



Office of the City Manager

CONSENT CALENDAR
July 9, 2019

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Kelly Wallace, Interim Director, HHCS
 Subject: Approve Waiver of the Nuclear Free Berkeley Act (NFBA) per BMC Section 12.90.070(A) to Enter into an Expenditure Contract with the University of California, Berkeley

RECOMMENDATION

Adopt a Resolution 1) waiving the contract requirements of the Nuclear Free Berkeley Act, pursuant to Resolution No. 60,840-N.S. and Chapter 12.90.070 of the Berkeley Municipal Code, in order to contract with the University of California Berkeley; and 2) authorizing the City Manager to execute a contract with the University of California, Berkeley for services evaluating the Sugar-Sweetened Beverage Tax Program.

FISCAL IMPACTS OF RECOMMENDATION

Contract funding of \$40,000 under budget Project code HHPGHB1901 and adopted by the City Council Resolution No. 67,063-N.S. This contract with the University of California, Berkeley has been entered into the City's contract management database and assigned CMS No. MX1H3

CURRENT SITUATION AND ITS EFFECTS

The Health, Housing & Community Services/Public Health Division is requesting a waiver to the "no contract" provision of the Nuclear Free Berkeley Act (NFBA) in order to execute an expenditure contract, and any amendments thereto, with UC Berkeley to perform evaluation services related to the Sugar Sweetened Beverage Tax.

Consistent with Resolution No. 60,840-N.S., the Berkeley Peace & Justice Commission approved a motion (**M/S/C**: Meola, Morizawa **Ayes**: Askary, Gussmann, Lippman, Meola, Morizawa, Pancoast, Pierce, Rodriguez; **Noes**: Blake; **Abstain**: Maran; **Absent**: Chen, Han; **Excused**: al-Bazian; **Recused**: Tregub) recommending that City Council approve the waiver pursuant to findings consistent with the Nuclear Free Berkeley Act (NFBA) at their meeting on June 3, 2019, on the following motion:

"Recommend Council action on request for waiver of the Nuclear Free Berkeley Act to authorize the City to enter into a contract with UC Berkeley to conduct an evaluation of the Healthy Berkeley programs and the sugar sweetened beverage tax." The evaluation of the impact of the sugar sweetened beverage tax and the Healthy Berkeley Program is a Strategic Plan Priority Project, advancing our goal to:

- Champion and demonstrate social and racial equity.
- Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

BACKGROUND

The three factors set forth in B.M.C. 12.90.070 used in determining the appropriateness of a waiver are addressed as follows:

1. The intent and purpose of the act

The scope of work for this contract conforms with the intent and purpose of the Nuclear Free Berkeley Act. The purpose of the expenditure contract is to evaluate the impact of the sugar-sweetened beverage tax.

2. The availability of alternative services, goods and equipment, or other supplies substantially meeting required specifications of the proposed contract.

The alternative to entering into an agreement with UC Berkeley is to discontinue a significant portion of the evaluation of the impact of the sugar-sweetened beverage tax and the Healthy Berkeley Program, thereby limiting the availability of evidence about the effectiveness of the tax.

3. Quantifiable additional costs resulting from use of available alternatives.

There is no available alternative since this component at this time.

ENVIRONMENTAL SUSTAINABILITY

This recommended action has no adverse environmental effect.

RATIONALE FOR RECOMMENDATION

On a select basis, the NFBA has been waived by Council for the purpose of executing a contract with UC Berkeley, designated under the NFBA as a "nuclear entity." The purpose of this expenditure contract is to engage the expertise within UC Berkeley to evaluate the impact of the sugar-sweetened beverage tax, which can also inform the impact of the City's tax and programs as well as the efforts to tax sugar sweetened beverages in other cities.

ALTERNATIVE ACTIONS CONSIDERED

The alternative to entering into an agreement with UC Berkeley is to discontinue a significant portion of the evaluation of the impact of the sugar-sweetened beverage tax and the Healthy Berkeley Program.

