

**SOPHIE HAHN**

Berkeley City Council, District 5
 2180 Milvia Street, 5th Floor
 Berkeley, CA 94704
 (510) 981-7150
 shahn@cityofberkeley.info

CONSENT CALENDAR
 April 20, 2021

To: Honorable Members of the City Council
 From: Councilmembers Sophie Hahn (Author), Kate Harrison (Cosponsor), and Susan Wengraf (Cosponsor)
 Subject: Budget Referral: Solano Avenue Revitalization Plan

RECOMMENDATION

Refer up to \$300,000 to the FY2022-FY2023 Budget Process for the development of a two-part Solano Avenue “Master” Revitalization Plan; Part A for the Upper/Eastern end of Solano Avenue and Part B for mid-corridor blocks within the City of Berkeley, to coordinate with the City of Albany’s mid-corridor Solano Avenue Reconfiguration Plan.

BACKGROUND

On May 28, 2019, the Council unanimously referred to the FY 2020-21 Budget Process the development of a two-part revitalization plan for the Solano Avenue corridor (see attached). Funds were allocated by the City Council to begin the planning process.

On February 11, 2020, the City of Berkeley released a Request for Proposals (RFP) for the Solano Avenue Revitalization Plan, inviting qualified firms or individuals to create a vision and implementation plan for the portions of Solano Avenue within Berkeley, with a deadline for submission of proposals in early March 2020 (see attached). Days later, in response to the rapidly spreading COVID-9 virus, the City of Berkeley issued a Shelter in Place order. City staff were reassigned to handle emergency operations, and practically all non-essential City business operations ceased. In light of the emergency and impending fiscal concerns, on June 30, 2020, the Council referred the Solano Avenue Revitalization Plan to the November 2020 AAO process, using dollars that would have been spent there on the study to pay for the continuation of basic services.¹

Although the Solano Avenue Revitalization Plan has not yet been fully funded, the need for revitalization has only become more urgent. Solano Avenue is a primary shopping district for much of North Berkeley, and as with many commercial corridors throughout the City, Solano Avenue has been hurt by the economic fallout of the COVID-19 pandemic.² The City’s temporary shutdowns of much of the retail and restaurant

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/06_June/City_Council_06-30-2020_-_Regular_Meeting_Agenda.aspx

² https://www.cityofberkeley.info/Clerk/City_Council/2021/03_Mar/Documents/2021-03-09_Item_26_Berkeley_Economic_Dashboards_Update.aspx

industry to curtail the spread of the coronavirus has resulted in a dramatic decline in revenues for restaurants and cafes, retail shops, and salons along Solano Avenue. At the same time, the highly anticipated opening of Touchstone Climbing at the former Oaks Theater has been delayed. Attracting customers to return to the Solano Avenue corridor is essential for the recovery of small businesses along Solano and has the potential to generate significantly more tax revenues for the City by attracting new businesses and patrons over the long run.

In addition, Solano Avenue is the most important commercial and pedestrian-oriented street shared by Berkeley and Albany, which has already implemented a Complete Streets plan for lower Solano Avenue, and is finalizing plans for a second phase along the mid-Solano corridor, connecting with Berkeley. We will miss an important opportunity to plan in tandem with Albany if Berkeley can not move forward.

For these reasons, I am resubmitting a request to fund the Solano Avenue Revitalization Plan in the current budget cycle.

FISCAL IMPACTS

\$300,000 to fund a two-part Solano Avenue “Master” Revitalization Plan.

CONTACT INFORMATION

Vice Mayor Sophie Hahn, Council District 5, 510-682-5905 (cell)

ATTACHMENTS

1. Budget Referral: Solano Avenue Revitalization Plan, May 28, 2019
 2. RFP for Solano Avenue Revitalization Plan, Feb. 11, 2021
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CONSENT CALENDAR

May 28, 2019

To: Honorable Mayor and Members of the City Council
 From: Councilmembers Sophie Hahn, Susan Wengraf, Kate Harrison, and
 Mayor Jesse Arreguin
 Subject: Budget Referral: Solano Avenue Revitalization Plan

RECOMMENDATION

1. Refer \$300,000 to the FY2020 - FY2021 Budget Process for the development of a two-part Solano Avenue "Master" Revitalization Plan; Part A for the Upper/Eastern end of Solano Avenue and Part B for mid-corridor blocks within the City of Berkeley, to coordinate with the City of Albany's mid-corridor Solano Avenue Reconfiguration Plan.
2. Direct the City Manager to send a letter to the City of Albany expressing Berkeley's desire to collaborate on reconfiguration and revitalization plans for the mid-corridor portion of Solano Avenue, and to initiate plans for coordination.

SUMMARY STATEMENT

Solano Avenue is a primary shopping district for much of North Berkeley, including the Thousand Oaks neighborhood and both the low and high North Berkeley hills. Revitalizing Solano Avenue as a neighborhood-serving, attractive and sustainable Main Street for North Berkeley is a key goal of local residents. Solano also has the potential to generate significantly more tax revenues for the City of Berkeley by attracting new businesses and patrons.

Upper Solano Avenue is extremely wide, with most of the right-of-way devoted to automobiles. This area presents a unique opportunity to create an enhanced sense of place for North Berkeley; to add pedestrian, landscaping and placemaking features that support a vibrant neighborhood Main Street and build community.

Solano Avenue is also the most important commercial and pedestrian-oriented street shared by Berkeley and Albany, knitting the two communities together. For approximately five blocks of mid-Solano, buildings on the North side of the street are in Berkeley, while the street, buildings on the South side of the street and *both* the North and South sidewalks are within Albany. This unusual configuration means that Albany

determines the street and sidewalk conditions for many Berkeley properties and businesses. Ensuring that mid-Solano amenities are similar and/or consistent on both the Albany and Berkeley portions of the street is thus particularly important. As a single continuous corridor, improvements to mid-Solano Avenue should be conceived and designed in a collaborative, coordinated manner.

Albany has already implemented a Complete Streets plan for lower Solano Avenue, from San Pablo Avenue to Masonic Avenue. This public investment in Albany's "downtown" at the western end of the Solano Avenue commercial corridor has triggered a notable revitalization, attracting new patrons and enlivening sidewalks.

Albany is currently discussing proposals for a second phase of their Solano Avenue Reconfiguration Plan, for the "mid-corridor" area, from Masonic Avenue to the Berkeley border. Due to an oversight, Berkeley's City Manager, Mayor and members of the City Council were not apprised of Albany's planning effort at the outset, and their visioning process has progressed without the City of Berkeley's participation.

In light of the importance of Solano Avenue to all of North Berkeley, of Albany's "head start" on planning for the mid-Solano corridor, and to encourage the necessary collaborative process between our two cities, the need to fund a study for the Berkeley portion of Solano Avenue is urgent.

This item refers \$300,000 to the FY2020 - FY 2021 Budget Process to begin development of a two-part Solano Avenue "Master" Revitalization Plan for Berkeley; Part A for the Upper/Eastern end of Solano Avenue and Part B for mid-corridor blocks within the City of Berkeley, allowing Berkeley to coordinate mid-Solano plans with Albany. This item also directs the City Manager to send a letter to the Albany City Manager, City Council and Transportation and Safety Commission expressing the City of Berkeley's desire to collaborate on important inter-City elements of Solano Avenue plans.

