sup>18</sup> Agenda packet for July 23, 2025 City Council meeting <https://berkeleyca.gov/sites/default/files/city-council-meetings/2025-07-23%20Annotated%20Agenda%20-%20Council.pdf>

<sup>19</sup> [https://berkeleyca.gov/sites/default/files/documents/2025-02-06\\_LPC\\_Item%207\\_2138%20Kittredge\\_Staff%20Report%20and%20Attachments.pdf](https://berkeleyca.gov/sites/default/files/documents/2025-02-06_LPC_Item%207_2138%20Kittredge_Staff%20Report%20and%20Attachments.pdf)

<sup>20</sup> Agenda packet for July 23, 2025 City Council meeting <https://berkeleyca.gov/sites/default/files/city-council-meetings/2025-07-23%20Annotated%20Agenda%20-%20Council.pdf>

for grouping information about the City's history, historic properties and the built environment. An historic context statement would provide transparency by providing a planning document with guidance on identifying and evaluating historic buildings and resources. It would include an evaluative framework and guidance for staff and Landmarks Preservation Commission decisions regarding historic resources thus decreasing staff time involved in researching each property initiated for landmark designation and ad hoc decisions about properties based on commissioners' and residents' comfort with growth. The requested funding for an historic context statement was projected to be between \$250,000 to \$275,000 and was not approved in FY 2024-25 or in FY 2025-26. Given this relatively high one-time cost, it is unclear whether Council would have the funding available to pursue a historic context statement in the near future.

Despite the relatively high one-time cost, there is broad recognition that the benefits of an historic context statement could outweigh the expense. It would not only generate a vetted list of potential landmarks and structures of merit but would also provide greater predictability for developers, staff, and residents alike. Other cities, such as San Francisco<sup>21</sup> and Los Angeles<sup>22</sup> have already commissioned historic context statements that serve as standard references for preservation planning and environmental review. While a citywide context study in Berkeley may take considerable time to complete, the recommendations in this ordinance can provide a practical framework in the interim - tiding the City over until a formal survey is adopted.

### **RATIONALE FOR RECOMMENDATION**

This referral is submitted in the spirit of eliminating one particular way people have used our municipal code to delay the construction of much-needed homes. It would also help address conflicts among neighbors that pit "maintaining the feel of a neighborhood" against property owners' interests in renovating their own homes. Berkeley has successfully adopted a Housing Element and has received the state's Prohousing Designation; the referred BMC amendment would be an additional step furthering our commitment to this designation and our efforts to provide more housing.

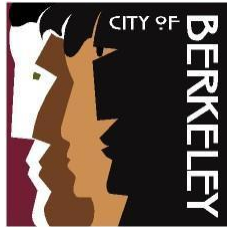
### **CONTACT PERSON**

Councilmember Rashi Kesarwani, District 1

(510) 981-7110

<sup>21</sup> <https://sfplanning.org/project/citywide-historic-context-statement>

<sup>22</sup> <https://planning.lacity.gov/preservation-design/historic-resources/historic-themes>



Igor Tregub  
Councilmember District 4

## **REVISED AGENDA MATERIAL for Supplemental Packet 2**

**Meeting Date:** November 10, 2025

**Item Number:** 12

**Item Description:** Referral to Amend Berkeley Municipal Codes 3.24.120 and 3.24.300 to Improve Procedure for Designating Landmarks, Historic Districts and Structures of Merit

**Submitted by:** Councilmember Igor Tregub

The revised material amends the item as revised in Supplemental 1 to improve consistency, reduce the staff time associated with administering revisions to BMC Section 3.24.300, and provide a stronger nexus to the stated issue the item seeks to address. Specifically, it raises the threshold for the number of residents needed to sign the verified application to initiate a landmarking designation to 200 in all cases and restricts an initiation of landmarking designation for five (5) years following the receipt of a Preliminary Use Permit application under SB 330 (the Housing Crisis Act of 2019) by the City of Berkeley, unless initiated by the property owner of record.



Igor Tregub  
Councilmember District 4

CONSENT CALENDAR  
November 10, 2025

TO: Honorable Mayor and Members of the City Council  
FROM: Councilmember Igor Tregub  
SUBJECT: Referral to Amend Berkeley Municipal Codes 3.24.120 and 3.24.300 to Improve Procedure for Designating Landmarks, Historic Districts and Structures of Merit

**RECOMMENDATION**

This supplemental provides refinements to Item 10 to improve consistency, reduce the staff time associated with administering revisions to BMC Section 3.24.300, and provide a stronger nexus to the stated issue the item seeks to address. Track changes associated with the supplemental are below.

Refer to the City Manager and City Attorney to amend two related Berkeley Municipal Code (BMC) sections: 3.24.120, "Landmarks, Historic Districts and Structures of Merit-Designation-Initiation Procedures," and its related BMC section 3.24.300, "Appeals-Procedures Required-City Council Authority."

This referral recommends refinements to the procedure for designating landmarks, historic districts, and structures of merit to discourage frivolous designations, often of sites that are planned to be redeveloped to address our City's housing shortage.

Proposed amendments include the following two changes to the BMC:

- 1) Raising the threshold for the number of residents needed to sign the verified application of initiation of designation from 50 to 200~~;~~ and requiring the property owner's approval of the designation; or
- 2) ~~For properties located in residential zoning districts,<sup>†</sup> require 51 percent of the residents within a 300-foot radius of the subject building/structure to be among the applicants signing on to initiate the landmark / structure of merit designation, similar to the threshold used for other City procedures by the~~

<sup>†</sup>As defined in Berkeley Municipal Code section 23.202-  
<https://berkeley.municipal.codes/BMC/23.202>

~~Planning and Public Works departments.<sup>2</sup> We note that this second requirement may necessitate the collection of more than 200 signatures.~~

- 2) ~~For those properties that do not have the owner's approval to designate as a landmark, historic district, or structure of merit, raising the threshold for the number of residents needed to sign the verified application of initiation of designation to 400. Restricting an initiation of designation for five (5) years following the receipt of a Preliminary Use Permit application under SB 330 (the Housing Crisis Act of 2019) by the City of Berkeley, unless initiated by the property owner of record.~~

Specifically, the proposed amendments to the Berkeley Municipal Code (BMC) 3.24.120, "Landmarks, Historic Districts and Structures of Merit-Designation-Initiation Procedures" would read as follows:

Initiation of designation shall be by the commission, or by a resolution of intention of the City Council, or by the Planning Commission, or by the Civic Arts Commission, or by the verified application of the owners of the property to be designated or their authorized agents, or by the verified application of at least ~~fifty~~ 200 residents of the City ~~and the consent of the property owner; and, for properties located in residential zoning districts, requiring 51 percent of the residents residing within a 300 foot radius of the subject property.; or, by the verified application of at least 400 residents if the property owner has not provided consent of the designation process.~~<sup>3</sup> Any such application shall be filed with the commission upon forms prescribed by the commission and shall be accompanied by all data required by the commission. Further, any such designation shall not be processed for five (5) years following the receipt of a Preliminary Use Permit application under SB 330 (the Housing Crisis Act of 2019) by the City of Berkeley, unless initiated by the property owner of record. Where such application is submitted for designation of an historic district, the application must be subscribed by or on behalf of a majority of the property owners or residents of the proposed district. (Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 4, 1974).<sup>1 4</sup>