CONTACT PERSON

Janice Chin, Public Health Division Manager, HHCS, (510) 981-5121

Attachments:

1: Resolution

Exhibit A – Scope of Work

2: Contract between COB and UCB - CMS No. MX1H3

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

APPROVAL OF WAIVER FOR THE "NO CONTRACT PROVISION" OF BERKELEY MUNICIPAL CODE SECTION 12.90.070 FOR CONTRACT WITH THE UNIVERSITY OF CALIFORNIA BERKELEY CMS No. MX1H3

WHEREAS, pursuant to Resolution No. 60,840 N.S. and Berkeley Municipal Code Section 12.90.070 The Nuclear Free Act of the Berkeley Municipal Code, in order to contract with the University of California Berkeley (UCB), the City Council must determine that no reasonable alternative exists based on consideration of three factors; and

WHEREAS, the three factors: the intent and purpose of the act, the availability of alternative service providers and quantifiable additional costs resulting from the use of alternative providers have all been considered; and

WHEREAS, the goal of the sugar sweetened beverage tax evaluation contract is to evaluate the impact of the sugar sweetened beverage tax; and

WHEREAS, by collecting and analyzing evaluation data the contract will result in an evaluation report that can inform efforts to tax sugar sweetened beverages in other cities; and

WHEREAS, the UCB evaluation team has a unique combination of expertise in evaluation, and public policy analytical understanding of the sugar sweetened tax implementation and report writing, such that it is uniquely qualified to undertake the multiple tasks that are required in this contract; and

WHEREAS, a failure to enter into a contract with UCB would significantly limit the availability of evidence about the effectiveness of the tax.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves a waiver to the "no-contract" provision of the BMC Section 12.90.070 because no reasonable alternative exists to the services that will be provided under contract with the University of California Berkeley.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager or her designee to execute a contract and any amendments with the University of California Berkeley in an amount not to exceed \$40,000 under budget code HHPGHB1901 and CMS No. MX1H3.

Exhibits

A: Scope of Work for UCB

Exhibit A

SCOPE OF SERVICES

On November 4, 2014, Berkeley passed a specific excise tax on sugar-sweetened beverages (SSBs), which was implemented in March, 2015. Measure D, which specified the tax, also established a Panel of Experts to make recommendations on how and to what extent the City should establish and/or fund programs to reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption. The public health impact of Measure D on children has yet to be determined in Berkeley. To this end, in 2016, the consultant agency conducted a wave 1/baseline survey of SSB consumption as well as attitudes, knowledge and norms around SSBs among children in 9 BUSD schools. The consultant agency will work with the City of Berkeley to design and implement a wave 2 self-administered survey that determines children's:

1. **Beverage consumption.** This includes consumption of SSBs (regular soda, sports drinks, energy drinks, and fruit-flavored drinks, and sweetened coffee and tea) and non-SSBs (water, diet soda, milk, and juice).
2. **Attitudes, knowledge, and norms around SSB consumption.** Attitudes, knowledge and norms regarding SSBs that may be predictive of consumption and could change before actual behavior changes.
3. **Exposure to gardening and cooking program.** BUSD received a direct allocation of funding for the gardening and cooking program, and these questions will assess exposure to the program.

The contractor will negotiate the specific length and content of the final survey with the school district and Cooking and Gardening Program for effective survey administration.

Survey items will be repeated from the wave 1/baseline survey conducted by the contractor in 2016. Survey items on SSB consumption were adopted from the Youth Risk Behavior Survey (YRBS) and state versions of YRBS that assess additional beverages. YRBS was developed and used by the Centers for Disease Control and Prevention (CDC) since 1990 to biennially monitor health risk behaviors among adolescents across the United States¹ as part of the Youth Risk Behavior Surveillance System. Use of the YRBS items allows for Berkeley's data to be compared to data routinely collected at the national and state level. The contractor will obtain approval of final survey instrument from the City of Berkeley.