BACKGROUND

Since the 1920s, Solano Avenue has served as a neighborhood-serving shopping district for North Berkeley and a northern gateway for the City of Berkeley. Bordering Albany, Berkeley's Solano Avenue Commercial District is home to about 130 commercial spaces encompassing approximately 190,000 square feet of commercial space. The eastern, Berkeley portion of Solano Avenue (commonly referred to as "Upper Solano") was a key hub for a number of rail lines in the 1930s, and today is an extra-wide street largely devoted to automobiles and buses, with relatively narrow

sidewalks. Upper Solano has a number of restaurants, home goods, clothing, and other unique shops that make it a commercial hub for North Berkeley.

However, both anecdotal and quantitative data suggest that Solano Avenue is an underperforming commercial district for Berkeley. Solano is similar in neighborhood character to the Elmwood District on College Avenue, but The Elmwood earns significantly more tax revenue per block, despite the fact that the two districts are located in areas with similar home prices and populations with similar purchasing power. Despite a modest uptick, tax revenues from Solano Avenue remained relatively flat between 2010 and 2018, especially when compared to the significant increases over that same time period in other Berkeley districts¹.

In recent years, Solano Avenue has been buffeted by changing demographics, the rise of online retail, and other forces that have impacted the area's longtime shops. For nearly a decade, the prominent Oaks Theater at 1875 Solano was vacant and had difficulty attracting an appropriate tenant.² The absence of the theatre, which drew patrons throughout afternoons and evenings, has deprived the area of much needed foot traffic.

In 2018, commercial vacancy rates in the Solano District were at 5.6%. This means that of a total inventory of ground floor commercial space of approximately 191,000 square feet, about 10,696 square feet were vacant. The vacancy rate was nearly a point higher than it was the previous year, and significantly higher than in the years 2012-2015, when the vacancy rate hovered between 3.5% to 4.4%.³

Solano Avenue is also undergoing a number of changes, including the impending opening of a Touchstone Climbing Gym at the long-vacant Oaks Theatre space. Touchstone estimates several hundred visitors per day. The opening of the new gym is expected to bring many new patrons to Solano Avenue's shops and restaurants, and will also impact parking and drop off zones.

Many of Touchstone's existing patrons ride bikes to their other locations (including Ironworks Gym in Berkeley), and demand for bike parking and other bicycle amenities on Solano is expected to increase dramatically once the gym opens. Solano Avenue was identified for a future Complete Street Corridor Study in the 2017 Berkeley Bicycle

¹ Berkeley Office of Economic Development, Commercial District Dashboard, March 2019

² Berkeley Office of Economic Development, Economic Development Analysis – Solano Avenue, Feb. 2017.

³ Berkeley Office of Economic Development, Economic Dashboard, 2018.

Plan, and numerous requests for a Ford Go-Bike station on Solano Avenue have been received since the successful launch of the City's bike sharing program.

Berkeley can strengthen community, enhance commerce and public space, better serve a variety of transit modes and increase tax revenues with the prompt initiation of an aspirational visioning and planning process for Solano Avenue.

In the spring of 2018, the Albany City Council began a public process to develop and approve a Solano Avenue Complete Streets Plan for the "mid-corridor" section of Solano Avenue, from Masonic Avenue to the Berkeley City Limit just east of Ventura Avenue. Goals of the study include strategies to "improve safety for pedestrians and bicyclists; enhance access to transit; promote a cohesive streetscape; [and] support local economic activity"⁴. The study also specifically considers "street lighting, intersection alignments, signal modernization, bike facilities, sidewalk improvements, streetscape landscaping, street parking, bus stops, public art, directional signage, and gateway improvements"⁵. Finally, the study considers a number of aesthetic features and improvements including public art, signage, and intersection and roadway design.

During the February 28, 2019 meeting of Albany's Traffic & Safety Commission, the Commission recommended to the City Council adoption of the draft Solano Avenue Complete Streets Plan⁶, including an alternative community plan with different parking and bike infrastructure recommendations. To date, the Plan as recommended by the Traffic & Safety Commission has not yet been discussed by the full Albany City Council, but it is expected to be heard soon. The plan, if adopted, has no sources of funding for implementation, but will guide future improvements on Solano Avenue in Albany. Despite an uneven start, there is still time for Berkeley to "catch up" and coordinate with Albany to create a cohesive, mutually beneficial mid-Solano plan that reflects the aspirations of both communities.

The community's desire for a revitalized Solano Avenue, coupled with consideration of the need to coordinate with Albany's Solano Avenue planning process presents a unique opportunity for Berkeley to begin its own visioning process for Solano Avenue.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES & LAWS

Policy ED-4 *Neighborhood and Avenue Commercial Districts* of the Economic Development Element of the General Plan sets the goal of providing programs and

⁴ <https://www.solanocompletestreets.org/>

⁵ <https://www.solanocompletestreets.org/>

⁶ <https://static1.squarespace.com/static/5ac43de02714e5d504879d1a/t/5c6210b26e9a7f2f1c03066d/1549930705894/Solano+Complete+Streets+Public+Review+Draft+2.11.19.pdf>

services to assist neighborhood and avenue commercial districts through actions such as “enhanc[ing] the pedestrian orientation of all shopping districts”.

Specifically, the City Council referred a Solano Avenue Economic Development Study to City Staff on April 25, 2017 to provide baseline information for future strategic planning and business development and initiatives. Several economic reports developed by the Office of Economic Development also demonstrate the potential for improvement to the City’s tax base by working towards a thriving Solano Avenue.

ACTIONS/ALTERNATIVES CONSIDERED

The City could defer initiating a comprehensive study for Solano Avenue and take it up at a later time. However, this would preclude any collaboration in the Albany redesign process, and because it is likely that any plan or vision approved in Albany will inform future changes in Berkeley, it is important that Berkeley be involved at the earliest stage possible. Delaying the study would also further prolong improvements to the Solano Avenue commercial district. Given the length of time need to conduct a thorough community process and to complete any construction or infrastructure project that is approved, starting a process now will ultimately yield more timely results.

CONSULTATION/OUTREACH OVERVIEW & RESULTS

Councilmember Hahn’s office has discussed the possibility of collaboration with Berkeley with Albany City Councilmembers and the Albany Mayor, and discussed with City Manager Dee Williams-Ridley funding for a Solano Avenue study, outreach protocols and project timing.

RATIONALE FOR RECOMMENDATION

The Albany study has been in development for nearly a year, and will soon be reviewed by the Albany City Council. Because Solano Avenue spans both Albany and Berkeley, it is imperative that Berkeley be informed of and engaged with proposed Albany improvements, and that a Berkeley study be undertaken to establish Berkeley’s own objectives and preferences for Solano Avenue.