Similarly, BMC 3.24.300(A)(1) is proposed to read as follows:

An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least ~~fifty~~ 200 residents. Further, any such designation shall not be processed for five (5) years following the receipt of a Preliminary Use Permit application under SB 330 (the Housing Crisis Act of 2019) by the City of Berkeley, unless initiated by the property owner of record. ~~and the consent of the property owner; or, if the property owner has not provided consent, by the verified application of at least 400 residents, for properties located in residential zoning districts, requiring 51 percent of the residents residing within a 300 foot radius of the subject property of the City~~ aggrieved or affected by any determination of the commission made under the provisions of this chapter.<sup>5</sup>

<sup>1 4</sup> Berkeley Municipal Code section 3.24.120: <https://berkeley.municipal.codes/BMC/3.24.120>

**FISCAL IMPACTS**

Staff time on a one-time basis to amend and incorporate the re-worded code sections into the BMC, and minor ongoing savings to staff time over the proposal in Supplemental 1.

**RATIONALE FOR RECOMMENDATION**

This supplemental provides refinements to Item 10 to improve consistency, reduce the staff time associated with administering revisions to BMC Section 3.24.300, and provide a stronger nexus to the stated issue the item seeks to address. Specifically, by simplifying the number of signatures needed to initiate a landmark application to a single number (200), it addresses the stated intent of the original proposal to prevent applications deemed to be frivolous while avoiding the need for city staff to process applications with two different signature requirements and determining a process for how support of a property owner to a landmarking designation would be determined. The second part of the supplemental, which restricts landmarking applications for five years following the receipt of an initial SB 330 designation by the city, other than by the property owner, proximately addresses the specific concerns described in the original item.

**CONTACT PERSON**

Councilmember Igor Tregub, District 4

(510) 981-7140

TO: City of Berkeley City Manager, Paul Buddenhagen  
City of Berkeley Planning Director, Jordan Klein

FROM: Landmarks Preservation Commission (LPC)

SUBJECT: Response to Referral to Amend Berkeley Municipal Codes 3.24.120 and 3.24.300 to Improve Procedure for Designating Landmarks, Historic Districts and Structure of Merit

DATE: March LPC meeting, March 5, 2026

### **EXECUTIVE SUMMARY**

In response to the Berkeley City Commission referral at the November 10, 2025, regular meeting regarding amendments to Berkeley Municipal Codes 3.24.120 "Landmarks, Historic Districts and Structures of Merit-Designation-Initiation Procedures," and its related BMC section 3.24.300 "Appeals-Procedures Required-City Council Authority," (see [Supplemental 1](#) and [Supplemental 2](#)) the Landmarks Preservation Commission (LPC) submits the following comments:

#### General comments:

- The LPC recommends that any changes or amendments to the ordinance include a public comment process. This ensures the Landmarks Preservation Ordinance (LPO) remains compliant with the California Office of Historic Preservation (OHP) standards when reviewed by a State Historic Preservation Officer (SHPO) to retain its Certified Local Government (CLG) status to preserve eligibility for state and federal grant funding and other benefits.

#### Specific comments regarding the Supplemental Packets 1 and 2:

- Landmark Initiations and Appeals: For initiations by the public, we endorse increasing the required number of signatures from 50 to 100.
- Owner-Initiated Path: This process should remain unchanged and does not require public signatures.
- State Housing Law Compliance: To address new and future state laws, we recommend stating the relevant policies on the application and the City website rather than altering the ordinance itself.

### **LEGISLATIVE CONTEXT**

The Berkeley City Council is proposing to make changes to the Landmarks Preservation Ordinance (LPO). We draw the Council's attention to the fact that Berkeley is currently a Certified Local Government (CLG) for the purposes of identification, evaluation, registration, and preservation of historic properties within Berkeley. CLG status is the "gold standard" to municipal historic preservation programs in California. Currently, only about 70 of California's

nearly 500 incorporated cities and towns (including Berkeley) have earned CLG status and programs are monitored annually by the State for conformance.

Being a CLG opens the door to state and federal funding for preservation efforts. Most recently, Berkeley was able to obtain a CLG grant that made it possible to conduct the last historic survey in the city, the Downtown Survey for the 2012 Downtown Plan.

Under the CLG program, local preservation ordinances must conform to certain standards, and changes to an ordinance should be reviewed by the State Office of Historic Preservation (OHP) by a State Historic Preservation Officer (SHPO) to ensure they are in conformity with CLG policies and goals. If an ordinance or city practices do not conform, the city risks loss of its CLG status and loss of access to federal and state grant funding and other CLG benefits.

A SHPO review of Berkeley's proposed changes, and the opportunity for public comment to the SHPO during that review, is an important procedure to build into any process for amending Berkeley's LPO before final adoption. The Commission raised this issue with the Director of Planning and LPC staff at the February LPC meeting. We have not yet received information on whether the opportunity for public comment has been initiated.

Information on the CLG program can be found here: [https://ohp.parks.ca.gov/?page\\_id=21239](https://ohp.parks.ca.gov/?page_id=21239)

## **RECOMMENDATIONS**

The recommendations below are based on the Supplemental Packets 1 and 2 received at the November 10, 2025, City of Berkeley Council meeting.

### **1. Signature requirements for Landmark initiation and appeals:**

Supplemental Packet 1 proposes increasing the required signatures for public nominations from 50 to 400 (without owner consent) and 200 (with owner consent). Supplemental Packet 2 proposes increasing the required signatures from 50 to 200 for both public designations and appeals.

The LPC provides the following comments and recommendations:

The LPC acknowledges the Council's concerns regarding staff workload and the potential for the current low threshold to cause project delays and uncertainty. Accordingly, the LPC supports doubling the signature requirement from 50 to 100. However, we believe that raising the requirement to 200 or 400 is onerous and would effectively eliminate the public's ability to participate in the landmarking process. Such a significant increase is contrary to Berkeley's long tradition of active, participatory democracy.

To address the issue of staff time and expenses, Council might consider an additional hourly fee for complex applications to supplement the standard flat fee. This would incentivize parties to resolve disagreements outside of the formal city process, thereby minimizing delays.

**2. Property Owner Approval of Designation:**

Supplemental Packet #1 currently requires 200 signatures with property owner approval or 400 signatures without it. Supplemental Packet #2 removes the requirement for owner approval if the 200 signatures have been collected (except for SB330 projects as addressed in item 3 below.)

The LPC agrees with the Packet #2 proposal - but with the 100 signatures as stated in item 1 above. The simplified alternative presented in Packet #2 is more logical and will be easier to administer.

If a landmark initiation proposal is submitted and the owner either supports the initiation or remains silent, the process should proceed.

**3. SB 330 related amendments:**

Supplemental Packet #2 proposes to restrict an initiation of landmarking designation for five (5) years following the receipt of a Preliminary Use Permit application under SB 330 (the Housing Crisis Act of 2019) by the City of Berkeley, unless initiated by the property owner of record.