¹ <https://www.cdc.gov/healthyyouth/data/yrbs/overview.htm>

The contractor will obtain student-level identifiers that would allow linking survey data with student demographics (age, gender, race/ethnicity, and free and reduced price meal eligibility) provided by BUSD. The contractor will also conduct matching by student-level identifiers to link wave 1/baseline survey responses with wave 2 survey responses. Collection of identifiers and demographics is dependent on BUSD continuing to allow an “opt-out” status exception for parental permission for this research and BUSD’s continued provision of student demographics without cost.

Sample: The contractor will seek to recruit the same schools that were included in the survey sample in fall of 2016. Surveys will be administered in grades 5, 7, and 9-12 in five elementary schools (Cragmont, Jefferson, John Muir, LeConte, and Thousand Oaks), two middle schools (Longfellow and Willard), and two high schools (Berkeley High—from which a sample of classes will be selected sampled—and Berkeley Tech). Provided all schools agree to participate, the contractor estimates a sample size of ≥ 850 completed surveys.

Deliverables

By May 31, 2020, the consultant will produce and forward to the City of Berkeley, a de-identified student-level dataset and prepare a presentation and brief report on wave 2 average responses to questions by school, grade-level, gender race/ethnicity, and free and reduced price meal eligibility.

Details of the project implementation will follow a mutually-agreed upon work plan.

CMS# MX1H3

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 Regents of the University of California on behalf of its Berkeley campus (“Contractor”), doing business at 2150 Shattuck Ave., Suite 313, 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 \$40,000. 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 M and end on June 30, 2020. 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:

Jyl Baldwin, Associate Director
Sponsored Project Office
University of California, Berkeley
2150 Shattuck Ave., Suite 313
Berkeley, CA

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: HHCS/ Public Health Division

CMS# MX1H3

Department Address: City of Berkeley, 1947 Center Street, 2nd Floor,
Berkeley, CA 94704, Attn: Jose Ducos

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 Ü-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.

27. **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.**

Business License Number
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: _____
CITY MANAGER

Registered by:

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

CITY AUDITOR

Attest:

CITY CLERK

CONTRACTOR

Regents of the University of California

Contractor Name (print or type)

Signature

Print Name

Tax Identification # _____

Berkeley Business License # _____

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

On November 4, 2014, Berkeley passed a specific excise tax on sugar-sweetened beverages (SSBs), which was implemented in March, 2015. Measure D, which specified the tax, also established a Panel of Experts to make recommendations on how and to what extent the City should establish and/or fund programs to reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption. The public health impact of Measure D on children has yet to be determined in Berkeley. To this end, in 2016, the consultant agency conducted a wave 1/baseline survey of SSB consumption as well as attitudes, knowledge and norms around SSBs among children in 9 BUSD schools. The consultant agency will work with the City of Berkeley to design and implement a wave 2 self-administered survey that determines children's:

1. **Beverage consumption.** This includes consumption of SSBs (regular soda, sports drinks, energy drinks, and fruit-flavored drinks, and sweetened coffee and tea) and non-SSBs (water, diet soda, milk, and juice).
2. **Attitudes, knowledge, and norms around SSB consumption.** Attitudes, knowledge and norms regarding SSBs that may be predictive of consumption and could change before actual behavior changes.
3. **Exposure to gardening and cooking program.** BUSD received a direct allocation of funding for the gardening and cooking program, and these questions will assess exposure to the program.

The contractor will negotiate the specific length and content of the final survey with the school district and Cooking and Gardening Program for effective survey administration.

Survey items will be repeated from the wave 1/baseline survey conducted by the contractor in 2016. Survey items on SSB consumption were adopted from the Youth Risk Behavior Survey (YRBS) and state versions of YRBS that assess additional beverages. YRBS was developed and used by the Centers for Disease Control and Prevention (CDC) since 1990 to biennially monitor health risk behaviors among adolescents across the United States¹ as part of the Youth Risk Behavior Surveillance System. Use of the YRBS items allows for Berkeley's data to be compared to data routinely collected at the national and state level. The contractor will obtain approval of final survey instrument from the City of Berkeley.

