



AGENDA

BERKELEY CITY COUNCIL MEETING

Tuesday, January 31, 2023

6:00 PM

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

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – MARK HUMBERT

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION

For in-person attendees, face coverings or masks that cover both the nose and the mouth are required. Physically distanced seating will be available. If you are feeling sick, please do not attend the meeting in person.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at http://berkeley.granicus.com/MediaPlayer.php?publish_id=1244.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://cityofberkeley-info.zoomgov.com/j/1610761302>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial **1-669-254-5252** or **1-833-568-8864 (Toll Free)** and enter Meeting ID: **161 076 1302**. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

Please be mindful that the meeting will be recorded and all rules of procedure and decorum apply for in-person attendees and those participating by teleconference or videoconference.

To submit a written communication for the City Council's consideration and inclusion in the public record, email council@cityofberkeley.info.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

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

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

1. Presentation: Bay Area Community Land Trust (BACLT)
2. Adjourn in memory of James Reagan, Community Activist

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

Public Comment on Non-Agenda Matters: *Persons will be selected to address matters not on the Council agenda. If five or fewer persons wish to speak, each person selected will be allotted two minutes each. If more than five persons wish to speak, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons attending the meeting in-person and wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda.*

Consent Calendar

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

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

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

Public Comment on Consent Calendar and Information Items Only: *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

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

Recess Items

1. **Contract No. 32200036 Amendment: Berkeley Convention and Visitors Bureau, d.b.a. Visit Berkeley**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to modify the sole source contract (Contract No. 32200036) and any amendments with the Berkeley Convention and Visitors Bureau, d.b.a. Visit Berkeley, to distribute one-twelfth of annual Berkeley Transient Occupancy Tax funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023.
Financial Implications: See report
Contact: Eleanor Hollander, Economic Development, (510) 981-7530

2. **Contract No. 100692-3 Amendment: Serological Research Institute for DNA Testing Services**
From: City Manager
Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to amend Contract No. 100692-3 and any necessary future amendments with Serological Research Institute (SERI) for the Police Department, increasing the contract amount by \$500,000 for a total not to exceed amount of \$2,000,000 while the contract expiration will remain June 30, 2025.
Financial Implications: See report
Contact: Jennifer Louis, Police, (510) 981-5900

Consent Calendar

3. Lease Agreement: Bay Area Hispano Institute for Advancement (BAHIA) at building 1718 8th Street, at James Kenney Park

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,852-N.S. authorizing the City Manager to execute a lease agreement with Bay Area Hispano Institute for Advancement (BAHIA) to use the building at 1718 8th Street, adjacent to James Kenney Community Center, in James Kenney Park for a 15-year lease term anticipated to begin March 1, 2023 and ending February 1, 2038, with one 5-year option to renew.

First Reading Vote: All Ayes.

Financial Implications: See report.

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

4. Resolution Reviewing and Ratifying the Proclamation of Local Emergency Due to the Spread of a Severe Acute Respiratory Illness Caused by a Novel (New) Coronavirus (COVID-19)

From: City Manager

Recommendation: Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, September 20, 2022, November 3, 2022, and December 13, 2022.

Financial Implications: To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

5. Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

From: City Manager

Recommendation: Adopt a Resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, October 11, 2022, November 3, 2022, November 29, 2022, December 13, 2022, and January 10, 2023.

Financial Implications: To be determined

Contact: Farimah Brown, City Attorney, (510) 981-6950

Consent Calendar

6. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 31, 2023

From: City Manager

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

Financial Implications: Various Funds - \$33,541,532

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

7. Grant Application: Funding from California Department of Forestry and Fire Protection (CAL FIRE) Wildfire Prevention Grant to Implement an Incentive Program for Residents of Berkeley's Very High Fire Hazard Severity Zone

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to apply for and accept a grant, and any amendments, from the California Department of Forestry and Fire Protection (CAL FIRE) for up to \$5 Million to implement a vegetation management program for residents of Berkeley's Very High Fire Hazard Severity Zone (VHFHSZ). Grant funds will be used to develop and deliver public education materials explaining the inspection process and the importance of creating defensible space, assist residents in need of financial assistance to remove vegetation to meet state and local codes, enhance the chipper program, and fund a 3rd party administrator to manage applications and contractor pay schedules.

Financial Implications: See report

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

8. Contract No. 32000202 Amendment: Berkeley Food & Housing Project for Rental Subsidy for the Russell Street Residence

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000202 with Berkeley Food & Housing Project (BFHP) to provide rental subsidies for the Russell Street Residence through June 30, 2023 in an amount not to exceed \$3,400,640. This will extend the existing contract by one year and add \$576,616 in funding.

Financial Implications: See report.

Contact: Lisa Warhuus, Health, Housing, and Community Services, (510) 981-5400

9. Contract: AppleOne Employment Services for Temporary Staffing Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with AppleOne Employment Services for Temporary Staffing Services, in the amount of \$250,000 for the period of February 1, 2023 through July 31, 2023.

Financial Implications: General Fund - \$250,000

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

Consent Calendar

- 10. Contract No. 32000118 Amendment: Nexgen Asset and Work Order Management Software Maintenance and Professional Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000118 with Nexgen Asset Management to provide additional funding for software maintenance, training and professional services for software enhancements, increasing the amount by \$689,400, for a total not-to-exceed amount of \$1,706,909 through June 30, 2024.
Financial Implications: Various Funds - \$689,400
Contact: Kevin Fong, Information Technology, (510) 981-6500
- 11. AHEAD, Inc: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to increase spending authority with AHEAD, Inc. ("AHEAD") for the purchase of additional Varonis software licenses, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) increasing the amount by \$186,610 for a total amount not-to-exceed \$422,915 and the period beginning January 31, 2023 through December 21, 2023.
Financial Implications: Cost Allocation Fund - \$186,610
Contact: Kevin Fong, Information Technology, (510) 981-6500
- 12. Contract No. 32200183 Amendment: Western Water Features Inc. for the Electrical Renovations at King Swim Center**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200183 with Western Water Features, Inc. for the electrical renovations at King Swim Center, increasing the contract amount by \$90,000 for a total not to exceed amount of \$1,100,000.
Financial Implications: CIP Fund - \$90,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700

Consent Calendar

- 13. Contract: California Constructores for Grove Park Field and Playground Renovation Project**
From: City Manager
Recommendation: Adopt a Resolution: 1. Approving the plans and specifications for the Grove Park Field and Playground Renovation Project, Specification No. 22-11538-C; and 2. Accepting the correction of the sum of bid items for California Constructores' bid; and 3. Accepting the bid of the lowest responsive and responsible bidder, California Constructores; and 4. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with California Constructores, for the Grove Park Field and Playground Renovation Project at 2828 Martin Luther King Jr. Way, Berkeley, CA 94703, in an amount not to exceed \$2,483,865, which includes a contract amount consisting of the base bid plus one additive alternate of \$2,159,883 and a 15% contingency in the amount of \$323,982.
Financial Implications: Various Funds - \$2,483,865
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
- 14. Contract No. 32000020 Amendment: Rincon Consultants, Inc. for On-Call Planning and Environmental Review Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000020 with Rincon Consultants, Inc., to increase the total not-to-exceed amount by \$1,000,000 to a new total of \$2,000,000, for additional services related to the review of land use permit applications and environmental review.
Financial Implications: See report
Contact: Alene Pearson, Planning and Development, (510) 981-7400
- 15. Contract: Koios Engineering, Inc. for Urgent Sewer Repair FY2023 Project**
From: City Manager
Recommendation: Adopt a Resolution: 1) approving plans and specifications for the Urgent Sewer Repair FY2023 Project, located throughout the City of Berkeley; 2) accepting the bid of the lowest responsive and responsible bidder, Koios Engineering, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$1,490,427, which includes a 10% contingency of \$135,493.
Financial Implications: See report
Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

16. Contract: Bay Pacific Pipeline, Inc. for Hearst, et al. FY2023 Sanitary Sewer Rehabilitation Project

From: City Manager

Recommendation: Adopt a Resolution: 1) approving plans and specifications for the FY2023 Sanitary Sewer Project, located on Hearst Avenue, Scenic Avenue, Euclid Avenue, Le Conte Avenue, Arch Street, Cedar Street, La Loma Avenue, Le Roy Avenue, Piedmont Avenue, Kelsey Street, Palm Court, Russell Street and Backline, Avalon Avenue Backline, Belrose Avenue Backline, University Avenue, Alvarado Road, and Roble Road Backline; 2) accepting the bid of the lowest responsive and responsible bidder, Bay Pacific Pipeline, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$4,417,421, which includes a 10% contingency of \$401,584.

Financial Implications: Sanitary Sewer Fund - \$4,417,421

Contact: Liam Garland, Public Works, (510) 981-6300

17. *Item Removed from the Agenda by the City Manager*** Authorize a Funding Agreement with AC Transit to supplement the Quick-Build Durant Transit Lane Project**

From: City Manager

Contact: Liam Garland, Public Works, (510) 981-6300

18. Contract: Gruendl Inc. DBA Ray's Electric for Martin Luther King Jr. Way Vision Zero Quick Build Project

From: City Manager

Recommendation: Adopt a Resolution: 1. Approving plans and specifications for the Martin Luther King Jr. Way Vision Zero Quick Build Project, (Project), Specification No. 23-11554-C; 2. Accept the bid of Gruendl Inc. Doing Business As (DBA) Ray's Electric, the lowest responsive and responsible bidder; and 3. Authorize the City Manager to execute a contract with Gruendl Inc. DBA Ray's Electric and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved plans and specifications, in an amount not to exceed \$1,663,900, which includes a contingency of ten percent for unforeseen circumstances.

Financial Implications: Various Funds - \$1,663,900

Contact: Liam Garland, Public Works, (510) 981-6300

Consent Calendar

19. Contract: Andes Construction, Inc. for FY2023 Sanitary Sewer Rehabilitation Parnassus Rd, et al. Project

From: City Manager

Recommendation: Adopt a Resolution: 1) approving plans and specifications for the FY2023 Sanitary Sewer Rehabilitation Parnassus Road Project, et al. Project located throughout the City of Berkeley; 2) accepting the bid of the lowest responsive and responsible bidder, Andes Construction, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$4,444,006, which includes a 10% contingency of \$404,001.

Financial Implications: Sanitary Sewer Fund - \$4,444,006

Contact: Liam Garland, Public Works, (510) 981-6300

Council Consent Items

20. Parking/Towing Fines & Fees Reform *(Reviewed by the Health, Life Enrichment, Equity & Community Committee)*

From: Councilmember Robinson (Author), Councilmember Harrison (Co-Sponsor), Councilmember Bartlett (Co-Sponsor), Councilmember Hahn (Co-Sponsor)

Recommendation:

1. Adopt an Ordinance amending BMC 14.72.080 to allow individuals who are eligible for Residential Preferential Parking (RPP) permits and also for parking citation Indigent Payment Plans to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.
2. Direct the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows: a. Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets. b. Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.
3. Refer to the City Manager to: a. Develop and return to Council with a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows. b. Explore the possibility of raising the thresholds for 2A to 80% or 100% of AMI in the future, and explore the possibility of indexing fee reduction to income. c. Consider allowing all undocumented individuals to participate in payment plans or fee reductions or waivers without the need to show proof of income or public benefits. d. Look at simplification of payment plan administration and potentially allowing all parking and towing-related fines and fees to be paid through payment plans, regardless of income qualification, as a means to simplify administration. Consider software options for tracking and collection. e. Explore opportunities to coordinate outreach for payment plans with opportunities to engage residents in participation in other social services and public benefits.
4. Refer \$383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.

Policy Committee Recommendation: Forward the item to Council with a positive recommendation that the City Council approve the item with the Author's substitute recommendations as follows:

- (1) Adopt an Ordinance amending BMC 14.72.080 to allow individuals who are eligible for Residential Preferential Parking (RPP) permits and also for parking citation Indigent Payment Plans to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.*
- (2) Direct the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows: a) Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and*

Council Consent Items

update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets. b) Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.

(3) Refer to the City Manager to: a) Develop and return to Council with a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows. b) Explore the possibility of raising the thresholds for 2A to 80% or 100% of AMI in the future, and explore the possibility of indexing fee reduction to income (if at 30% AMI, pay 30% of fee, if at 50%, pay 50% of fee, etc.). c) Consider allowing all undocumented individuals to participate in payment plans or fee reductions or waivers without the need to show proof of income or public benefits. d) Look at simplification of payment plan administration and potentially allowing all parking and towing-related fines and fees to be paid through payment plans, regardless of income qualification, as a means to simplify administration. Consider software options for tracking and collection. e) Explore opportunities to coordinate outreach for payment plans with opportunities to engage residents in participation in other social services and public benefits.

(4) Refer \$383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.

Financial Implications: See report

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Action Calendar

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

The Presiding Officer will request that persons wishing to speak use the "raise hand" function to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

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

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak use the "raise hand" function to be recognized and to determine the number of persons interested in speaking at that time.

Action Calendar – Public Hearings

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

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

21. **ZAB Appeal: 2065 Kittredge Street, Use Permit #ZP2021-0193**

From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Use Permit # ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an eight-story, mixed-use building at 2065 Kittredge Street with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces, and dismiss the appeal.

Financial Implications: None

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

Council Action Items

22. **Resolution Authorizing Regional Early Action Planning Grants (REAP 2.0) for Higher Impact Transformative Activities**

From: Mayor Arreguin (Author)

Recommendation: Adopt a resolution authorizing the City of Berkeley to request an allocation of Early Action Planning Grants (REAP 2.0) for Higher Impact Transformative Activities.

Financial Implications: See report

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

23. **Outcomes Based Funding, Pay-For-Success and Social Impact Bonds**

(Reviewed by the Budget & Finance Committee)

From: Councilmember Bartlett (Author)

Recommendation: Qualified Positive Recommendation from the Berkeley City Council Budget & Finance Committee to:

Refer to the City Attorney to provide guidance on how the City can implement an Outcomes Based Funding initiative; request implementation analysis from the City Manager; and request information on whether or not this program can be used with external funds (e.g. grants) or city funds only

Policy Committee Recommendation: Send the item to the City Council with a Qualified Positive Recommendation to refer to the City Attorney to provide guidance on how the City can implement an Outcomes Based Funding initiative; request implementation analysis from the City Manager; and request information on whether or not this program can be used with external funds (e.g. grants) or city funds only.

Financial Implications: See report

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

Council Action Items

24. **Amending City Council Rules of Procedure & Order to Allow Policy Committee Track Items with Budget Referrals to be Referred to the Budget & Finance Committee and one Subject Matter Policy Committee** (*Reviewed by the Agenda & Rules Committee*)

From: Councilmember Hahn (Author)

Recommendation: That the City Council sets the following deadline: In order to be considered for the June 2023 budget process, Policy Committee Track items (as defined in the City Council Rules of Procedure and Order) that have potential budget implications must be submitted to the agenda process to allow for consideration by the Agenda & Rules Committee no later than at the March 6, 2023 meeting (setting the Agenda for the March 21, 2023 Regular Meeting of the City Council).

Policy Committee Recommendation: Send the item to the City Council with a qualified positive recommendation that in order to be considered for the budget process that will take place in June 2023, policy committee track items (as defined in the City Council Rules of Procedure), that have the potential for budget implications, must be submitted to the agenda process to allow for consideration by the Agenda & Rules Committee no later than its March 6, 2023 meeting.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

Information Reports

25. **Updated Sanctuary City Contracting Compliance Report for FY 2021**

From: City Manager

Contact: Farimah Brown, City Attorney, (510) 981-6950

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply:

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

Archived indexed video streams are available at:

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

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

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

to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

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

Agendas and agenda reports may be accessed via the Internet at:
<https://berkeleyca.gov/your-government/city-council/city-council-agendas>
and may be read at reference desks at the following locations:

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

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

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

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

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



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

~~~~~  
***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 19, 2023.***

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

## Communications

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

### **Warming Centers**

1. Stephanie Hung
2. Moni Law
3. Enrique Marisol
4. Laura Cornwall
5. Clara Donovan
6. Lisa Teague
7. Melissa Tomlinson
8. Patty Yao

### **World Housing Crisis**

9. Michelle LePaule

### **Emergency Batteries During Hill Fires**

10. Mary Behm Steinberg

### **Stuart Street Repair**

11. Toby St. John

### **City of Berkeley Hiring Practices**

12. Elana Auerbach

### **Berkeley Police Department Matters**

13. John White
14. Friends of Adeline

### **People's Park**

15. Sandra Morey

### **TOPA (Tenant's Opportunity to Purchase Act)**

16. Nicholas Heller

### **Turtle Island Monument**

17. Corrina Gould, on behalf of Confederated Villages of Lisjan Nation
18. Jennifer Lovvorn, on behalf of the Civic Arts Program

### **Visuals for Zoom Meetings**

19. Bryce Nesbitt

### **BUSD Achievement Gap**

20. Barbara Gilbert

### **Crime in Berkeley**

21. Ernie Mansfield

22. Eric Friedman

### **IKE Kiosks**

23. Verna Winters

### **Demolition Ordinance**

24. Rafa Sonnenfeld

### **Youth Representation on Berkeley's Environmental & Climate Commission**

25. Alfred Twu

26. Jasmine Moreira Cortes

27. Liza Lutzker

28. 21 similarly-worded form letters

### **Earthquake Zones**

29. Kelly Hammargren

### **URL's Only**

30. Vivian Warkentin (2)

### **Supplemental Communications and Reports**

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

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



Office of the City Manager

**RECESS ITEM**  
CONSENT CALENDAR  
 January 31, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Eleanor Hollander, Manager, Office of Economic Development  
 Subject: Contract No. 32200036 Amendment: Berkeley Convention and Visitors Bureau, d.b.a. Visit Berkeley

**RECOMMENDATION**

Adopt a Resolution ratifying the action taken by the City Manager during recess to modify the sole source contract (Contract No. 32200036) and any amendments with the Berkeley Convention and Visitors Bureau, d.b.a. Visit Berkeley, to distribute one-twelfth of annual Berkeley Transient Occupancy Tax funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023.

**NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS**

The Office of Economic Development (OED) will not be able to make payments on recent invoices received and Visit Berkeley will not have adequate operating funds for FY 2023 activities already underway. The contract has exceeded the not-to-exceed amount of \$700,000 (established by council action on September 14, 2021).

**FISCAL IMPACTS OF RECOMMENDATION**

Transient Occupancy Tax (TOT) is assessed on the room charge for rental of transient lodging when the period of occupancy is 30 days or less. Hotel guests pay the tax and it is often referred to as a “hotel tax”.

In 1991, the TOT collected by the City of Berkeley was raised from 11% to 12% in order to create and fund a Convention and Visitors Bureau (CVB). The City retained their original 11% TOT to the general fund and there was no out-of-pocket expense to the City for the organization’s creation. Simultaneously, the lodging industry agreed to raise the TOT 1% with a goal that strategic marketing and sales outreach would increase revenues to lodging businesses and financially benefit the City by increasing general fund revenues, sales tax, and overall economic impacts from visitor spending.

Every year, the City of Berkeley collects twelve percent (12%) TOT from lodging establishments’ short-term room rental revenues and distributes one-twelfth of the amount collected via a “TOT contract” with the Berkeley CVB, d.b.a. Visit Berkeley. The

revenues are collected and the funds are expended from the General Fund using the budget code 011-21-208-251-0000-000-446-636110-. While historically, a new contract was signed every fiscal year with a Not to Exceed (NTE) amount provided by the Budget Office based on the City's projections for TOT revenues, during the COVID-19 pandemic (FY 2021), OED continued distributing Visit Berkeley's TOT allocation using funds encumbered through the FY 2020 contract.

Subsequently, a new contract (Contract Number #32200036) for FYs 22 and 2023 was established with Visit Berkeley in September 2021 with a not-to-exceed (NTE) amount of \$700,000 using the best post-pandemic predictions regarding TOT available at the time. The NTE amount authorized under that contract is currently insufficient to distribute TOT funds owed to Visit Berkeley for FY 2023 payments, and now OED needs to modify the existing contract with Visit Berkeley to make these payments. A modification of this same multi-year contract (to remove the NTE amount) will enable OED to distribute all TOT payments due to Visit Berkeley for FYs 2022-2023 as pass through contract reflecting actual TOT revenues collected by the City of Berkeley.

#### CURRENT SITUATION AND ITS EFFECTS

The concept of a Berkeley Convention and Visitors Bureau (CVB) was presented to and approved by City Council as a Consent Item on September 24, 1991 and the CVB was incorporated as a 501(c)6, Not for Profit Mutual Benefit Corporation known as "Visit Berkeley" that same year. Ever since, there has been an annual contract between the City of Berkeley and Visit Berkeley to enable the pass-through of TOT funds collected.

Council is requested to ratify the action taken by the City Manager to modify a sole source contract (Contract Number: 32200036) with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, to remove the not-to-exceed (NTE) amount of \$700,000, as revenues collected to date have already exceed that amount. The removal of the NTE amount on Contract Number #32200036 reflects that:

- As of October 31, 2022, \$511,048.06 has been expended in contract number #32200036 (that is) paid to Visit Berkeley FYs 2022 and 2023.
- Visit Berkeley is currently owed \$253,527.62 in FY 2023 TOT funds, billed in November 2022.
- One twelfth of the TOT revenues collected by the City in FYs 2022 and 2023 (projected to equal approximately \$700,000 in CVB revenues) has been distributed to Visit Berkeley to date, and the NTE amount of the contract must be removed to pass through the remaining collected TOT funds for the term of the contract (June 30, 2023) as to date, a total of \$ 764,575.68 under this contract Visit Berkeley should have received by now.
- Visit Berkeley will be owed the TOT collected in the final month of FY 2023 (June) after FY 2023 collections are reconciled (this amount is referred to as the "true-up" and is paid in the subsequent fiscal year).

- The multi-year nature of the contract makes it more efficient for the City to issue “true-up” TOT payments for past and upcoming fiscal years, as tax collections for the prior fiscal year are not usually tallied until several months after the close of the prior fiscal year. For example, if an advance payment to enable Visit Berkeley’s operations in any given year exceeds the TOT amount due to Visit Berkeley for that year, the following year’s distributions will be adjusted to reflect the prior year’s overpayment.
- The cumulative funds distributed to Visit Berkeley will always be reconciled so they equal one twelfth of the TOT revenues collected by the City of Berkeley.

### BACKGROUND

TOT is levied on all lodging establishments in Berkeley. As of December 2022, there are 26 such establishments. The origin of the arrangement with Visit Berkeley is detailed in the March 1991 *Convention and Visitors Bureau Creation Documents* and Berkeley City Council Consent Calendar, September 24, 1991. Each year, the forecasted TOT collection amount is codified in the Biennial (or Annual) Budget and one-twelfth of the TOT collected annually is devoted to Visit Berkeley. OED staff receives the annual or biennial TOT revenue projection from Budget staff in the City Manager’s Office, calculates one-twelfth of that number, and produces a contract with Visit Berkeley for that amount with a corresponding scope of work and payment schedule. If the revenues come in over the amount anticipated, the contact must be modified to properly pass through the funds in accordance with the adopted 1991 Resolution entitled *Convention and Visitors Bureau Creation Documents*.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Visit Berkeley works to promote the Bay Area Green Business certification program with Berkeley’s hotel owners, thereby encouraging the local lodging industry to take considerable action to meet environmental sustainability objectives.

### RATIONALE FOR RECOMMENDATION

Modifying the FY 2021-2023 TOT contract will enable the City to distribute funds owed to Visit Berkeley over a multi-year period, as per the 1991 *Convention and Visitors Bureau Creation Documents*.

### ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

### CONTACT PERSON

Elizabeth Redman Cleveland, Economic Development, (510) 981-7532.  
Eleanor Hollander, Economic Development, (510) 981-7534

Attachments:

1: Resolution

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

RATIFYING THE ACTION TAKEN BY THE CITY MANAGER DURING RECESS TO MODIFY A SOLE SOURCE CONTRACT (CONTRACT NO. 32200036) WITH VISIT BERKELEY

WHEREAS, the City of Berkeley collects Transient Occupancy Tax (TOT) on room charges for rental of transient lodging every year; and

WHEREAS, TOT was raised from 11% to 12% to create and fund a Convention and Visitors Bureau (d.b.a. Visit Berkeley) in 1991 so strategic marketing and sales outreach would increase revenues to lodging businesses and financially benefit the City by increasing general fund revenues, sales tax, and overall economic impacts from visitor spending; and

WHEREAS, the City of Berkeley Office of Economic Development (OED) distributes one-twelfth of the TOT amount collected annually for the General Fund via a "TOT contract" with Visit Berkeley; and

WHEREAS, OED is unable to make payments on recent invoices received and Visit Berkeley will not have adequate operating funds for FY 2023 activities and beyond until the existing contract is modified to remove the not-to-exceed (NTE) contract amount; and

WHEREAS, payments due to Visit Berkeley as forecasted by the City's FYs 2022-23 budget revenue projections for TOT, equaled approximately \$700,000 of TOT funds for Visit Berkeley which set the contract's NTE amount in September 2021; and

WHEREAS, the actual funds distributed to Visit Berkeley will be based on actual TOT revenues collected by the City of Berkeley; and

WHEREAS, the actual revenues collected to date have exceeded the \$700,000 NTE amount of the contract and are now due to Visit Berkeley.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to modify a sole source contract (Contract No. 32200036) and any amendments with Visit Berkeley to distribute one-twelfth of annual Berkeley TOT funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023.





Office of the City Manager

**RECESS ITEM**  
CONSENT CALENDAR  
 January 31, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jennifer Louis, Interim Chief, Police Department  
 Subject: Contract No. 100692-3 Amendment: Serological Research Institute for DNA Testing Services

**RECOMMENDATION**

Ratify the action taken by the City Manager during recess to amend Contract No. 100692-3 and any necessary future amendments with Serological Research Institute (SERI) for the Police Department, increasing the contract amount by \$500,000 for a total not to exceed amount of \$2,000,000 while the contract expiration will remain June 30, 2025.

**NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS**

The Police Department utilizes this contractor to test DNA evidence involved in crimes against the community. Without this contract, the Police Department would not be able to have critical DNA evidence processed in an expeditious manner to support the arrest and charging of suspects in various violent criminal cases.

**FISCAL IMPACTS OF RECOMMENDATION**

Approval supports an ongoing operational expense required for solving criminal cases in a timely manner. The funding for this contract is allocated from the State Proposition 172 Fund.

**CURRENT SITUATION AND ITS EFFECTS**

The Berkeley Police Department (BPD) currently contracts with the Serological Research Institute (SERI) for its forensic deoxyribonucleic acid (DNA) testing services. On May 10, 2022, the BPD received unanimous Council approval for a \$500,000 amendment to this contract and that additional allocation has been nearly exhausted. In order to support additional casework, the Department will need approval of an additional \$500,000 to the existing contract limits set when this contract was amended in May of 2022. This dollar increase will allow the Department to continue to test DNA for criminal investigations. This enables the potential identification of a suspect based on DNA found at a crime scene and may result in the suspect being arrested and charged faster.

Due to the unpredictable nature of the contract usage, the BPD has expended nearly \$500,000 since the May 2022 amendment and has less than \$20,000 remaining of the \$1,500,000 contract. It can be difficult to estimate the dollar amount required annually as it can change significantly from year to year based on the DNA collected and volume required to be tested. In order to continue processing DNA evidence to substantiate charges against suspects, the BPD is requesting this contract amendment of an additional \$500,000 and a contract total not to exceed \$2,000,000.

This essential contract supports our goal to create a resilient, safe, connected, and prepared city and BPD considers it as a Strategic Plan Priority Project.

### BACKGROUND

In 2014, the Department entered into a service contract with SERI to obtain their forensic DNA services. SERI was added when two other providers, the Alameda County Sheriff's Crime Laboratory and Forensic Analytical Sciences, Inc. were unable to keep up with increased caseload from the Berkeley Police Department. SERI is accredited through the American Society of Crime Laboratories Directors/Laboratory Accreditation Board. SERI is located in Richmond, CA and provides state of the art forensic services, laboratory analysis and expert testimony for its clients.

While maintaining compliance with the Federal Bureau of Investigations, Quality Assurance Standards for Forensic DNA Testing, SERI has consistently provided the fastest case turnaround times of our three contracted vendors. SERI has helped minimize DNA testing backlogs the department was experiencing with other vendors. Fast DNA testing turnaround times help the department identify serious violent offenders and helps solve criminal cases faster. SERI was originally intended to be an additional DNA Laboratory. However, due to the high level of service provided, they have become our primary provider. During this time, the investigative demand for their services has increased based on several factors including improved DNA recovery techniques and new legislative requirements.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Serological Research Institute provides and maintains an extensive online test request submission and product ordering options. These online forms reduce the amount of paper required to forward and process requests.

### RATIONALE FOR RECOMMENDATION

The cost associated with DNA testing services is an operational expense for which the Berkeley Police Department is currently responsible. In an effort to solve criminal cases as fast as practical and potentially limit further victimization, the BPD continues to utilize these services. An amendment to increase funds for this contract will allow the Department to continue to meet the DNA testing requirements of its investigations.

ALTERNATIVE ACTIONS CONSIDERED

Stop the use of this contract and allow DNA testing to be submitted to the county crime laboratory which has extensive testing backlogs and limited availability to accept additional casework. This option would result in violent criminal cases to remain unsolved and unprosecuted.

CONTACT PERSON

Jennifer Louis, Interim Chief of Police, 510-981-5700

Attachment:

1: Resolution

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

CONTRACT NO. 100692-3 AMENDMENT: SEROLOGICAL RESEARCH INSTITUTE  
FOR DNA TESTING SERVICES

WHEREAS, the Berkeley Police Department is responsible for the investigation of criminal cases in Berkeley; and

WHEREAS, closure of criminal investigations will bring relief to the families of the victims and reduce fear in the community; and

WHEREAS, the use of forensic deoxyribonucleic acid (DNA) testing is essential to solving violent crimes; and

WHEREAS, the Department primarily enlists the services of Serological Research Institute for the timely processing of DNA testing; and

WHEREAS, it is essential to have an accredited laboratory in order to ensure the consistent processing of DNA evidence; and

WHEREAS, the Berkeley Police Department has identified DNA testing services as an operational expense for which the Department is responsible and funds from the State Proposition 172 Fund will be the primary source of funding.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to amend Contract No. 100692-3 and any necessary future amendments with Serological Research Institute (SERI) for the Police Department, increasing the contract amount by \$500,000 for a total not to exceed amount of \$2,000,000 while the contract expiration will remain June 30, 2025.

ORDINANCE NO. 7,852-N.S.

LEASE AGREEMENT WITH BAHIA TO USE CITY PROPERTY LOCATED AT  
1718 8<sup>th</sup> STREET IN JAMES KENNEY PARK

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

Section 1. The City Manager, or her designee, is hereby authorized to execute a lease agreement with BAHIA with a lease term beginning on March 1, 2023, ending February 1, 2038. The estimated revenue is \$111,593. The lease shall be substantially in the form attached hereto as Exhibit “A”.

Section 2. All revenue from said lease shall be deposited in the Parks Tax Fund in a specific revenue account (Budget Code 450-5801-363.10-04) and used to maintain public facilities in James Kenney Park.

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

At a regular meeting of the Council of the City of Berkeley held on January 17, 2023, this Ordinance was passed to print and ordered published by posting by the following vote:

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

Noes: None.

Absent: None.

**CITY OF BERKELEY**  
**IMPROVED PROPERTY LEASE**

Between

THE CITY OF BERKELEY, A CHARTER CITY  
ORGANIZED AND EXISTING UNDER THE LAWS  
OF THE STATE OF CALIFORNIA

as Landlord,

and

BAY AREA HISPANO INSTITUTE FOR ADVANCEMENT (BAHIA) INC.

as Tenant.

For the Property at  
1718 8<sup>th</sup> Street  
Berkeley, CA

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**PROPERTY LEASE**

**BASIC LEASE INFORMATION**

- 1. Landlord: City of Berkeley, a California municipal corporation  
2180 Milvia Street  
Berkeley, CA 94704  
Attention: Director, Parks, Recreation & Waterfront  
Telephone: (510) 981-6706  
Email: parks@cityofberkeley.info
- 2. Tenant: Bay Area Hispano Institute for Advancement (BAHIA) Inc.
- 3. Tenant Trade Name: Bay Area Hispano Institute for Advancement Inc.
- 4. Effective Date: March 1, 2023
- 5. Premises: One building (as depicted in Exhibit “A”) located at 1718 8<sup>th</sup> Street, the outdoor gated play area and garden area, and non-exclusive rights to the common area (outdoor sidewalk area by the front door, as shown on the map attached hereto as Exhibits “A”).
- 6. Permitted Uses: The Premises shall be used by Tenant for the purpose of operating a child care and development center.
- 7. Initial Term: Fifteen (15) year(s), commencing as of March 1, 2023 (“**Commencement Date**”).
- 8. Option Period: Five (5) years.
- 9. Base Rent: \$6,000 per year with 3% increase annually.
- 10. Improvements Tenant will invest approx. \$219,000 in capital improvements. This includes adding a gate entry at the northeast side of the Premises, ADA access to the loft area, ADA improvements to reading room/amphitheater, repair fence fabric around exterior play area, repaint interior and exterior, and replace roof.
- 11. Maintenance Tenant commits to ongoing maintenance, including landscaping, trees, graffiti abatement, pest control, and maintenance of plumbing, electrical, roof/gutters, and building systems.
- 12. Services Base rent includes the cost of utility charges and services, including water, gas, electrical, and sewer. Tenant will make all arrangements and pay for refuse collection and telephone service.

The Basic Lease Information set forth above and the Exhibits attached hereto are incorporated into and made a part of the following Lease. In the event of any conflict between the Basic Lease Information and terms of the Lease, the terms of the Lease shall control.

LANDLORD’S INITIALS

TENANT’S INITIALS

**LEASE**

THIS LEASE is made by and between the CITY OF BERKELEY, a Charter City organized and existing under the laws of the State of California ("Landlord or City") and BAY AREA HISPANO INSTITUTE FOR ADVANCEMENT, Inc. ("BAHIA"), a non-profit organization doing business at 1718 8<sup>th</sup> Street, in Berkeley, CA ("Tenant").

WITNESSETH:

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises for the term and subject to the terms, covenants, agreements and conditions set forth below, to each and all of which Landlord and Tenant hereby mutually agree.

**1. DEFINITIONS**

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

A. "Affiliate," as to any person, shall mean such person's partners, members, commissioners, officers, employees, volunteers and agents.

B. "Building" shall mean a building on the Premises as shown on Exhibit "A".

C. "Lease Year" shall mean each twelve-month period during the term of the Lease commencing upon the effective date of the Lease.

F. "Premises" shall mean the building located at 1718 8th Street (approximately 4,500 sq. ft.), the outdoor gated play area and garden area (approximately 3,700 sq. ft.) and non-exclusive rights to the common area (outdoor sidewalk area by the front door (approximately 1,600 sq. ft.) as shown on the map attached hereto as Exhibits "A". The Tenant understands that the building is adjacent to the James Kenney Community Center and on the grounds of James Kenney Park which provide recreational services to children and adults of all ages. Prior to using the common area for special events only, the Tenant agrees to provide at least thirty (30) days' written notice of intent to use James Kenney Park, site coordinator and recreation manager to ensure that there are no other conflicting uses of the space. The Tenant agrees to cooperate with users of the Community Center and Park in use of the common area for ingress and egress. No items will be allowed to be stored within the common area. Items not related to the Tenants' program shall not be stored on the Premises at any time.

**2. TERM**

A. "Initial Term and Term of Renewal". The initial term is for a period of approximately fifteen years. Tenant has the option, under certain terms and conditions as described below, to renew this lease for an additional five-year term. This Lease shall take effect once duly approved by the Berkeley City Council and executed by both Landlord and Tenant

(“the Effective Date”). The Initial Lease Term will expire at midnight February 28, 2038 (“the Termination Date”).

B. Procedure for Renewal. If Tenant wishes to renew the Lease beyond the Initial Lease Term, Tenant must provide written notice of such intent to Landlord at least one hundred and twenty (120) days prior to the expiration of the Initial Term. If Landlord, in its sole discretion, determines that Tenant has complied with all terms and conditions of the Lease, at least sixty (60) days prior to expiration of the Lease, Landlord shall provide written notice to Tenant of any additional improvements that will be required to be completed by Tenant or increase in rent for a single five-year renewal term and shall provide notice of its determination to grant renewal of the lease upon condition that Tenant agrees to the additional improvements and increase in rent, if any, at least thirty (30) days prior to the expiration of the Initial Term.

### 3. RENT

A. Rent. Tenant shall pay to Landlord as a minimum rental for its use and occupancy of the Premises an annual rent of **SIX THOUSAND DOLLARS (\$6000.00)** for the first year of the Lease, increasing by 3% for each subsequent year of the original term and any option term. For purposes of determining Rent, the first year of the Lease is the period up to February 28, 2024 and will be pro-rated for a partial year.

B. Manner of Payment. All rent and other payments due from Tenant shall be made to Landlord in lawful money of the United States of America at Landlord's address for notice hereunder, or to such other person or at such other place as Landlord may from time to time designate in writing.

C. Delinquency and Late Charges; Interest.

1. Tenant hereby acknowledges that its late payment of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult or impracticable to ascertain. Such costs include, without limitation, processing and accounting charges and overtime wages. Accordingly, any payment of rent or other sum due hereunder that remains due and unpaid for a period of ten (10) days after it becomes due and payable shall be subject to a delinquency charge of ten percent (10%) of the delinquent amount. The parties agree that such charge represents a fair and reasonable estimate of the costs Landlord shall incur by reason of Tenant's late payment. Landlord shall apply any monies received from Tenant first to any accrued delinquency charges and then to any rent then due. Acceptance of such delinquency charges by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount. The delinquency charge is in addition to all other remedies that Landlord may have under this Lease or at law.

2. Any amount due to Landlord, if not paid when due, shall bear interest from the date due until paid at the rate of the twelve percent (12%) per annum. Interest shall not be payable on delinquency or late charges nor on any amounts upon which such charges are paid

by Tenant, to the extent such interest would cause the total interest to exceed that legally permitted. Payment of interest shall not excuse nor cure any default hereunder by Tenant.

D. Accord and Satisfaction. Landlord's acceptance of a lesser amount of rent or other sum due hereunder shall not be deemed to be other than on account of the earliest rent or payment due and shall be applied by Landlord as provided in subsection C.1. No endorsement or statement on any check or letter accompanying any such check or payment shall be deemed an accord and satisfaction, and Landlord may accept such check or payment and pursue any other remedy available under this Lease or at law. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required hereunder (if required) and without invalidation of any notice required pursuant to California Code of Civil Procedure Section 1161, et seq., or any successor statute.

#### 4. PROPERTY AND OTHER TAXES

A. Possessory Interest Taxes. The property interests created by this Lease may be subject to property taxation and Tenant, in whom the possessory interest is vested, will be responsible for the timely payment of any property taxes levied on such possessory interest. Tenant agrees to pay before delinquency all lawful taxes, assessments, fees or charges which at any time may be levied by the state, county, city or any tax or assessment levying body against the transfer of the leasehold interest hereunder upon recordation or otherwise, or upon any activity carried on under this Lease, any interest in this Lease or any possessory right which Tenant may have in or to the Property or the Premises by reason of its use or occupancy thereof or otherwise.

B. City of Berkeley Assessments. Tenant also shall be responsible for and shall pay prior to delinquency all assessments imposed against the Property and/or the Premises by the City. Tenant acknowledges that City has established certain assessment districts within the City of Berkeley and that all properties within the assessment districts are subject to annual assessments. The City reserves the right to create additional districts and to terminate any such district(s). Tenant shall be billed for each such assessment in the same manner as other property owners and lessees in the City.

C. Personal Property and Other Taxes. In addition to all other sums to be paid by Tenant hereunder, Tenant shall pay, before delinquency, any and all taxes levied or assessed during the term of the Lease on Tenant's equipment, furniture, fixtures, merchandise, and other personal property located in the Premises, and shall pay, or shall reimburse Landlord for, any and all assessments (including, without limitation, all assessments for public improvements, services or benefits, irrespective of when commenced or completed), excises, levies, business taxes, Lease, permit, inspection and other authorization fees, transit fees, service payments in lieu of taxes and any other fees or charges of any kind, which are levied, assessed, or imposed by any public authority: (i) upon or measured by rental payable hereunder, including without limitation, any gross income tax or excise tax levied by the City of Berkeley, Alameda County, the State of California, the Federal Government or any other government body with respect to the receipt of

such rental; (ii) upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the or any portion thereof; (iii) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures, merchandise, and other personal property located at or in the Premises or by the cost or value of any improvements made by Tenant to the Premises, regardless of whether title to such improvements shall be in Tenant or Landlord; or (iv) upon this Lease or any document to which Tenant is a party creating or transferring an interest in the Premises.

D. Tenant's Right to Contest. Tenant may, at no cost to Landlord, reasonably contest the legal validity or amount of any taxes, assessments, or charges for which Tenant is responsible under this Lease, and institute such proceedings as Tenant considers necessary; provided, however, that Tenant shall at all times protect Landlord from foreclosure of any lien, and that Landlord shall not be required to join in any proceeding or contest brought by Tenant.

## 5. USE OF PREMISES

A. The Premises shall be used by Tenant for the purpose of operating a child care and development center. Tenant may add new program activities with written approval from the City 30 days prior to commencement and such permission will not be unreasonably withheld so long as the programs held on the Premises focus on child care and development.

B. Tenant shall operate its business on and about the Premises in a manner consistent with the use permitted herein and any local, state or federal laws or regulations or the standards promulgated by Landlord.

C. Tenant understands the leased Premises are adjacent to James Kenney Community Center and on the grounds of James Kenney Park. At all times, Tenant agrees to provide adequate personnel to ensure the safe and efficient management of its use of the leased Premises Tenant must comply with all applicable regulations governing the use of James Kenney Park.

D. Tenant will comply with all applicable safety standards in effect at any given time, and take all necessary steps to ensure that its participants are properly supervised to prevent injury to participants and others. Tenant will provide adequate supervision of the participants at all times while using the Premises.

E. Landlord shall have no responsibility for Tenant's equipment that may be lost, stolen, or damaged.

F. Tenant agrees to require its employees, participants, and visitors who use the Premises and to abide by standards of behavior common to general park use.

G. Business may be conducted with the public on the Premises at any time on any

day that James Kenney Park is open to the public, provided that Tenant shall have obtained all required permits and provided Tenant shall comply with all rules applicable to James Kenney Park.

H. Tenant agrees to cooperate with the City in promoting community participation in Tenant's programs and activities held at James Kenney Park.

I. Tenant shall not, without the written consent of Landlord:

1. place, construct or maintain in, on, or about the Premises or within James Kenney Park any advertisement media, including without limitation, searchlights, flashing lights, loudspeakers, or other similar media or device;

2. place or permit the use in or on the Premises of any vending machines, newspaper racks or other coin operated devices.

3. warehouse or stock on the Premises any goods, wares or merchandise other than that which is directly related to the Tenant's use of the Premises;

4. store, display or sell goods or merchandise on the Premises or place or permit;

5. portable signs or other devices to be stored or to remain on the Premises;

6. use or permit any portion of the Premises to be used as living or sleeping quarters; and

7. sell, distribute, display, or offer for sale any item, which, in Landlord's good faith judgment, may tend to detract from the image of James Kenney Park.

J. Tenant shall not do or permit to be done in, on, or about the Premises anything which is prohibited by or may conflict with any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated, which is prohibited by the standard forms of special form or commercial general liability insurance or which may cause a cancellation of any insurance policy covering James Kenney Park or the Premises or any of its contents, or (except with the prior written consent of Landlord) which may increase the existing rate of or affect any special form or commercial general liability insurance or other insurance upon James Kenney Park or the Premises, or any of its contents. In the event Tenant does or permits to be done anything or keeps or permits to be kept anything on or about the Premises or the James Kenney Park which increases the existing rate of such insurance upon James Kenney Park or the Premises or any of its contents, Tenant shall pay the amount of any such increase promptly upon Landlord's demand. Tenant shall not do or permit anything to be done which will in any way obstruct or interfere with the rights of other lawful users of James Kenney Park, including, without limitation, tenants, their employees or invitees, disturb or annoy them, or use

or allow the Premises to be used for any improper, unlawful or objectionable purpose. Tenant shall not maintain or permit any nuisance in or about the Premises or commit or suffer-to be committed any waste in or upon the Premises.

K. No auction, fire, bankruptcy, distress, clearance, or going-out-of-business sale shall be conducted on the Premises nor shall any sign or advertisement regarding such activity be posted in or about the Premises.

L. If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business, Tenant shall procure and maintain such license or permit and submit the same for inspection by Landlord. Tenant at all times shall comply with the terms and conditions of each such license or permit.