The LPC is concerned that this proposal to simply restrict landmarking designations for five years following a Preliminary Use Permit application lacks the necessary accountability measures as applied to SB 330 projects generally.

Specifically, the current proposal:

- Does not require the submission of a complete use permit or building permit application.
- Does not mandate that construction begin within a specific timeframe.
- Risks inviting bad-faith applications intended solely to block landmark initiations.
- Allows any new preliminary application to restart the five-year clock indefinitely.

Furthermore, we believe that incorporating SB 330 requirements directly into the ordinance unnecessarily complicates the text and could jeopardize the City's eligibility for future grants by affecting its CLG status as described above.

As state housing laws evolve, amending the ordinance for each individual law is time-intensive, costly in staff time to the City, and may lead to inconsistencies or legal challenges.

The LPC recommends that the City of Berkeley follow the City of San Francisco's model. Instead of amending the ordinance, we suggest incorporating policy language into the Landmark Application and onto the City's website stating that applications may not be submitted for local landmark or structure of merit designation while there is an active project application for development pursuant to the Housing Crisis Act (SB 330).

**CONTEXT**

In response to the

1. Case Study #1 (1915 Berryman Street) & #2 (910 Indian Rock Avenue):
  - a. LPC did not vote to designate landmark or structure of merit either of these properties.
  - b. By increasing the number of signatures to 100 AND changing the fee structure to pay for additional staff time beyond that covered by the fee, should serve as adequate deterrence.
  
2. Case Study #3 (2425 Durant Avenue) & #4 (2138 Kittredge Street)
  - a. LPC followed City Planning staff advice at the time based on City Attorney analysis (see attachment) with the understanding that landmarking structures on these two sites would be stayed as long as the SB 330 applications were active. When both applications were appealed to the City Council, City Planning staff changed their position. LPC now follows the current policy as articulated by the City Council.



Office of the City Attorney

## MEMORANDUM

July 8, 2020

To: Jordan Klein, Interim Planning Director

From: Farimah Brown, City Attorney  
Chris Jensen, Assistant City Attorney

**Re: Impact of SB 330 on Landmarks Preservation Commission Review of Housing Development Projects**

The Land Use Planning Division has requested an opinion as to whether SB 330 (2019) limits the authority of Landmarks Preservation Commission (“LPC”) to conduct historic resource evaluations of applications for housing projects.

SB 330 applies to any “housing development project,” which is defined as any residential development, mixed-use development with at least two-thirds of the square footage designated for residential use, or transitional housing or supportive housing development. (Gov. Code § 65589.5(h)(2).)

Where the requirements of SB 330 apply, determinations as to whether the site of the proposed project is historic site must be made “at the time the application for the housing development project is deemed complete.” (Gov. Code § 65913.10(a).) That determination “shall remain valid during the pendency of the housing development project for which the application was made unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.” (*Ibid.*)

“Deemed complete” is defined in two different ways in SB 330. Government Code section 65905.5(b)(1) provides that “deemed complete” means “the application has met all of the requirements specified in the relevant list compiled pursuant to Section 65940<sup>1</sup> that was available at the time when the application was submitted.” (Gov. Code § 65905.5(b)(1).) However, Government Code 65589.5(h)(5) states: “Notwithstanding any other law, until January 1, 2025, ‘deemed complete’ means that the applicant has

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<sup>1</sup> Government Code section 65940 provides that “[e]ach public agency shall compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project.” (Gov. Code § 65940(a).)

*Impact of SB 330 on Landmarks Preservation Commission Review of Housing Development Projects*

July 8, 2020

Page 2

submitted a preliminary application pursuant to Section 65941.1.” (Gov. Code § 65589.5(h)(5).) Until January 1, 2025, section 65589.5(h)(5) controls, “[n]otwithstanding any other law.”

Government Code section 65941.1 defines the requirements for a “preliminary application,” which include information about “[a]ny historic or cultural resources known to exist on the property.” (Gov. Code § 65941.1(a)(9).) Upon providing this information about known historic or cultural resources, along with the other information listed in section 65941.1, the application must be “deemed complete,” as set forth in Government Code section 65589.5(h)(5). Government Code section 65913.10(a) prohibits the City from imposing additional historic or cultural resources protections after this time.

Taken together, these provisions of SB 330 have the effect of divesting the LPC of jurisdiction to require applicants to comply with any cultural or historic resource preservation requirements after the time that a “preliminary application” for a housing development project is deemed complete. LPC and the City are prohibited by state law from denying or imposing conditions on a housing development project based on any cultural or historic resources protections imposed after the date on which the application was “deemed complete,” and any historic resources information required as part of the preliminary application must be limited to the identification of resources that are “known to exist” at the time of the application. Demolition referrals for commercial buildings that are over 40 years old are still required under the Zoning Ordinance, but cannot lead to the imposition of conditions of approval on the project if the LPC acts after the application is deemed complete.

SB 330 does not impact the LPC’s jurisdiction over purely commercial projects or any other project that does not meet the definition of a housing development project under Government Code section 65589.5(h)(2). In addition, SB 330 does not limit the City’s obligation to assess the impact of a proposed project on cultural resources under CEQA and to impose measures to mitigate any adverse impact on cultural resources. (See Gov. Code § 65913.10(c).)





Environment and Climate Commission

INFORMATION CALENDAR

April 14, 2026

To: Honorable Mayor and Members of the City Council  
 From: Environment and Climate Commission (ECC)  
 Submitted by: Alison LaBonte, Chairperson, ECC  
 Subject: Environment and Climate Commission 2026 Work Plan

INTRODUCTION

The Environment and Climate Commission (ECC) is responsible for advising the City Council on matters related to environmental sustainability and climate change. ECC’s scope includes work to advance the goals of: advancing green buildings and resource efficiency; decarbonizing buildings and transportation; engaging and educating the community; addressing the impacts and welfare of all species, including animals, insects, and plants; reducing greenhouse gas emissions; reducing toxics and preventing pollution; and supporting environmental justice. The ECC works closely with the City of Berkeley’s Office of Energy & Sustainable Development (OESD).

CURRENT SITUATION AND ITS EFFECTS

The ECC has a broad scope, which supports the City’s Strategic Plan goal to be a global leader in addressing climate change, advancing environmental justice, and protecting the environment, and a responsibility to support and work closely with OESD staff. The ECC created subcommittees to work on the following projects:

| Project                        | Status       | Description                                                                                                                                                                                                                                                                                                                             |
|--------------------------------|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Building Decarbonization       | In Committee | Support OESD staff with feedback on building electrification programs, including Building Emissions Saving Ordinance (BESO), Berkeley Existing Buildings Electrification Strategy, Climate Equity Fund, Just Transition Fund, Reach Codes, and Building Performance Standards. Collaboration with Housing Advisory Committee as needed. |
| Community Outreach             | In Committee | In collaboration with OESD, plan community outreach campaigns, create materials, and support events that raise awareness of City activities, public programs, and local climate action opportunities. Make suggestions about possible website improvements. Raise awareness of climate activities/resources to Councilmembers.          |
| Climate Emergency Preparedness | In Committee | In coordination with the Office of Emergency Services and Public Health Community Preparedness and Prevention Team, support the City with engagement on                                                                                                                                                                                 |

|                      |              |                                                                                                                                                                                                       |
|----------------------|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      |              | climate emergency education and resources, including at Community Resilience Centers.                                                                                                                 |
| Data                 | In Committee | Analyze data sets of relevance to environment and climate activities in Berkeley and city-wide goals.                                                                                                 |
| OESD Input & Support | Ongoing      | Support OESD staff with feedback on programs, standards, and other initiatives, including the Climate Equity Fund, Climate Action planning, etc. Forward viable grant opportunities when appropriate. |

At the February 25, 2026, meeting, the commission took the following action:

Action: M/S/C (Kesselman, Ranney) to approve the 2026 Environment and Climate Commission Workplan.