Transportation infrastructure and other changes to the Albany-side of Solano Avenue will undoubtedly influence any future transportation infrastructure on the Berkeley portion of Solano Avenue. As such, collaboration between Berkeley and Albany on the mid-corridor redesign is key to a sensible and coherent transition between the Albany and Berkeley portions of Solano Avenue.

IMPLEMENTATION, ADMINISTRATION & ENFORCEMENT

The two elements of the requested study are intended to produce inspiring plans for the Upper and mid-Solano portions of Solano Avenue in Berkeley. The Avenue should be seen first as a public space and a driver of community and economic strength; a neighborhood destination, not just a place to pass through quickly.

The goal for Upper Solano, from The Alameda to approximately Ensenada Avenue (exact western border to be determined by the study), is to create a strong and aesthetically pleasing sense of place, and to enhance the experience of the public realm. Upper Solano Avenue already serves as a Main Street for much of North Berkeley; the intent is for this area to become a more vibrant, attractive and accessible Main Street; a complete ecosystem with greater amenities for residents of all ages, and for all modes of transit. Improvements should be considered that create spaces for social interaction and define a character for the street, including but not limited to landscaping, seating, street furniture, lighting, public art and other features that invite the community to gather, linger, shop and dine more frequently.

The goal for the Berkeley portion of mid-Solano (from approximately Ensenada to where Albany picks up responsibility for the street and sidewalks) is to continue pedestrian and other amenities at a scale appropriate for the mix and concentration of retail, office and residential uses, and to coordinate with Albany to ensure a cohesive corridor.

The study should include robust community outreach and input and, at a minimum, a community survey, a public realm study, review of transit needs and pedestrian safety and crossings, a parking study, review of street and curb alignments (including possible alternatives to the Colusa Dogleg) and green infrastructure.

FISCAL IMPACTS

\$300,000 to fund a two-part Solano Avenue “Master” Revitalization Plan. Funds for implementation of the plan have not yet been identified; this is a preliminary visioning process to create a master plan from which funding needs and resources can be derived. Transit infrastructure and pedestrian accessibility improvements that may result from future implementation are intended to increase City tax revenues from Solano Avenue.

ENVIRONMENTAL SUSTAINABILITY

This recommendation is consistent with the City of Berkeley’s environmental sustainability goals by encouraging biking and walking, incorporating green infrastructure, and strengthening community.

CONTACT

Sophie Hahn, District 5, (510) 981-7150

ATTACHMENTS

1. Map of Solano Avenue Commercial District, OED Economic Dashboards 2019
2. Photos of streetscape, pedestrian, and traffic treatments on Upper Solano Ave

Attachment 1



Attachment 2







Finance Department
General Services Division

**FOR PROPOSALS (RFP)
Specification No. 20-11384-C
FOR
Solano Avenue Revitalization Plan
PROPOSALS WILL NOT BE OPENED AND READ PUBLICLY**

Dear Proposer:

The City of Berkeley is soliciting written proposals from qualified firms or individuals **to create a vision and implementation plan for the portions of Solano Avenue within Berkeley.** As a Request for Proposal (RFP) this is not an invitation to bid and although price is very important, other factors will be taken into consideration.

The project scope, content of proposal, and vendor selection process are summarized in the RFP (attached). **Proposals must be received no later than 2:00 pm, on Thursday, March 5, 2020.** All responses must be in a sealed envelope and have “**Solano Avenue Revitalization Plan**” and **Specification No. 20-11384-C** clearly marked on the **outer most mailing envelope.** Please submit one (1) unbound original, four (4) unbound copies, and one (1) electronic copy of the proposal as follows:

Mail or Hand Deliver To:
City of Berkeley
Finance Department/General Services Division
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704

Proposals will not be accepted after the date and time stated above. Incomplete proposal or proposals that do not conform to the requirements specified herein will not be considered. Issuance of the RFP does not obligate the City to award a contract, nor is the City liable for any costs incurred by the proposer in the preparation and submittal of proposals for the subject work. The City retains the right to award all or parts of this contract to several bidders, to not select any bidders, and/or to re-solicit proposals. The act of submitting a proposal is a declaration that the proposer has read the RFP and understands all the requirements and conditions.

For questions concerning the anticipated work, or scope of the project, please **contact Melissa McDonough, Senior Management Analyst,** via email at **mcdonough@cityofberkeley.info** no later than **February 21.** Answers to questions will **not** be provided by telephone or email. Rather, answers to all questions or any addenda will be **posted** on the City of Berkeley’s site at **<http://www.cityofberkeley.info/ContentDisplay.aspx?id=7128>**. It is the vendor’s responsibility to check this site. For general questions concerning the submittal process, contact purchasing at 510-981-7320.

Sincerely,

Darryl Sweet
General Services Manager

The City of Berkeley (the “City”) is soliciting submissions from qualified firms, teams, or individuals to provide professional consultant services necessary to develop a community vision, along with design and revitalization concepts for the portion of Solano Avenue in the City that will provide a foundation for a thriving economy and a place where the community gathers. The final work product will be actionable, with an implementation plan that should include the key milestones, a financing plan, and identify key partners that the City will need to realize the vision for Solano Avenue.

Goals of the Solano Avenue Revitalization Plan

The overall goal of this project is to conduct an inclusive and transparent community process, identify and engage meaningfully with all stakeholders, identify design interventions, and provide an actionable vision and achievable revitalization plan for Berkeley’s Solano Avenue that strengthens community, enhances commerce and public space, and better serves a variety of transit modes.

The goals for this study are to:

- Create a strong identity and an aesthetically distinct sense of place,
- Enhance the experience of the public realm,
- Invigorate commerce and become a more vibrant, attractive and accessible Main Street with amenities for all ages and transit modes,
- Offer improvements that create spaces for social interaction and define a character for the street including but not limited to landscaping, seating, street furniture, lighting, public art and other features that invite the community to gather, linger, shop and dine more frequently,
- Propose pedestrian and other amenities at a scale appropriate to the mix and concentration of retail, office, and residential uses, and
- Coordinate, as necessary, with the City of Albany¹.

Additional Considerations

A successful revitalization plan project will include robust outreach, incorporate sustainability into its recommendations, and devise revitalization strategies well-tailored to the community’s needs. The vision for Solano Avenue should be summarized in an implementation plan that at minimum, includes the following:

- Distillation of community input,
- Public realm study,
- Review of transit needs and pedestrian safety at key crossings,
- Parking study,
- Review of street and curb alignments,
- Recommended zoning code revisions (if any),
- Economic development initiatives,
- Ranked menu of green infrastructure recommendations/options, and
- Financing plan.

¹ In 2019, the City of Albany adopted a Complete Streets and Corridor Revitalization Plan for portions of Solano Avenue in their jurisdiction. The City of Albany’s Complete Streets and Corridor Revitalization Plan and related documents are at <https://www.solanocompletestreets.org/>.

Proposers should demonstrate that community outreach and engagement will be accessible and address any barriers to achieving equitable outreach and engagement.

II. SCOPE OF SERVICES

Project Tasks

The project will consist of tasks that may include, but are not limited to those outlined below.