M. Nothing shall be done in or about the Premises by Tenant or anyone having a contractual relationship with Tenant that will result in substantial interference, by themselves or third parties, with normal operation and use of James Kenney Park or the means of ingress and egress thereto ("Substantial Interference"). Tenant shall use every effort to eliminate Substantial Interference including legal action. If Tenant fails to bring an immediate halt to any Substantial Interference, Landlord shall have the right (i) to take action and require Tenant to undertake and eliminate such Substantial Interference and (ii) to commence any legal action to eliminate such Substantial Interference. Any agreement entered into by Tenant with regard to use of the Premises shall contain a provision reserving to Tenant all of the necessary rights and remedies to permit Tenant to comply with its obligations under this provision and authorizing Landlord to enforce the terms of such provision if Tenant fails to do so.

## **6. USE OF JAMES KENNEY PARK PROPERTY**

A. The parties acknowledge that Tenant has, as a member of the general public, the non-exclusive right, in common with others duly authorized by Landlord, and subject to all generally applicable laws and regulations, to use James Kenney Park.

B. Tenant agrees that except as otherwise provided in this Lease, it is not a covenant or condition of this Lease or of any other agreement with Tenant that Landlord undertake or cause to be undertaken any development or redevelopment of the Premises or James Kenney Park, and Landlord shall incur no liability whatsoever to Tenant for failure to undertake such development or redevelopment.

C. Landlord at all times shall have the right and privilege of making such changes in and to James Kenney Park (other than the Building) from time to time which in its sole opinion are deemed to be desirable or appropriate, including the location and relocation of stairways, sidewalks, pathways, driveways, streets, entrances, exits, automobile parking spaces, the direction and flow of traffic, designation of prohibited areas, landscaped areas, utilities and all other facilities; provided, however, that the foregoing is not intended to entitle Landlord to

unreasonably effect changes that would materially and adversely affect access to or visibility of the Premises, except temporarily during periods of construction. Landlord shall have the right to establish, promulgate, and enforce such reasonable rules and regulations concerning James Kenney Park, as it may deem necessary or advisable for the proper and efficient management, operation, maintenance and use thereof, and Tenant shall comply with the same.

D. Landlord at all times shall have the sole and exclusive management and control of James Kenney Park, including without limitation, the right to lease, license or permit the use of space within James Kenney Park to persons for the sale of merchandise and/or services and the right to permit advertising displays, educational displays, displays of art, and promotional activities and entertainment.

E. Nothing contained herein shall be deemed to create any liability to Landlord for any personal injury, or any damage to motor vehicles, vessels, or other property of Tenant's members, employees or others, unless caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees. Tenant is solely responsible for the security of the Premises, and for the safety of those using the Premises pursuant to this Lease or any permits or licenses from the City. Tenant acknowledges that if Landlord provides security guards or police patrols for James Kenney Park or any portion thereof, Landlord does not represent, guarantee or assume responsibility that Tenant or any person or entity will be secure from losses or injury caused by the acts of third parties and does not assume responsibility for any such illegal acts. Tenant hereby waives any present or future claims Tenant may have against Landlord, whether known or unknown, for bodily injury or property damage arising from the performance of such security agents. City shall not be obligated to provide any public liability or property damage or loss insurance for the benefit of Tenant or any other person or entity.

F. Tenant will use its best efforts to maintain effective relations with other users of James Kenney Park and with neighbors. Tenant shall park vehicles only in legal and/or designated parking areas and only for the legal period of time; shall deposit all trash in legal containers; shall not deposit food or material of any kind on adjacent Premises; and shall respect the environment of James Kenney Park.

G. Tenant shall not interfere with the free and unobstructed access by the public to James Kenney Park. Tenant shall not preclude other users of James Kenney Park from exercising a different use without first obtaining any and all appropriate permits.

H. Landlord reserves to itself the right to grant to others in the future nonexclusive utility easements over, under, through, across or on the Premises in locations that will not unreasonably interfere with Tenant's access to or use of the Premises. Any interference shall be temporary, and all work on the Premises shall proceed expeditiously. Tenant shall be given reasonable notice before commencement of any work on the Premises. In the event the installation or maintenance of such future utility lines in such easements causes any damage to the Premises, or any portion thereof, or to the Building, or other facilities located upon the Premises, including but not limited to pavement, curbs and sidewalks, the same shall be repaired



by Landlord at its expense, if not so repaired by the party installing and maintaining the line. Landlord shall hold harmless and indemnify Tenant from all claims arising out of the grant or use of such a utility easement, except to the extent they result from the negligence or willful misconduct of Tenant or its sub-lessees or sub-tenants.

## 7. SERVICES

A. Tenant acknowledges that there is no separate meter for water, gas, electrical or sewer service provided to the Premises. Tenant understands that base rent includes the cost of these utility charges and services. Tenant shall make all arrangements and pay for refuse collection and telephone service, and all fees and periodic charges related thereto.

B. Landlord makes no representation or warranty that the supply of any utility or service to the Premises and/or the Building will not be interrupted, delayed or reduced.

C. Landlord shall not be liable for damages to either person or property; nor shall Landlord be deemed to have evicted Tenant; nor shall there be any abatement of any rent; nor shall Tenant be relieved from performance of any covenant on its part to be performed hereunder by reason of any (i) breakdown of equipment or machinery utilized in supplying utilities or services; (ii) interruption of or failure to supply or delay in supplying any such utilities or services; (iii) the limitation or restriction on use of water, electricity gas, or telecommunications service serving the Premises or James Kenney Park; or (iv) failure to repair or cure any of the foregoing, except in the case of Landlord's gross negligence or willful misconduct.

## 8. OBLIGATION OF TENANT TO REMOVE PERSONAL PROPERTY

Upon the expiration of this Agreement, Tenant is obligated to remove any personal property placed in the Premises by the Tenant. If any personal property does remain on the Premises upon the expiration of the Agreement it will be considered abandoned personal property, which will be removed, by the City and the Tenant will be responsible for all costs associated with removing the personal property from the Premises.

## 9. ALTERATIONS AND IMPROVEMENTS

A. Tenant acknowledges that Landlord owns the Premises. Tenant accepts the Premises from Landlord in its "as is" condition, the conditions that exist as of the Effective Date of this Lease. Tenant acknowledges that Landlord makes no representation or warranty concerning (i) the physical condition of the Premises; (ii) the Premises suitability for Tenant's proposed use; or (iii) the presence of any Hazardous Substance in or about the Premises, except as otherwise expressly set forth in this Lease. Landlord has encouraged Tenant to make its own physical inspection of all aspects of the Premises and to conduct its own investigation as to the suitability of the Property and the Premises for Tenant's use.

B. Upon the execution of this Lease, Landlord approves and requires the

improvements to the Premises listed on Exhibit "B" that shall be completed by Tenant. Tenant shall complete the improvements within the timeframe as stated in Exhibit "B". Tenant shall not make any alterations, additions or improvements to the Premises (i) costing in excess of \$5,000 for any single instance or \$15,000 in the aggregate for any twelve (12) consecutive months or (ii) affecting the Building structure or utility systems, or attach any fixture or item of equipment thereto without Landlord's prior written consent except for the improvements listed in Exhibit "B". All such alterations, additions, or improvements shall be made at Tenant's sole expense in accordance with Landlord's General Design Requirements (if any) and the plans and specifications (including specifications for materials to be used in connection therewith) and a statement of the estimated cost of such work submitted to and approved by Landlord (collectively the "Plans and Specifications"). If the cost thereof exceeds \$5,000 for any single instance, or if such Tenant's work involves the Building structure or utility systems, any contractor or person selected by Tenant must be a licensed contractor. Landlord, in its sole discretion, shall approve or disapprove Tenant's request and may disapprove Tenant's use of any materials or substances, including but not limited to asbestos and fiberglass, which Landlord, in its sole discretion, deems potentially hazardous, toxic or threatening to health. To the extent that Tenant's work shall require a building permit or other permits from the City of Berkeley, and/or any other governmental agency, Tenant shall not perform any of Tenant's work until Tenant has obtained all requisite permits. Tenant further shall comply with all prevailing wage requirements of California Labor Code Sections 1720 et seq., to the extent such requirements are applicable to Tenant's work.

C. Except as otherwise expressly provided in this Lease, Tenant shall not repair, replace or modify any utility system located within the Building without the Landlord's prior written consent. Tenant is responsible for the repair of any damage to any utility system, structural element of the Building(s), facilities of Landlord or any other facilities arising out of Tenant's construction activities or Tenant's negligence or willful misconduct; provided, however, such provision is not intended to and shall not be interpreted to make any other person or entity a third party beneficiary thereof.

D. This Lease specifically prohibits Tenant, or any other party, from expanding uses or structures allowed on the Premises beyond those designated in use permits approved by the City of Berkeley. Notwithstanding approval of any new Use Permit allowing expansion, or any future expansion of the uses in existing buildings, or additions to existing buildings, or construction of any new buildings, or moving existing buildings onto the Premises, are all subject to the prior written approval of the Landlord (with the exception of the Exhibit "B" Improvements) and all improvements (including Exhibit "B" Improvements) are subject to the environmental review and permit regulations and approvals of same by all applicable local, state, and federal agencies.

E. Except for Exhibit "B" Improvements, Tenant shall not substantially deface or change any floors, walls, ceilings, roofs, or partition any of the structures or improvements on the Premises without first providing thirty (30) days written notice to Landlord. If Landlord raises no objections within thirty (30) days after receipt of such notice, Tenant may proceed,

provided Tenant obtains all required permits. Except as may be specifically approved in writing by Landlord, Tenant shall require all contractors to provide a labor and materials bond for the full amount of any contract for improvements that exceed \$50,000, including any applicable Exhibit "B" Improvements. Tenant shall pay, when due, all sums of money that may be due or become due for any labor, services, materials, supplies or equipment furnished to or for Tenant in, at, upon or about the Premises and which may be secured by any mechanic's, material men's or other lien against the Premises or Landlord's interest therein.

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

F 1. Tenant hereby agrees in accordance with the schedule set forth in Exhibit "B" to undertake and complete all of the recommended capital improvements.

2. Tenant understands the Premises were inspected by Disability Access Consultants LLC (DAC). Tenant acknowledges receipt of their findings and some of these are incorporated into planned improvements in Exhibit B. City makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Tenant's use of the Premises requires modifications or additions to the Premises in order to comply with the ADA or similar legislation, Tenant agrees to make any such necessary modifications and/or additions at Tenant's expense. City shall have no responsibility to make any repairs or modifications to the premises in order to comply with accessibility standards, except as set forth in other provisions of this Lease.

3. The parties acknowledge and agree that one of the principles underlying the terms and conditions of this Lease is Tenant's agreement to perform specified capital improvements on the Premises in exchange for abated rent and a 15-year term of occupancy. The parties have thoroughly inspected the Building and Premises and have entered into this Lease on the assumption that the capital improvements set forth in Exhibit B represents a reasonable estimate of the improvements necessary to preserve, enhance and improve the condition of the Building through the term of this Lease. However, the parties also acknowledge and agree that certain events (for example, latent or unanticipated defects or damage to the Premises, accessibility requirements, etc.) may give rise to substantial, unavoidable expenses that materially and adversely affect Tenant's ability to perform its obligations under this Lease. In such event, upon Tenant's written notice to Landlord, Landlord shall temporarily defer declaring default pursuant to Section 19 of this Lease, and the parties, in good faith, shall employ their best efforts to negotiate amendments to the Lease that recognize Tenant's financial hardship while preserving to the extent possible the original terms and intent of the Lease. In the event the parties are unable to reach agreement on such amendments, either party may terminate this lease upon 30 days' written notice to the other. Upon such termination, Tenant shall vacate the Premises in accordance with Section 8. and shall be relieved of all other obligations under this Lease.

G. 1. Tenant agrees that to the extent it is required to comply with the prevailing wage requirements, Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with Section 1773.8 of the California Labor Code), in effect on the date of Landlord's first approval of a building permit or other approval of the work. Copies of the applicable prevailing rate of per diem wages are on file at Landlord's principal office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the Premises. Tenant, as a penalty to Landlord, shall forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof (or such other sum as specified from time to time by Section 1775 of the California Labor Code), for each worker paid less than the applicable prevailing rates for such work or craft in which such worker is employed. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Tenant.

2. Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on Tenant's Work covered by this subsection H showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In the event of noncompliance with the foregoing requirements concerning payroll records which continues for more than ten (10) days after Landlord gives Tenant written notice specifying in what respects Tenant must comply, Tenant shall forfeit, as a penalty to Landlord, for each worker Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, until strict compliance is effectuated. Tenant shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that Section. For purposes of the prevailing wage requirements of this subsection, Tenant shall be deemed to be a "contractor" as that term is used in Sections 1720 et seq., of the California Labor Code. Except where the context otherwise requires, the definitions of terms and phrases contained in the State prevailing wage law, Sections 1720 et seq., of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the prevailing wage requirements of this subsection H.

## 10. LIENS

Tenant shall keep the Premises, the Building, and James Kenney Park free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not cause any such liens to be released of record, Landlord shall have, in addition to all other remedies provided herein or by law, the right (but not the obligation) to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid and all expenses incurred by Landlord in connection therewith shall be reimbursed by Tenant promptly on demand. Landlord shall have the right to post and keep posted on the Premises any notices (including, without limitation,

notices of non-responsibility pursuant to California Civil Code Section 3094) that Landlord may deem proper for protection of Landlord and the Premises. Tenant shall give Landlord at least ten (10) business days' prior notice of the date of commencement of any Tenant's work on or in the Premises to allow Landlord to post such notices.

**11. TENANT AND LANDLORD MAINTENANCE OBLIGATIONS**

A. Tenant agrees that during the entire term of this Lease, at its own cost and expense, it shall keep and maintain the Building(s) on the Premises, and all leasehold improvements, including interior and exterior walls, floors, ceilings, plumbing and heating, fixtures, furniture, and other improvements located on the Premises in good-quality order, repair and condition. Except as otherwise provided in this Lease, Tenant shall perform, at its own cost and expense, any and all maintenance, removal of graffiti, repairs, or rehabilitation to the Building(s), or other area in the Premises, whether required by deterioration or by operations of Tenant or otherwise. Subject to approval required by Section 9, the obligation under this section to maintain the building and improvements on the Premises, includes any repairs to the roof and the exterior siding.

B. To the extent applicable, Tenant hereby waives the provisions of Civil Code Sections 1941 and 1942, and any other provision of law now or hereafter in effect, with regard to the habitability of the Property and the Premises.

C. "Good-quality order, repair and condition", as used herein, shall mean the maintenance, repair, or renovation of the Building, equipment, furniture, fixtures, outdoor lighting, signage, and appurtenances necessary to keep and maintain the Building in efficient and attractive condition, given the nature and age of the Building, at any time during the term of this Lease.

D. Tenant shall provide its own janitorial service for the Premises, and all of Tenant's rubbish shall be removed by Tenant to such location(s) on the Premises or within James Kenney Park as may be designated by Landlord for pick-up and disposal by the Landlord.

E. Landlord shall maintain or cause to be maintained, at Landlord's expense, any street lighting.

F. In the event of a dispute that Landlord and Tenant cannot informally resolve, Tenant's only remedy against Landlord shall be the right to terminate this Lease, effective thirty (30) days from the delivery of written notice to Landlord.

G. Nothing in this Section 11 shall be deemed to affect or impair Landlord's rights under Section 9 of this Lease. Tenant acknowledges that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate or paint the Building or to improve the Premises, or any part thereof. Landlord has made no representations respecting the condition of the Building, the Premises, or James Kenney Park, except as specifically set forth in this Lease.

**12. ENVIRONMENTAL**

A. Tenant shall follow all environmental rules and regulations as they apply to City agencies. Specifically, Tenant shall minimize waste and recycle and compost. Tenant must participate in a recycling service provided by the City or provide an acceptable alternative with the approval of the City's Recycling Supervisor. To that end, Tenant shall:

1. Assign someone to be in charge of its recycling programs, and to communicate needs and questions to the City's Zero Waste Division.
2. Recycle corrugated cardboard, office papers and beverage containers (glass bottles, plastic bottles, and cans)
3. Place collection containers for paper at convenient locations.
4. Educate employees and program participants about recycling procedures.
5. Recycle batteries and office equipment (contact the City's Zero Waste Division for information about vendors).
6. Tenant shall recycle construction waste from tenant improvements.
7. Tenant shall conserve energy.

**13. DAMAGE OR DESTRUCTION**

A. In the event the Premises are damaged by fire, flood, earthquake, act of God, the elements, or other casualty, then (unless this Lease is terminated pursuant to this Section 13) Tenant shall forthwith repair the same, at its sole expense. In this event, Tenant shall be solely responsible for the loss, repair, and replacement of its equipment and leasehold improvements.

B. Anything in subsection A to the contrary notwithstanding, neither Tenant nor Landlord shall have any obligation to repair or rebuild the Premises or the Buildings following damage or destruction thereto if the damage or destruction is due to any cause or casualty other than one against which the responsible party is required to carry insurance or actually does carry insurance and such party reasonably estimates that the cost of repair or rebuilding exceeds ten percent (10%) of the replacement cost of the Premises or Buildings, as the case may be. If the responsible party elects not to repair any damage or destruction pursuant to this provision, such party shall give the other party notice of such election within sixty (60) days after the date of such damage or destruction; and this Lease shall terminate as of the date of such damage or destruction.

C. Tenant hereby waives the provisions of California Civil Code Sections 1932 and 1933 and any other statutes now or hereafter in effect which relate to termination of a lease when leased Premises is damaged or destroyed and agrees that such event shall be governed by the terms of this Lease.

**14. INDEMNIFICATION**

A. To the fullest extent permitted by law, Tenant shall (1) immediately defend and

(2) indemnify Landlord, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the Lease. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Tenant's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

B. The duty to defend is a separate and distinct obligation from the Tenant's duty to indemnify. The Tenant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Landlord, the Landlord and its directors, officers, and employees, immediately upon submittal to the Tenant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Tenant from its separate and distinct obligation to defend Landlord. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Tenant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Tenant may submit a claim to the Landlord for reimbursement of reasonable attorneys' fees and defense costs.

C. The review, acceptance or approval of any of Tenant's work or work product by any indemnified party shall not affect, relieve or reduce the Tenant's indemnification or defense obligations. This Section survives the termination of this Lease. The provisions of this Section are not limited by and do not affect the provisions of this Lease relating to insurance.

D. Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Tenant or any of the Tenant's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Tenant or its subcontractors, the Tenant shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.

## 15. INSURANCE

A. Tenant, at its sole expense, shall procure and maintain the following insurance:

1. Commercial general liability insurance insuring Tenant against any liability arising out of its use, occupancy, repair or maintenance of the Premises, the Building, James Kenney Park, with a combined single limit of not less than \$2,000,000 for injury to or

death of one or more persons in any one accident or occurrence and Property damage in any one accident or occurrence. Such comprehensive general liability insurance shall include fire liability coverage and public liability and Property damage insurance, including personal injury, broad form Property damage, blanket contractual, and other coverage as may be reasonably required by Landlord. Landlord shall have the right, from time to time, to require Tenant to increase the amount of its comprehensive general liability insurance coverage if, in Landlord's reasonable opinion, the amount of such coverage is not sufficient in light of the risks insured and Tenant's use of the Premises or James Kenney Park.

2. Special Form Property insurance for cost of damage to the Premises, including, without limitation, during any term of construction of Tenant's work, builders' All-Risk Insurance. Such insurance shall include coverage for vandalism and malicious mischief and cost of demolition and increased cost of construction by reason of changes in applicable ordinances/laws and shall not contain a co-insurance clause.

B. All policies of insurance and all renewals thereof shall be approved as to form and sufficiency by Landlord's Risk Manager and shall be issued by good and responsible companies qualified to do and doing business in California and rated A+: XIII or better in the most recent version of Best's Insurance Guide. Each of the required insurance coverages except for workers compensation (i) shall name Landlord and each of its Affiliates as additional insureds and, with respect to casualty insurance, as their respective interests may appear and (ii) shall provide that it may not be canceled or altered by the insurer in such manner as to adversely affect the coverage unless sixty (60) days' prior notice is given by certified mail to Landlord at the address set forth in Section 35 below, or to such place as Landlord may from time to time designate in a notice to Tenant.

C. An original certificate of each policy of insurance shall be delivered to Landlord prior to the date the Premises is delivered to Tenant and from time to time during the Term. If Tenant shall fail to procure or maintain any insurance required hereunder or shall fail to furnish to Landlord any duplicate policy or certificate, Landlord may obtain such insurance; and any premium or cost paid by Landlord for such insurance shall be reimbursed by Tenant promptly upon Landlord's demand. Tenant shall make good faith efforts to ensure that at least sixty (60) days prior to the expiration of any such policy, an extension endorsement showing that such insurance coverage has been or will be renewed or extended shall be delivered to Landlord and if, despite such good faith efforts, such extension endorsement cannot be timely delivered, Tenant shall cause to be delivered to Landlord within said time other reasonable documentary evidence of renewal of coverage and shall continue exercising diligent efforts to deliver to Landlord the required extension endorsement. If such coverage is canceled or reduced, Tenant, within ten (10) days after receipt of written notice of such cancellation or reduction in coverage but in no event later than the effective date of cancellation or reduction, shall deliver to Landlord a certificate showing that the required insurance has been reinstated or provided through another insurance company(ies). Upon Tenant's failure to so deliver such certificate, Landlord may, without further notice and at its option, (1) exercise Landlord's rights as provided in this Lease or (2) procure such insurance coverage at Tenant's expense and Tenant shall promptly reimburse



Landlord for such expense.

D. If any of the insurance required in this Section 15 is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of not less than five (5) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

E. Each of Tenant's Property insurance policies insuring the Premises and Tenant's Property in the Premises shall include a waiver of the insurer's right of subrogation against Landlord, or, if such waiver should be unobtainable or unenforceable, (i) an express agreement that such policy shall not be invalidated if the assured waives, before the casualty, the right of recovery against any party responsible for a casualty covered by the policy or (ii) any other form of permission concerning the assured's right to waive its right of recovery. If such waiver, agreement or permission shall not be, or shall cease to be, obtainable, Tenant shall so notify Landlord promptly after learning thereof.

F. Tenant hereby releases Landlord with respect to any claim (including a claim for negligence) which Tenant might otherwise have against Landlord for loss, damage or destruction of Tenant's Property occurring during the Term to the extent to which Tenant is insured under a policy (ies) containing a waiver of subrogation or agreement or permission to release liability, as provided in E. above. If, notwithstanding the recovery of insurance proceeds by Tenant for such loss, damage or destruction, Landlord is liable to Tenant with respect thereto or is obligated under this Lease to make replacement, repair, restoration or payment, then (provided Tenant's right of full recovery under its insurance policies is not thereby prejudiced or otherwise adversely affected) the amount of the net proceeds of the Tenant's insurance against such loss, damage or destruction shall be offset against Landlord's liability to Tenant therefore or shall be made available to Landlord to pay for replacement, repair or restoration, as the case may be. Nothing contained herein shall relieve either party of any duty to repair, restore or rebuild imposed elsewhere in this Lease or shall nullify any abatement of rent provided for elsewhere in this Lease.

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

H. If a death, serious personal injury, or substantial Property damage occurs in connection with the performance of this Lease, Tenant shall immediately notify the Landlord's Risk Manager. If any accident occurs in connection with this Lease, Tenant shall promptly submit a written report to Landlord, in such form as the Landlord may require. This report shall

include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Tenant's subtenant, if any; 3) name and address of Tenant's liability insurance carrier; and 4) a detailed description of the accident, including whether any of Landlord's equipment, tools or materials were involved.

I. Tenant shall forward all insurance documents to:

Parks, Recreation & Waterfront  
City of Berkeley  
2180 Milvia St., 3<sup>rd</sup> Floor  
Berkeley, CA 94704

**16. COMPLIANCE WITH LAWS**

A. Tenant, at its sole expense, shall promptly comply with all applicable laws, ordinances, rules, regulations, permits or requirements now or hereafter in effect (whether foreseen or unforeseen by Landlord or Tenant), with the requirements of any board of fire underwriters or similar body now or hereafter constituted; with any occupancy certificate issued by any public officer and with the provisions of all recorded documents affecting the Premises, insofar as any of the foregoing relate to or affect the condition, use or occupancy of the Premises or the Building. Such compliance by Tenant shall include, without limitation, compliance with all obligations to alter, maintain, or restore the Premises (and, as applicable, the Building), or construct improvements in or to the Premises, regardless of cost and regardless of when during the term of the Lease the work is required.

B. Tenant acknowledges that conducting its operations at the Premises and making certain alterations and improvements may require an authorization, approval or permit (collectively, "Regulatory Approval") from a governmental authority having jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any such Regulatory Approval, and Tenant shall not seek any Regulatory Approval without first obtaining the approval of Landlord, except for the items listed on Exhibit "B". All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by regulatory agencies as part of a Regulatory Approval; however, Landlord shall not take any action that would materially interfere or prevent Tenant from complying with all such conditions. Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for said fines and penalties, except to the extent that such fines or penalties were caused by the willful acts or omissions of Landlord. To the fullest extent permitted by law, Tenant agrees to indemnify and hold Landlord and its officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which Landlord may incur as a result of Tenant's failure to timely obtain or comply with the terms and conditions of any Regulatory Approval. Landlord agrees to cooperate (but only to the same extent and in the same manner as a non-public entity could so cooperate,

and not as an exercise of Landlord's police or regulatory power) with Tenant in filing, processing and obtaining all Regulatory Approvals, and upon request of Tenant, to join with Tenant as co-applicant in filing, processing and obtaining all Regulatory Approvals; provided, however, that Landlord may refuse to file, process or obtain Regulatory Approvals or to join Tenant as a co-applicant if Landlord determines in its sole and absolute discretion that it is not in Landlord's best interest to do so. Nothing contained herein shall be deemed to limit or otherwise constrain Landlord's discretion, powers, and duties as a regulatory agency with certain police powers.

C. Tenant understands and agrees that Landlord is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of the City of Berkeley with certain police powers. Landlord's legal status shall in no way limit the obligation of Tenant to obtain any required approvals from Landlord's departments, boards, or commissions that have jurisdiction over the Premises. By Landlord's entering into this Lease, neither Landlord nor any of City Council, boards, commissions, agencies, departments, or Affiliates obligates itself to any other governmental agent, board, commission or agency, or to Tenant, or to any other individual or entity, with regard to any discretionary action relating to development or operation of the Premises or James Kenney Park. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals that may be required or desirable for the improvement, alteration, or operation of the Premises or James Kenney Park. By entering into this Lease, Landlord is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all laws.

## 17. ASSIGNMENT AND SUBLEASE

A. Any provision of this Lease to the contrary notwithstanding, Tenant shall not directly or indirectly, by operation of law or otherwise, transfer, assign, pledge, encumber or hypothecate this Lease or all or any portion of the Premises or Tenant's interest in and to the Premises (collectively, an "Assignment") or sublet the Premises or any portion thereof or permit the Premises or any portion thereof to be used, occupied or managed by anyone other than Tenant pursuant to any Lease, use or concession agreement or otherwise (collectively, a "Sublease") without first obtaining Landlord's written consent. Any assignment, encumbrance, or sublease without Landlord's written consent shall be voidable and, at Landlord's election, shall constitute a default. City has the sole discretion to determine whether to agree to any sublease or assignment. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this Section.

B. Neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Tenant, in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Tenant or by any process of law. Possession of the Premises shall not be divested from Tenant in such proceedings or by any process of law without the prior written consent of Landlord.

C. Tenant expressly waives any rights that it might otherwise be deemed to possess

pursuant to applicable law, including without limitation, Section 1997.040 of the California Civil Code, to limit any remedy of Landlord pursuant to Section 1951.2 or 1951.4 of the Code by means of proof that enforcement of a restriction on use of the Premises would be unreasonable.

## 18. INSPECTION

Landlord may enter the Premises at all reasonable times (with reasonable advance notice except in case of emergency) (i) to inspect the same; (ii) to exhibit the same to prospective purchasers, mortgagees or tenants; (iii) to conduct tests, inspections and surveys to determine whether Tenant is complying with all of its obligations hereunder; (iv) to post notices of nonresponsibility or other notices that may be permitted hereunder; (v) to post "to Lease" signs of reasonable size upon the Premises during the last ninety (90) days of the Term; and (vi) to make repairs required or permitted to be made by Landlord or repairs to any adjoining space or any utility systems or to make repairs, alterations or additions to any other portion of the Building or James Kenney Park; provided, however, that all such work shall be done as promptly and with as little interference to Tenant as reasonably possible. Tenant hereby waives all claims against Landlord for any injury or inconvenience to or interference with Tenant's business or any loss of occupancy or quiet enjoyment of the Premises resulting from Landlord's entry into the Premises or any work performed therein by Landlord. Landlord shall at all times have a key to all doors in and about the Premises (excluding Tenant's vaults, safes and similar areas designated by Tenant in writing in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency to obtain entry to the Premises. Tenant also shall provide Landlord with written notice of the name, address, telephone number, and Tenant's account number of the burglar alarm company (if any) utilized by Tenant for the Premises. Any entry to the Premises by any of said means or otherwise shall not under any circumstances be deemed a forcible or unlawful entry into or a detainer of the Premises or an eviction (actual or constructive) of Tenant from the Premises.

## 19. DEFAULT

The occurrence of any one of the following shall constitute an event of default on the part of Tenant:

- A. Failure to Use Premises. Failure to use the Premises as specified in Section 5 and 6.
- B. Nonpayment of Rent. Failure to pay any installment of rent or any other sum due and payable hereunder upon the date when such payment is due, such failure continuing for a period of five (5) days after written notice of such failure; provided, however, that Landlord shall not be required to provide such notice more than twice during any consecutive twelve (12) months with respect to non-payment of any portion of rent, the third such non-payment during any consecutive twelve (12) months constituting an event of default without requirement of notice.
- C. Other Obligations. Failure to perform any obligation, agreement or covenant under this Lease, such failure having continued for thirty (30) days after notice of such failure

from Landlord or such longer period as is reasonably necessary to remedy such default, provided that Tenant has commenced to remedy the default within such thirty (30) day period and shall continuously and diligently pursue such remedy until such default is cured.

D. General Assignment. A general assignment by Tenant for the benefit of creditors.

E. Bankruptcy. The filing of a voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and to continue to perform the obligations of Tenant hereunder, such trustee or Tenant, in such time period as may be permitted by the bankruptcy court having jurisdiction, shall cure all defaults of Tenant hereunder outstanding as of the date of affirmance and shall provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations hereunder. Any transferee (by operation of law or otherwise) must provide Landlord with adequate assurance of its future performance under this Lease. In the event of Tenant's bankruptcy, insolvency or reorganization, the parties specifically intend that the actions of the trustee or Tenant in assuming and/or assigning this Lease shall be governed by Section 365 of Title 11 of the United States Code applicable to shopping center leases.

F. Receivership. The employment of a receiver to take possession of all or substantially all of Tenant's assets in the Premises.

G. Insolvency. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets in or on the Premises; the admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation; the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceeding or if, within thirty (30) days after the commencement of any proceeding against Tenant seeking reorganization or arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law or regulation, such proceeding shall not have been dismissed.

H. Release of Hazardous or Toxic Substances or Materials and Other Environmental Impacts. Any release or discharge in, on, under, around, or from the Premises and/or James Kenney Park by Tenant, its agents or employees of Hazardous Substances which has not been fully cleaned up within ten (10) days after such release or discharge. Any negative impacts to the natural habitat and environment of James Kenney Park caused by Tenant that are documented by a qualified, independent source and for which reasonable remediation measures are not available, or the Tenant fails to cooperate with the Landlord in implementing in a timely manner reasonable measures intended to mitigate any negative impacts.

I. Illegal Drugs. Any release or discharge of chemicals, toxics, solution in

connection with the manufacturing and mixing of any illegal substance on the premises.

J. Non-compliance with Lease terms. Failure to perform any of the obligations and improvements listed on Exhibit "B", such failure continuing for 30 days after notice from the landlord of said default.

## 20. REMEDIES UPON DEFAULT

A. Termination. In the event of the occurrence of any event of default, Landlord shall have the right immediately to terminate this Lease by written notice and at any time thereafter to recover possession of the Premises or any part thereof and to expel and remove Tenant, any other person or party occupying the same and all Premises located therein, by any lawful means and to reenter the Premises without prejudice to any of the remedies that Landlord may have under this Lease or under law or equity.

B. Continuation after Default. In the event of any default, this Lease shall continue in effect for so long as Landlord does not terminate this Lease under subsection A above. In such case, Landlord may enforce all its rights and remedies under this Lease, including without limitation, the right to recover rent as it becomes due, and all of its rights and remedies under law. Acts of maintenance, preservation, efforts to relet the Premises for Tenant's account or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate this Lease or Tenant's right to possession.

C. Damages upon Termination. Should Landlord terminate this Lease pursuant to subsection A above, in addition to any other rights and remedies to which it may be entitled under applicable law, Landlord shall be entitled to recover from Tenant: (i) the worth at the time of the award of the unpaid rent and other amounts which had been earned at the time of termination; plus (ii) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rent loss that Tenant proves reasonably could have been avoided; plus (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rent loss that Tenant proves reasonably could be avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would likely result therefrom, including without limitation, the costs and expenses (including brokerage commissions and advertising costs) incurred by Landlord, with or without terminating the Lease, (1) in retaking possession of the Premises; (2) in cleaning and making repairs and alterations to the Premises reasonably necessary to return the Premises to good condition for the use permitted by this Lease and otherwise to prepare the Premises for reletting; (3) in removing all persons and personal property from the Premises and transporting and storing any of Tenant's personal property left at the Premises, although Landlord shall have no obligation to remove, transport, or store any of such personal property; and (4) in reletting the Premises for such term, at such rent and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; plus (v) such other amounts in

addition to or in lieu of the foregoing as may be permitted from time to time under California law. The "worth at the time of award" of the amounts referred to in (i) and (ii) shall be computed with interest at the maximum rate allowed by law. The "worth at the time of award" of the amount referred to in (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

D. Computation of Rent for Purposes of Default. For purposes of computing unpaid rent which would have accrued and become payable pursuant to subsection C above, unpaid rent shall include the total rent for the balance of the term of the Lease.

E. Remedies Cumulative. All rights, privileges and elections or remedies of the parties are cumulative and not alternative to the extent permitted by law and except as otherwise specifically provided herein.

F. No Waiver. Landlord's waiver of any breach of a covenant or condition hereof, or Landlord's failure to declare any default immediately upon occurrence thereof or a delay in taking any action in connection therewith shall not waive such breach or such covenant or condition or any subsequent breach thereof. The subsequent acceptance of rent or other monies by Landlord shall not be deemed a waiver of any preceding default by Tenant, other than the failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such default at the time of its acceptance of rent.

G. No Right of Redemption. Tenant waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179 or any other present or future law in the event Tenant is evicted or Landlord takes possession of the Premises by reason of Tenant's default.

## 21. ENVIRONMENTAL OBLIGATIONS

A. Tenant shall not, without Landlord's prior written consent (which consent may be granted or denied in Landlord's sole discretion), install, bring into or release or discharge in, on, under, around, or from the Premises any (i) asbestos-containing materials, (ii) electrical transformers, fluorescent light fixtures with ballasts or other equipment containing PCB's or (iii) materials which constitute hazardous, extremely hazardous or toxic materials under the Resource Conservation and Recovery Act, the California Hazardous Waste Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the California Safe Drinking Water and Toxic Enforcement Act of 1986 or any other applicable law or regulation concerning hazardous or toxic materials, (collectively "Hazardous Substances") and has not done so prior to the effective date of this Lease. Any Hazardous Substances which are used, stored, treated, disposed of or released from the Premises by Tenant or its representatives, agents, employees or invitees, shall be used, stored, treated, released and disposed of in accordance with all applicable laws and regulations.

B. If Tenant knows or has reasonable cause to believe that any Hazardous Substance

has been released on or beneath the Premises, Tenant shall immediately notify the Berkeley Police Department and the Toxic Management Office and promptly give written notice of same to Landlord. If Tenant knows or has reasonable cause to believe that such substance is an imminent and material danger to public health or safety, Tenant shall take all actions necessary to alleviate such danger. Tenant shall provide to Landlord as promptly as possible, and in any event within five business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof and concerning Hazardous Substances. Tenant shall not negotiate or enter into any settlement agreement, consent decree or other compromise in respect of Hazardous Substances affecting the Premises or the Premises without first giving Landlord prior written notice and full opportunity to appear, intervene or otherwise protect Landlord's rights and interests.

C. Without limitation of the provisions of Sections 14 hereof, Tenant shall indemnify, defend and hold Landlord and its affiliates harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term of this Lease as a result of the handling of Hazardous Substances on the Premises, or James Kenney Park by Tenant, its agents or invitees, including without limitation, all costs of monitoring, investigating, and remediation of the same, damages for diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees. This indemnification by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Landlord or required by any federal, state or local governmental agency or political subdivision because of Hazardous Substance present in the soil or groundwater in, on or under the Premises or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Substance in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises or James Kenney Park, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Substance in, on, under or about the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Premises. Tenant's obligations under this Section 21.C. shall survive the expiration or termination of this Lease.

## **22. LANDLORD'S RIGHT TO CURE**

All covenants to be performed by Tenant shall be performed at Tenant's sole cost and expense and without abatement of rent. Without limiting Landlord's rights under any other provision of this Lease, if Tenant shall fail to pay any sum of money or shall fail to perform any other act and such failure shall have become an event of default under Section 19, Landlord, without waiving or releasing Tenant from any of its obligations, may make (but shall not be obligated to make) any such payment or perform any such other act. All sums so paid by



Landlord and all necessary incidental costs shall be deemed additional rent and shall be payable to Landlord immediately upon Landlord's written demand.

**23. EMINENT DOMAIN**

A. If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken on the earlier of the dates that title vests in the condemning authority or such authority takes possession of the Premises. In the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other party within thirty (30) days after such date of taking; provided, however, that Tenant shall have no right to terminate this Lease unless the portion of the Premises taken shall be of such extent and nature as substantially to impede or impair Tenant's use of the balance of the Premises. In the event of any such taking, Landlord shall be entitled to all compensation, damages, income, rent, awards and interest that may be paid or made in connection with such taking. Tenant shall have no claim against Landlord for the value of any unexpired Term; however, Landlord shall cooperate with Tenant if Tenant seeks to recover, at its sole expense, proceeds or awards paid to compensate for damage to the "goodwill" associated with Tenant's business. Any such amounts recovered shall belong to Tenant.

B. If any part of the Premises shall be so taken and this Lease shall not be terminated, then this Lease shall continue in full force and effect, except that the Rent shall be reduced in the same proportion that the rentable area of the Premises taken bears to the original rentable area of the Premises. Landlord, upon receipt of the award, shall make all necessary repairs and alterations (exclusive of Tenant's trade fixtures, furniture, furnishings, personal Premises, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances will permit and to restore the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit. Landlord, in any event, shall not be required to spend for such repairs and alterations an amount in excess of the amount received by Landlord as damages for the taking of such part of the Premises and/or Building; and Tenant, at its sole cost and expense, shall make all necessary repairs and alterations to Tenant's trade and lighting fixtures, furniture, furnishings, personal Premises, decorations, signs and contents.

C. As used herein, the "amount received by Landlord" shall mean that portion of the award received by Landlord as damages from the condemning authority which is free and clear of all prior claims or collections by Landlord and less reasonable attorneys' and appraisers' fees and expenses.

**24. SUBORDINATION**

A. This Lease shall be subject and subordinated to (i) all ground or underlying leases which have been or may hereafter be executed affecting the Premises, (ii) any Declaration of Covenants, Conditions and Restrictions now or hereafter recorded affecting James Kenney Park,

all without the necessity of having further instruments executed on behalf of Tenant to effectuate such subordination.

B. Tenant agrees to execute and deliver upon demand such further instruments or documents as may reasonably be required by Landlord to evidence any such subordination of this Lease. Tenant hereby constitutes and appoints Landlord, as Tenant's attorney-in-fact, coupled with an interest, to execute and deliver any such instrument(s) on behalf of Tenant.

**25. NO MERGER**

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies or operate as an assignment to it of any or all such subleases or subtenancies.

**26. TRANSFER BY LANDLORD**

In the event the original Landlord or any successor owner of James Kenney Park shall sell or convey the Premises or the Building, or any portion thereof that includes the Premises, all liabilities and obligations on the part of the original Landlord or such successor owner shall terminate. All such liabilities and obligations thereupon shall be binding only upon the new owner. Tenant agrees to attorn to such new owner.

**27. ESTOPPEL CERTIFICATES**

From time to time, Tenant shall execute and deliver to Landlord promptly upon request a certificate certifying (i) that this Lease is unmodified and in full force and effect or, if there has been any modification, that this Lease is in full force and effect as modified, and stating the date and nature of each such modification; (ii) the date to which rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in such certificate; (iv) that Landlord is not in default under this Lease and that Tenant has no claims, charges, offsets or defenses against Landlord, or specifying the nature of any such default or claim, charges, offsets or defense; and (v) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, vendee, or other party. If Tenant fails to execute and deliver any such certificate within ten (10) business days after Landlord's written request, such failure, at Landlord's election, shall be conclusive against Tenant that this Lease is in full force and effect, without modification (except as may be represented by Landlord), that there are no uncured defaults in Landlord's performance, and that not more than one month's rent has been paid in advance.

**28. HOLDING OVER**

If, after the expiration of the Term of the Lease, Tenant remains in possession of the

Premises with Landlord's consent all provisions of this Lease shall remain in effect with the following exceptions: (1) Tenant shall become a tenant from month-to-month, such tenancy terminable on thirty (30) days' notice given at any time by either party; and (2) the Rent shall increase to 120% of the amount of the rent when the Lease expired.

**29. CHANGES BY LANDLORD**

A. The description of the Premises and the location of any Premises utility system(s), including without limitation electrical, plumbing, shall be subject to such minor changes as Landlord determines to be necessary or desirable in the course of any construction performed by or under the authorization of Landlord. No such changes shall invalidate or affect this Lease. Landlord shall effect such changes using reasonable efforts not to disturb Tenant's business. Tenant shall have no claim against Landlord for abatement of rent or loss of business as a result of any such disturbance.

B. Landlord shall have the right in its sole discretion to, among other things, change permitted land uses, install, maintain and remove public improvements, change the arrangement, character, use or location of entrances or passageways, walkways, streets, sidewalks, parking areas, stairs, landscaping, toilets, and other facilities and portions of James Kenney Park, and to change the name, number or designation by which the Building is commonly known. None of the foregoing shall be deemed an actual or constructive eviction of Tenant, nor shall it entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided, however, Landlord shall not unreasonably obstruct or interfere with access to or the lines of sight toward the Premises.

**30. GOVERNING LAW**

This Lease shall be governed by the laws of the State of California.

**31. SECURITY DEPOSIT**

As security for the full and faithful performance by Tenant of each and every term, provision, covenant, and condition of this Lease, Tenant shall deposit with Landlord in an amount of **ONE HUNDRED DOLLARS (\$100)**, unless waived in whole or in part by Landlord. Such security shall be deposited on or before the Effective Date of this Lease.

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

Landlord will not be required to keep the security deposit separate from its own funds and

Tenant shall not be entitled to interest on the security deposit. The security deposit will not be a limitation on Landlord's damages or other rights under this Lease, or a payment of liquidated damages or an advance payment of the rent. If Tenant pays the rent and performs all of its other obligations under this Lease, Landlord shall return the unused portion of the security deposit to Tenant within sixty (60) days after the end of the term. Landlord may deliver the security deposit to a purchaser of the Premises and be discharged from further liability with respect to it.

**32. SIGNAGE**

The size, design, material and location of any sign, marquee, awning, decoration or other attachment, advertising material or lettering on the Premises or on the exterior of the Building (collectively "signage") shall be subject to Landlord's prior written approval. All such signage shall comply with the criteria outlined in Landlord's General Design Requirements (if any) and shall be subject to the following provisions:

A. Tenant, at its sole expense, shall submit to Landlord a written description of all proposed signage, including dimensions, color, proposed location and other pertinent information ("Signage Proposal"). Landlord shall review the Signage Proposal and shall notify Tenant in writing of its approval, or reason(s) for its disapproval, within thirty (30) business days after Landlord's receipt of the Signage Proposal. If disapproved, Tenant shall make all required modifications to the Signage Proposal and shall resubmit the same to Landlord within seven (7) days after its receipt of Landlord's disapproval.

B. Within ten (10) days after Landlord's approval of the Signage Proposal, Tenant, at its sole expense, shall cause to be prepared and submitted to Landlord two (2) sets of plans ("Sign Plans") reflecting in detail the information contained in the approved Signage Proposal. Landlord shall review the Sign Plans within thirty (30) days after Landlord's receipt of the same.

C. Upon Tenant's receipt of its sign permit from Landlord, Tenant shall construct and/or install all signage shown on the Sign Plans; in any event, however, Tenant shall complete such construction and/or installation not later than thirty (30) days after the sign permit is issued, unless otherwise agreed to by the City in writing.

D. Upon Landlord's request, Tenant immediately shall remove any signage that Tenant has placed or permitted to be placed in, on or about the Premises or Building contrary to the terms of this Section 32. If Tenant fails to do so, Landlord may enter upon the Premises and remove the same at Tenant's expense. Tenant, at its sole expense, shall maintain and replace all approved signage and shall repair, at its sole expense, any damage to the Building caused by the erection, maintenance or removal of any signage, including any damage caused by Tenant's removal of its signage at the expiration or earlier termination of the Lease. Tenant also shall comply with such regulations as may from time to time be promulgated by Landlord governing the signage of all tenants in James Kenney Park.

**33. NO PARTNERSHIP**

It is expressly understood and agreed that Landlord shall not be deemed in any way or for any purpose a partner, agent or principal of Tenant, in the conduct of its business or otherwise, or a joint venture or member of a joint enterprise with Tenant.

**34. NO WAIVER**

Landlord's waiver of Tenant's breach of any covenant or condition shall not be deemed a waiver of any subsequent breach of the same or any other covenant or condition, nor shall any custom or practice which may develop between the parties in the administration of the terms hereof be construed to waive or to lessen the right of Landlord to insist upon Tenant's performance in strict accordance with the terms of this Lease.

**35. NOTICES**

All notices, demands, consents or approvals which may or are required to be given by either party shall be in writing and shall be deemed to have been received when delivered personally or on the earlier of the date of actual receipt or two (2) business days following deposit in the United States mail, registered or certified, postage prepaid, addressed as follows:

**To Tenant:** BAHIA  
1718 8<sup>th</sup> Street  
Berkeley, CA 94710

**To Landlord:** Parks, Recreation & Waterfront  
City of Berkeley  
2180 Milvia Street, 3<sup>rd</sup> Floor  
Berkeley, CA 94704

**With copy to:** City Manager  
City of Berkeley  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704

Notices to Landlord regarding Hazardous Substances required by Section 21 hereof shall be sent both to the above addresses and to such other place as either party may from time to time designate in a written notice to the other party, or in the case of Tenant, delivered to the Premises.

Tenant will appoint an agent to receive the service of all proceedings, demands, and notices hereunder the person in charge of or occupying the Premises at the time. If no person shall be in charge of or occupying the same, then such service may be made by attaching the same on the main entrance of the Premises

**36. COMPLETE AGREEMENT**

This Lease is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding involving this Lease. The language and all parts of this Lease shall be construed as a whole and in accordance with its fair meaning and not restricted for or against either party. This Lease may be modified or amended only by a written instrument signed by both parties.

**37. REQUESTS FOR CONSENT; WAIVER OF CLAIM**

Tenant hereby waives any claim for damages against Landlord that it may have based upon any assertion that Landlord unreasonably has withheld or has delayed any consent or approval, and Tenant's sole remedy shall be an action for specific performance of such provision, injunction or declaratory judgment. In the event of a final determination in Tenant's favor, the requested consent or approval shall be deemed to have been granted.

**38. INTERPRETATION**

The use of masculine, feminine, or neuter genders shall include the other genders, and the singular shall include the plural and vice-versa. Headings are intended for convenience only and shall not be referred to in construing any provision. If there is more than one party as Tenant, the obligations imposed upon Tenant shall be joint and several. If any provision(s) of this Lease shall be found, to any extent, to be invalid or unenforceable the remainder of the Lease shall not be affected thereby.

**39. SUCCESSORS AND ASSIGNS**

This Lease shall be binding upon and shall inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and shall inure to the benefit of Tenant, its heirs, successors and (to the extent assignment may be permitted hereunder) assigns.

**40. AUTHORITY**

If Tenant is a corporation or partnership, each of the persons executing this Lease on behalf of Tenant covenants and warrants that Tenant is a duly authorized and existing corporation or partnership, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease and that each person signing on behalf of Tenant is authorized to do so.

**41. UNAVOIDABLE DELAYS**

A. In the event that Tenant or Landlord is delayed, directly or indirectly, from the performance of any act or thing required to be done or performed under the terms or conditions hereof by acts of the other party to this Lease, acts of God, fire, floods, inclement weather, unavoidable governmental action, strikes or labor difficulties of any and all kinds, shortages of or delay in the delivery of materials, acts of war, riot and civil commotion, or by any other cause beyond the reasonable control of Tenant or Landlord, as the case may be, such failure shall not be deemed to be a breach of this Lease or a violation of any such covenants or conditions and the time within which Tenant or Landlord must perform any such act shall be extended by a period of time equal to the period of delay arising from any of such causes.

B. Notwithstanding any provision of this Section 41 or any other provision of this Lease to the contrary, it is understood and agreed that there shall be no abatement of, or delay in the commencement of, or payment of any sum due to Landlord under this Lease.

**42. TIME OF THE ESSENCE**

Time is of the essence of each and every covenant and condition of this Lease.

**43. BROKERAGE**

Landlord and Tenant hereby represent and warrant, each to the other, that they have not disclosed this Lease or the subject matter hereof to, and have not otherwise dealt with, any broker, finder or any other person, firm, corporation or other legal entity so as to create any legal right or claim of whatsoever kind or nature for a commission or similar fee or compensation with respect to the Premises or this Lease. Landlord and Tenant hereby indemnify each other against, and agree to hold each other harmless from, any liability or claim (and all expenses, including attorneys' fees, incurred in defending any such claim or in enforcing this indemnity) for a real estate brokerage commission or similar fee or compensation arising out of or in any way connected with any claimed dealings with the indemnitor and relating to the Premises or this Lease.

**44. CITY NON-DISCRIMINATION ORDINANCE**

A. Tenant hereby agrees to comply with the provisions of the Berkeley Municipal Code ("B.M.C."), including without limitation Chapter 13.26, as amended from time to time. In the performance of its obligations under this Lease, Tenant agrees as follows:

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

2. Tenant shall permit Landlord access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the reasonable opinion of Landlord, are necessary to monitor compliance

with this non-discrimination provision. In addition, Tenant shall fill out, in a timely fashion, forms supplied by Landlord to monitor this non-discrimination provision.

B. Tenant understands that this Lease is governed by City Council Resolution No. 58,664 – N.S. This resolution, as may be amended from time, stipulates that Tenant's membership policies may be reviewed by the City for compliance therewith at any time, and that unsatisfactory membership policies may result in non-renewal of this Lease or termination by the City.

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

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

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

**46. CONFLICT OF INTEREST PROHIBITED**

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

B. In accordance with California Government Code Section 1090 and the Political Reform Act, (Government Code Section 87100 *et seq.*) no person who is a director, officer, partner, trustee, employee or consultant of Tenant, or immediate family member of any of the preceding, shall make or participate in a decision made by Landlord or any of its boards, commissions or committees, if it is 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 Tenant, except to the extent permitted by 2 California Code of Regulations, Section 18700(c)(2).



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

**47. NUCLEAR FREE BERKELEY**

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

**48. OPPRESSIVE STATES**

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

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

B. For purposes of this Lease, the Tibet Autonomous Region and the provinces of Adu, Kham, and U-Tsang shall be deemed oppressive states.

C. Tenant's failure to comply with this Section shall constitute a default of this Lease and Landlord may terminate this Lease pursuant to Section 19. In the event that Landlord terminates this Lease due to a default under this provision, Landlord may deem Tenant a non-responsible bidder for five (5) years from the date this Lease is terminated.

**49. BERKELEY LIVING WAGE ORDINANCE (LWO)**

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

B. Tenant shall be required to maintain all reasonable records and documents that would establish whether Tenant is subject to Berkeley's Living Wage Ordinance. If Tenant is

subject to the LWO, as defined therein, Tenant shall be further required to maintain monthly records of those employees located on the leased premises. These records shall include the total number of hours worked, the number of hours spent providing service on the leased Premises, the hourly rate paid, and the amount paid by Tenant for health benefits, if any, for each of its employees providing services under the lease. The records described in this Section shall be made available upon the City's request. The failure to produce these records upon demand shall be considered a default, subject to the provisions contained in Section 19 herein.

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

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

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 19.

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

#### **50. BERKELEY EQUAL BENEFITS ORDINANCE (EBO)**

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

B. If Tenant is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Tenant agrees to supply the City with any records the City deems necessary to determine compliance with this provision. Failure to do so shall be a considered a default, subject to the provisions of Section 19 of this lease.

C. If Tenant fails to comply with the requirements of this Section, City shall have the

rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Tenant's failure to comply with this Section shall constitute default of the lease, upon which City may terminate this lease pursuant to Section 20.

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

**51. BERKELEY SANCTUARY CITY ORDINANCE**

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