Vote: Ayes - Ranney, LaBonte, Tahara, Mahmoudian, Kesselman, Binns, Brown, Athanasiou; Noes - None; Abstain - None; Absent - McGuire, Syed.

**BACKGROUND**

First established in 2022, the ECC was formed by merging the Community Environmental Advisory Commission and the Energy Commission. ECC commissioners bring a wide range of expertise, with backgrounds in government, academia, nonprofit, and private sector environmental work, and include youth perspectives. These backgrounds inform the ECC’s work and help it to consider diverse and equitable approaches to addressing the City’s environmental challenges.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

The ECC’s initiatives will improve environmental sustainability, reduce greenhouse gas emissions, and support a just transition.

**POSSIBLE FUTURE ACTION**

This work plan is intended to provide a guide to the work the ECC plans to take on in 2026. As additional items or issues arise, or are referred to the Commission from Council, the ECC will adjust this plan accordingly.

**FISCAL IMPACTS OF POSSIBLE FUTURE ACTION**

Future action items that the ECC may send to City Council could require staff time to develop, finalize, and/or implement. The ECC strives to ensure proposals provide significant net triple bottom line benefits to the City when evaluating total costs and benefits across environmental, social, and economic impacts.

**CONTACT PERSON**

Sarah Moore, Secretary, Environment and Climate Commission,  
[smoore@berkeleyca.gov](mailto:smoore@berkeleyca.gov)



Parks and Waterfront  
Commission

INFORMATION CALENDAR

April 14, 2026

To: Honorable Mayor and Members of the City Council  
From: Parks, Recreation, and Waterfront Commission  
Submitted by: Carrie Rybczynski, Vice-Chair, Park, Recreation and Waterfront  
Commission  
Subject: Bond Measure Subcommittee — Final Report

INTRODUCTION

The Parks, Recreation, and Waterfront (PRW) Commission is responsible for reviewing and advising the City Council on the policies, projects, planning efforts, activities, funding, and the physical condition of parks, pools, camps, recreation centers, the Marina, and public greenery.

CURRENT SITUATION AND ITS EFFECTS

Over the past two months, the PRW subcommittee on the 2026 bond measure has participated in the community process for the 2026 bond measure and has produced a report that evaluates the proposed bond program. In addition, the PRW subcommittee on potential dog park locations has produced a report with preliminary recommendations.

At its regular meeting on March 11, 2026, the Parks, Recreation, and Waterfront Commission took action to send the two reports to Council as an Information Item: M/S/C: Stewart/Nash/U) Ayes: Muszynski; Nash; Philips; Rybczynski; Stewart. Noes: None; Absent: None.

Attachments:

- 1: Bond Measure Subcommittee — Final Report
- 2: PRWC Dog Park Subcommittee Recommendations

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## Parks, Recreation, and Waterfront Commission

### Bond Measure Subcommittee — Final Report

**Prepared by:** Leigh Stewart, Mary Muszynski, Ben Nash

**Date:** March 11, 2026

**To:** Parks, Recreation, and Waterfront Commission, for transmittal to City Council

#### 1. Summary

Berkeley has approximately \$1.65 billion in unfunded capital liabilities, including roughly \$340 million for Parks, Recreation, and Waterfront alone.<sup>[^1]</sup> Construction costs continue to rise. A \$300 million infrastructure bond is the right response — and the city has done serious work to get it right.

The City contracted with a professional survey company to conduct a 500-resident poll, held community meetings, consulted six commissions, and convened four focus groups with targeted constituencies. The \$300 million figure polled at 72% support — stronger, notably, than \$200 million.<sup>[^2]</sup> The defined-project-list approach directly addresses what went wrong with Measure L, which failed at 59% in 2022 after being criticized as too large, too vague, and too bundled.<sup>[^3]</sup> There is appetite for this.

This report focuses on the 20 PRW projects (\$107.6 million) and offers five recommendations: clarify the pool strategy, improve selection transparency, strengthen climate framing, reconsider the Civic Center allocation, and address the Southeast Berkeley gap.

The commission enthusiastically supports this bond — the need, the process, and the great majority of the project list. We want it to pass. The recommendations below are offered in that spirit — we believe addressing them will strengthen the bond and improve its chances with voters.

#### 2. PRW Project Review

The subcommittee has reviewed all 20 PRW projects through meetings with the PRW Director, community outreach sessions, subcommittee discussion, and review of the December 2 staff report and supporting materials. Below is our assessment of each project.

##### Community Facilities

**Frances Albrier Community Center — \$30M.** This is a major community facility serving West Berkeley. Based on resident feedback and commissioner input, this is one of the strongest items on the list.

**King Pool & Locker Room Replacement — \$25M.** The pool itself is needed — King is an

outdated 1960s facility. However, the subcommittee has concerns about the pool strategy that go beyond this single line item. The city does not own the land at King; it sits on BUSD property. The question is not just whether to upgrade King, but whether the city's overall pool plan is resilient — particularly given the risk of leaving the flats with no pool at all. See Section 3A.

### **Shoreline & Sea Level Rise**

**South Cove Seawall — \$5M.** Critical infrastructure. As the PRW Director noted in discussions with the subcommittee, if this seawall fails — which he described as a real risk given its condition — the entire landmass where the sailing clubs operate becomes unusable, and the city would have to fund repairs later at higher cost.<sup>[4]</sup> The shoreline projects are well-positioned for state and federal matching grants. Measure T1 demonstrated this model: \$100 million in bond funds leveraged an additional \$80 million in grants, producing over \$183 million in total infrastructure investment.<sup>[1]</sup>

**University Ave / Seawall Dr / Bay Trail / Plaza — \$5M.** Supports climate resilience and sea level rise adaptation. Highly competitive for existing state grants.

**Marina Docks Timber Pile Replacement — \$6M.** Critical for maintaining the marina as a revenue source for the Waterfront. This is a deferred maintenance that is not eligible for known grants or Parks Tax — it can only be funded through general fund or bond or the Marina Fund.<sup>[5]</sup>

**Marina Blvd Sea Level Rise & Bay Trail — \$1.9M.** Climate resilience infrastructure that protects access to the north side of the Waterfront, Cesar Chavez Park, and prevents SLR damage to important commercial tenants (Doubletree, Marine Center, and berth slips). Highly competitive for existing state grants.