I. Project Initiation

- A. Attend kick-off meeting to review project goals, scope, and study area.
- B. Refine scope, if necessary.

II. Research

- A. Document review (e.g., collect and review existing plans and data).
- B. Conduct site visit.
- C. Draft *Existing Conditions Report* (including maps).

III. Outreach

- A. Develop *Outreach Plan*.
- B. Create and disseminate outreach materials.
- C. Hold outreach events (e.g., meetings, interviews, focus groups, design charrettes, workshops, etc.).
- D. Draft summary of community ideas from outreach events.

IV. Plan Development

- A. Develop up to three (3) design and revitalization concepts informed by community ideas.
- B. Develop *Draft Plan*, including identifying financial tools and resources for implementation.

V. Plan Revision

- A. Present *Draft Plan* to stakeholders, relevant City Commissions and Boards (i.e., Solano Avenue Business Improvement District), soliciting feedback.
- B. Revise *Draft Plan* based on feedback.

VI. Final Plan

- A. Present *Final Plan* to City Council.

Project Term

The project work is anticipated to begin in summer 2020 and should be completed by summer 2021.

III. SUBMISSION REQUIREMENTS

All proposals shall include the following information, organized as separate sections of the proposal. The proposal should be concise and to the point.

1. Contractor Identification:

Provide the name of the firm, the firm's principal place of business, the name and telephone number of the contact person and company tax identification number.

2. Firm Experience:

Provide a listing of relevant projects completed by the project team within the past five (5) years involving community outreach, design and/or revitalization work with municipalities, public sector, or business districts. For each listing please include a brief description of each project, the location, and the project start and completion date.

3. Staff Experience:

Provide a listing of each key staff person in the firm who will be assigned to the project and background information demonstrating their capabilities and qualifications to perform the assigned task. For each individual, provide current professional registrations, related experience, educational background, and years of experience with the team.

4. Client References:

Provide a minimum of *three (3)* client references. References should be California cities or other large public sector entities. Provide the designated person's name, title, organization, address, telephone number, and the project(s) that were completed under that client's direction.

5. Project Understanding

Briefly indicate your understanding of the definition of the project, its goals, and any associated potential opportunities. List any challenges that you anticipate, and explain how you will overcome those challenges.

6. Project Approach

Describe how you will approach this project as described in sections I and II above. Explain the specific tasks you will implement, the research you will undertake, outreach you plan to conduct and the deliverables you will provide to the City of Berkeley. Include a timeline/project plan assuming a June 2, 2020 start date and a June 30, 2021 end date. Highlight milestones, resource requirements, and necessary inputs not addressed herein.

7. Project Organization

Provide a chart showing the names and assignment of all key personnel, including an estimate of each individual's time commitment to the project. The chart should include proposed lines of communication with City staff. Any proposed sub-consultants should be clearly identified on the chart.

8. Price Proposal:

The proposal shall include pricing for all services by task. Pricing shall be all inclusive unless indicated otherwise on a separate pricing sheet. The Proposal shall itemize all services, including hourly rates for all professional, technical and support personnel, and all other charges related to completion of the work shall be itemized.

9. Contract Terminations:

If your organization has had a contract terminated in the last five (5) years, describe such incident. Termination for default is defined as notice to stop performance due to the vendor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the vendor, or (b) litigated and such litigation determined that the vendor was in default.

Submit full details of the terms for default including the other party's name, address, and phone number. Present the vendor's position on the matter. The City will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience.

If the firm has not experienced any such termination for default or early termination in the past five (5) years, so indicate.

IV. SELECTION CRITERIA

The following criteria will be considered, although not exclusively, in determining which firm is hired.

1. Qualifications and References - including relevant experience of project team. (35%)
2. Project Understanding. (20%)
3. Demonstrated Efficient and Effective Project Approach (40%)
4. Overall Quality of the Response - including completeness, clarity, and organization. (5%)

A selection panel will be convened to evaluate proposals and select a firm.

After a review of the proposals from the short listed respondents, the City may ask the proposers to make an oral presentation to answer any questions the City may have and to clarify their proposal. The City will then rank the proposals and will attempt to negotiate satisfactory contracts with them. If the City is unable to reach agreement with the selected respondents, the City will repeat the negotiation process with the next highest respondent, and so on, if necessary.

V. PAYMENT

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. Mail invoices to the Project Manager and reference the contract number.

City of Berkeley
Accounts Payable
PO Box 700
Berkeley, CA 94701

Payments: The City will make payment to the vendor within 30- days of receipt of a correct and complete invoice.

VI. CITY REQUIREMENTS

A. Non-Discrimination Requirements:

Ordinance No. 5876-N.S. codified in B.M.C. Chapter 13.26 states that, for contracts worth more than \$3,000 bids for supplies or bids or proposals for services shall include a completed Workforce Composition Form. Businesses with fewer than five employees are exempt from submitting this form. (See B.M.C. 13.26.030)

Under B.M.C. section 13.26.060, the City may require any bidder or vendor it believes may have discriminated to submit a Non-Discrimination Program. The Contract Compliance Officer will make this determination. This applies to all contracts and all consultants (contractors). Berkeley Municipal

Code section 13.26.070 requires that all contracts with the City contain a non-discrimination clause, in which the contractor agrees not to discriminate and allows the City access to records necessary to monitor compliance. This section also applies to all contracts and all consultants. **Bidders must submit the attached Non-Discrimination Disclosure Form with their proposal**

B. Nuclear Free Berkeley Disclosure Form:

Berkeley Municipal Code section 12.90.070 prohibits the City from granting contracts to companies that knowingly engage in work for nuclear weapons. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that engages in nuclear weapons work. If your company engages in work for nuclear weapons, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Nuclear Free Disclosure Form with their proposal.**

C. Oppressive States:

The City of Berkeley prohibits granting of contracts to firms that knowingly provide personal services to specified Countries. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that is covered by City Council Resolution No. 59,853-N.S. If your company or any subsidiary is covered, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Oppressive States Disclosure Form with their proposal.**

D. Sanctuary City Contracting Ordinance:

Chapter 13.105 of the Berkeley Municipal Code prohibits the City from granting and or retaining contracts 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”). **Bidders must submit the attached Sanctuary City Compliance Statement with their proposal.**

E. Conflict of Interest:

In the sole judgment of the City, any and all proposals are subject to disqualification on the basis of a conflict of interest. The City may not contract with a vendor if the vendor or an employee, officer or director of the proposer's firm, or any immediate family member of the preceding, has served as an elected official, employee, board or commission member of the City who influences the making of the contract or has a direct or indirect interest in the contract.

Furthermore, the City may not contract with any vendor whose income, investment, or real property interest may be affected by the contract. The City, at its sole option, may disqualify any proposal on the basis of such a conflict of interest. **Please identify any person associated with the firm that has a potential conflict of interest.**

F. Berkeley Living Wage Ordinance:

Chapter 13.27 of the Berkeley Municipal Code requires that contractors offer all eligible employees with City mandated minimum compensation during the term of any contract that may be awarded by the City. If the Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts with the City within a one-year period may subject Contractor to the requirements under B.M.C. Chapter 13.27. A certification of compliance with this ordinance will be required upon execution of a contract. The current Living Wage rate can be found here:

https://www.cityofberkeley.info/Finance/Home/Vendors_Living_Wage_Ordinance.aspx. The Living Wage rate is adjusted automatically effective June 30th of each year commensurate with the corresponding increase in the Consumer Price Index published in April of each year. If the Living Wage rate is adjusted during the term of your agreement, you must pay the new adjusted rate to all eligible employees, regardless of what the rate was when the contract was executed.