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

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

**52. AUDIT**

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

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

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

**54. SURVIVAL**

The provisions of this Lease and obligations of Tenant, that by their nature, are to be performed after or are to survive termination of this Lease shall survive such termination.

**55. EXHIBITS**

Exhibits A and B, and any other exhibit, addendum or schedule referenced in this Lease are made a part hereof by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Lease at Berkeley, California effective as of the Effective Date.

LANDLORD:

CITY OF BERKELEY  
A municipal corporation

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

Approved as to form:

Registered by:

\_\_\_\_\_  
City Attorney Date City Auditor Date

Attest:

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

TENANT:  
BAY AREA HISPANO INSTITUTE FOR ADVANCEMENT (BAHIA) INC.  
A non-profit organization

By: \_\_\_\_\_  
Martha Melgoza, Executive Director Date

**TENANT INFORMATION**

Tax Identification No.  
Incorporated: Yes No  
Certified Woman Business Enterprise: Yes \_\_\_ No X  
Certified Minority Business Enterprise: Yes \_\_\_ No X  
**Certified Disadvantaged Business Enterprise: Yes No**  
**City Business License No. \_\_\_\_\_, or Exempt pursuant to B.M.C. Section \_\_\_\_\_**

Exhibit "A"

- Leased Premises:
- Lease building
  - Leased exterior - outdoor fenced play area
  - non-exclusive use, common area shared with James Kenney Park



## Exhibit "B"

## Schedule of Improvements and Maintenance 2023-2038

## BAHIA Inc.

| Date            | What/Location                   | Description                                                                                    | Estimated Cost    |
|-----------------|---------------------------------|------------------------------------------------------------------------------------------------|-------------------|
| 2023            | Fence around exterior play area | Repair fence fabric                                                                            | \$ 10,000         |
| 2024            | Gate entry                      | Adding gate entry at the northeast side of the Premises, between the Premises and the sidewalk | \$ 25,000         |
| 2028            | Exterior building               | Repaint by year 5                                                                              | \$ 20,000         |
| 2028            | Reading room stairs/room        | ADA improvements to amphitheater/reading room                                                  | \$ 22,000         |
| 2028            | Electrical                      | Comprehensive inspection with an electrician and make repairs as recommended.                  | \$ 10,000         |
| 2038            | Exterior building               | Repaint by year 15                                                                             | \$ 20,000         |
| 2038            | Electrical                      | Comprehensive inspection with an electrician and make repairs as recommended.                  | \$ 10,000         |
| by 2038         | Stairs to loft area             | ADA access to loft area                                                                        | \$ 32,000         |
| by 2038         | Roof                            | Replace roof                                                                                   | \$ 70,000         |
| <b>TOTAL \$</b> |                                 |                                                                                                | <b>219,000.00</b> |

## Preventative Maintenance

| Frequency     | What/Location               | Description                                                                                                           |
|---------------|-----------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Quarterly     | Stairs & Railings           | Make sure that they are not loose                                                                                     |
| Yearly        | General Building & Interior | Test smoke and carbon monoxide detectors and change batteries                                                         |
| Monthly       | Interior Lights             | Check condition and look for any that might be broken, replaced bulbs as needed                                       |
| Monthly       | General Building & Interior | Conduct routine pest inspections and treatments                                                                       |
| Monthly       | Exterior Windows            | Check condition and look for any that might be broken                                                                 |
| Yearly (Fall) | Roof & Gutters              | Clean debris from roof and gutters. Check condition of roof                                                           |
| Ongoing       | Painting                    | Check for condition of exterior/interior paint or siding                                                              |
| Ongoing       | Painting                    | Graffiti abatement as needed                                                                                          |
| Yearly        | Electrical                  | Look for loose wires or fixtures. You will want to schedule a more comprehensive inspection with an electrician.      |
| Monthly       | Plumbing                    | Check for leaks, signs of water damage and loose fixtures. You will want a more complete inspection with a plumber.   |
| Yearly        | Heating & Cooling Systems   | Check gas water heater and gas furnace. Change furnace filter. Clear cobwebs and dust from furnace prior to starting. |
| Monthly       | Heating & Cooling Systems   | Check sump pump                                                                                                       |
| Ongoing       | Exterior Landscape          | Remove weeds, bamboo, or any other invasive plants growing beyond fenced area                                         |

**Exhibit "B"**

**Schedule of Improvements and Maintenance 2023-2038**

**BAHIA Inc.**

| <b>Date</b>     | <b>What/Location</b>            | <b>Description</b>                                                                             | <b>Estimated Cost</b> |
|-----------------|---------------------------------|------------------------------------------------------------------------------------------------|-----------------------|
| 2023            | Fence around exterior play area | Repair fence fabric                                                                            | \$ 10,000             |
| 2024            | Gate entry                      | Adding gate entry at the northeast side of the Premises, between the Premises and the sidewalk | \$ 25,000             |
| 2028            | Exterior building               | Repaint by year 5                                                                              | \$ 20,000             |
| 2028            | Reading room stairs/room        | ADA improvements to amphitheater/reading room                                                  | \$ 22,000             |
| 2028            | Electrical                      | Comprehensive inspection with an electrician and make repairs as recommended.                  | \$ 10,000             |
| 2038            | Exterior building               | Repaint by year 15                                                                             | \$ 20,000             |
| 2038            | Electrical                      | Comprehensive inspection with an electrician and make repairs as recommended.                  | \$ 10,000             |
| by 2038         | Stairs to loft area             | ADA access to loft area                                                                        | \$ 32,000             |
| by 2038         | Roof                            | Replace roof                                                                                   | \$ 70,000             |
| <b>TOTAL \$</b> |                                 |                                                                                                | <b>219,000.00</b>     |

**Preventative Maintenance**

| <b>Frequency</b> | <b>What/Location</b>        | <b>Description</b>                                                                                                    |
|------------------|-----------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Quarterly        | Stairs & Railings           | Make sure that they are not loose                                                                                     |
| Yearly           | General Building & Interior | Test smoke and carbon monoxide detectors and change batteries                                                         |
| Monthly          | Interior Lights             | Check condition and look for any that might be broken, replaced bulbs as needed                                       |
| Monthly          | General Building & Interior | Conduct routine pest inspections and treatments                                                                       |
| Monthly          | Exterior Windows            | Check condition and look for any that might be broken                                                                 |
| Yearly (Fall)    | Roof & Gutters              | Clean debris from roof and gutters. Check condition of roof                                                           |
| Ongoing          | Painting                    | Check for condition of exterior/interior paint or siding                                                              |
| Ongoing          | Painting                    | Graffiti abatement as needed                                                                                          |
| Yearly           | Electrical                  | Look for loose wires or fixtures. You will want to schedule a more comprehensive inspection with an electrician.      |
| Monthly          | Plumbing                    | Check for leaks, signs of water damage and loose fixtures. You will want a more complete inspection with a plumber.   |
| Yearly           | Heating & Cooling Systems   | Check gas water heater and gas furnace. Change furnace filter. Clear cobwebs and dust from furnace prior to starting. |
| Monthly          | Heating & Cooling Systems   | Check sump pump                                                                                                       |
| Ongoing          | Exterior Landscape          | Remove weeds, bamboo, or any other invasive plants growing beyond fenced area                                         |





Office of the City Attorney

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Farimah Faiz Brown, City Attorney  
Subject: Resolution Reviewing and Ratifying the Proclamation of Local  
Emergency Due to the Spread of a Severe Acute Respiratory Illness  
Caused by a Novel (New) Coronavirus (COVID-19)

RECOMMENDATION

Adopt a Resolution reviewing the need for continuing the local emergency due to the spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19) and ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, September 20, 2022, November 3, 2022, and December 13, 2022.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. The Proclamation of Local Emergency empowers the Director of Emergency Services to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such local emergency. Pursuant to Government Code section 8630(b) and Berkeley Municipal Code section

2.88.040.A.1, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

Pursuant to Government Code section 8630(c), the City Council must review the need for continuing the local emergency at least once every sixty (60) days. The Council last reviewed and ratified the Proclamation of Local Emergency on May 10, 2022. The Council therefore must review the continuing need for the local emergency by July 9, 2022.

This item requests that the Council review the continued need for the local emergency and again ratify the Proclamation of Local Emergency issued on March 3, 2020, initially ratified by the Council on March 10, 2020, and subsequently reviewed and ratified by the Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, September 20, 2022, and November 3, 2022. If reviewed and ratified on January 31, 2023, the Council will need to again review and ratify the proclamation by April 1, 2023 in order to continue the local emergency.

If at any time the Council determines that the need for continuing the local emergency has ended, state law directs the Council to terminate the local emergency at the earliest possible date that conditions warrant. (Cal. Gov. Code section 8630(d).)

#### BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,955 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley.

Since April 2021, the highly transmissible SARS-CoV-2 B.1.617.2 ("Delta") variant has been detected in the City of Berkeley and is contributing to substantial levels of community transmission.

The City Council has subsequently reviewed and ratified the Proclamation of Local Emergency on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022,

March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, September 20, 2022, November 3, 2022, and December 13, 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

The Resolution would enable the Director of Emergency Services to continue to efficiently allocate resources due to the ongoing and imminent threat to public safety.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Dee Williams-Ridley, City Manager, City Manager's Office (510) 981-7000

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998

Attachments:

1: Resolution

RESOLUTION NO. –N.S.

RESOLUTION REVIEWING AND RATIFYING THE PROCLAMATION OF LOCAL EMERGENCY

WHEREAS, the Emergency Services Act, Government Code sections 8558(c) and 8630 authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a city exist; and

WHEREAS, pursuant to Government Code section 8630, such an emergency may be proclaimed by the governing body or by an official designated by ordinance adopted by the governing body; and

WHEREAS, Berkeley Municipal Code section 2.88.040 provides that the City Manager, serving as the Director of Emergency Services, may request that the City Council proclaim the existence of a local emergency; and

WHEREAS, under provision of local law, if the City Council cannot be convened and, in the judgment of the Director of Emergency Services, the circumstances warrant it, a proclamation of local emergency may be issued which must be ratified or nullified by the City Council within seven days of issuance; and

WHEREAS, in accordance with authority granted under the above provisions of state and local law, the Director of Emergency Services beginning on March 3, 2020 did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (“COVID-19”), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, Government Code section 8630(c) requires that the City Council review the need for continuing the local emergency at least once every sixty (60) days; and

WHEREAS, the City Council subsequently reviewed the need for continuing the local emergency and again ratified the Proclamation of Local Emergency on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, September 20, 2022, November 3, 2022, and December 13, 2022; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 13,000 confirmed cases of COVID-19 and at least

61 deaths in the City of Berkeley, thereby warranting and necessitating the continuation of the local emergency; and

WHEREAS, the City Council will need to again review the need for continuing the local emergency and ratify the Proclamation of Local Emergency by April 1, 2023;

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, on July 16, 2021, in light of the apparent increased transmissibility of the Delta variant, the City of Berkeley recommended that all individuals including fully vaccinated persons wear masks in public indoor settings; and

WHEREAS, on July 26, 2021, the California State Health Officer issued an order requiring vaccination or routine testing of all employees working in high-risk health care and congregate settings, in light of the fact that current requirements of staff in health care settings, such as universal mask requirements for all staff are not proving sufficient to prevent transmission of the more transmissible Delta variant; and

WHEREAS, on July 27, 2021, the CDC updated its guidance for fully vaccinated persons to reflect new evidence regarding the Delta variant, noting that “[i]nfections in fully vaccinated people (breakthrough infections) happen in only a small proportion of people who are fully vaccinated, even with the Delta variant”; and

WHEREAS, on August 2, 2021, the Health Officer for the City of Berkeley issued an order requiring all individuals to wear masks in all indoor public settings; and

WHEREAS, on August 5, 2021, the California State Health Officer issued an order requiring that workers in healthcare settings be fully vaccinated by September 30, 2021; and

WHEREAS, on August 11, 2021, the City announced its intention to implement a vaccination policy for City employees to protect the health and safety of the City of Berkeley’s employees and community members from the imminent and substantial threat to public health and safety posed by the Delta variant; and

WHEREAS, on September 14, 2021, given the increased and unforeseen risk posed by the Delta variant, as compared to earlier variants of the COVID-19 virus previously present in the City of Berkeley, the City Council found that a Citywide vaccination policy protects public health and reduces the risk of substantial harm to City staff and community members that could result from workplace outbreaks caused by the Delta variant; and

WHEREAS, on September 14, 2021, given the urgency posed by the highly transmissible nature of the Delta variant, the City Council recognized the variant’s existence as creating

an emergency of grave character and as warranting immediate adoption of a Citywide vaccination policy.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that it is hereby proclaimed and ordered that the Proclamation of Local Emergency, issued by the Director of Emergency Services on March 3, 2020, initially ratified by the City Council on March 10, 2020, and subsequently reviewed and ratified by the City Council on April 21, 2020, June 16, 2020, July 28, 2020, September 22, 2020, November 17, 2020, December 15, 2020, February 9, 2021, March 30, 2021, May 25, 2021, July 20, 2021, September 14, 2021, December 14, 2021, February 8, 2022, March 22, 2022, May 10, 2022, June 28, 2022, July 26, 2022, September 20, 2022, November 3, 2022, and December 13, 2022, has been reviewed and is hereby again ratified and confirmed.

BE IT FURTHER RESOLVED that during the existence of this local emergency the powers, functions, and duties of the emergency organization of this City shall be those prescribed by state law, and the Charter, ordinances, resolutions and approved plans of the City of Berkeley.



Office of the City Attorney

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
Madame City Manager

From: Farimah Faiz Brown, City Attorney

Subject: Resolution Making Required Findings Pursuant to the Government Code and Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RECOMMENDATION

Adopt a resolution making the required findings pursuant to Government Code Section 54953(e)(3) and determining that as a result of the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference, initially ratified by the City Council on September 28, 2021, and subsequently reviewed and ratified on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, October 11, 2022, November 3, 2022, November 29, 2022, December 13, 2022, and January 10, 2023.

FISCAL IMPACT OF RECOMMENDATION

To be determined.

CURRENT SITUATION AND ITS EFFECTS

The City Council made the initial findings required under the Government Code on September 28, 2021. The Council must make the findings every thirty days in order to continue to meet exclusively through video conference or teleconference.

Pursuant to California Government Code section 8630 and Berkeley Municipal Code Chapter 2.88.040, on March 3, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (COVID-19), including a confirmed case in the City of Berkeley. As a result of multiple confirmed and presumed cases in Alameda County, the County has declared a local health emergency. On March 4, 2020, Governor Gavin Newsom issued a Proclamation

of a State of Emergency due to the spread of COVID-19. On March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20, which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) related to the holding of teleconferenced meetings by City legislative bodies. Among other things, Executive Order N-29-20 suspended requirements that each location from which an official accesses a teleconferenced meeting be accessible to the public. These changes were necessary to allow teleconferencing to be used as a tool for ensuring social distancing. City legislative bodies have held public meetings via videoconference and teleconference pursuant to these provisions since March 2020. These provisions of Executive Order N-29-20 will expire on September 30, 2021.

COVID-19 continues to pose a serious threat to public health and safety. There are now over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley. Additionally, the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease.

As a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination. Holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time

Assembly Bill 361 (Rivas), signed into law by Governor Newsom on September 16, 2021, amended a portion of the Brown Act (Government Code Section 54953) to authorize the City Council, during the state of emergency, to determine that, due to the spread of COVID-19, holding in-person public meetings would present an imminent risk to the health or safety of attendees, and therefore City legislative bodies must continue to meet via videoconference and teleconference. Assembly Bill 361 requires that the City Council must review and ratify such a determination every thirty (30) days. Therefore, if the Council passes this resolution on January 31, 2023, the Council will need to review and ratify the resolution by March 2, 2023.

This item requests that the Council review the circumstances of the continued state of emergency posed by the spread of COVID-19, and find that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination. This item further requests that the Council determine that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference



and teleconference, and that City legislative bodies shall continue to comply with all provisions of the Brown Act, as amended by SB 361.

#### BACKGROUND

On March 1, 2020, Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency.

On March 3, 2020, the City's Director of Emergency Services proclaimed a local emergency due to the spread of COVID-19, including a confirmed case in the City of Berkeley and multiple confirmed and presumed cases in Alameda County.

On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the spread of COVID-19.

On March 10, 2020, the City Council ratified the Proclamation of Local Emergency. Since that date, there have been over 4,700 confirmed cases of COVID-19 and at least 57 deaths in the City of Berkeley.

On March 17, 2020, Governor Newsom signed Executive Order N-29-20 which suspended certain portions of the Ralph M. Brown Act (Cal. Gov. Code § 54950 et seq.) to allow teleconferencing of public meetings to be used as a tool for ensuring social distancing. As a result, City legislative bodies have held public meetings via teleconference throughout the pandemic. The provisions of Executive Order N-29-20 allowing teleconferencing to be used as a tool for social distancing will expire on September 30, 2021.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

#### RATIONALE FOR RECOMMENDATION

The Resolution would enable the City Council and its committees, and City boards and commissions to continue to hold public meetings via videoconference and teleconference in order to continue to socially distance and limit the spread of COVID-19.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Farimah Brown, City Attorney, City Attorney's Office (510) 981-6998  
Mark Numainville, City Clerk, (510) 981-6908

Attachments:1: Resolution Directing City Legislative Bodies to Continue to Meet Via Videoconference and Teleconference

RESOLUTION NO. –N.S.

RESOLUTION MAKING THE REQUIRED FINDINGS PURSUANT TO GOVERNMENT CODE SECTION 54953(E)(3) AND DIRECTING CITY LEGISLATIVE BODIES TO CONTINUE TO MEET VIA VIDEOCONFERENCE AND TELECONFERENCE

WHEREAS, in accordance with Berkeley Municipal Code section 2.88.040 and sections 8558(c) and 8630 of the Government Code, which authorize the proclamation of a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a City exist, the City Manager, serving as the Director of Emergency Services, beginning on March 3, 2020, did proclaim the existence of a local emergency caused by epidemic in the form of the global spread of a severe acute respiratory illness caused by a novel (new) coronavirus (“COVID-19”), including confirmed cases in California and the San Francisco Bay Area, and presumed cases in Alameda County prompting the County to declare a local health emergency; and

WHEREAS, on March 10, 2020, the City Council ratified the Proclamation of Local Emergency with the passage of Resolution No. 69-312; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency pursuant to the California Emergency Services Act, in particular, Government Code section 8625; and

WHEREAS, the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020 continues to be in effect; and

WHEREAS, on September 16, 2021, Governor Newsom signed into law AB 361, which authorizes the City Council to determine that, due to the continued threat to public health and safety posed by the spread of COVID-19, City legislative bodies shall continue to meet via videoconference and teleconference; and

WHEREAS, the City Council does find that the aforesaid conditions of extreme peril continue to exist, and now include over 4,700 confirmed cases of COVID-19 and at least 55 deaths in the City of Berkeley; and

WHEREAS, the City Council recognizes that the SARS-CoV-2 B.1.617.2 (“Delta”) variant of COVID-19 that is currently circulating nationally and within the City is contributing to a substantial increase in transmissibility and more severe disease; and

WHEREAS, as a result of the continued threat to public health posed by the spread of COVID-19, state and local officials continue to impose or recommend measures to promote social distancing, mask wearing and vaccination; and

WHEREAS, holding meetings of City legislative bodies in person would present imminent risks to the health and safety of the public and members of legislative bodies, and therefore public meetings cannot safely be held in person at this time; and

WHEREAS, the City Council made the initial findings required by the Government Code on September 28, 2021; and

WHEREAS, the City Council made subsequent findings required by the Government Code on October 26, 2021, November 16, 2021, December 14, 2021, January 10, 2022, February 8, 2022, March 8, 2022, March 22, 2022, April 12, 2022, May 10, 2022, May 31, 2022, June 28, 2022, July 26, 2022, August 23, 2022, September 20, 2022, October 11, 2022, November 3, 2022, November 29, 2022, December 13, 2022, January 10, 2023; and

WHEREAS, the City Council will need to again review the need for the continuing necessity of holding City legislative body meetings via videoconference and teleconference by March 2, 2023.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that, pursuant to Government Code section 54953, the City Council has reviewed the circumstances of the continued state of emergency posed by the spread of COVID-19, and finds that the state of emergency continues to directly impact the ability of the public and members of City legislative bodies to meet safely in person, that holding public meetings of City legislative bodies in person would present imminent risks to the health and safety of attendees, and that state and local officials continue to promote social distancing, mask wearing and vaccination.

BE IT FURTHER RESOLVED that City legislative bodies, including but not limited to the City Council and its committees, and all commissions and boards, shall continue to hold public meetings via videoconference and teleconference.

BE IT FURTHER RESOLVED that all City legislative bodies shall comply with the requirements of Government Code section 54953(e)(2) and all applicable laws, regulations and rules when conducting public meetings pursuant to this resolution.





Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 31, 2023

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is **\$33,541,532**.

| <u>PROJECT</u>                                                      | <u>Fund</u>                     | <u>Source</u>                                                                                 | <u>Amount</u> |
|---------------------------------------------------------------------|---------------------------------|-----------------------------------------------------------------------------------------------|---------------|
| Affordable Housing in Lieu Fee Study                                | 011                             | GF - Discretionary                                                                            | \$150,000     |
| Social Housing Models and Market Analysis                           | 016                             | U1 - Housing                                                                                  | \$150,000     |
| Southside Complete Streets                                          | 011<br>134<br>147<br>305<br>501 | GF – Discretionary<br>Meas BB<br>UC Settlement<br>Capital Grant – Fed<br>Capital Improvements | \$14,500,000  |
| On-Call Geotechnical Consultant Services for FY 24, FY 25 And FY 26 | 611                             | Sanitary Sewer Operation                                                                      | \$1,500,000   |
| On-Call Survey Consultant Services for FY 24, FY 25 And FY 26       | 611                             | Sanitary Sewer Operation                                                                      | \$1,500,000   |

|                                                                      |            |                                                   |                     |
|----------------------------------------------------------------------|------------|---------------------------------------------------|---------------------|
| Fire Station #2 Improvements                                         | 511        | Meas T1 – Infrstr and Fac                         | \$1,091,532         |
| City of Berkeley Parking Data Analytics (Modeling and Visualization) | 631        | Parking Meter Fund                                | \$250,000           |
| Bulk Diesel Fuel Service                                             | 672        | Equipment Maintenance                             | \$6,000,000         |
| On-Call Project and Construction Management Services                 | 511<br>501 | Meas T1 – Infrstr and Fac<br>Capital Improvements | \$8,400,000         |
| <b>Total:</b>                                                        |            |                                                   | <b>\$33,541,532</b> |

CURRENT SITUATION AND ITS EFFECTS

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

BACKGROUND

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Need for the services.

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on January 31, 2023

CONSENT CALENDAR  
January 31, 2023

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 31,2023
  - a. Affordable Housing in Lieu Fee Study
  - b. Social Housing Models and Market Analysis
  - c. Southside Complete Streets
  - d. On-Call Geotechnical Consultant Services for FY 24, FY 25 And FY 26
  - e. On-Call Survey Consultant Services for FY 24, FY 25 And FY 26
  - f. Fire Station #2 Improvements
  - g. City of Berkeley Parking Data Analytics (Modeling and Visualization)
  - h. Bulk Diesel Fuel Service
  - i. On-Call Project and Construction Management Services

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

DATE SUBMITTED: January 31, 2023

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | ESTIMATED COST                                                                                                                                                                                            | BUDGET CODE TO BE CHARGED                                                                                                                                                                                                                                                        | DEPT. / DIVISION              | CONTACT NAME & PHONE           |
|--------------------|-------------------------------------------------|----------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--------------------------------|
| 23-11571-C         | Affordable Housing In Lieu Fee Study            | 14-Feb-23            | 28-Mar-23                | Economic Feasibility Analysis for an Affordable Housing In Lieu Fee                                                                                                                                                                                                                                                                                                                                                                                                                   | Up to \$150,000                                                                                                                                                                                           | 011-53-584-622-0000-000-441-612990-                                                                                                                                                                                                                                              | HHCS/HCS                      | Mike Uberti, 981-5114          |
| 23-11580-C         | Social Housing Models and Market Analysis       | 2/14/2023            | 3/28/2023                | Policy Research and Market Analysis of Social Housing Models                                                                                                                                                                                                                                                                                                                                                                                                                          | Up to \$150,000                                                                                                                                                                                           | 016-51-504-533-0000-000-444-612990-                                                                                                                                                                                                                                              | HHCS/HCS                      | Anna Cash, 981-5403            |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>\$300,000</b>                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                  |                               |                                |