**University Ave Sea Level Rise – Bike Park — \$2.75M.** Supports climate goals and adds a new Bike Park (on newly-vacant land) and has gone through an extensive community planning process . Highly competitive for existing state grants.

### **Park Amenities & Open Space**

**Adeline Corridor Open Space — \$6M.** One of the strongest items on the list. South Berkeley is projected for significant residential growth and needs more green space as a matter of equity. In a landlocked city, opportunities to create new open space are rare — this is one of them. Per the PRW Director, a \$825,000 federal earmark has already been secured for design.<sup>[4]</sup>

**Glendale-La Loma Park Improvements — \$3.5M.** Safety and ADA improvements to playgrounds, parking lot, and pathways.<sup>[5]</sup> Playstructure is close to 50 years old, needs replacement. Play structures are consistently among the highest-demand categories in community feedback, particularly popular with families.

**Cesar Chavez Park Restroom & Pathway — \$3M.** This is a high-use waterfront park and it urgently needs a proper bathroom. The pathway has deteriorated significantly and does not meet current ADA accessible codes, and needs replacement. Only 60% of the project cost comes from the bond; the project is highly competitive for State Coastal Conservancy grants.<sup>[5]</sup>

**Cedar Rose Play Structure — \$2.5M.** The play structure has not been replaced in almost three decades. Play structures are extremely popular with families — high-use, high-visibility

improvements that generate broad support.

**Aquatic Park Dreamland Area — \$2.1M.** One of the best returns on bond investment. The full Dreamland project totals \$8.4 million — including a bioswale, parking, restroom, and an expanded play area roughly 175% the size of the current one.<sup>[^4]</sup> The bond's \$2.1 million serves as the 25% local match with over \$6 million likely from a local developer.<sup>[^5]</sup> Very popular with families.

**Dog Parks (4–6 sites citywide) — \$2.5M.** Dogs using regular parks creates significant conflict among residents. Dedicated dog parks are a relatively inexpensive way to address a real and widespread problem, and distributing sites citywide means broad benefit.

**Restrooms: Cedar Rose (\$500K), Codornices (\$500K), Harrison (\$750K) — \$1.75M total.** Overdue bathroom replacements at well-used parks.<sup>[^5]</sup> Public restrooms are a critical basic service.

### **Sports Facilities**

**Harrison Field Turf Conversion — \$6M.** Strong community support. Harrison is a heavily used field; conversion to artificial turf would roughly double usable field capacity and significantly reduce maintenance and irrigation costs — and may increase revenue as well. Berkeley used to have a reputation for having the best sports fields in the region. It's important to keep investing here.

**Live Oak Soccer/Basketball/Lighting — \$3M.** Needed modernization at a well-used facility — re-levels uneven basketball courts, converts soccer field to turf, and adds lighting.<sup>[^5]</sup> Popular with families and youth sports. 66% of the project cost comes from the bond; the remainder may be funded with Parks Tax.<sup>[^5]</sup>

**San Pablo Sports Field Irrigation & Drainage — \$1.6M.** Critical system upgrade. Will significantly reduce maintenance and irrigation costs and allow this very popular, heavily used park to serve even more residents.

## **3. Recommendations**

### **A. The pool strategy needs more work**

The bond proposes upgrading King Pool for \$25 million. Upgrading our existing pools is reasonable — but the current plan doesn't account for the fact that the city doesn't control any of its pool sites, and that creates real risk.

Both remaining city-operated pool sites — King and West Campus — sit on BUSD land.<sup>[^6]</sup> The city does not own any pool site. Willard has already been lost; BUSD reclaimed the site in 2010. West Campus has only four years remaining on its lease, and BUSD could choose not to renew — as it did with Willard. King has 24 years on its lease, but the City Attorney requires a minimum 25-year lease for bond-funded construction, meaning the lease would need to be renegotiated before bond funds could be spent.<sup>[^4]</sup>

The Frances Albrier Community Center Replacement Project included an option for a 25-meter community pool with play elements.<sup>[^4]</sup> It is the only potential pool site where the city owns the land outright.

If West Campus is lost, the city could end up with only one pool — at King, in Northeast Berkeley, the area that already has the highest park density in the city. The flats would have no pool at all.

If the city is confident that both leases will be secure for the long term, then upgrading King is reasonable. But even in that case, the city should seriously consider building a pool at San Pablo Park. It would put aquatic infrastructure on city-owned land, and its location near Southeast Berkeley adds particular value — SE has the fewest city park facilities of any quadrant and zero PRW projects on the current bond list.

If there is any doubt about whether West Campus will be available for the next decade, then a pool at San Pablo Park is essential. Staff estimates suggest the cost difference between replacing King and building new at San Pablo would not justify the risk of depending entirely on BUSD's continued cooperation.

The PRW Director has had preliminary conversations with the BUSD superintendent, who indicated that the district has no current plans for the King or West Campus sites and is willing to discuss sale, trade, or longer leases.<sup>[4]</sup> This is encouraging, but informal — it is not a binding commitment, and the history with Willard shows how quickly circumstances can change.

The city should have more confidence in its pool site agreements before going to voters. In particular, the commission urges Council to assess the long-term viability of the West Campus lease, given that losing it would leave King as the city's only pool.

## **B. The selection process needs more transparency**

The December 2 staff report lists five selection criteria: health, life, and safety needs; critical infrastructure condition and accessibility; community use and equity; geographic distribution; and potential to leverage external or matching funds.<sup>[1]</sup> These are good criteria. The problem is that the staff report does not document how the criteria were applied — no scoring, no weighting, no documented analysis of how individual projects were evaluated against each criterion. The PRW Director confirmed in discussions with the subcommittee that there was no formal scoring system.<sup>[4]</sup>

This matters because when multiple reasonable criteria point in different directions — as they inevitably do — the lack of a transparent process makes it impossible to understand why certain trade-offs were made. Southeast Berkeley is one example — see Section 3E.

The commission recommends that Council document how the selection criteria were balanced or applied.

## **C. Climate framing is an opportunity**

Many projects on the list have significant climate benefits — electrification, sea level rise protection, resilient infrastructure — but these are not being communicated to voters.

Polling shows that environmental and climate infrastructure is among the most popular categories with residents, while waterfront projects poll poorly.<sup>[2]</sup> But waterfront projects *are* climate projects — the seawall, the Bay Trail, the sea level rise adaptation work. This is a communication gap that may be leaving support on the table.

The seawall is the clearest example: if it fails, the city loses an entire recreation area, disproportionately affecting users of low-cost activities like sailing and windsurfing — and then has to pay to fix it anyway, at higher cost. That's climate resilience, equity, and fiscal responsibility in one project.

Several shoreline projects in the bond list are also consistent with the regional shoreline adaptation planning now required by the San Francisco Bay Conservation and Development Commission, reinforcing their importance as long term climate resilience infrastructure.

Finally, many facility projects also involve electrification and gas removal. These climate benefits are real but invisible in the current framing.

The commission recommends that the city make the climate benefits of these projects visible to voters. This does not change the project list — it changes how the list is presented, and it aligns with what polls best.