G. Berkeley Equal Benefits Ordinance:

Chapter 13.29 of the Berkeley Municipal Code requires that contractors offer domestic partners the same access to benefits that are available to spouses. A certification of compliance with this ordinance will be required upon execution of a contract.

H. Statement of Economic Interest:

The City's Conflict of Interest Code designates "consultants" as a category of persons who must complete Form 700, Statement of Economic Interest, at the beginning of the contract period and again at the termination of the contract. The selected contractor will be required to complete the Form 700 before work may begin.

VII. OTHER REQUIREMENTS

A. Insurance

The selected contractor will be required to maintain general liability insurance in the minimum amount of \$2,000,000, automobile liability insurance in the minimum amount of \$1,000,000 and a professional liability insurance policy in the amount of \$2,000,000 to cover any claims arising out of the performance of the contract. The general liability and automobile insurance must name the City, its officers, agents, volunteers and employees as additional insureds.

B. Worker's Compensation Insurance:

A selected contractor who employs any person shall maintain workers' compensation insurance in accordance with state requirements. Sole proprietors with no employees are not required to carry Worker's Compensation Insurance.

C. Business License

Virtually every contractor that does business with the City must obtain a City business license as mandated by B.M.C. Ch. 9.04. The business license requirement applies whether or not the contractor has an office within the City limits. However, a "casual" or "isolated" business transaction (B.M.C. section 9.04.010) does not subject the contractor to the license tax. Warehousing businesses and charitable organizations are the only entities specifically exempted in the code from the license requirement (see B.M.C. sections, 9.04.295 and 9.04.300). Non-profit organizations are granted partial exemptions (see B.M.C. section 9.04.305). Persons who, by reason of physical infirmity, unavoidable misfortune, or unavoidable poverty, may be granted an exemption of one annual free license at the discretion of the Director of Finance. (see B.M.C. sections 9.04.290).

Vendor must apply for a City business license and show proof of application to Purchasing Manager within seven days of being selected as intended contractor.

The Customer Service Division of the Finance Department located at 1947 Center Street, Berkeley, CA 94704, issues business licenses. Contractors should contact this division for questions and/or information on obtaining a City business license, in person, or by calling 510-981-7200.

D. Recycled Paper

All reports to the City shall be on recycled paper that contains at least 50% recycled product when such paper is available at a cost of not greater than ten percent more than the cost of virgin paper, and when such paper is available at the time it is required. If recycled paper is not available the Contractor shall use white paper. Written reports or studies shall be *printed on both sides of the page* whenever practical.

E. State Prevailing Wage:

Certain labor categories under this project may be subject to prevailing wages as identified in the State of California Labor Code commencing in Section 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.

Wage information is available through the California Division of Industrial Relations web site at: http://www.dir.ca.gov/OPRL/statistics_and_databases.html

VIII. SCHEDULE (dates are subject to change)

- | | |
|--|------------------------|
| <input type="checkbox"/> Issue RFP to Potential Bidders: | February 11, 2020 |
| <input type="checkbox"/> Questions Due | February 21, 2020 |
| <input type="checkbox"/> Proposals Due from Potential Bidders | March 5, 2020 |
| <input type="checkbox"/> Interviews (if needed) | Week of March 23, 2020 |
| <input type="checkbox"/> Complete Selection Process | April 10, 2020 |
| <input type="checkbox"/> Council Approval of Contract (over \$50k) | May 26, 2020 |
| <input type="checkbox"/> Award of Contract | May 27, 2020 |
| <input type="checkbox"/> Sign and Process Contract | June 8, 2020 |
| <input type="checkbox"/> Notice to Proceed | June 9, 2020 |

Thank you for your interest in working with the City of Berkeley for this service. We look forward to receiving your proposal.

Attachments:

- | | |
|---|--------------|
| • Check List of Required items for Submittal | Attachment A |
| • Non-Discrimination/Workforce Composition Form | Attachment B |
| • Nuclear Free Disclosure Form | Attachment C |
| • Oppressive States Form | Attachment D |
| • Sanctuary City Compliance Statement | Attachment E |
| • Living Wage Form | Attachment F |
| • Equal Benefits Certification of Compliance | Attachment G |

City of Berkeley
Solano Avenue Revitalization Plan

Specification No. 20-11384-C

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- Right to Audit Form
- Insurance Endorsement
- Professional Consulting Agreement

Attachment H
Attachment I
Attachment J

ATTACHMENT A

CHECKLIST

- Proposal describing service (one (1) unbound original and four (4) unbound copies, and one (1) electric copy of the proposal)
- Contractor Identification and Company Information
- Client References
- Costs proposal by task, type of service & personnel
- The following forms, completed and **signed in blue ink** (attached):
 - Non-Discrimination/Workforce Composition Form Attachment B
 - Nuclear Free Disclosure Form Attachment C
 - Oppressive States Form Attachment D
 - Sanctuary City Compliance Statement Attachment E
 - Living Wage Form (*may be optional*) Attachment F
 - Equal Benefits Ordinance Certification of Compliance (EBO-1) Attachment G

ADDITIONAL SUBMITTALS REQUIRED FROM SELECTED VENDOR AFTER COUNCIL APPROVAL TO AWARD CONTRACT.

- Provide **original-signed in blue ink** Evidence of Insurance
 - Auto
 - Liability
 - Worker’s Compensation
- Right to Audit Form Attachment H
- Commercial General & Automobile Liability Endorsement Form Attachment I
- Berkeley Business License

For informational purposes only: Sample of Personal Services Contract can be found on the City’s website on the current bid and proposal page at the top of the page.

NON-DISCRIMINATION/WORKFORCE COMPOSITION FORM FOR NON-CONSTRUCTION CONTRACTS

To assist the City of Berkeley in implementing its Non-Discrimination policy, it is requested that you furnish information regarding your personnel as requested below and return it to the City Department handling your contract:

Organization: _____

Address: _____

Business Lic. #: _____

Occupational Category: _____ (See reverse side for explanation of terms)	Total Employees		White Employees		Black Employees		Asian Employees		Hispanic Employees		Other Employees	
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
Official/Administrators												
Professionals												
Technicians												
Protective Service Workers												
Para-Professionals												
Office/Clerical												
Skilled Craft Workers												
Service/Maintenance												
Other (specify)												
Totals:												

Is your business MBE/WBE/DBE certified? Yes _____ No _____ If yes, by what agency? _____

If yes, please specify: Male: _____ Female: _____ Indicate ethnic identifications: _____

Do you have a Non-Discrimination policy? Yes: _____ No: _____

Signed: _____ Date: _____

Verified by: _____ Date: _____

City of Berkeley Contract Compliance Officer

Attachment B (page 1)

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 Transporters" 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.