| 23-11572-C         | Southside Complete Streets                      | 3/1/2023             | 4/15/2023                | The Contractor will construct Class IV cycletracks along 1 mile of Bancroft Way (Milvia St. to Piedmont Ave.), ¼ mile of Fulton Street (Bancroft Way to Dwight Way), and ¼ mile of Dana Street (Bancroft Way to Dwight Way). Work also includes dedicated transit lanes on Bancroft and Dana, installation of new roadway pavement, curb ramps, traffic signal improvements, signing and striping improvements, and island medians along Bancroft Way, Fulton Street and Dana Street. | \$14,500,000 (includes 10% construction contingency)<br><br>\$1,000,000 City Council Approved 12.13.22<br><br>\$150,538<br><br>\$2,063,732 Includes FY24 UC Funding<br><br>\$7,335,000<br><br>\$3,950,730 | 011-54-622-668-0000-000-431-665110- (PWTRCS2001)<br><br>134-54-622-668-0000-000-431-665110- (PWTRCS2001)<br><br>147-54-622-668-0000-000-431-665110- (PWTRCS2001)<br><br>305-54-622-668-0000-000-431-665110- (PWTRCS2001)<br><br>501-54-623-673-3012-000-431-665110- (PWTRCS2001) | Public Works - Transportation | Public Works - Transportationq |



DATE SUBMITTED: January 31, 2023

| SPECIFICATION NO. | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED                      | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                                                                                            | ESTIMATED COST                                                  | BUDGET CODE TO BE CHARGED                                                                                                        | DEPT. / DIVISION            | CONTACT NAME & PHONE     |
|-------------------|----------------------------------------------------------------------|----------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------------|
| 23-11573-C        | On-Call Geotechnical Consultant Services for FY 24, FY 25 and FY 26  | 3/6/2023             | 4/4/2023                 | "FY 2024: \$500,000<br>FY 2025: \$500,000<br>FY 2026: \$500,000<br>"                                                                                                                                                                                                                                    | "FY 2024: \$500,000<br>FY 2025: \$500,000<br>FY 2026: \$500,000 | "Funding is project based and subject to available funding<br>Initial funding will be in 611-54-623-676-0000-000-472-612310<br>" | Public Works - Engineering  | Adadu Yemane<br>981-6413 |
| 23-11574-C        | On-Call Survey Consultant Services for FY 24, FY 25 and FY 26        | 3/6/2023             | 4/4/2023                 | Provide On-Call survey services to aid in the design and construction of the City's Capital Improvement Projects                                                                                                                                                                                        | "FY 2024: \$500,000<br>FY 2025: \$500,000<br>FY 2026: \$500,000 | "Funding is project based and subject to available funding<br>Initial funding will be in 611-54-623-676-0000-000-472-612310<br>" | Public Works - Engineering  | Adadu Yemane<br>981-6413 |
| 23-11575-C        | Fire Station #2 Improvements                                         | 6/16/23              | 7/13/2023                | HVAC, Electrical, and Interior Improvements                                                                                                                                                                                                                                                             | \$1,091,532.00                                                  | 511-54-623-677-0000-000-444-662110-PWT1CB2204-511-T1-P2-CONSTRUCT-                                                               | PW/Engineering              | Elmar Kapfer 981-6435    |
| 23-11578-C        | City of Berkeley Parking Data Analytics (Modeling and Visualization) | 2/1/2023             | 3/25/2023                | City requests proposals from qualified contractors to collect, analyze, model/predict, and visualize parking occupancy data at on-street meters and off-street parking garages to enable City staff to make well-informed parking price and/or time limit adjustments in a timely and efficient manner. | \$225,000                                                       | "631-54-622-665-0000-000-472-612990-<br>FY 24: \$75k<br>FY 25: \$75k<br>FY 26: \$75k "                                           | Public Works/Transportation | Gordon Hansen, 981-7064  |

DATE SUBMITTED: January 31, 2023

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED      | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                                                                                                                                                                          | ESTIMATED COST                                                                                   | BUDGET CODE TO BE CHARGED                                                                                                                                                                 | DEPT. / DIVISION                | CONTACT NAME & PHONE         |
|--------------------|------------------------------------------------------|----------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|------------------------------|
| 23-11579-C         | Bulk diesel fuel service                             | 2/1/2023             | 2/23/2023                | "Bulk fuel services for City's fleet vehicles for a 3-year term with an option to extend for an additional 3 years and remote monitoring of fuel levels in above ground tanks.<br><br>Looking for multiple providers. RFQ preferred." | \$2,000,000 per year for a total of \$6,000,000                                                  | 672-54-626-722-0000-000-473-642130-                                                                                                                                                       | Public Works / Equipment Maint. | Greg Ellington<br>981-6469   |
| 23-11581-C         | On-Call Project and Construction Management Services | 2/7/2023             | 3/14/2023                | Project management and construction management services for various capital improvement projects at City-owned and maintained facilities (3-year term).                                                                               | "\$8,400,000 Total over three years<br><br>FY23- \$1.0M<br><br>FY24-\$3.0M<br><br>FY25- \$4.4M " | "TBD (on-call contract) funds are built into projects.<br><br>511-52-545-000-0000-000-461-612310-<br><br>511-54-623-677-0000-000-444-612990-<br><br>501-54-623-677-0000-000-444-612990- " | PW/Eng                          | Elmar Kapfer<br><br>981-6435 |
| <b>DEPT. TOTAL</b> |                                                      |                      |                          |                                                                                                                                                                                                                                       | <b>33,241,532</b>                                                                                |                                                                                                                                                                                           |                                 |                              |
| <b>TOTAL</b>       |                                                      |                      |                          |                                                                                                                                                                                                                                       | <b>33541532</b>                                                                                  |                                                                                                                                                                                           |                                 |                              |



Office of the City Manager

CONSENT CALENDAR

January 31, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: David Sprague, Interim Chief, Fire Department

Subject: Grant Application: Funding from California Department of Forestry and Fire Protection (CAL FIRE) Wildfire Prevention Grant to Implement an Incentive Program for Residents of Berkeley's Very High Fire Hazard Severity Zone

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to apply for and accept a grant, and any amendments, from the California Department of Forestry and Fire Protection (CAL FIRE) for up to \$5 Million to implement a vegetation management program for residents of Berkeley's Very High Fire Hazard Severity Zone (VHFHSZ). Grant funds will be used to develop and deliver public education materials explaining the inspection process and the importance of creating defensible space, assist residents in need of financial assistance to remove vegetation to meet state and local codes, enhance the chipper program, and fund a 3rd party administrator to manage applications and contractor pay schedules.

FISCAL IMPACTS OF RECOMMENDATION

There is no requirement for matching funds for this grant. The Fire Department (Department) is applying for the full amount available.

CURRENT SITUATION AND ITS EFFECTS

The Department is preparing to launch an educational campaign targeting residents in the VHFHSZ to increase awareness of the importance of defensible space and the impending Zone 0 state regulations that go in to effect for all new construction January of 2023 and all existing properties in January of 2024. The community will benefit from additional programs, staffing, and resident defensible space assistance programs.

This grant supports the City's Strategic Plan's goals and objectives as follows:

Goal 1: Create a resilient, safe, connected, and prepared City

**3.23** Fire Prevention: Increase fire/life safety capacity and resources to effectively maintain community safety.

Goal 2: Be a customer-focused organization that provides excellent, timely, easily-accessible service and information to the community.

**9.10** Increase and improve communications from the Fire Department

Goal 3: Champion and demonstrate social and racial equity.

No specific objective: however, this program does address the socioeconomic equity of Berkeley's residents.

Program Objectives

In addition to Goals 1-3 listed above, this program provides Berkeley residents with the following expanded services:

- a public education program that will educate residents about defensible space,
- an enhanced chipping program,
- a resident assistance program for vegetation treatment performed from 0-100 ft for those who cannot do the work due to physical or financial hardship,
- a resident assistance program for vegetation treatment performed past 100ft.

BACKGROUND

The science around wildfire prevention is novel and is driving changes to best practices, regulations, and fire codes. The California State Board of Forestry passed legislation that mandates intense vegetation management within a five-foot radius around homes. This will go into effect in January 2023 for new homes and January of 2024 for existing homes. Berkeley residents voted to implement Measure FF in November 2020 to help fund operational changes and improve the community's resistance to wildfire. If awarded, the grant funds, coupled with the existing budget will allow the Department to make significant improvements in the overall defensible space in the VHFHSZ.

ENVIRONMENTAL SUSTAINABILITY

Ensuring Berkeley is complying with state and local wildfire prevention standards will help sustain the local environment and mitigate the potential of fire, mudslides, and other catastrophic impacts associated with the overgrowth of vegetation and loss of habitat post-wildfire.

RATIONALE FOR RECOMMENDATION

The challenges faced in the VHFHSZ present a citywide threat from wildfire that must be aggressively mitigated by a partnership between residents and the City. The education provided to the VHFHSZ residents and the creation of defensible space will help prevent a wildfire that has the potential to impact the entire City of Berkeley and adjacent communities.

ALTERNATIVE ACTIONS CONSIDERED

None.

Grant Application: Funding from California Department of Forestry and Fire Protection  
Wildfire Prevention Grant to Implement an Incentive Program for Residents of  
Berkeley's Very High Fire Hazard Severity Zone

CONSENT CALENDAR  
January 31, 2023

CONTACT PERSON

David Sprague, Interim Fire Chief, 510-981-3473

Dan Green, WUI Division Chief, 510-981-3473

Attachments:

1: Resolution

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

GRANT APPLICATION: FUNDING FROM CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CAL FIRE) WILDFIRE PREVENTION GRANT TO IMPLEMENT AN INCENTIVE PROGRAM FOR RESIDENTS OF BERKELEY'S VERY HIGH FIRE HAZARD SEVERITY ZONE

WHEREAS, the science around wildfire prevention is novel and is driving changes to best practices, regulations, and fire codes, and

WHEREAS, the California State Board of Forestry has passed legislation that mandates intense vegetation management within a five-foot radius around homes, and

WHEREAS, these grant funds will be coupled with the existing budget to make significant improvements in defensible space within the VHFHSZ, and

WHEREAS, grant funds may be used to support public education around the inspection program and the need to create defensible space, assist residents in need with the costs of removing vegetation to meet state and local codes, enhance the chipper program, and fund a 3rd party administrator to manage applications and reimbursement.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to apply for and accept a grant, and any amendments, from the California Department of Forestry and Fire Protection (CAL FIRE) for up to \$5,000,000 to implement a vegetation management program for residents of Berkeley's Very High Fire Hazard Severity Zone (VHFHSZ).



Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Lisa Warhuus, Director, Health, Housing and Community Services

Subject: Contract No. 32000202 Amendment: Berkeley Food & Housing Project for Rental Subsidy for the Russell Street Residence

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 32000202 with Berkeley Food & Housing Project (BFHP) to provide rental subsidies for the Russell Street Residence through June 30, 2023 in an amount not to exceed \$3,400,640. This will extend the existing contract by one year and add \$576,616 in funding.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the scope of work in the amount of \$576,616 will be provided from the Mental Health Services Act (MHSA) Community Services & Supports funding category, Fund 315. Funding is available in the Fiscal Year 2023 (FY 2023) budget.

CURRENT SITUATION AND ITS EFFECTS

Russell Street Residence (RSR) is a board and care facility that provides supportive housing for high need mental health clients. A daily subsidy is needed to cover the costs of operating the program. RSR provides up to 17 beds per night for some of the most vulnerable members of our community. The Department of Health, Housing, and Community Services' Mental Health Division (HHCS/MHD) has administered a contract with BFHP for housing and services at this site since December 2019, and recommends that services continue through this fiscal year.

BACKGROUND

The City initially contracted with BFHP to provide these services in December of 2019 and has extended and increased it three times since then. BFHP has done a satisfactory job administering this program, and these additional funds will help ensure that they can continue the program for another year.

Council previously approved funding for RSR activities in its adoption of the MHSA Three Year Program and Expenditure Plans (Three Year Plans) and Annual Updates on

July 27, 2021 via Resolution No. 69,999-N.S. Funding for these services and supports is included in the FY 2023 Budget.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

Operating costs for RSR increased during Fiscal Year 2022. This amendment will allow HHCS/MHD to reimburse BFHP for costs incurred in FY2022, and to subsidize operating costs for FY2023. The amendment will add one year of funding to the contract, ensuring no break in services and allowing a vital community organization to continue their important work.

ALTERNATIVE ACTIONS CONSIDERED

Staff did not identify an alternative action that would be consistent with the adopted MHSA Three-Year Program and Expenditure Plans.

CONTACT PERSON

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

Attachments:  
1: Resolution



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

CONTRACT NO. 32000202 AMENDMENT: BERKELEY FOOD & HOUSING PROJECT  
FOR ADMINISTRATIVE SERVICES

WHEREAS, City Council approved the MHSA Plan Fiscal Year 2019-2020 Annual Update on July 23, 2019 by Resolution No. 69,033-N.S., which included funding for the programs to be included in the contract here; and

WHEREAS, City Council approved participation in the Homeless Mentally Ill Outreach and Treatment allocation funding on September 13, 2018 by Resolution No. 68,592-N.S.; and

WHEREAS, on December 3, 2019 via Resolution No. 69,192-N.S., City Council approved a contract with Berkeley Food and Housing Project for Flexible Spending Programs and the Russell Street Residence; and

WHEREAS, on May 26, 2020 via Resolution No. 69,404-N.S., City Council approved amending Contract No. 32000202; and

WHEREAS, on July 14, 2020 via Resolution No. 69,492-N.S. City Council approved amending Contract No. 32000202; and

WHEREAS, on January 18, 2022 via Resolution No. 70,180-N.S. City Council approved amending Contract No. 32000202; and

WHEREAS, community input and stakeholder feedback has determined a need for the programs being funded; and

WHEREAS, the Berkeley Food and Housing Project has been a trusted partner in the implementation of a variety of programs in collaboration with the City; and

WHEREAS, funds in the amount of \$576,616 are available in FY2023 in ERMA GL Code 315 (Mental Health Services Act).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an amendment to Contract No. 32000202 with the Berkeley Food and Housing Project for administrative services through June 30, 2023 in an amount not to exceed \$3,400,640. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.





Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Aram Kouyoumdjian, Director of Human Resources  
 Subject: Contract: AppleOne Employment Services for Temporary Staffing Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with AppleOne Employment Services for Temporary Staffing Services, in the amount of \$250,000 for the period of February 1, 2023 through July 31, 2023.

FISCAL IMPACTS OF RECOMMENDATION

One-time funding in the amount of \$250,000 paid for by all departments from various funding sources included in the FY 2023 Adopted Budget as a citywide contract.

CURRENT SITUATION AND ITS EFFECTS

Due to recruitment and retention problems facing the Department and the City, which have an unknown duration, it is critical that the Departments have alternatives in place to ensure work can progress and that there is continuity of operations. The volume of work facing Departments currently lack resource capacity.

BACKGROUND

Departments are in the midst of a number of large projects, assignments or make sufficient promotions that disrupt the completion of work. With vacancies and ongoing placement of employees in open positions, additional immediate staffing is needed to sustain vital services for the City. The salary savings from recent open City positions would fund these temporary staffing services.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

AppleOne has provided outstanding services when the City has had temporary staffing needs. They are responsive and have a great selection of temporary staff available on short notice.

Contract: AppleOne Employment Services

CONSENT CALENDAR  
January 31, 2023

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Jessica Lewis, Assistant Management Analyst, 510-981-6824

Attachments:

1. Resolution

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

CONTRACT: APPLEONE EMPLOYMENT SERVICES FOR TEMPORARY STAFFING SERVICES

WHEREAS, the Human Resources Department conducts recruitments and maintains employment lists of qualified individuals for career and temporary positions; and

WHEREAS, City departments may require additional administrative, clerical, technical, or professional temporary staff to augment its existing resources to deliver services and provide administrative support; and

WHEREAS, if there are no available candidates from existing employment lists, City departments may use a temporary staffing agency to obtain limited-term temporary staff; and

WHEREAS, expenditures for these services will be paid from a variety of funding sources in budgets of individual operating departments when temporary staffing services are required.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a Contract with AppleOne Employment Services in the amount of \$250,000. A record signature copy of said contract and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kevin Fong, Director, Information Technology  
 Subject: Contract No. 32000118 Amendment: Nexgen Asset and Work Order Management Software Maintenance and Professional Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000118 with Nexgen Asset Management to provide additional funding for software maintenance, training and professional services for software enhancements, increasing the amount by \$689,400, for a total not-to-exceed amount of \$1,706,909 through June 30, 2024.

FISCAL IMPACTS OF RECOMMENDATION

Funding for FY 23 and FY24 software maintenance and professional services are available in the Public Works and Parks, Recreation and Waterfront funds as itemized below. Any future expenditures are subject to Council approval of the proposed citywide budget and Annual Appropriations Ordinances.

**Software Maintenance:**

| Funding Source                                                | Budget Code                        | FY 2023          | FY 2024          |
|---------------------------------------------------------------|------------------------------------|------------------|------------------|
| Public Works<br>Department Tech Svcs –<br>Software Maint Fund | 672-54-626-722-0000-000-472-613130 | \$134,400        | \$141,120        |
| Parks Tax, PRW,<br>Software Maintenance                       | 138-52-541-598-0000-000-461-613130 | \$33,600         | \$35,280         |
| <b>Total Software Maintenance</b>                             |                                    | <b>\$168,000</b> | <b>\$176,400</b> |

**Professional Services:**

| Funding Source             | Budget Code                         | FY 2023  | FY 2024  |
|----------------------------|-------------------------------------|----------|----------|
| PW Building<br>Maintenance | 673-54-624-692-0000-000-472-612990- | \$10,000 | \$41,000 |
| PW Building Purchase       | 636-54-624-697-0000-000-472-612990- | \$1,000  | \$4,000  |
| PW Sanitary Sewer          | 611-54-621-654-0000-000-472-612990- | \$11,000 | \$41,000 |

|                                     |                                     |                 |                  |
|-------------------------------------|-------------------------------------|-----------------|------------------|
| PW Clean Storm Water                | 616-54-625-713-0000-000-472-612990- | \$11,000        | \$41,000         |
| PW Zero Waste                       | 601-54-625-714-0000-000-472-612990- | \$11,000        | \$41,000         |
| PW Street Light Assessment District | 142-54-624-694-3018-000-426-612990- | \$11,000        | \$41,000         |
| PW Measure BB (Street & Road)       | 134-54-625-715-0000-000-431-612990- | \$10,000        | \$41,000         |
| Forestry                            | 138-52-542-566-0000-000-461-634110- | \$3,750         | \$3,750          |
| Bldg Maintenance                    | 138-52-542-568-0000-000-461-634110- | \$3,750         | \$3,750          |
| Landscape                           | 138-52-542-567-0000-000-461-634110- | \$7,500         | \$7,500          |
| <b>Total Professional Services</b>  |                                     | <b>\$80,000</b> | <b>\$265,000</b> |

CURRENT SITUATION AND ITS EFFECTS

The departments of Public Works and Parks, Recreation and Waterfront went live with Nexgen, a new CMMS/EAM (Computerized Maintenance Management System and Enterprise Asset Management) system a year ago. This was part of the Citywide FUND\$ Replacement Program. The City seeks additional funding to pay for year 2 and year 3 software maintenance, as well as professional services to implement additional functionalities such as the Contractor Portal and Project modules.

These additions will enable staff to maximize the use of the software and improve the efficiency in servicing our community members. The Nexgen Computer Maintenance Management System & Enterprise Asset Management (CMMS/EAM) System is a Strategic Plan Priority Project, advancing our goal to “Provide state-of-the-art, well maintained infrastructure, amenities, and facilities.”

BACKGROUND

The City’s previous work order and maintenance management systems (FUND\$, Accela, and Verint) were antiquated and inadequate to perform proper maintenance of City assets and retrieve information needed to comply with mandated reporting requirements and internal performance measures. These systems were not well integrated, lacked digital field communications, and could not provide effective fiscal management and data analytics typically offered by a modern CMMS/EAM (Computerized Maintenance Management System/Enterprise Asset Management) system. The situation had led to inefficiencies in business workflow, delayed community response times, and limited reporting and analysis required to manage City assets effectively.

On October 23, 2018, the City issued Request for Proposals (RFP) #19-11259-C for an improved Computerized Maintenance Management System & Enterprise Asset Management (CMMS/EAM) System based upon business analysis completed by the Departments of Information Technology, Parks, Recreation and Waterfront, and Public Works in partnership with ThirdWave Corporation.



The City received seven (7) responses to the CMMS/EAM System RFP by the December 18, 2018 deadline. A committee of 12+ staff from the Parks, Recreation & Waterfront, Public Works, and Information Technology departments conducted a comprehensive evaluation process that included proposal reviews, vendor demonstrations, and reference checks. Staff selected NEXGEN Asset Management as presenting the most comprehensive, user-responsive, and effective solution for the City's current and future work order and asset management needs.

In 2019, with the Council approval, the City entered into a contract agreement (No. 32000118) with Nexgen Asset Management to provide the new work order and asset management software. In November 2021, the software went live.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

An improved system, with greater efficiency, will lessen the number of trips field employees have to visit a site to address an issue which reduces greenhouse gas emissions associated with travel time. This supports the reduction of carbon footprint and the goals of the City's Climate Action Plan. Further, the mobile application capability of the new CMMS/EAM system will eliminate the use of paper currently being used by virtually all field staff thus working towards the City's goal of achieving zero waste to landfills.

RATIONALE FOR RECOMMENDATION

Software maintenance is required. Further, these additions will enable staff to maximize the use of the software and improve the efficiency in servicing our community members.

ALTERNATIVE ACTIONS CONSIDERED

None. Staff does not recommend using a newly implemented software without software maintenance.

CONTACT PERSON

Kevin Fong, Director, Information Technology, 510-981-6541

Attachments:

1: Resolution

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

CONTRACT NO. 32000118 AMENDMENT: NEXGEN ASSET AND WORK ORDER  
MANAGEMENT SOFTWARE MAINTENANCE AND PROFESSIONAL SERVICES

WHEREAS, the City of Berkeley has identified the need to improve the efficiency of its asset management and work order processes; and

WHEREAS, on October 23, 2018, the City of Berkeley issued Request for Proposal No. 19-11259-C for an improved computerized maintenance management system & enterprise asset management system and received seven responding bidders; and

WHEREAS, in response to the City's Request for Proposal, vendor NEXGEN Asset Management responded with a proposal that was rated as the highest response submitted by competing vendors; and

WHEREAS, on June 11, 2019, by Resolution No. 68,948 - N.S., the Council approved a contract (No. 32000118) with Nexgen Asset Management for software hosting, implementation, maintenance and related services, for an amount not to exceed \$1,017,509; and

WHEREAS, funding for this recommendation will be provided by the FY 2023 and 2024 Public Works, Software Maintenance, Parks, Recreation & Waterfront Software Maintenance and Parks Tax funds, and spending for this contract and related amendments in future fiscal years is subject to Council's approval of the proposed city-wide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 32000118 with Nexgen Asset Management for additional funding, increasing the amount by \$689,400, for a total not-to-exceed amount of \$1,706,909 for software maintenance, training and professional services for software enhancements through June 30, 2024.



Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Kevin Fong, Director, Department of Information Technology  
 Subject: AHEAD, Inc: Using the California Department of General Services' (DGS) Software Licensing Program (SLP) for Software License Purchases

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to increase spending authority with AHEAD, Inc. ("AHEAD") for the purchase of additional Varonis software licenses, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) increasing the amount by \$186,609.51 for a total amount not-to-exceed \$422,914.51 and the period beginning January 31, 2023 through December 21, 2023.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the additional Varonis software licenses in the amount of \$186,609.51 is available in the Department of Information Technology's FY 2023 Cost Allocation Fund as outlined below:

| FY2023              | Description                              | Funding Source                         |
|---------------------|------------------------------------------|----------------------------------------|
| \$186,609.51        | Additional Varonis DatAdvantage licenses | IT Cost Alloc (680), IT Dept, Security |
| \$215,128.00        | Previously approved Varonis licenses.    | IT Cost Alloc (680), IT Dept, Security |
| \$21,177.00         | Professional Services                    | IT Cost Alloc (680), IT Dept, Security |
| <b>\$422,914.51</b> | <b>New NTE Total</b>                     |                                        |

CURRENT SITUATION AND ITS EFFECTS

The City's Data Safety Program is designed to support the City's IT Digital Strategic Plan's goal of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities. The Varonis DatAdvantage product allows the City to monitor file activity and user behavior, prevent data breaches, and perform permissions management and auditing. It maps who can access data, and more importantly, *who* accesses data across file and email systems, thereby identifying where the City may be at risk.

### BACKGROUND

The procurement and implementation of Varonis in 2021 provided visibility into how the City is handling and protecting the data it touches on a daily basis. City Information Technology is now expanding its Cybersecurity posture by adding control over the storage and management of its file stores, and ensuring proper alerting for files stored and accessed throughout the City's datacenters.

The City of Berkeley participates in a cooperative purchasing agreement established by the California Department of General Services (DGS) called the Software License Program (SLP). Established in January 1994, the SLP negotiates major software discounts with publishers and passes those discounts onto the State. The State establishes contracts with resellers based on these negotiations, which local agencies within the State of California can utilize. The City of Berkeley has engaged AHEAD as a reseller for the Varonis software under SLP contract number SLP-19-70-0151s. Additional software, and other goods and services related to the City's Data Safety Program, are also available on this SLP contract with AHEAD.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The Varonis DatAdvantage suite provides the necessary protections needed as the City moves towards utilizing more electronic files and documents, reducing the amount of paper use, thus supporting the City's efforts to reduce the negative impact on the environment.

### RATIONALE FOR RECOMMENDATION

There is a large amount of data that resides in the City's shared drives which cannot be properly controlled and managed, placing the City at risk, due to a number of factors, including but not limited to identifying the type of data stored, and the owners of the data.

The Varonis DatAdvantage product provides the ability to visualize who can access sensitive and regulated information, audit every single file and email touched on-premise and in the cloud, and manage changes.

### ALTERNATIVE ACTIONS CONSIDERED

Varonis provides automated protection as well as remediation through control over the files in City datacenters and those accounts used to access them. To accomplish this without Varonis would require a substantial increase in staffing which is not viable.

### CONTACT PERSON

Kevin Fong, Director, Department of Information Technology, 510-981-6541

Attachments:

1: Resolution

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

A

HEAD: USING THE CALIFORNIA DEPARTMENT OF GENERAL SERVICES' (DGS) SOFTWARE LICENSING PROGRAM (SLP) FOR SOFTWARE LICENSE PURCHASES

WHEREAS, the purpose of the Data Safety Program is to protect the City of Berkeley's information and access to information, using an enterprise standard across all city systems, and is designed to support the Digital Strategic Plan and the City's Strategic Plan goal of advancing our City's strategic goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities; and

WHEREAS, the City of Berkeley participates in a cooperative purchasing agreement established by the California Department of General Services (DGS) called the Software License Program (SLP) that negotiates software discounts that are passed down to local agencies through a cooperative contract and software reseller; and

WHEREAS, the City of Berkeley has engaged AHEAD as a reseller for the Varonis software under SLP contract number SLP-19-70-0151s, and has the opportunity to purchase additional software, and other goods related to the City's Data Safety Program; and

WHEREAS, funding for purchases with AHEAD are funded by the IT Cost Allocation Fund (Fund 680), and citywide purchases will be made as needed by other available funding.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to increase spending authority with AHEAD for the purchase of professional services and software, and other goods related to the City's Data Safety Program, utilizing pricing and contracts, amendments, and extensions from the California Department of General Services (DGS) Software Licensing Program (SLP) increasing the amount by \$186,609.51 for an amount not-to-exceed \$422,914.51, and the period beginning January 31, 2023 through December 21, 2023.