#### **D. Civic Center improvements are difficult to justify**

Old City Hall and Veterans Memorial Building are included in the bond for seismic work. The commission has significant concerns about this allocation.

Community reaction to these projects has been consistently tepid to negative — met with skepticism at the Willard community meeting and across focus groups and commission consultations. These are closed buildings that are not currently serving the public.

The bond covers seismic work only. But seismic investment in closed buildings creates an implicit commitment to full rehabilitation, which would cost hundreds of millions more.<sup>[4]</sup> This is not just a one-time expense — it is the first installment on a much larger obligation.

Berkeley has \$1.65 billion in unfunded capital liabilities. PRW alone has a \$340 million backlog.<sup>[1]</sup> With that much deferred maintenance on active-use facilities — pools, playgrounds, parks that residents use every day — it is hard to see why seismic work on closed buildings should take priority.

These are Public Works projects, not PRW. But they share a ballot, and they affect whether the bond reaches the two-thirds threshold it needs. Voters who see money going to buildings they don't use may be harder to persuade on the rest of the bond.

The commission recommends that Council either provide a substantially stronger public justification for these projects — one that explains why they should take priority given the scale of unfunded needs elsewhere — or consider reallocating those funds to higher-impact items.

#### **E. Southeast Berkeley deserves a closer look**

Southeast Berkeley had the fewest city park facilities of any quadrant.<sup>[7]</sup> BMC 6.42.020.C establishes a standard of two acres of parks and open space per 1,000 residents, with areas below that standard designated as high priority for investment. The *Equitable Future* report (2016), produced by this commission, documents the SE deficit in detail.<sup>[7]</sup> It is not referenced in the staff report.

The word "southeast" does not appear anywhere in the 50-page staff report.<sup>[^1]</sup> Neither does "quadrant." No census tract analysis was performed. "Geographic distribution" appears exactly once — as a criterion name — with no supporting analysis.

The result is zero PRW projects in the quadrant with the fewest city park facilities. This is also consistent with a pattern: Measure T1 was similarly light on Southeast Berkeley improvements. This may reflect legitimate trade-offs against other criteria — but without a transparent process, there is no way to know.

The commission recommends that Council specifically address the SE quadrant omission and explain how geographic distribution was weighed against other criteria in the selection process.

#### 4. Conclusion

This bond is necessary and well-structured. The commission is enthusiastic about the vast majority of the PRW project list and believes this bond can and should pass. The recommendations above are intended to make it stronger — to close gaps in the pool strategy, improve transparency, sharpen the climate case, address geographic equity, and ensure every dollar on the ballot can be defended to voters. We urge Council to address these items before the bond goes to voters.

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#### Sources

[^1]: City of Berkeley, "Discussion Regarding Potential Ballot Measures for the November 3, 2026, General Municipal Election," Staff Report, December 2, 2025.

[^2]: Polling results presented by PRW Director to subcommittee, March 3, 2026. Results not yet public at time of writing; expected to be presented to Council March 17.

[^3]: Ballotpedia, "Berkeley, California, Measure L, Housing and Infrastructure Bond Measure (November 2022)." 26,545 yes (59.42%) / 18,130 no (40.58%).

[^4]: PRW Director Scott Ferris, in discussions with the subcommittee (January–March 2026).

[^5]: City of Berkeley, "Discussion Regarding Potential Ballot Measures — Supplemental," December 2, 2025. (Attachment 5, corrected project details.)

[^6]: City of Berkeley, *Citywide Pools Master Plan*, 2009, p. 7: "These are all pool venues currently operated by City of Berkeley and located on BUSD property."

[^7]: Parks & Waterfront Commission Subcommittee on Planning, *Berkeley Parks Planning for an Equitable Future*, July 2016.

[^8]: City of Berkeley, *Frances Albrier Community Center Replacement Project — Executive Summary with Attachments*, Siegel and Strain Architects, 2019. Design goals include "net-zero and all-electric strategies"; existing gas equipment flagged as conflicting with the city's all-electric goal.

## Addendum A: Selection Criteria Analysis — PRW Bond Projects

The December 2 staff report lists five core criteria used to evaluate projects for the bond, plus additional criteria from the Vision 2050 framework.<sup>[1]</sup> No definitions are provided in the report. The following definitions are inferred from project descriptions, the bond's category structure, and city context. Each PRW project is then assessed against these criteria.

### Criteria Definitions

**1. Health, Life, and Safety (HLS)** Does this project protect the public from physical harm? Seismic hazards, structural failure, ADA non-compliance, lack of basic sanitation. Across the full bond, the paradigm case is fire stations — not just because the buildings are aging, but because without functional fire infrastructure, the city's ability to protect residents is compromised. For parks: seawall failure risk, safety hazards at aging facilities, missing restrooms.

**2. Critical Infrastructure Condition and Accessibility (CICA)** How deteriorated is the asset, and can the public actually use it? This covers the deferred maintenance backlog — assets that are failing or approaching failure — and the rising cost of maintaining them in their current state. The "accessibility" piece includes ADA compliance and the \$48M backlog identified in the city's Self-Evaluation and Transition Plan. Distinct from HLS: this is about asset condition and cost trajectory, not immediate danger to people.

**3. Community Use and Equity (CUE)** How many people does this serve, and does it reach underserved populations? This criterion blends two things: raw usage volume and distributional fairness. These can pull in opposite directions — a heavily used Northeast Berkeley facility scores high on use but low on equity if NE already has the highest park density. Bundling them as a single criterion means the trade-off between the two is never made explicit.

**4. Potential to Leverage External or Matching Funds (LEV)** Can this bond dollar unlock additional dollars? Grant eligibility and matching fund ratios — where bond funds serve as local match to access state or federal grants. The inverse also matters: some projects (marina docks, King Pool) have no alternative funding path, meaning the bond is the only option.

**5. Climate Resiliency and Sustainability (CRS)** Does this project protect against climate impacts or advance decarbonization? Sea level rise adaptation, electrification, gas removal, stormwater management. For parks, this is strongest in the shoreline projects. Many facility rehabs likely include electrification as part of modernization, but this is not documented in current project descriptions.

**Geographic Distribution** is omitted from the per-project analysis below. It is a portfolio-level criterion — applied to the overall project list rather than scored per project. The staff report lists it as a criterion but provides no supporting analysis. See Sections 3B and 3E of this report for a full discussion.