Attachment B (page 2)

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:

_____ Title: _____

Signature:

_____ Date: _____

Business Entity:

Contract Description/Specification No: **Solano Avenue Revitalization Plan/ 20-11384-C**

Attachment C

CITY OF BERKELEY
Oppressive States Compliance Statement

The undersigned, an authorized agent of _____ (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 Aho, 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: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No:
Solano Avenue Revitalization Plan/ 20-11384-C

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: _____

Attachment D

CITY OF BERKELEY
Sanctuary City Compliance Statement

The undersigned, an authorized agent of (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 _____ day of _____, 20__, at _____, California.

Printed Name: _____ Title: _____

Signed: _____ Date: _____

Business Entity: _____

City of Berkeley

Solano Avenue Revitalization Plan

Contract Description/Specification No:

Solano Avenue Revitalization Plan/ 20-11384-C

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SCCO CompStmt (10/2019)

Attachment E

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.

City of Berkeley
Solano Avenue Revitalization Plan

Specification No. 20-11384-C

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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: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No:
Solano Avenue Revitalization Plan/ 20-11384-C

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

Attachment F (page 2)

City of Berkeley
To be completed by
Contractor/Vendor

ation Plan

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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

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.
 Yes No (If "Yes," proceed to Section 5; if "No", continue to the next question.)
- B. Does your company provide (or make available at the employees' expense) any employee benefits?
 Yes No
If "Yes," continue to Question C.
If "No," proceed to Section 5. (The EBO is not applicable to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee? Yes No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee? Yes No

If you answered "No" to both Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.) If you answered "Yes" to both Questions C and D, please continue to Question E.

If you answered "Yes" to Question C and "No" to Question D, please continue to Section 3.

- 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? Yes No

If you answered "Yes," proceed to Section 4. (You are in compliance with the EBO.)

If you answered "No," continue to Section 3.

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
 - By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor submits evidence of taking reasonable measures to comply with the EBO; or
 - At such time that administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure, not to exceed three months; or
 - Upon expiration of the contractor's current collective bargaining agreement(s).

Attachment G (page 1)

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?* Yes No

* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

SECTION 4. REQUIRED DOCUMENTATION

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

SECTION 5. CERTIFICATION

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

Executed this _____ day of _____, in the year _____, at _____,

(City) (State)

Name (please print)

Signature

Title

Federal ID or Social Security Number

<u>FOR CITY OF BERKELEY USE ONLY</u>			
<input type="checkbox"/> Non-Compliant (The City may not do business with this contractor/vendor)			
<input type="checkbox"/> One-Person Contractor/Vendor	<input type="checkbox"/> Full Compliance	<input type="checkbox"/> Reasonable Measures	
<input type="checkbox"/> Provisional Compliance	Category,	Full Compliance	by Date:
Staff Name(<i>Sign and Print</i>): _____		Date: _____	

Attachment G (page 2)

CITY OF BERKELEY
Right to Audit Form

The contractor agrees that 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 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.

Signed: _____ Date: _____

Print Name & Title: _____

Company: _____

Contract Description/Specification No:
Solano Avenue Revitalization Plan/ 20-11384-C

Please direct questions regarding this form to the Auditor's Office, at (510) 981-6750.

Attachment H

CITY OF BERKELEY
Commercial General and Automobile Liability Endorsement

The attached Certificates of Insurance are hereby certified to be a part of the following policies having the following expiration dates:

Policy No.	Company Providing Policy	Expir. Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The scope of the insurance afforded by the policies designated in the attached certificates is not less than that which is afforded by the Insurance Service Organization's or other "Standard Provisions" forms in use by the insurance company in the territory in which coverage is afforded.

Such Policies provide for or are hereby amended to provide for the following:

1. The named insured is _____.
2. CITY OF BERKELEY ("City") is hereby included as an additional insured with respect to liability arising out of the hazards or operations under or in connection with the following agreement:
_____.

The insurance provided applies as though separate policies are in effect for both the named insured and City, but does not increase the limits of liability set forth in said policies.

3. The limits of liability under the policies are not less than those shown on the certificate to which this endorsement is attached.
4. Cancellation or material reduction of this coverage will not be effective until thirty (30) days following written notice to _____, Department of _____, Berkeley, CA.
5. This insurance is primary and insurer is not entitled to any contribution from insurance in effect for City.

The term "City" includes successors and assigns of City and the officers, employees, agents and volunteers.

Insurance Company

Date: _____

By: _____
Signature of Underwriter's
Authorized Representative

City of Berkeley

Solano Avenue Revitalization Plan

Contract Description/Specification No:

Solano Avenue Revitalization Plan/ 20-11384-C

Attachment I

Specification No. 20-11384-C

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AGREEMENT FOR CONSULTING SERVICES

This is an Agreement between the City of Berkeley, a Charter City organized and existing under the laws of the State of California ("City"), and _____ ("Consultant"), a California [corporation, partnership, joint venture], doing business at _____ who agree as follows:

RECITALS

WHEREAS, this Agreement sets forth the terms and conditions under which City shall obtain and Consultant will provide the services identified in Appendix "A" attached hereto;

Now, THEREFORE, City and Consultant agree as follows:

1. DEFINITIONS

1.1 Where any word or phrase defined below, or a pronoun in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

1.1.1 Agreement: This Agreement together with all attachments and appendices and other documents incorporated herein by reference.

1.1.2 Project: Total design of _____ of which the Work performed under this Agreement may be whole or part.

1.1.3 Project Manager: Person or persons designated by City and authorized to act on City's behalf with respect to this Agreement.

1.1.4 Work: The work described in Appendix A "Scope of Services", and made a part of this Agreement.

2. TERM OF THIS AGREEMENT

2.1 This Agreement shall begin on _____ and end on _____. The City Manager of the City or his/her designee may extend the term of this Agreement by giving written notice.

3. SERVICES CONSULTANT AGREES TO PERFORM

Consultant agrees to perform the services provided for in Appendix "A", as authorized from time to time by City in writing, in the manner provided in this Agreement. Time is of the essence in the performance of this Agreement.

4. COMPENSATION

4.1 Compensation shall be due Consultant according to the Compensation Schedule established in Appendix "B", "Compensation for Services," in a total amount not to exceed \$ _____. Consultant shall invoice its time at its ordinary billing rates.

- 4.2 City will not withhold the entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount. Payment for questioned amount(s) will be made upon City's receipt of any requested documentation verifying the questioned amount(s) and City's determination that the questioned amount(s) is reimbursable under the terms of this Agreement.
- 4.3 Invoices furnished by Consultant under this Agreement must be in a form acceptable to City. All amounts paid by City to Consultant shall be subject to audit by City. Payment shall be made by City to Consultant at the address stated in Appendix "A".