Office of the City Manager

CONSENT CALENDAR

January 31, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Scott Ferris, Director, Parks, Recreation & Waterfront

Subject: Contract No. 32200183 Amendment: Western Water Features Inc. for the Electrical Renovations at King Swim Center

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32200183 with Western Water Features, Inc. for the electrical renovations at King Swim Center, increasing the contract amount by \$90,000 for a total not to exceed amount of \$1,100,000.

FISCAL IMPACTS OF RECOMMENDATION

Funding in the amount of \$90,000 for this contract amendment is available in the FY 2023 budget in the CIP Fund (Fund 501). No other funding is required, and no other projects will be delayed due to this expenditure.

CURRENT SITUATION AND ITS EFFECTS

In 2022, the original scope of the renovation project at the King and West Campus Swim Center involved replacement of the plaster, tiles, and electrical equipment. However, the electrical work at King could not be performed due to insufficient funding. This amendment will allow the installation of the new electrical equipment at King Swim Center that will include a new water chemistry controller with an associated electronic interlock device, upgraded electrical components to adequately power the new controller, and the installation of a variable frequency drive (VFD), which will reduce energy use.

BACKGROUND

Specification No 22-11489C for renovation work at King and West Campus pools was competitively bid out in early January 2022. On January 27, 2022, the City received 2 bids, of which Western Water Features was the lowest responsive bidder. On March 8, 2022, Council adopted Resolution No. 70,248-N.S., authorizing the contract in the amount of \$1,010,000.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

This project will improve the environmental impact of pool operations by reducing the usage of energy and chemicals.

RATIONALE FOR RECOMMENDATION

Western Water Features, Inc. is highly qualified and responsive. They have successfully worked for the City of Berkeley and many other local municipalities. The City of Berkeley does not have the in-house labor or resources to complete this additional work.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation & Waterfront, 510-981-6700

Attachment:

1: Resolution



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

CONTRACT NO. 32200183 AMENDMENT: WESTERN WATER FEATURES INC. FOR ELECTRICAL RENOVATIONS AT KING SWIM CENTER

WHEREAS, in 2022, the original scope of the renovation project at the King and West Campus Swim Center involved replacement of the plaster, tiles, and electrical equipment. However, the electrical work at King could not be performed due to insufficient funding; and

WHEREAS, this amendment will allow the installation of the new electrical equipment at King Swim Center that will include a new water chemistry controller with an associated electronic interlock device, upgraded electrical components to adequately power the new controller, and the installation of a variable frequency drive (VFD), which will reduce energy use; and

WHEREAS, specification # No 22-11489C for the plaster, tile, and electrical renovation work at King and West Campus pools was competitively bid out in early January 2022; and

WHEREAS, on January 27, 2022, the City received 2 bids, of which Western Water Features was the lowest responsive bidder. On March 8, 2022, Council adopted Resolution No. 70,248-N.S., authorizing the contract in the amount of \$1,010,000; and

WHEREAS, the electrical renovations could not be performed due to insufficient funding; and

WHEREAS, funding in the amount of \$90,000 for this contract amendment is available in the FY 2023 budget in the CIP Fund (Fund 501).

WHEREAS, the City has neither the labor or resources necessary to undertake this project.

NOW THEREFORE BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute an amendment to Contract No. 32200183 with Western Water Features Inc. for the electrical renovations at King Swim Center, increasing the contract amount by \$90,000 for a total amended not to exceed amount of \$1,100,000. A record signature copy of any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Scott Ferris, Director, Parks Recreation & Waterfront  
Subject: Contract: California Constructores for Grove Park Field and Playground Renovation Project

RECOMMENDATION

Adopt a Resolution:

1. Approving the plans and specifications for the Grove Park Field and Playground Renovation Project, Specification No. 22-11538-C; and
2. Accepting the correction of the sum of bid items for California Constructores' bid; and
3. Accepting the bid of the lowest responsive and responsible bidder, California Constructores; and
4. Authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, with California Constructores, for the Grove Park Field and Playground Renovation Project at 2828 Martin Luther King Jr. Way, Berkeley, CA 94703, in an amount not to exceed \$2,483,865, which includes a contract amount consisting of the base bid plus one additive alternate of \$2,159,883 and a 15% contingency in the amount of \$323,982.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY 2023 budget in the Measure T1 Fund (Fund 511), Capital Improvement Fund (Fund 501) and Parks Tax Fund (Fund 138). Additional funding from the California Department of Parks and Recreation Prop 68 Per Capita (\$253,328) and Prop 68 RIRE (\$250,000) grants will be recommended for appropriation in the second amendment to the appropriations ordinance in the One Time Grant Fund (Fund 336). No other funding is required, and no other projects will be delayed due to this expenditure.

|                                            |             |
|--------------------------------------------|-------------|
| California Constructores (lowest bid)..... | \$2,159,883 |
| 15% Contingency                            | \$323,982   |
| <hr/>                                      |             |
| Total construction cost                    | \$2,483,865 |
| <br>                                       |             |
| Measure T1 Fund (FY2023) .....             | \$851,310   |
| Parks Tax Fund (FY2023) .....              | \$534,000   |

|                                              |             |
|----------------------------------------------|-------------|
| Capital Improvement Fund (FY2023) .....      | \$595,227   |
| Prop 68 Per Capita Grant Fund (FY2023) ..... | \$253,328   |
| Prop 68 RIRE Grant Fund (FY2023) .....       | \$250,000   |
| <hr/>                                        |             |
| Total construction cost.....                 | \$2,483,865 |

CURRENT SITUATION AND ITS EFFECTS

The existing 2-5 and 5-12 playgrounds, picnic area and ball field at Grove Park at 2828 Martin Luther King Jr. Way, Berkeley, CA 94703 are in need of renovations. The existing play structures no longer fulfill the play potential of the park due to their deterioration and ADA inaccessibility. The project includes removal and disposal of the 2-5 and 5-12 playgrounds, installation of two new play areas in the existing locations and renovation of the picnic area. In addition to new play structures, accessible surfacing will be installed throughout both play areas to enhance the safety and access for park users. The project also includes renovation of the ball field which included ADA access improvements, replacement of turf, and improvements to the backstop, netting, fencing, dugouts, lighting control, drainage and the irrigation system.

BACKGROUND

The project was advertised for bids on November 23, 2022, and bids were opened on December 20, 2022. The City received 7 bids, from a low base bid of \$2,075,983.20 to a high base bid of \$2,595,000.

California Constructores was the apparent lowest bidder at \$2,075,983.20. Evaluation of bids were conducted as outlined in the Project Manual, Document 00 2113 Instructions to Bidders – Paragraph 3.02 “Evaluation of Bids.” Staff found a mathematical error in the summation of bid items in the total base bid price by California Constructores. Upon evaluating the total base bid price based on bid items, it was found that the correct sum was \$2,091,883. According to the Project Manual, Document 00 2113 Instructions to Bidders – Paragraph 3.02 “Evaluation of Bids”, “discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.” Staff determined California Constructores remained the lowest bidder using the correct sum.

California Constructores was the lowest responsive and responsible bidder. Staff conducted references checks and received satisfactory feedback. Staff recommends that a contract for this project be awarded to California Constructores.

The Living Wage Ordinance does not apply to this project since construction contracts are, pursuant to City policy, subject to State prevailing wage laws. The contractor will need to submit a Certification of Compliance for the Equal Benefits Ordinance. The contract will be subject to the Community Workforce Agreement.

ENVIRONMENTAL SUSTAINABILITY

The construction contract includes requirements to comply with the City’s Environmentally Preferable Purchasing Policy. The project is a renovation of a developed urban site and therefore will not negatively affect natural habitat.

Contract: California Constructors for  
Grove Park Field and Playground Renovation Project

CONSENT CALENDAR  
January 31, 2023

RATIONALE FOR RECOMMENDATION

The renovation of the existing ages 2-5 and 5-12 playgrounds, picnic area and ball field at Grove Park are needed as part of the City's ongoing program to repair, renovate, and improve accessibility at non-compliant or aging Parks facilities. The City does not have in-house labor or equipment resources to complete this renovation project.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Scott Ferris, Director, Parks Recreation & Waterfront, (510) 981-6700

Wendy Wellbrock, Associate Civil Engineer, Parks Recreation & Waterfront, (510) 981-6346

Attachments:

1: Resolution

2: Bid Results

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

CONTRACT: CALIFORNIA CONSTRUCTORES FOR GROVE PARK FIELD AND  
PLAYGROUND RENOVATION PROJECT

WHEREAS, the existing 2-5 and 5-12 playgrounds, picnic area and ball field at Grove Park at 2828 Martin Luther King Jr. Way, Berkeley, CA 94703 are in need of renovations; and the City has neither the labor nor the equipment necessary to undertake this project; and

WHEREAS, an invitation for bids was duly advertised on November 23, 2022, bids were opened on December 20, 2022, and the City received 7 bids; and

WHEREAS, upon receipt and review of submitted bids, a mathematical error was found in California Constructores' bid, which upon calculation of the corrected sum, California Constructores remains the lowest bid; and

WHEREAS, California Constructores was determined to be the lowest responsive and responsible bidder, and references for California Constructores were provided and checked out satisfactorily; and

WHEREAS, funding is available in the FY 2023 budget from the Measure T1 Fund (Fund 511), Parks Tax Fund (Fund 138), Capital Improvement Fund (Fund 501), and Prop 68 Per Capita (\$253,328) and Prop 68 RIRE (\$250,000) grants have been awarded and will be recommended for appropriation in the second amendment to the appropriations ordinance in the One Time Grant Fund (Fund 336).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 22-11538-C for the Grove Park Field and Playground Renovation project are approved.

BE IT FURTHER RESOLVED that the correction of the sum of bid items for California Constructores' bid is accepted; and a construction contract is awarded to California Constructores as the lowest responsive and responsible bidder for a total contract amount of \$2,483,865; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions, or change orders until completion of the project in accordance with the approved plans and specifications with California Constructores for the Grove Park Field and Playground Renovation project in an amount not to exceed \$2,483,865, which includes a contract amount consisting of the base bid plus one additive alternate at a total of \$2,159,883 and a 15% contingency in the amount of \$323,982 for unforeseen circumstances. A record signature copy of the agreement and any amendments to be on file in the Office of the City Clerk.



City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

Bid Date: 12/20/2022  
Spec. # 22-11538-C

FOR: [Grove Park Field and Playground Renovations](#)

|    | Bidders                                 | Base Bid        | ALT 1          | ALT 2        | required w/ bid |           |                   |         |          |           |
|----|-----------------------------------------|-----------------|----------------|--------------|-----------------|-----------|-------------------|---------|----------|-----------|
|    |                                         |                 |                |              | Addenda 1 & 2   | Subs List | Bid Regis. & Exp. | NC Aff. | Bid Bond | Bid Cert. |
| 1  | ANGOTTI & REILLY INC                    | \$ 2,222,005.00 | \$ (31,388.00) | \$ 75,000.00 | X               | X         | X                 | X       | X        | X         |
| 2  | BOTHMAN CONSTRUCTION                    | \$ 2,330,000.00 | \$ (33,630.00) | \$ 45,000.00 | X               | X         | X                 | X       | X        | X         |
| 3  | CALIFORNIA CONSTRUCTORES                | \$ 2,075,983.20 | \$ (48,000.00) | \$ 68,000.00 | X               | X         | X                 | X       | X        | X         |
| 4  | CWS CONSTRUCTION GROUP                  | \$ 2,595,000.00 | \$ (22,420.00) | \$ 75,000.00 | X               | X         | X                 | X       | X        | X         |
| 5  | MARK LEE & YOUNG KAY (BAY CONSTRUCTION) | \$ 2,482,680.00 | \$ (22,420.00) | \$ 70,000.00 | X               | X         | X                 | X       | X        | X         |
| 6  | REDGWICK CONSTRUCTION                   | \$ 2,373,230.00 | \$ (15,694.00) | \$ 57,710.00 | X               | X         | X                 | X       | X        | X         |
| 7  | REDWOOD ENGINEERING CONSTRUCTION        | \$ 2,244,744.00 | \$ (24,904.00) | \$ 75,000.00 | X               | X         | X                 | X       | X        | X         |
| 8  |                                         |                 |                |              |                 |           |                   |         |          |           |
| 9  |                                         |                 |                |              |                 |           |                   |         |          |           |
| 10 |                                         |                 |                |              |                 |           |                   |         |          |           |

Bid Recorder: Talia Stewart

Talia Stewart (Dec 21, 2022 13:02 PST)

Date Dec 21, 2022

Bid Opener: Josh Roben

Josh Roben (Dec 21, 2022 08:41 PST)

Date Dec 21, 2022

Project Manager: Wendy Wellbrock

Date Dec 20, 2022







Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Alene Pearson, Acting Director, Planning and Development Department  
 Subject: Contract No. 32000020 Amendment: Rincon Consultants, Inc. for On-Call Planning and Environmental Review Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 32000020 with Rincon Consultants, Inc., to increase the total not-to-exceed amount by \$1,000,000 to a new total of \$2,000,000, for additional services related to the review of land use permit applications and environmental review.

FISCAL IMPACTS OF RECOMMENDATION

The additional not-to-exceed amount in the amended contract will only be exercised if a project applicant requests expedited processing of a Use Permit or other discretionary zoning application, or if an Environmental Impact Report or other technical, environmental review is required. Work will only be authorized under the contract, and funds encumbered, once an applicant provides full funding.

In the event that total revenue exceeds the budgeted amount in the fiscal year, a request for additional appropriation will be submitted as part of a subsequent amendment to the Annual Appropriations Ordinance.

Once the City receives funds from an applicant, they will be 1) deposited into the PSC Fund revenue code 621-53-584-621-0000-000-000-446140; and 2) encumbered into the contractor's Purchase Order using expenditure account code 621-53-584-622-0000-000-472-612990.

CURRENT SITUATION AND ITS EFFECTS

The City has used environmental and planning consultants since 2005 for expedited processing of land use permit applications when requested by project applicants. When consultants are used, City staff remains actively involved with the projects and coordinates closely with the consultants. Such on-call services are also used in instances when complex environmental analyses such as those required by CEQA or NEPA must be performed on a project. In all instances, the project applicant assumes responsibility for the costs of such services, passed through the City to the consultant as costs are incurred.

Rincon Consultants, Inc. (Rincon) has performed well when called upon by the City and has nearly exhausted the original \$1,000,000 not-to-exceed amount. Rincon has a strong understanding of the Berkeley Municipal Code and permit processes, closely tracks changing CEQA guidelines, has strong attention to detail, and provides well written work products. Since Rincon is actively working on several City projects, increasing its contract maximum to \$2,000,000 will allow for continuity in the project review process.

#### BACKGROUND

On June 25, 2019, the City Council authorized the execution of contracts with 12 firms in as-needed amounts between \$500,000 and \$1,000,000 over a three-year period ending in June 2022, including a contract with Rincon for a not-to-exceed amount of \$1,000,000. Those contracts were subsequently extended for an additional three-year period without increasing the budget caps.

The City continues to receive a high volume of development applications, including many seeking expedited review and/or specialized analysis at the project applicants' requests and expenses. Therefore, an increase in the budget cap is warranted to replenish the ability to utilize the contract for the three-year period through fiscal 2025.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Development review services performed by on-call consultants may include assessments of a project's compliance and consistency with City goals and State requirements for energy and water efficiency, reduction of transportation impacts and fuel use, and other environmental factors.

#### RATIONALE FOR RECOMMENDATION

As the number of Use Permit applications has increased over the past several years, the Planning Department has improved customer service by using on-call consultants to expedite project applications and conduct environmental reviews. Increasing the not-to-exceed contract amount with Rincon, one of the City's high-performing on-call contractors, will allow for the continued timely processing of development applications while not incurring additional costs to the City.

#### ALTERNATIVE ACTIONS CONSIDERED

Staff could redirect work on current projects under expedited review to other firms contracted for such as-needed services, could handle such expedited review requests on a case-by-case basis, or could de-prioritize work on other current projects to do this work in-house.

#### CONTACT PERSON

Steven Buckley, Land Use Manager, Planning Department, 510-981-7411

Contract No. 32000020 Amendment: Rincon Consultants, Inc. for  
On-Call Planning and Environmental Review Services

CONSENT CALENDAR  
January 31, 2023

Attachments:  
1: Resolution

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

CONTRACT NO. 32000020 AMENDMENT: RINCON CONSULTANTS, INC. FOR  
PLANNING AND ENVIRONMENTAL REVIEW SERVICES

WHEREAS, on June 25, 2019, the City authorized the execution of contracts with 12 firms in as-needed amounts between \$500,000 to \$1,000,000 over a three-year period ending in June 2022, including a contract with Rincon Consultants, Inc. for a not-to-exceed amount of \$1,000,000; and

WHEREAS, the as-needed contracts were subsequently extended for an additional three years, through June 2025, without additional funds added; and

WHEREAS, the City continues to receive a high volume of development applications, including many seeking expedited review and/or specialized analysis at the project applicants' requests and expense; and

WHEREAS, staff have found that Rincon Consultants, Inc. have performed well on its previously assigned projects, are working on a number of currently active development project reviews, and wish to utilize Rincon Consultants, Inc. further; and

WHEREAS, no work will be authorized under the contract, and no funds will be encumbered, unless an applicant provides full funding, as in the case of expedited application review requests or the need for outside consultants for required analysis, or unless the City Manager or their designee authorizes the temporary use of existing Permit Service Center Fund balance for purposes of alleviating backlogs of applications on a limited basis.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or their designee is hereby authorized to execute an amendment to Contract No. 32000020 with Rincon Consultants, Inc., to add \$1,000,000 to the not-to-exceed amount, bring the new contract total not-to-exceed amount to \$2,000,000 for as-needed Planning and Environmental Review Services. A copy of the contract and any amendments will be kept on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Department of Public Works  
Subject: Contract: Koios Engineering, Inc. for Urgent Sewer Repair FY2023 Project

RECOMMENDATION

Adopt a Resolution: 1) approving plans and specifications for the Urgent Sewer Repair FY2023 Project, located throughout the City of Berkeley; 2) accepting the bid of the lowest responsive and responsible bidder, Koios Engineering, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$1,490,427, which includes a 10% contingency of \$135,493.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY 2023 Sanitary Sewer Fund 611-54-623-676-3013-000-473-665130-PWENSR2303.

|                                        |                    |
|----------------------------------------|--------------------|
| Low bid by Koios Engineering, Inc..... | \$1,354,934        |
| 10% Contingency .....                  | \$135,493          |
| <b>Total construction cost</b>         | <b>\$1,490,427</b> |

CURRENT SITUATION AND ITS EFFECTS

An Invitation for Bids (Specification. No. 23-11544-C) was released on October 26, 2022 and opened on November 17, 2022. Three non-local bids were received, ranging from a low of \$1,354,934 to a high of \$1,581,068 (Attachment 3, Bid Results). The engineer's estimate for the project was \$1,200,000. Koios Engineering, Inc. of San Francisco, CA was the lowest responsive and responsible bidder with a bid of \$1,354,934. References for Koios Engineering, Inc. proved satisfactory, thus staff recommends award of the contract to Koios Engineering, Inc.

This sanitary sewer project supports the City's Strategic Plan goals of providing state

of-the-art, well-maintained infrastructure, amenities, and the goal of protecting the environment.

### BACKGROUND

To remain compliant with the Consent Decree dated September 22, 2014, the City has implemented a long-term mandated Sanitary Sewer Capital Improvement Program to eliminate sanitary sewer overflows (SSOs) and to reduce stormwater infiltration and inflow into the sanitary sewer system. Under this program, the City utilizes a comprehensive asset management approach based on complex and evolving hydrologic and hydraulic modeling and condition assessments to repair, replace, or upgrade the City's portion of the sanitary sewer system. Ultimately, these actions will assist East Bay Municipal Utility District (EBMUD) in its goal of eliminating discharges from its wet weather facilities by the end of 2035.

This is the ninth year of the twenty-two-year Consent Decree program, which stipulates that the City shall perform collection system repair and rehabilitation to control infiltration and inflow.<sup>1</sup> This is in support of and in addition to ongoing work previously identified in the City's Sanitary Sewer Management Plan (SSMP) and Asset Management Implementation Plan (AMIP).

This sanitary sewer project is part of the City's ongoing program to rehabilitate or replace its aging sanitary sewer system, and to eliminate potential health hazards to the public. The project is located throughout the City as shown on the Location Map (Attachment 2). The sanitary sewer collection system in these areas needs immediate rehabilitation to prevent pipe failures, sewer blockages, and leakage problems. Field investigations performed using a closed-circuit television camera revealed deteriorated piping and pipe defects in the existing sanitary sewer mains. These conditions are similar to problems previously found in other sanitary sewer mains prior to their replacement.

Planned work entails point (spot) repair of 6-inch, 8-inch diameter sanitary sewer pipes at sixteen locations; rehabilitation of four maintenance holes; removal and reconstruction of fifty-three maintenance holes; and any related work. These repairs will correct existing acute defects including imminent structural failures identified during the FY2022 sewer main inspection and condition assessment program. The planned scope of work also includes provision for emergency/urgent work related to acute sewer system defects at other locations that may arise during FY 2023. As required by the EPA and Regional Water Quality Control Board (RWQCB) Consent Decree, such acute defects must be addressed within one year of being identified. The contract's one hundred thirty-five working day term includes a ninety-working day construction period and an additional forty-five working days for project closeout. A 10% contingency is included for related construction events.

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<sup>1</sup> At an average annual rate of no less than 22,120 feet of sanitary sewer mains on a three-fiscal-year rolling average.

The Living Wage Ordinance does not apply to this project as Department of Public Works construction contracts are subject to State prevailing wage laws. Koios Engineering, Inc. has submitted a Certification of Compliance with the Equal Benefits Ordinance.

The City filed a Notice of Exemption declaring this work is exempt from the California Environmental Quality Act (CEQA). This notification was filed with Alameda County to fulfill the requirement for public notification. No comments, questions, or protests were received.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Improvements to the City's sanitary sewer system will help protect water quality by reducing the frequency of SSOs, and infiltration and inflow into the City's sanitary sewer system that can negatively affect the San Francisco Bay.

RATIONALE FOR RECOMMENDATION

Contracted services are required for the specialized services required for this project, as the City lacks the in-house resources needed to complete scheduled sanitary sewer rehabilitation and replacement projects. Further, the City must take timely action to address urgent/emergent sewer repairs without delay. Finally, subject to fines and stipulated penalties, the Consent Decree demands the City to repair acute defects within one year of discovery, and complete sanitary sewer mains rehabilitation and replacement at an average annual rate of no less than 22,120 feet on a three-fiscal-year rolling average. The City will have a three-year annual average of approximately 22,600 linear feet of replaced or rehabilitated sewer through the end of FY 2023 on June 30, 2023.

ALTERNATIVE ACTIONS CONSIDERED

No reasonable alternative exists as the City's sanitary sewer pipelines are in poor condition and in need of timely rehabilitation to prevent an increased probability of infiltration and inflows, sanitary sewer leakages, and backup problems in the sanitary sewer system.

CONTACT PERSON

Joe Enke, Manager of Engineering, Public Works, (510) 981-6411  
Daniel Akagi, Supervising Civil Engineer, Public Works, (510) 981-6394  
Farid Javandel, Deputy Director of Public Works, Transportation and Engineering (510) 981-7061

Attachments:

- 1: Resolution
- 2: Location Map
- 3: Bid Results

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

CONTRACT: KOIOS ENGINEERING INC. FOR URGENT SEWER REPAIR  
FY2023 PROJECT.

WHEREAS, the Sanitary Sewer Project is part of the City's on-going Sanitary Sewer Capital Improvement Program to rehabilitate or replace the aging and deteriorated sanitary sewer system; and

WHEREAS, the Capital Improvement Program is a requirement of compliance with the National Pollution Discharge Elimination System Permit (NPDES) and California Regional Water Quality Control Board Consent Decree; and

WHEREAS, the City has neither the staff nor the equipment necessary to undertake this Sanitary Sewer Rehabilitation Project and other urgent/emergent sewer repairs; and

WHEREAS, on October 26, 2022 the City released an Invitation for Bids (Specification No. 23-11544-C) for sanitary sewer rehabilitation and replacement; and

WHEREAS, on November 17, 2022 the City received three bids, and Koios Engineering, Inc. was found to be the lowest responsive and responsible bidder; and

WHEREAS the City filed a Notice of Exemption on May 19, 2022 declaring these urgent repairs are exempt from the California Environmental Quality Act, and

WHEREAS, funds are available in the FY 2023 budget in Sanitary Sewer Fund 611; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specifications No. 23-11544-C for the Urgent Sewer Repair FY2023 Project are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with Koios Engineering, Inc., until completion of the project in accordance with the approved plans and specifications for the Urgent Sewer Repair FY2023 Project located throughout the City, in an amount not to exceed \$1,490,427 which includes a 10% contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments will be on file in the Office of the City Clerk.



# CITY OF BERKELEY, CALIFORNIA SANITARY SEWER REHABILITATION URGENT SEWER PROJECT FY 2023 SPECIFICATION NO. 23-11544-C



### LEGEND

- POINT REPAIR LOCATION
- MAINTENANCE HOLE REHAB/REPLACE



City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

Spec. No.  
23-11544-C

Bid Date: 11.17.2023

FOR: Urgent Sanitary Sewer Repair FY 2023

required w/ bid

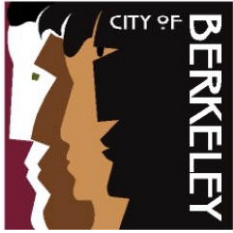
|    | Bidders                   | Base Bid        | Bid Bond | Addendum (1) | Experience -<br>Fin. Qual. | Taxpayer ID | Opp.States | Nuclear Free | EBO | Sanctuary<br>City |
|----|---------------------------|-----------------|----------|--------------|----------------------------|-------------|------------|--------------|-----|-------------------|
| 1  | Glosage Engineering, Inc. | \$ 1,468,700.00 | X        | X            | X                          | X           | X          | X            | X   | X                 |
| 2  | Kerex Engineering         | \$ 1,581,068.00 | X        | X            | X                          | X           | X          | X            | X   | X                 |
| 3  | Koios Engineering, Inc.   | \$ 1,354,934.00 | X        | X            | X                          | X           | X          | X            | X   | X                 |
| 4  |                           |                 |          |              |                            |             |            |              |     |                   |
| 5  |                           |                 |          |              |                            |             |            |              |     |                   |
| 6  |                           |                 |          |              |                            |             |            |              |     |                   |
| 7  |                           |                 |          |              |                            |             |            |              |     |                   |
| 8  |                           |                 |          |              |                            |             |            |              |     |                   |
| 9  |                           |                 |          |              |                            |             |            |              |     |                   |
| 10 |                           |                 |          |              |                            |             |            |              |     |                   |

Bid Recorder: Josh Roben

Bid Opener: Darryl Sweet

Project Manager: Adadu Yemane

*JS*  
\_\_\_\_\_  
*Darryl Sweet*  
\_\_\_\_\_  
*Adadu Yemane*  
\_\_\_\_\_



Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager

Submitted by: Liam Garland, Director, Department of Public Works

Subject: Contract: Bay Pacific Pipeline, Inc. for Hearst, et al. FY2023 Sanitary Sewer Rehabilitation Project

RECOMMENDATION

Adopt a Resolution: 1) approving plans and specifications for the FY2023 Sanitary Sewer Project, located on Hearst Avenue, Scenic Avenue, Euclid Avenue, Le Conte Avenue, Arch Street, Cedar Street, La Loma Avenue, Le Roy Avenue, Piedmont Avenue, Kelsey Street, Palm Court, Russell Street and Backline, Avalon Avenue Backline, Belrose Avenue Backline, University Avenue, Alvarado Road, and Roble Road Backline; 2) accepting the bid of the lowest responsive and responsible bidder, Bay Pacific Pipeline, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$4,417,421, which includes a 10% contingency of \$401,584.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY 2023 Sanitary Sewer Fund 611-54-623-676-3013-000-473-665130.

|                                            |                    |
|--------------------------------------------|--------------------|
| Low bid by Bay Pacific Pipeline, Inc. .... | \$4,015,837        |
| 10% Contingency .....                      | \$401,584          |
| <b>Total construction cost</b>             | <b>\$4,417,421</b> |

CURRENT SITUATION AND ITS EFFECTS

An Invitation for Bids (Specification. No. 23-11545-C) was released on November 9, 2022 and bids were opened on December 16, 2023. Five non-local bids were received, ranging from a low of \$4,015,837 to a high of \$6,632,530 (Attachment 3, Bid Results). The engineer's estimate for the project was \$6,030,000. Bay Pacific Pipeline, Inc. of Novato, CA was the lowest responsive and responsible bidder with a bid of \$4,015,837. References for Bay Pacific Pipeline, Inc. proved satisfactory, thus staff recommends award of the contract to Bay Pacific Pipeline, Inc.

This sanitary sewer project supports the City's Strategic Plan goals of providing state

of-the-art, well-maintained infrastructure, amenities, and the goal of protecting the environment.

### BACKGROUND

To remain compliant with the September 22, 2014 Consent Decree, the City has implemented a long-term mandated Sanitary Sewer Capital Improvement Program to eliminate sanitary sewer overflows (SSOs) and to reduce storm water infiltration and inflow into the sanitary sewer system. Under this program, the City utilizes a comprehensive asset management approach based on complex and evolving hydrologic and hydraulic modeling and condition assessments to repair, replace, or upgrade the City's portion of the sanitary sewer system. Ultimately, these actions will assist East Bay Municipal Utility District (EBMUD) in their goal of eliminating discharges from their wet weather facilities by the end of 2035.