## Per-Project Assessment

## Shoreline &amp; Sea Level Rise

| Project                                | HLS                                        | CICA                           | CUE                                          | LEV                                          | CRS      |
|----------------------------------------|--------------------------------------------|--------------------------------|----------------------------------------------|----------------------------------------------|----------|
| South Cove Seawall \$5M                | Yes — "imminent failure," immediate safety | Yes — full replacement         | Moderate — low-cost recreation, equity angle | Yes — 20% match unlocks state/federal grants | Yes      |
| Univ Ave / Seawall Dr / Bay Trail \$5M | Low — proactive adaptation                 | Moderate                       | Yes — major public trail, high traffic       | Yes — 20% match, grant-eligible              | Yes      |
| Marina Timber Piles \$6M               | Moderate — structural                      | Yes — timber piles, 50+ yr fix | Moderate — marina users, but revenue source  | No — not eligible for grants <sup>[5]</sup>  | Moderate |
| Marina Blvd Sea Level Rise \$1.9M      | Low — proactive adaptation                 | Moderate                       | Yes — Bay Trail connection, high traffic     | Yes — 50% match, grant-eligible              | Yes      |
| Univ Ave Bike Park \$2.75M             | Low — proactive adaptation                 | Moderate                       | Yes — Bump track elements for youth          | Yes — 50% match, grant-eligible              | Yes      |

## Community Facilities

| Project       | HLS                                                                                        | CICA                                 | CUE                                             | LEV                                                                         | CRS                                                                                                               |
|---------------|--------------------------------------------------------------------------------------------|--------------------------------------|-------------------------------------------------|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Albrier \$30M | Moderate — seismic; only major community center not rebuilt or upgraded; emergency shelter | Yes — dramatically undersized, aging | Yes — high-use facility, West Berkeley (equity) | Low — limited eligibility for FEMA/sustainable energy grants <sup>[5]</sup> | Yes — conceptual design targets net-zero and all-electric; includes heat pumps, 216 kW solar array <sup>[8]</sup> |

|                    |     |                                        |                                                                                          |                                                                     |                                            |
|--------------------|-----|----------------------------------------|------------------------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------------------|
| King Pool<br>\$25M | Low | Yes — 1960s facility, full replacement | Yes on use (doubles programmatic capacity), weak on equity (NE has highest park density) | No — difficult to secure grants for pool facilities <sup>[^5]</sup> | Likely — modernization, but not documented |
|--------------------|-----|----------------------------------------|------------------------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------------------|

### **Park Amenities & Open Space**

| <b>Project</b>                         | <b>HLS</b>                                     | <b>CICA</b>                                                          | <b>CUE</b>                                                             | <b>LEV</b>                                                                              | <b>CRS</b>                                                                           |
|----------------------------------------|------------------------------------------------|----------------------------------------------------------------------|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| Adeline Corridor \$6M                  | Low — new construction                         | No — new construction                                                | Yes — equity-priority area, South Berkeley growth, rare new open space | Moderate — federal earmark for design secured <sup>[^4]</sup>                           | High - new green space in urban area reduces Urban Heat Island, new trees absorb CO2 |
| Glendale-La Loma Play \$3.5M           | Moderate — safety/ADA                          | Yes — aging, ADA access                                              | Yes — play structures, families                                        | Low                                                                                     | Low                                                                                  |
| Cesar Chavez Pathway and Restroom \$3M | Moderate — basic sanitation (portable toilets) | Yes — pathways deteriorating, do not meet ADA codes                  | Yes — high-use waterfront park                                         | Yes — 60% bond, highly competitive for State Coastal Conservancy grants <sup>[^5]</sup> | Low                                                                                  |
| Cedar Rose Play \$2.5M                 | Low                                            | Moderate — heavily used play area needs safety/accessibility upgrade | Yes — families, high-visibility                                        | Low                                                                                     | Low                                                                                  |

|                      |                                            |                       |                                                        |                                                                                  |                     |
|----------------------|--------------------------------------------|-----------------------|--------------------------------------------------------|----------------------------------------------------------------------------------|---------------------|
| Dreamland<br>\$2.1M  | Low                                        | Moderate              | Yes — expanded play area                               | Yes — 25% local match, with \$6M+ likely from additional sources <sup>[^5]</sup> | Moderate — bioswale |
| Dog Parks<br>\$2.5M  | Low                                        | No — new construction | Yes — citywide, addresses significant community demand | Low                                                                              | Low                 |
| Restrooms<br>\$1.75M | Moderate — public health, basic sanitation | Yes — aging/overdue   | Yes — well-used parks                                  | Low                                                                              | Low                 |

**Sports Facilities**

| Project                                     | HLS | CICA                                                                   | CUE                                  | LEV                                          | CRS                           |
|---------------------------------------------|-----|------------------------------------------------------------------------|--------------------------------------|----------------------------------------------|-------------------------------|
| Harrison Turf<br>\$6M                       | Low | Yes — failing natural fields                                           | Yes — heavily used, doubles capacity | Low                                          | Moderate — water savings      |
| Live Oak \$3M                               | Low | Moderate — modernization                                               | Yes — families, youth sports         | Low                                          | Low — water savings from turf |
| San Pablo Irrigation and Drainage<br>\$1.6M | Low | Yes — failing irrigation/drainage, most used sports fields in the city | Yes — most used sports fields        | No — not eligible for grants <sup>[^5]</sup> | Low                           |

## PRWC Dog Park Subcommittee Recommendations

### Executive Summary

Between October and November 2025, Dog Park Subcommittee members visited several locations identified by the Parks, Recreation, and Waterfront Department (PRWD) as potential dog park locations. Our reviews and recommendations are below. All locations have existing parks; based on PRWD guidance, Subcommittee members recommend converting a portion of the following parks to dog parks.

### Subcommittee Mission

Berkeley is a city that values equity, public health, and community engagement. As dog ownership rises and urban density increases, the demand for off-leash recreation areas has outpaced available space. Berkeley currently only has 2 dog parks; the first one, Ohlone Dog Park, was established in 1979 and was one of the first in the nation. Then, in 1998, the 17-acre Off Leash Area in Cesar Chavez Park started a trial period, and in 2000, it was formally authorized as a designated Off-Leash Area. This proposal urges the City of Berkeley to prioritize the creation and expansion of dedicated dog parks/dog play areas to support public health, safety, and neighborhood vitality.

### The Need for More Dog Parks

Currently, Berkeley has limited off-leash dog areas, which are often overcrowded or located far from many residential neighborhoods, such as Cesar Chavez Park. This shortage can create tension in shared-use parks, encourage off-leash activity in inappropriate areas, and diminish the quality of life for both dog owners and non-dog owners alike.

### Dog Park Site Recommendations

1. King School Park
2. Glendale La Loma Park
3. Berkeley Way Mini Park
4. San Pablo Park
5. Aquatic Park

## King School Park

Staff-provided description of proposed dog area: West side of King Park (small)

Address: 1700 Hopkins Street

Neighborhood: Hopkins

District: 5

Councilmember: Shoshana O'Keefe

Approx. Park Acreage: 1.72 acres | 74,920 sq. ft.

Topography: Flat

Ground Surface: Grass

### Site Conditions

**Fencing Feasibility:** Good ease of enclosure with low fencing (too low for dogs) existing along two edges, so within existing paths. A new dog fence system is needed. Though there is room for this, and possibly a planted setback strip along the main path and sidewalk edges.

**Water Source:** Existing fountain or irrigation tap likely

**Drainage:** No signs of ponding or erosion; slight slope toward Hopkins; relatively flat and elevated above sidewalk and path.