5. QUALIFIED PERSONNEL; NO SUBCONSULTING

- 5.1 Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant. Consultant will conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Consultant.
- 5.2 Consultant agrees that any personnel referred to in Appendix "A" will continue their assignments on the Project during the entire term of this Agreement, as described in Appendix "A."
- 5.3 Consultant is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

6. REPRESENTATIONS

- 6.1 Consultant represents that it is qualified to perform the Work and that it possesses the necessary licenses and/or permits required to perform the Work or will obtain such licenses and/or permits prior to time such licenses and/or permits are required.
- 6.2 Consultant represents that the Work shall be performed in a professional manner and shall conform to the standards of practice observed on similar, successfully completed projects by specialists in the Work to be provided. Consultant agrees that, if the Work is not so performed, in addition to all of its obligations under this Agreement and at law, Consultant shall reperform or replace unsatisfactory Work at no additional expense to City.
- 6.3 The granting of any progress payment by City, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of City, or State certification, shall in no way waive or limit the certification obligations in this Paragraph or lessen the liability of Consultant to reperform or replace unsatisfactory Work, including but not limited to cases where the unsatisfactory character of such work may not have been apparent or detected at the time of such payment, inspection, review or approval.
- 6.4 Nothing in this Paragraph shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which City or Consultant may have under this Agreement or any applicable law. All rights and remedies of City, whether under this Agreement or other applicable law, shall be cumulative.

7. INDEMNIFICATION BY CONSULTANT

7.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Consultant shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless the City and its officers, agents, departments, officials, representatives and employees (collectively “**Indemnitees**”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively “**Liabilities**”). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities. With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type of express or implied indemnity against the Indemnitees other than for Liabilities that are caused in whole or in part by the sole negligence, active negligence or willful misconduct of such Indemnitee.

8. LIABILITY OF CITY

8.1 Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

9. INDEPENDENT CONTRACTOR; PAYMENT OF TAXES AND OTHER EXPENSES

9.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the services required of Consultant by the terms of this Agreement. Consultant 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 Consultant.

9.2 Terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Consultant's Work only and not as to the means or methods by which such a result is obtained.

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

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

10. INSURANCE

10.1 Prior to the execution of this Agreement, Consultant shall furnish to City satisfactory proof that Consultant has taken out for the entire period covered by this Agreement, as further defined below, the following insurance in a form satisfactory to City and with an insurance carrier satisfactory to City, authorized to do business in California and rated by A. M. Best & Company A minus or better, financial category size seven (7) or better, which will protect those described below from claims described below which arise or are alleged to have arisen

out of or result from the services of Consultant for which Consultant may be legally liable, whether performed by Consultant, or by those employed directly or indirectly by it, or by anyone for whose acts Consultant may be liable:

- 10.1.1 Commercial general liability insurance, written on an "occurrence" basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, products liability, blasting, explosion, collapse of buildings or structures, damage to underground structures and utilities, liability for slander, false arrest and invasion of privacy arising out of construction management operations, blanket contractual liability, broad form endorsement, a construction management endorsement, products and completed operations, personal and advertising liability, with per location limits of not less than \$2,000,000 general aggregate and \$2,000,000 each occurrence, subject to a deductible of not more than \$25,000 payable by Consultant.
 - 10.1.2 Business automobile liability insurance with limits not less than \$1,000,000 each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than \$10,000 payable by Consultant.
 - 10.1.3 Full workers' compensation insurance for all persons whom Consultant may employ in carrying out Work contemplated under Contract, in accordance with Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act", approved May 26, 1913, and all Acts amendatory or supplemental thereto. Workers' compensation policy shall include Employer Liability Insurance with limits not less than \$1,000,000 each accident.
 - 10.1.4 Professional Liability Insurance, specific to this Project only, with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement, and any deductible not to exceed \$50,000 each claim, with no exclusion for claims of one insured against another insured.
- 10.2 Insurance policies shall contain an endorsement containing the following terms:
- 10.2.1 City, and its directors, officers, partners, representatives, employees, consultants, subconsultants and agents, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.
 - 10.2.2 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.
 - 10.2.3 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to City thirty (30) days in advance of the effective date thereof.
 - 10.2.4 Insurance shall be primary insurance and no other insurance or self insured retention carried or held by any named or additional insureds other than the Consultant shall be called upon to contribute to a loss covered by insurance for the named insured.

- 10.3 Certificates of Insurance and Endorsements shall have clearly typed thereon the title of the Contract, shall clearly describe the coverage and shall contain a provision requiring the giving of written notice described above in subparagraph 10.2.3.
- 10.4 At the time of making an application for an extension of time, Consultant shall submit evidence that insurance policies will be in effect during requested additional period of time.
- 10.5 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant or any of its permitted subcontractors or subconsultants may be held responsible for payment of damages resulting from their operations.
- 10.6 If Consultant fails to maintain any required insurance, City may take out such insurance, and deduct and retain amount of premium from any sums due Consultant under this Agreement.
- 10.7 Consultant shall forward all insurance documents to, _____, Office of Capital Projects, 1947 Center Street, First Floor, Berkeley, CA 94704.

11. SUSPENSION OF WORK

City may, without cause, order Consultant, in writing, to suspend, delay or interrupt Work pursuant to this Agreement, in whole or in part, for such periods of time as City may determine, in its sole discretion. Suspension shall be effected by delivery to Consultant of a written notice of suspension specifying the extent to which performance of the Work under this Agreement is suspended, and the date upon which the suspension becomes effective, which shall be no less than seven (7) calendar days from the date the notice of suspension is delivered. Suspension of Work shall be treated as an excusable delay.

12. TERMINATION OF AGREEMENT FOR CAUSE

- 12.1 If at any time City believes Consultant may not be adequately performing its obligations under this Agreement or may fail to complete the Work as required by this Agreement, City may request from Consultant written assurances of performance and a written plan to correct observed deficiencies in Consultant's performance if written notice of the same is provided by City. Failure to provide written assurances constitutes grounds to declare a default under this Agreement.
- 12.2 Consultant shall be in default of this Agreement and City may, in addition to any other legal or equitable remedies available to City, terminate Consultant's right to proceed under the Agreement, for cause, should Consultant commit a breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from City to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide City within the 10 day period a written plan acceptable to City to cure said breach, and then diligently commence and continue such cure according to the written plan.)
- 12.3 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered.

13. TERMINATION OF AGREEMENT FOR CONVENIENCE

13.1 City may terminate performance of the Work under the Agreement in accordance with this Paragraph in whole, or from time to time in part, whenever City shall determine that termination is in the best interest of City. Termination shall be effected by delivery to Consultant of notice of termination specifying the extent to which performance of the Work under the Agreement is terminated, and the date upon which termination becomes effective, which shall be no less than twenty-one (21) calendar days from the date the notice of termination is delivered. Consultant 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.

13.2 Except as provided in this Agreement, in no event shall City be liable for costs incurred by or on behalf of Consultant after the effective date of a notice of termination.

13.3 Termination under this provision shall not be construed as a waiver of any right or remedy otherwise available to City.