¹ <https://www.cdc.gov/healthyyouth/data/yrbs/overview.htm>

The contractor will obtain student-level identifiers that would allow linking survey data with student demographics (age, gender, race/ethnicity, and free and reduced price meal eligibility) provided by BUSD. The contractor will also conduct matching by student-level identifiers to link wave 1/baseline survey responses with wave 2 survey responses. Collection of identifiers and demographics is dependent on BUSD continuing to allow an “opt-out” status exception for parental permission for this research and BUSD’s continued provision of student demographics without cost.

Sample: The contractor will seek to recruit the same schools that were included in the survey sample in fall of 2016. Surveys will be administered in grades 5, 7, and 9-12 in five elementary schools (Cragmont, Jefferson, John Muir, LeConte, and Thousand Oaks), two middle schools (Longfellow and Willard), and two high schools (Berkeley High—from which a sample of classes will be selected sampled—and Berkeley Tech). Provided all schools agree to participate, the contractor estimates a sample size of ≥ 850 completed surveys.

Deliverables

By May 31, 2020, the consultant will produce and forward to the City of Berkeley, a de-identified student-level dataset and prepare a presentation and brief report on wave 2 average responses to questions by school, grade-level, gender race/ethnicity, and free and reduced price meal eligibility.

Details of the project implementation will follow a mutually-agreed upon work plan.

EXHIBIT B

PAYMENT

Payment

Payments will be made by the Finance Accounting Division in arrears within thirty (30) days after receipt and acceptance of proper, itemized and correct invoices by the Finance Accounting Division.

Expenses

Allowable expenses are identified and itemized in the budget below, created by University of California, Berkeley, and approved by the Public Health Division, City of Berkeley, found as page 2 to this Exhibit B.

Invoices

Invoices shall be submitted quarterly, be fully itemized, and have sufficient description to permit audit. Contractor shall submit proper documentation for all expenditures made under this contract including receipts, invoices and time records. All invoices shall be in the Contractor's standard invoice, but at a minimum shall include: current and cumulative costs; contract number; project title; the period being covered by the invoice; and certification as to the truth and accuracy of the invoice. The invoice package will also include general ledger detail listing all expenses on a line by line basis for the invoicing period. If any invoice must be held pending revisions, corrections or amendments by the Contractor, including budget amendments (it is the contractor's responsibility to correct invoice documents, the supervising department shall not be required to give written notice of the withholding action; however, it may do so. In all cases, the Contractor shall be notified of the errors and corrective action needed. The withholding action shall be discussed with the Contractor at the time the errors are brought to the Contractor's attention. The City of Berkeley may, with Contractor's consent, make adjustments on invoices to correct mathematical and typographical errors to expedite processing.

Invoices should be submitted to:

Jose Ducos, Senior Health Management Analyst
City of Berkeley Public Health Division
1947 Center Street,
Berkeley, CA 94704
Phone (510) 981-5281
Fax (510) 981-5315
E-Mail: jducos@cityofberkeley.info

Not-To-Exceed Amount

The total amount of the allocation for this contract amendment shall not exceed \$40,000. The City will make payment to the vendor within thirty (30 days) of receipt of a correct, complete and approved invoice

Budget

The budget for the scope of services set forth in Exhibit A shall not exceed \$40,000.

Budget for Scope of Services in Exhibit A

Item	Amount
Personnel (salaries, fringe, and UCB GAEL liability fee of 0.95% of salaries). Note: Drs. Falbe and Madsen are providing their time in-kind (i.e., effort as needed).	\$28,165
Scantron survey formatting and printing	\$1600
Incentives for schools and teachers	\$1862
Travel	\$120
<i>Subtotal Direct Costs</i>	\$31,746
<i>Off Campus UCB Indirect Rate (26%)</i>	\$8,254
Total	\$40,000