**Shade / Trees:** Existing street and park trees around perimeter, sunny.

**Ground Cover Condition:** Natural turf is not well-maintained. A minimal scope could support DG or gravel.

**Potential Conflicts:** Proximity to picnic and play areas.

**Neighborhood Receptivity:** Observed dog activity on leash.

Other notes

- Community input is needed. This is a well-used park throughout the day. It's not clear how much this lawn area is used. It was empty while the rest of the park was active. The area size would support split small and large dog areas or one big area.

### Photos



King West looking from the sidewalk at Hopkins



King West toward the play area

## Glendale La Loma Park

Staff-provided description of proposed dog area: Second level of Glendale, La Loma Park (medium-sized park)

Address: 1300 Glendale Ave

District: 6 Councilmember: Brent Blackaby

Approx. Park Acreage: 5.61 acres | 244,400 sq. ft.

Topography: Sloped - Terraced

Ground Surface: Grass

### Site Context

Surrounding Land Uses: Residential

Access: Street frontage, street parking, ADA access, neighborhood

Visibility & Safety: Slope interrupts sightlines from the lower terrace, but “eyes on the park” from neighbors overlooking spaces.

Fencing Feasibility: Good.

Water Source: unknown

Drainage: No signs of ponding or erosion; minimal to steep slopes.

Shade / Trees: Mostly sunny. Some shade from surrounding trees.

Ground Cover Condition: Natural grass turf not well-maintained. Possibly not irrigated.

Potential Conflicts: Proximity to homes for noise.

Neighborhood Receptivity: Unknown.

### Photos – Glendale La Loma Park



Berkeley Way Mini Park

Photos





## San Pablo North of Ballpark

### Site Conditions

Existing park: Yes

Surrounding neighborhood: Yes

Flat land: partly

Ground material: Grass

Other notes

- Two halves of this grassy strip are separated by a walking path that leads from the sidewalk to the park
- One half has a slope (closer to the baseball dugout)
- Lots of dogs play at this park

### Photos





## Aquatic Park

### Site conditions

Existing park: Yes

Surrounding neighborhood: No

Flat land: Partly

Ground material: Dirt and grass

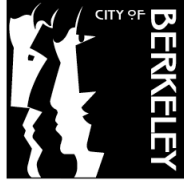
Other notes

- Existing water fountain (not flowing) with ground level dog bowl.
- The open space next to the parking lot and train tracks is pretty flat with a slight grade and a few trees as you walk further along the path.
- Mostly small hills, but the pictured section is flat.

### Photos







## AGENDA

### BERKELEY CITY COUNCIL MEETING

Tuesday, March 24, 2026

6:00 PM

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

ADENA ISHII, MAYOR

COUNCILMEMBERS:

DISTRICT 1 – RASHI KESARWANI

DISTRICT 2 – TERRY TAPLIN

DISTRICT 3 – BEN BARTLETT

DISTRICT 4 – IGOR TREGUB

DISTRICT 5 – SHOSHANA O'KEEFE

DISTRICT 6 – BRENT BLACKABY

DISTRICT 7 – CECILIA LUNAPARRA

DISTRICT 8 – MARK HUMBERT

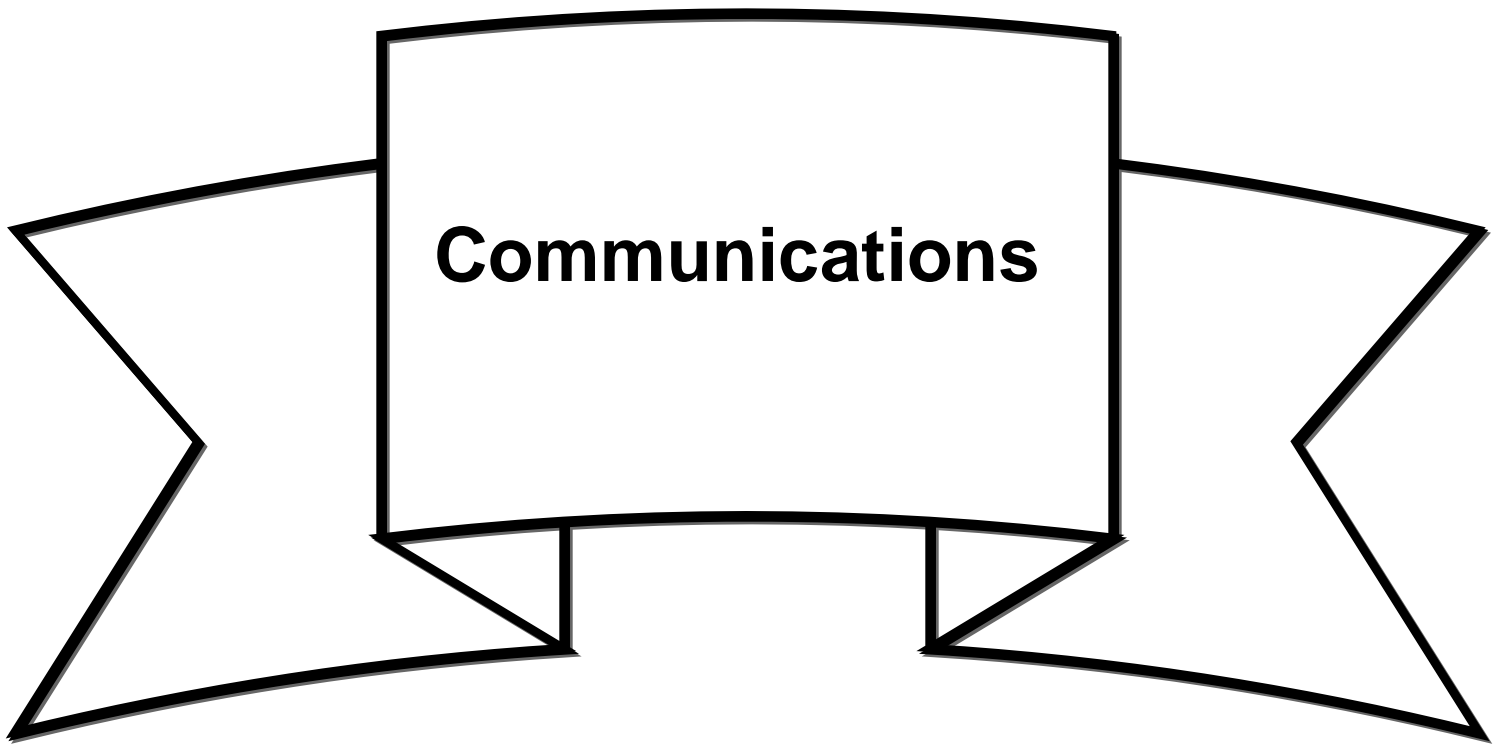
*This meeting will be conducted in a hybrid model with both in-person and virtual attendance. Attend this meeting remotely using [Zoom](#). To request to speak, use the “raise hand” function in Zoom. To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter **Meeting ID: 161 845 7872**. 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).*

*Live captioned broadcasts of Council meetings are available on B-TV (Channel 33) and via [internet video stream](#). All Council meetings are recorded.*

*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 \$500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than \$500 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.*



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**City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**Records Online**

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3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
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6. Click the desired file in the Results column to view the document as a PDF