14. PROPRIETARY OR CONFIDENTIAL INFORMATION OF CITY

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

15. NOTICES TO THE PARTIES

All notices to be given by the parties hereto shall be in writing and effective when served by depositing same in the United States Post Office, postage prepaid and addressed as follows:

To City:

To Consultant:

16. OWNERSHIP OF RESULTS/WORKS FOR HIRE

- 16.1 When this Agreement is terminated, Consultant 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 Agreement. All materials shall be returned in the same condition as received.
- 16.2 Any interest of Consultant or its subcontractors or subconsultants, in studies, reports, memoranda, computational sheets or other documents prepared by Consultant or its subcontractors or subconsultants in connection with services to be performed under this Agreement shall become the property of City. Consultant may, however, retain one copy for its files.
- 16.3 Any and all work, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, designs, specifications, drawings, diagrams, surveys, source codes or any original works of authorship created by Consultant or its subcontractors or subconsultants in connection with services performed under this Agreement shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of City. In the event that it is ever determined that any such works created by Consultant or its subcontractors or subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns all copyrights to such works to City. With the prior written approval of City's Project Manager, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

17. AUDIT AND INSPECTION OF RECORDS

- 17.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, and documents of any sort prepared by or furnished to Consultant during the course of performing the Work and providing services with respect to the Project, for a period of at least three (3) years following final completion and acceptance of the Project, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. All such records shall be available to City upon request at reasonable times and places. Monthly records of Consultant's personnel costs, consultant costs, and reimbursable expenses shall be kept on a generally recognized accounting basis, and shall be available to City upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising City and allowing City to accept and store the records.
- 17.2 Consultant agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities under this Agreement. Consultant shall permit City to audit, examine and make copies, excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Consultant shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon City by this Paragraph.

17.3 The rights and obligations established pursuant to this Paragraph shall be specifically enforceable and survive termination of this Agreement.

18. DISPUTES

18.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the City's Project Manager and a principal of the Consultant who shall decide the true meaning and intent of the Agreement. Such referral may be initiated by written request from either party and a meeting between the City's Project Manager and principal of the Consultant shall take place within five days of the request.

18.2 Consultant shall continue its Work throughout the course of any and all disputes, and Consultant's failure to continue work during any and all disputes shall be considered a material breach of this Agreement, provided City continues to make payment to Consultant for undisputed work completed by Consultant. Consultant further agrees that should Consultant stop work due to a dispute or disputes, any and all claims, whether in law or in equity Consultant may have against City, their officers, agents, representatives, and employees, whether such claims are pending, anticipated or otherwise, shall be deemed to have been waived and forever barred.

19. AGREEMENT MADE IN CALIFORNIA/VENUE

19.1 This Agreement shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Agreement 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 Agreement shall be in Alameda County, California.

19.2 This Agreement shall be executed in duplicate. One duplicate original shall be retained by City and one duplicate original shall be given to Consultant.

20. CONFORMITY WITH LAW AND SAFETY

20.1 Consultant 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, the California Building Code, the American with Disabilities Act, any copyright, patent or trademark law and all other applicable federal, state, municipal and local safety regulations. All services performed by Consultant must be in accordance with these laws, ordinances, codes and regulations. Consultant's failure to comply with any laws, ordinances, codes or regulations applicable to the performance of the work hereunder shall constitute a breach of contract.

20.2 If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Consultant shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Consultant 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 Consultant's subcontractor or subconsultant, if any; 3) name

and address of Consultant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

- 20.3 If a release of hazardous materials or hazardous waste that cannot be controlled occurs in connection with the performance of this Contract, Consultant shall immediately notify the Berkeley Police Department and the City's Health Protection office.
- 20.4 Consultant shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

21. MATERIAL SAFETY DATA SHEETS

- 21.1 To comply with the City's Hazardous Communication Program, Consultant agrees to submit Material Safety Data Sheets (MSDS) for all "hazardous substances" Consultant 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 Consultant may use that product.

21.2 City will inform Consultant 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.

22. NON-DISCRIMINATION

Consultant 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, Consultant agrees as follows:

22.1 Consultant 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.

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

23. CONFLICT OF INTEREST PROHIBITED

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

23.2 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 Consultant, 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 Consultant.

23.3 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.

24. NUCLEAR FREE BERKELEY

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

25. OPPRESSIVE STATES CONTRACTING PROHIBITION

25.1 In accordance with Resolution No. 59,853-N.S., Consultant 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, 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.

25.2 Appendix A to Resolution No. 59,853-N.S. designates the following as Oppressive States for the purposes of this contract: Tibet Autonomous Region and the provinces of Abo, Kham, and Ü-Tsang.

25.3 Consultant's failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 12. In the event that the City terminates Consultant due to a default under this provision, City may deem Consultant a non-responsible bidder for five (5) years from the date this Contract is terminated.

26. RECYCLED PAPER FOR WRITTEN REPORTS

If Consultant is required by this Contract to prepare a written report or study, Consultant 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, Consultant shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the paper whenever practical.

27. BERKELEY LIVING WAGE ORDINANCE

27.1. Consultant hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Consultant is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Consultant 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. Consultant expressly acknowledges that, even if Consultant is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Consultant to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

27.2. If Consultant is currently subject to the Berkeley Living Wage Ordinance, Consultant 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 Consultant for health benefits, if any, for each of its employees providing services under the Contract. Consultant agrees to supply City with any records it deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 17.

27.3. If Consultant is currently subject to the Berkeley Living Wage Ordinance, Consultant shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Consultant engages to execute its responsibilities under this Contract. All subcontractor or subconsultant 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.

27.4. If Consultant 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.

27.5. Consultant'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 12. In the event that City terminates Consultant due to a default under this provision, City may deem Consultant 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, Consultant 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 Consultant'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 of forfeiture for Consultant's breach. City may deduct any assessed liquidated damages from any payments otherwise due Consultant.

28. BERKELEY EQUAL BENEFITS ORDINANCE

28.1. Consultant hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Consultant is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Consultant 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.

28.2. If Consultant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Consultant 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.

28.3. If Consultant 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.

28.4. Consultant's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Sections 12. In the event the City terminates this contract due to a default by Consultant under this provision, the City may deem Consultant 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, Consultant 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 Consultant'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 Consultant's breach. City may deduct any assessed liquidated damages from any payments otherwise due Consultant.

29. 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, Consultant 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. Consultant shall defend, indemnify and hold harmless City concerning any liability arising out of Labor Code section 1720 et. seq. and 1770 et. seq.

30. SETOFF AGAINST DEBTS

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

31. 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 Consultant's service.

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

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

33. MISCELLANEOUS

33.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information.

33.2 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of City and the Consultant.

33.3 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by City's Project Manager of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

33.4 Any provisions or portions thereof of this Agreement prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective

without affecting other provisions or portions thereof of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, or made unlawful or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

34. SEVERABILITY

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

THE CITY OF BERKELEY

By: _____
CITY MANAGER

Registered by:

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

CITY AUDITOR

Attest:

CITY CLERK

[CONSULTANT NAME]

By: _____

Printed name and title of signatory, if different from consultant name

Taxpayer Identification No.

Berkeley Business License No.

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 _____