This is the ninth year of the twenty-two-year Consent Decree program, which stipulates that the City shall perform collection system repair and rehabilitation to control infiltration and inflow.<sup>1</sup> This is in support of and in addition to ongoing work previously identified in the City's Sanitary Sewer Management Plan (SSMP) and Asset Management Implementation Plan (AMIP).

This sanitary sewer project is part of the City's ongoing program to rehabilitate or replace its aging sanitary sewer system, and to eliminate potential health hazards to the public. The project is located at various locations throughout the City as shown on the Location Map (Attachment 2). The sanitary sewer collection system in these areas needs immediate rehabilitation to prevent pipe failures, sewer blockages, and leakage problems. Field investigations performed using a closed-circuit television camera revealed deteriorated piping and pipe defects in the existing sanitary sewer mains. These conditions are similar to problems previously found in other sanitary sewer mains prior to their replacement.

Planned work includes the rehabilitation of approximately 8,230 linear feet sanitary sewer mains varying in size from 6-inch to 18-inch diameter; replacement of 1,443 linear feet of 8-inch sanitary sewer force main; maintenance hole rehabilitation; replacement of 4-inch and 6-inch diameter sanitary sewer laterals, and other related work. To reduce traffic impacts, minimize inconvenience to the public, and reduce cost, a majority of this sanitary sewer rehabilitation work will be performed using the pipe bursting and cured-in-place-pipe methods. These trenchless methods allow replacement of buried pipelines without the need for a traditional open trench construction. These methods of pulling a new high-density polyethylene pipe (HDPE) or a new felt liner through the existing clay and concrete pipes allow for cost savings and avoid street closures and traffic disruptions caused by open trenches.

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<sup>1</sup> At an average annual rate of no less than 22,120 feet of sanitary sewer mains on a three-fiscal-year rolling average.

The Living Wage Ordinance does not apply to this project as Department of Public Works construction contracts are subject to State prevailing wage laws. Bay Pacific Pipeline, Inc. has submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement applies to this project because the estimated value of the project exceeds \$500,000. As a result, the contractor and all subcontractors will be required to sign an agreement to be bound by the terms of the Agreement.

The City filed a Notice of Exemption declaring this work is exempt from the California Environmental Quality Act (CEQA). This notification was filed with Alameda County to fulfill the requirement for public notification. No comments, questions, or protests were received.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Improvements to the City's sanitary sewer system will help protect water quality by reducing the frequency of SSOs, and infiltration and inflow into the City's sanitary sewer system that can negatively affect the San Francisco Bay.

#### RATIONALE FOR RECOMMENDATION

Contracted services are required for the specialized services required for this project, as the City lacks the in-house resources needed to complete scheduled sanitary sewer rehabilitation and replacement projects. Further, the City must take timely action to address urgent/emergent sewer repairs without delay. Finally, subject to fines and stipulated penalties, the Consent Decree demands the City to repair acute defects within one year of discovery, and complete sanitary sewer mains rehabilitation and replacement at an average annual rate of no less than 22,120 feet on a three-fiscal-year rolling average. The City will have a three-year annual average of approximately 22,600 linear feet of replaced or rehabilitated sewer through the end of FY 2023 on June 30, 2023.

#### ALTERNATIVE ACTIONS CONSIDERED

No reasonable alternative exists as the City's sanitary sewer pipelines are in poor condition and in need of timely rehabilitation to prevent an increased probability of infiltration and inflows, sanitary sewer leakages, and backup problems in the sanitary sewer system.

#### CONTACT PERSON

Joe Enke, Manager of Engineering, Public Works, (510) 981-6411  
Daniel Akagi, Supervising Civil Engineer, Public Works, (510) 981-6394  
Farid Javandel, Deputy Director of Public Works, Transportation and Engineering (510) 981-7061

Contract: Bay Pacific Pipeline, Inc. for Sanitary Sewer Rehabilitation  
at Various Locations

CONSENTCALENDAR  
January 31, 2023

Attachments:

- 1: Resolution
- 2: Location Map
- 3: Bid Results



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

CONTRACT: BAY PACIFIC PIPELINE, INC. FOR SANITARY SEWER REHABILITATION FY2023 – HEARST AVE, SCENIC AVE, EUCLID AVE, LE CONTE AVE, ARCH ST, CEDAR ST, LA LOMA AVE, LE ROY AVE, PIEDMONT AVE, KELSEY ST, PALM CT, RUSSELL ST AND BACKLINE, AVALON BACKLINE, BELROSE BACKLINE, UNIVERSITY AVE, ALVARADO RD, AND ROBLE ROAD BACKLINE.

WHEREAS, the Sanitary Sewer Project is part of the City's on-going Sanitary Sewer Capital Improvement Program to rehabilitate or replace the aging and deteriorated sanitary sewer system; and

WHEREAS, the Capital Improvement Program is a requirement of compliance with the National Pollution Discharge Elimination System Permit (NPDES) and California Regional Water Quality Control Board Consent Decree; and

WHEREAS, the City has neither the staff nor the equipment necessary to undertake this Sanitary Sewer Rehabilitation Project and other urgent/emergent sewer repairs; and

WHEREAS, on November 9, 2022 the City released an Invitation for Bids (Specification No. 23-11545-C) for sanitary sewer rehabilitation and replacement; and

WHEREAS, on December 15, 2022 the City received 5 bids, and Bay Pacific Pipeline, Inc. was found to be the lowest responsive and responsible bidder; and

WHEREAS, funds are available in the FY 2023 budget Sanitary Sewer Fund 611; and

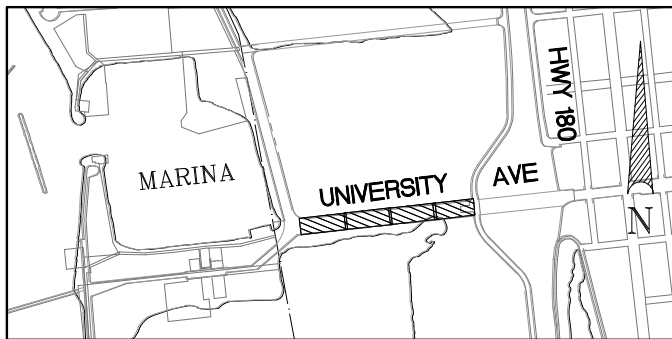
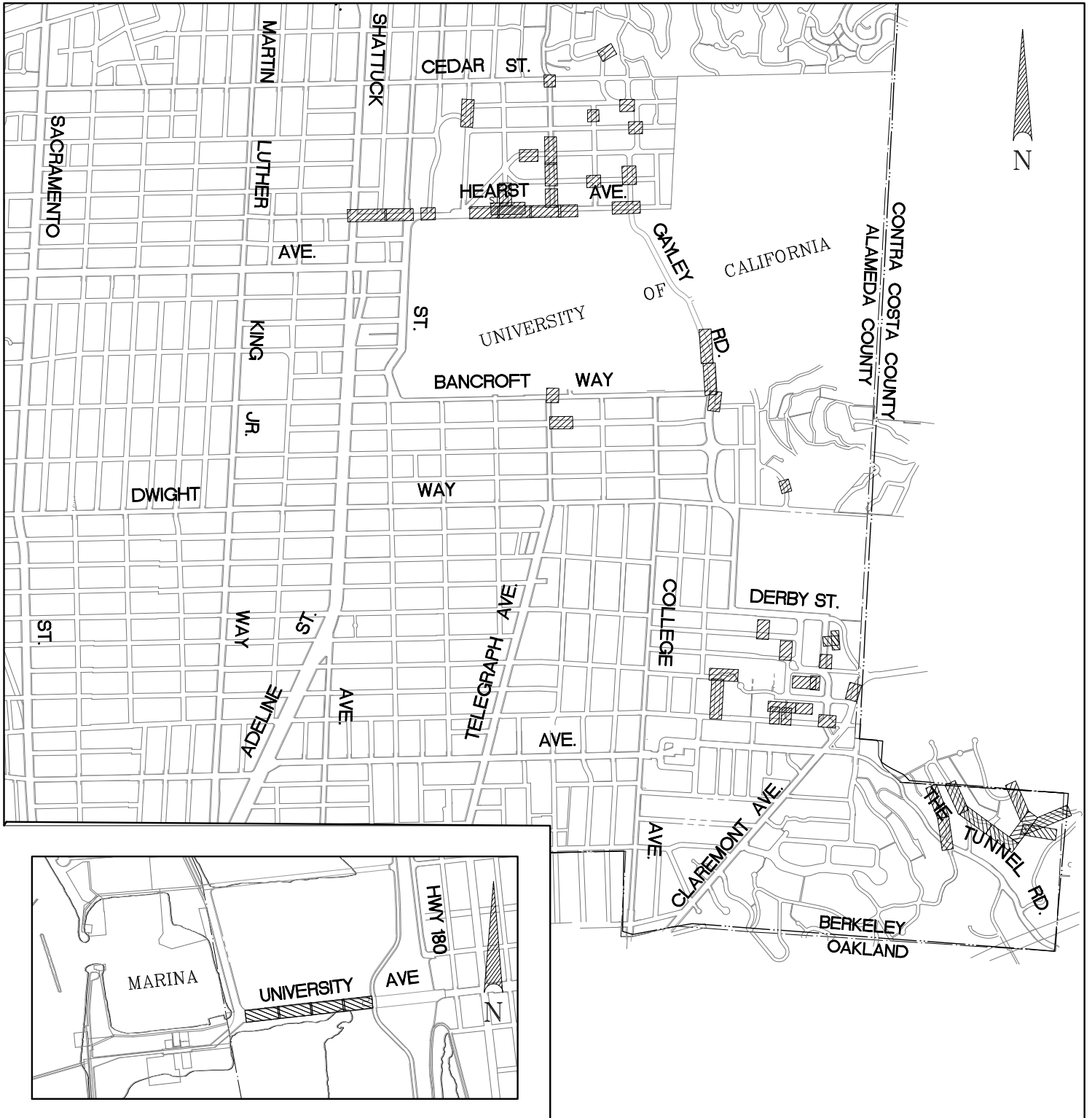
WHEREAS the City filed a Notice of Exemption on May 19, 2022 declaring this work is exempt from the California Environmental Quality Act.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specifications No. 23-11545-C for the Sanitary Sewer Rehabilitation FY 2023 Project are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with Bay Pacific Pipeline, Inc., until completion of the project in accordance with the approved plans and specifications for the Sanitary Sewer Rehabilitation Project located on Hearst Avenue, Scenic Avenue, Euclid Avenue, Le Conte Avenue, Arch Street, Cedar Street, La Loma Avenue, Le Roy Avenue, Piedmont Avenue, Kelsey Street, Palm Court, Russell Street and Backline, Avalon Avenue Backline, Belrose Avenue Backline, University Avenue, Alvarado Road, and Roble Road Backline, in an amount not to exceed \$4,417,421 which includes a 10% contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments will be on file in the Office of the City Clerk.

# CITY OF BERKELEY, CALIFORNIA SANITARY SEWER et al. HEARST AVENUE REHABILITATION PROJECT

SPECIFICATION NO. 23-11545-C



### LEGEND



PROJECT REPAIR LOCATION

### LOCATION MAPS

NOT TO SCALE





City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

Spec. No.  
23-11545-C

Bid Date: 12/15/2022

FOR: [Sanitary Sewer Rehab - Hearst et al](#)

required w/ bid

|    | Bidders                     | Base Bid                                    | Bid Bond | Addendum (1 & 2) | Experience -<br>Fin. Qual. | Taxpayer ID | Nuclear<br>Free | Opp. States | Sanctuary<br>City | EBO |
|----|-----------------------------|---------------------------------------------|----------|------------------|----------------------------|-------------|-----------------|-------------|-------------------|-----|
| 1  | Andes Construction, Inc.    | \$ 4,817,135.00                             | X        | XX               | X                          | X           | X               | X           | X                 | X   |
| 2  | Bay Pacific Pipeline, Inc.  | \$ <del>4,020,336.00</del> \$4,015,836.50** | X        | XX               | X                          | X           | X               | X           | X                 | X   |
| 3  | Cratus, Inc.                | \$ 6,632,530.00                             | X        | XX               | X                          | X           | X               | X           | X                 | X   |
| 4  | Pacific Trenchless, Inc.    | \$ 5,285,577.00                             | X        | XX               | X                          | X           | X               | X           | X                 | X   |
| 5  | Precision Engineering, Inc. | \$ 4,612,041.00                             | X        | XX               | X                          | X           | X               | X           | X                 | X   |
| 6  |                             |                                             |          |                  |                            |             |                 |             |                   |     |
| 7  |                             |                                             |          |                  |                            |             |                 |             |                   |     |
| 8  |                             |                                             |          |                  |                            |             |                 |             |                   |     |
| 9  |                             |                                             |          |                  |                            |             |                 |             |                   |     |
| 10 |                             |                                             |          |                  |                            |             |                 |             |                   |     |

Bid Recorder: Josh Roben

Josh Roben (Dec 15, 2022 14:44 PST)

Date Dec 15, 2022

Bid Opener: Darryl Sweet

Date Dec 15, 2022

Project Manager: Ricardo Salcedo

Date Dec 15, 2022

\*\* After reviewing bid proposals, a mathematical error was discovered for Bay Pacific. The actual Base Bid has been revised above.

Dec 16, 2022






# Bid Abstract 23-11545-C (Sanitary Sewer Rehab. - Hearst, et. al.)\_encrypted\_ (Revised)

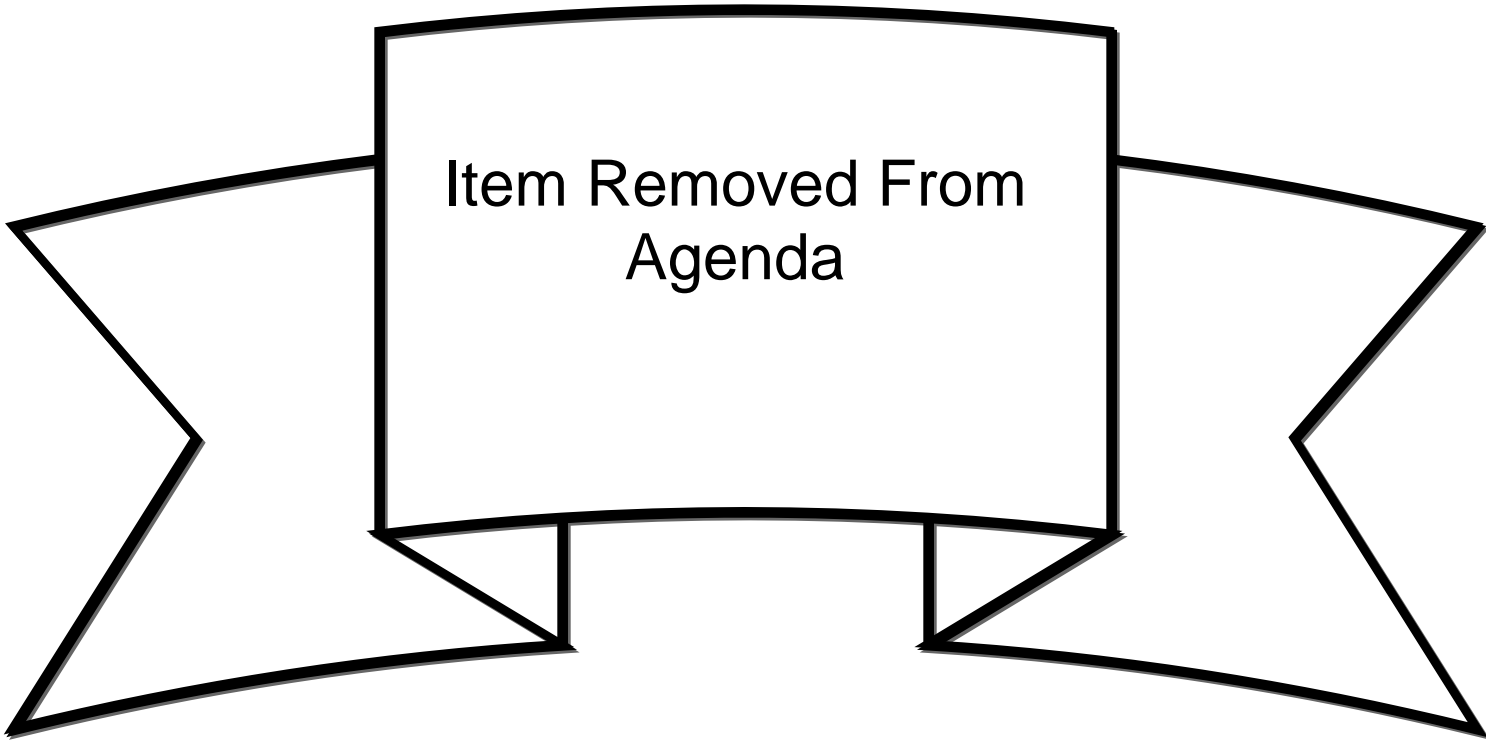
Final Audit Report

2022-12-17

|                 |                                              |
|-----------------|----------------------------------------------|
| Created:        | 2022-12-16                                   |
| By:             | Josh Roben (JRoben@cityofberkeley.info)      |
| Status:         | Signed                                       |
| Transaction ID: | CBJCHBCAABAAS3ljoZYaWh4pLKG_yuq95unfE7YzaQek |

## "Bid Abstract 23-11545-C (Sanitary Sewer Rehab. - Hearst, et. a l.)\_encrypted\_ (Revised)" History

-  Document created by Josh Roben (JRoben@cityofberkeley.info)  
2022-12-16 - 8:29:56 PM GMT
-  Document emailed to Ricardo Salcedo (RSalcedo@cityofberkeley.info) for signature  
2022-12-16 - 8:30:51 PM GMT
-  Email viewed by Ricardo Salcedo (RSalcedo@cityofberkeley.info)  
2022-12-17 - 0:17:50 AM GMT
-  Document e-signed by Ricardo Salcedo (RSalcedo@cityofberkeley.info)  
Signature Date: 2022-12-17 - 0:20:51 AM GMT - Time Source: server
-  Agreement completed.  
2022-12-17 - 0:20:51 AM GMT



Item Removed From  
Agenda

This item has been removed from the agenda by the City Manager.

If you have questions regarding this report, please contact the person noted on the agenda.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley, City Council's Website**  
<https://berkeleyca.gov/your-government/city-council>





Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Liam Garland, Director, Department of Public Works  
 Subject: Contract: Gruendl Inc. DBA Ray's Electric for Martin Luther King Jr. Way Vision Zero Quick Build Project

RECOMMENDATION

1. Approve plans and specifications for the Martin Luther King Jr. Way Vision Zero Quick Build Project, (Project), Specification No. 23-11554-C;
2. Accept the bid of Gruendl Inc. Doing Business As (DBA) Ray's Electric, the lowest responsive and responsible bidder; and
3. Authorize the City Manager to execute a contract with Gruendl Inc. DBA Ray's Electric and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved plans and specifications, in an amount not to exceed \$1,663,900, which includes a contingency of ten percent for unforeseen circumstances.

FISCAL IMPACTS OF RECOMMENDATION

The construction budget for the Martin Luther King Jr. Way Vision Zero Quick Build Project is \$1,663,900, including contingency. The construction of this Project is funded in part by a California Active Transportation Program (ATP) grant administered through the California Transportation Commission (CTC). Funds are available in the FY 2023 budget in the funding sources indicated below:

Contract: Gruendl Inc. DBA Ray's Electric  
for Martin Luther King Jr. Way Vision Zero Quick Build Project

CONSENT CALENDAR  
January 31, 2023

| Project                                                                          | ATP Grant-State    | Alameda County Measure F VRF Streets and Roads Program | Alameda County Measure BB Local Streets and Roads Program | Alameda County Measure BB Bicycle and Pedestrian Program | City of Berkeley Street Lighting Fund | City of Berkeley Capital Improvement Fund |
|----------------------------------------------------------------------------------|--------------------|--------------------------------------------------------|-----------------------------------------------------------|----------------------------------------------------------|---------------------------------------|-------------------------------------------|
|                                                                                  | (Fund 306)         | (Fund 133)                                             | (Fund 134)                                                | (Fund 135)                                               | (Fund 142)                            | (Fund 501)                                |
| Martin Luther King Jr. Way Vision Zero Quick Build, Specification No. 23-11554-C | \$470,000          | \$215,100                                              | \$390,000                                                 | \$100,000                                                | \$118,800                             | \$370,000                                 |
| Total funding for construction:<br><b>\$1,663,900</b>                            | <b>\$1,663,900</b> |                                                        |                                                           |                                                          |                                       |                                           |

|                                              |                    |
|----------------------------------------------|--------------------|
| Low Bid by Ray's Electric                    | \$1,512,567.25     |
| 10% Contingency                              | \$151,256.73       |
| <b>Total Not-To-Exceed Construction Cost</b> | <b>\$1,663,900</b> |

**CURRENT SITUATION AND ITS EFFECTS**

On November 17, 2022, two bids were received and opened for construction of the Project, in the amounts of \$1,512,567.25 and \$1,651,194.00. The determination of the low bidder was based on the total price of all bid items, as described in the bid documents. The low bidder is Gruendl Inc. DBA Ray's Electric (Ray's Electric), with a bid of \$1,512,567.25, or \$246,567 above the engineer's estimate of \$1.266 million. Staff has identified additional funding to cover the total bid price of the low bidder, plus a 10% contingency, as indicated above. Staff has verified that Ray's Electric is the lowest responsive and responsible bidder in accordance with the Public Contract Code.

The Living Wage Ordinance does not apply to this project as the Public Works Department's construction contracts are, pursuant to City policy, subject to State prevailing wage laws. Ray's Electric has submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement applies to this project because the estimated construction cost exceeds \$500,000. As a result, the successful bidder and all subcontractors will be required to sign an agreement to be bound by the terms of the Community Work Force Agreement.

## BACKGROUND

The primary purpose of the Martin Luther King Jr. Way Vision Zero Quick Build Project is to improve safety for pedestrians and bicyclists crossing Martin Luther King Jr. Way (MLK), in accordance with the City's Vision Zero Action Plan which establishes a strategy to eliminate all traffic fatalities and severe injuries by 2028 while increasing safe, healthy, and equitable mobility for all. The initial framework for the Project was conceived during the development of the 2017 Berkeley Pedestrian Plan, in which a variety of community outreach and engagement activities played a key role in identifying recommended pedestrian safety improvements, and reaffirmed during the development of the 2020 Berkeley Pedestrian Plan. The proposed Project is intended to make walking and biking safer and more convenient modes of transportation along the MLK corridor by connecting important destinations, improving crossings at intersections, and addressing the goals of the Berkeley Pedestrian Plan, and the Berkeley Vision Zero Action Plan.

The Project extents include the MLK corridor from Dwight Way to Russell Street and include a total of nine intersections: Dwight Way, Blake Street, Parker Street, Carleton Street, Derby Street, Ward Street, Stuart Street, Oregon Street, and Russell Street.

The Project will construct the following components:

- Pedestrian refuge islands, hardened centerlines, curb ramps, and/or enhanced crosswalk lighting at selected intersections.
- Rectangular rapid flashing beacons (RRFBs) on Martin Luther King Jr. Way at Oregon Street, Stuart Street, and Parker Street.
- Pavement resurfacing with a particular focus on crosswalks, including high-visibility crosswalk markings and pavement markings.
- Red curbs to improve the visibility of pedestrians and bicyclists at intersections.

City staff made a concerted effort to engage the public and solicit input during the conceptual design phase of the Project. On March 3, 2022, City staff hosted an online meeting to obtain community input on the overall Project concept, including improvements proposed at each of the nine intersections along the MLK corridor. City staff used community feedback from this process to develop the final design of the Project.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The purpose of the ATP is to encourage increased use of active modes of transportation, such as biking and walking. Increasing biking and walking would help the City comply with the 2009 Berkeley Climate Action Plan Policy 5.a that calls for expanding and improving Berkeley's bicycle and pedestrian infrastructure. The Climate Action Plan further states that transportation modes such as public transit, walking, and bicycling must

become the primary means of fulfilling the City's mobility needs in order to meet these targets.

#### RATIONALE FOR RECOMMENDATION

The proposed Project components were designed to address pedestrian and bicycle crossing safety needs along the MLK corridor, in accordance with the Berkeley Pedestrian Plan and the Berkeley Vision Zero Action Plan. Furthermore, the Vision Zero Action Plan classifies MLK as a High-Injury Street in an Equity Priority Area. An Equity Priority Area considers historic data in prioritizing infrastructure projects that remedy systemic inequity. As a whole, the work of this Project is a significant step forward to improve safety at intersection crossings and for people of all ages and abilities to traverse the MLK corridor more safely by walking or biking.

#### ALTERNATIVE ACTIONS CONSIDERED

Council could opt not to take the proposed actions at this time and instead defer this item to a future Council agenda. Such a decision would delay the construction of the Project and could cause the City to fail to meet its ATP grant funding obligation to award a construction contract within six months of receiving the construction grant fund allocation. The deadline to award a construction contract to meet the ATP grant funding obligation is February 18, 2023. Failure to award a contract by this date would ultimately endanger the delivery of not only this Project, but could also jeopardize the City's ability to secure funding for future ATP grant-funded projects.

#### CONTACT PERSON

Farid Javandel, Deputy Director of Public Works, Transportation and Engineering (510) 981-7061

Ken Jung, Supervising Civil Engineer, Public Works Department (510) 981-7028

Ian Bronswick, Associate Civil Engineer, Public Works Department (510) 981-6399

#### Attachments:

- 1: Resolution
- 2: Site Map
- 3: Abstract of Bids



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

CONTRACT: GRUENDL INC. DBA RAY'S ELECTRIC FOR MARTIN LUTHER KING JR. WAY VISION ZERO QUICK BUILD PROJECT

WHEREAS, the design of the Martin Luther King Jr. Way Vision Zero Quick Build Project (Specification No. 23-11554-C) consists of pedestrian and bicycle safety improvements across Martin Luther King Jr. Way at nine intersections, from Dwight Way to Russell Street; and

WHEREAS, the Project is identified as a priority project in the City's 2020 Pedestrian Plan; and

WHEREAS, the City has received a funding allocation from the California Active Transportation Program on August 18, 2022, and the construction contract for this Project must be awarded by the Council of the City of Berkeley by the funding deadline of February 18, 2023 to avoid forfeiture of these funds; and

WHEREAS, funds are available in the FY 2023 budget in the Capital Grants - State Fund (Fund 306), the Alameda County Measure F VRF Streets and Roads Program (Fund 133), the Measure BB Local Streets and Roads Fund (Fund 134), the Measure BB Bicycle and Pedestrian Fund (Fund 135), the Street Lighting Fund (Fund 142), and the Capital Improvements Fund (Fund 501); and

WHEREAS, no other funding is required, and no other project will be delayed due to this expenditure; and

WHEREAS, on October 19, 2022, the City released an Invitation for Bids for the work of this Project; and

WHEREAS, Gruendl Inc. doing business as Ray's Electric was found to be the lowest responsive and responsible bidder; and

WHEREAS, the City has neither the staff nor the equipment needed to undertake the construction of this Project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specifications for the Martin Luther King Jr. Way Vision Zero Quick Build Project (Specification No. 23-11554-C) are approved.


BE IT FUTHER RESOLVED that the Council of the City of Berkeley accepts the bid of Gruendl Inc. doing business as Ray's Electric as the lowest responsive and responsible bidder.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions, and/or change orders until completion of the Project in accordance with the approved Plans and Specifications with Gruendl Inc. doing business as Ray's Electric for an amount not to exceed \$1,663,900, which includes a ten percent construction contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments will be on file in the Office of the City Clerk.

Figure 1 - Site Map  
Martin Luther King Jr. Way Vision Zero Quick Build Project – Project Spec.  
No. 23-11554-C



Legend:

-  - Approximate location of project work



City of Berkeley  
Abstract of Bid Worksheet

Finance Department  
General Services Division

Spec. No.  
23-11554-C

Bid Date: 11.17.2023

FOR: MLK Vision Zero Quick build

|    | Bidders             | Base Bid        | Bid Bond | Addendum (0) | Experience -<br>Fin. Qual. | Taxpayer ID | Opp,States | Nuclear Free | EBO | Sanctuary<br>City |
|----|---------------------|-----------------|----------|--------------|----------------------------|-------------|------------|--------------|-----|-------------------|
| 1  | Ray's Electric      | \$ 1,512,567.25 | X        | N/A          | X                          | X           | X          | X            | X   | X                 |
| 2  | Sposeto Engineering | \$ 1,651,194.00 | X        | N/A          | X                          | X           | X          | X            | X   | X                 |
| 3  |                     |                 |          |              |                            |             |            |              |     |                   |
| 4  |                     |                 |          |              |                            |             |            |              |     |                   |
| 5  |                     |                 |          |              |                            |             |            |              |     |                   |
| 6  |                     |                 |          |              |                            |             |            |              |     |                   |
| 7  |                     |                 |          |              |                            |             |            |              |     |                   |
| 8  |                     |                 |          |              |                            |             |            |              |     |                   |
| 9  |                     |                 |          |              |                            |             |            |              |     |                   |
| 10 |                     |                 |          |              |                            |             |            |              |     |                   |

Bid Recorder: Josh Roben

Bid Opener: Darryl Sweet

Project Manager: Ian Bronswicks

*[Signature]*  
\_\_\_\_\_  
*Darryl Sweet*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_



Office of the City Manager

CONSENT CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Department of Public Works  
Subject: Contract: Andes Construction, Inc. for FY2023 Sanitary Sewer Rehabilitation Parnassus Rd, et al. Project

RECOMMENDATION

Adopt a Resolution: 1) approving plans and specifications for the FY2023 Sanitary Sewer Rehabilitation Parnassus Road Project, et al. Project located throughout the City of Berkeley; 2) accepting the bid of the lowest responsive and responsible bidder, Andes Construction, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments, extensions, or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$4,444,006, which includes a 10% contingency of \$404,001.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY 2023 Sanitary Sewer Fund at 611-54-623-676-3013-000-473-665130-PWENSR2301.

|                                             |                    |
|---------------------------------------------|--------------------|
| Lowest bid by Andes Construction, Inc. .... | \$4,040,005        |
| 10% Contingency .....                       | \$404,001          |
| <b>Total construction cost</b>              | <b>\$4,444,006</b> |

CURRENT SITUATION AND ITS EFFECTS

An Invitation for Bids (Specification. No. 23-11548-C) was released on November 09, 2022, and bids were opened on December 13, 2022. Six non-local bids were received, ranging from a low of \$4,040,005 to a high of \$6,492,528 (Attachment 3, Bid Results). The engineer's estimate for the project was \$5,200,000. Andes Construction, Inc. of Oakland, CA was the lowest responsive and responsible bidder with a bid of \$4,040,005. References for Andes Construction, Inc. proved satisfactory. Staff recommends the award of the contract to Andes Construction, Inc.

This sanitary sewer project supports the City's Strategic Plan goals of providing state

of-the-art, well-maintained infrastructure, amenities, and the goal of protecting the environment.

### BACKGROUND

To remain compliant with the Consent Decree dated September 22, 2014, the City has implemented a long-term mandated Sanitary Sewer Capital Improvement Program to eliminate sanitary sewer overflows (SSOs) and to reduce stormwater infiltration and inflow into the sanitary sewer system. Under this program, the City utilizes a comprehensive asset management approach based on complex and evolving hydrologic and hydraulic modeling and condition assessments to repair, replace, or upgrade the City's portion of the sanitary sewer system. Ultimately, these actions will assist East Bay Municipal Utility District (EBMUD) in its goal of eliminating discharges from its wet weather facilities by the end of 2035.

This is the ninth year of the twenty-two-year Consent Decree program, which stipulates that the City shall perform collection system repair and rehabilitation to control infiltration and inflow.<sup>1</sup> This is in support of and in addition to ongoing work previously identified in the City's Sanitary Sewer Management Plan (SSMP) and Asset Management Implementation Plan (AMIP).

This sanitary sewer project is part of the City's ongoing program to rehabilitate or replace its aging sanitary sewer system, and to eliminate potential health hazards to the public. The project is located throughout the City as shown on the Location Map (Attachment 2). The sanitary sewer collection system in these areas requires immediate rehabilitation to prevent pipe failures, sewer blockages, and leakage problems. Field investigations performed using a closed-circuit television camera revealed deteriorated piping and pipe defects in the existing sanitary sewer mains. These conditions are similar to problems previously found in other sanitary sewer mains prior to their replacement.

Planned work includes the rehabilitation of approximately 6,129 linear feet of sanitary sewer mains varying in size from 6-inch to 12-inch diameter sanitary sewer pipe; rehabilitation of fifty-eight maintenance holes; removal and reconstruction of sixty-two maintenance holes; construction of seven maintenance holes; replacement of 4-inch and 6-inch diameter sanitary sewer laterals, and other related work. To reduce traffic impacts, minimize inconvenience to the public, and reduce cost, a majority of this sanitary sewer rehabilitation work will be performed using the pipe bursting method. This trenchless method allows the replacement of pipelines buried below street level without the need for traditional open trench construction. This method of pulling a new high-density polyethylene pipe (HDPE) through the existing vitrified clay pipe with a cone-shaped hammerhead to "burst" the surrounding clay pipe, allows for cost savings and minimizes street closures and traffic disruptions caused by open trenches. The contract's one hundred twenty working day term includes a seventy-five working day construction period and an additional forty-five working days for project closeout. A 10% contingency is included for related

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<sup>1</sup> At an average annual rate of no less than 22,120 feet of sanitary sewer mains on a three-fiscal-year rolling average.

construction events.

The Living Wage Ordinance does not apply to this project as Department of Public Works construction contracts are subject to State prevailing wage laws. Andes Construction, Inc. has submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement (CWA) applies to this project because the estimated value of the project exceeded \$500,000. As a result, the contractor and all subcontractors will be required to sign an agreement to be bound by the terms of the CWA.

The City filed a Notice of Exemption declaring this work is exempt from the California Environmental Quality Act (CEQA). This notification was filed with Alameda County to fulfill the requirement for public notification. No comments, questions, or protests were received.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Improvements to the City's sanitary sewer system will help protect water quality by reducing the frequency of SSOs, and infiltration and inflow into the City's sanitary sewer system that can negatively affect the San Francisco Bay.

#### RATIONALE FOR RECOMMENDATION

Contracted services are required for the specialized services required for this project, as the City lacks the in-house resources needed to complete scheduled sanitary sewer rehabilitation and replacement projects. Further, the City must take timely action to address urgent and emergent sewer repairs without delay. Finally, subject to fines and stipulated penalties, the Consent Decree demands the City repair acute defects within one year of discovery, and complete sanitary sewer mains rehabilitation and replacement at an average annual rate of no less than 22,120 feet on a three-fiscal-year rolling average. The City will have a three-year annual average of approximately 22,600 linear feet of replaced or rehabilitated sewer through the end of FY 2023 on June 30, 2023.

#### ALTERNATIVE ACTIONS CONSIDERED

No reasonable alternative exists as the City's sanitary sewer pipelines are in poor condition and in need of timely rehabilitation to prevent an increased probability of infiltration and inflows, sanitary sewer leakages, and backup problems in the sanitary sewer system.

#### CONTACT PERSON

Joe Enke, Manager of Engineering, Public Works, (510) 981-6411  
Daniel Akagi, Supervising Civil Engineer, Public Works, (510) 981-6394  
Farid Javandel, Deputy Director of Public Works, Transportation and Engineering (510) 981-7061

Attachments:

1: Resolution

- 2: Location Map
- 3: Bid Results



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

CONTRACT: ANDES CONSTRUCTION, INC. FOR FY2023 SANITARY  
SEWER REHABILITATION PARNASSUS RD, ET AL. PROJECT.

WHEREAS, the Sanitary Sewer Project is part of the City's on-going Sanitary Sewer Capital Improvement Program to rehabilitate or replace the aging and deteriorated sanitary sewer system; and

WHEREAS, the Capital Improvement Program is a requirement of compliance with the National Pollution Discharge Elimination System Permit (NPDES) and California Regional Water Quality Control Board Consent Decree; and

WHEREAS, the City has neither the staff nor the equipment necessary to undertake this Sanitary Sewer Rehabilitation Project and other urgent and emergent sewer repairs; and

WHEREAS, on November 9, 2022, the City released an Invitation for Bids (Specification No. 23-11548-C) for sanitary sewer rehabilitation and replacement; and

WHEREAS, on December 13, 2022, the City received six bids and Andes Construction, Inc. was found to be the lowest responsive and responsible bidder; and

WHEREAS the City filed a Notice of Exemption on May 19, 2022, declaring this work is exempt from the California Environmental Quality Act, and

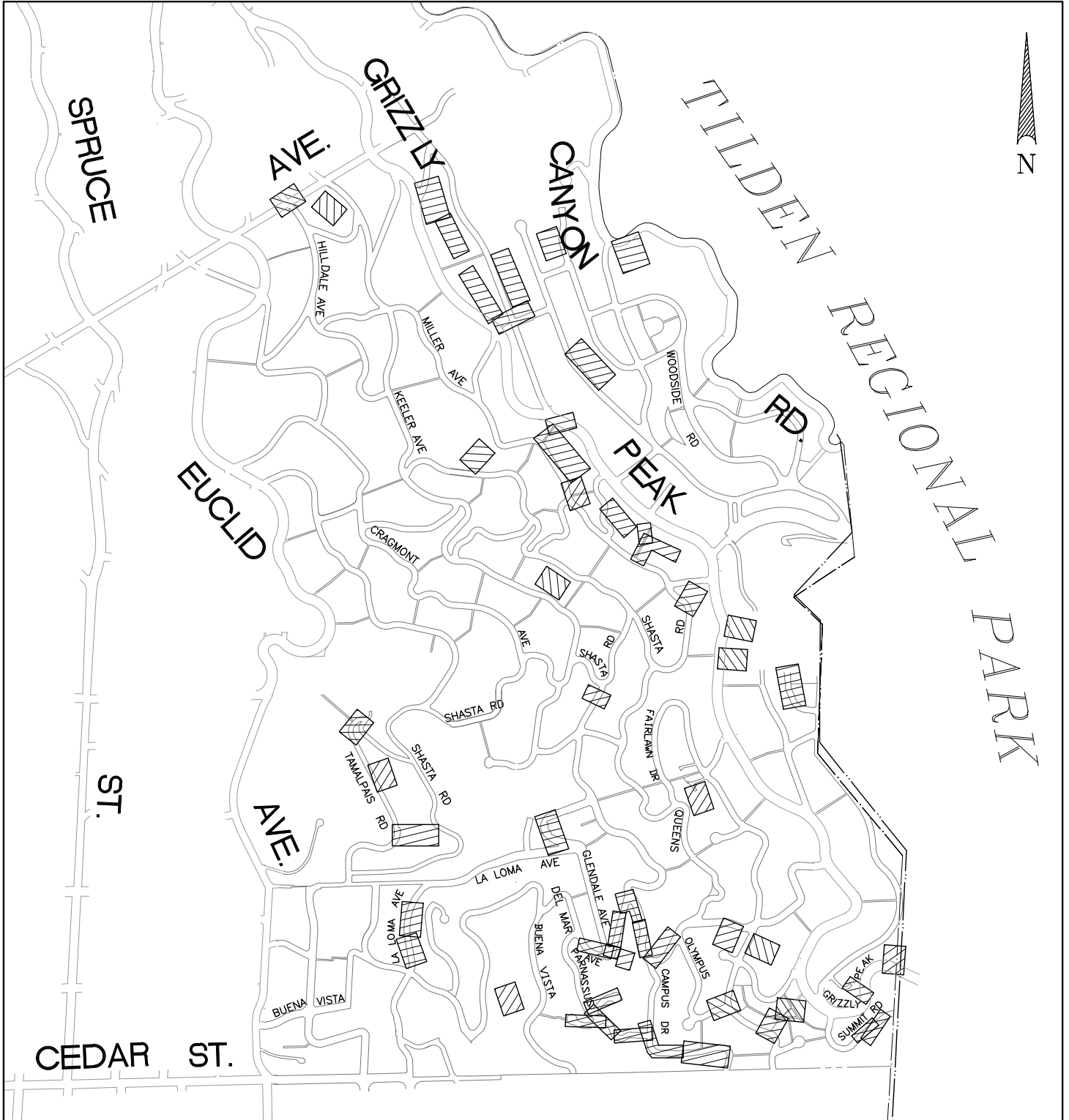
WHEREAS, funds are currently available in the FY 2023 Sanitary Sewer Fund 611; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specifications No. 23-11548-C for the FY2023 Sanitary Sewer Rehabilitation Parnassus Rd, et al. Project are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments with Andes Construction, Inc., until completion of the project in accordance with the approved plans and specifications for the Sanitary Sewer Rehabilitation Parnassus Road Project, et al. Project located throughout the City, in an amount not to exceed \$4,444,006 which includes a 10% contingency for unforeseen circumstances. A record signature copy of the said contract and any amendments is to be on file in the City Clerk Department.

# CITY OF BERKELEY, CALIFORNIA SANITARY SEWER et al. PARNASSUS AVENUE REHABILITATION PROJECT

SPECIFICATION NO. 23-11548-C



LEGEND

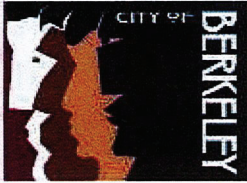


PROJECT REPAIR LOCATION

LOCATION MAPS

NOT TO SCALE

ATTACHMENT 2



**City of Berkeley  
Abstract of Bid Worksheet**

Finance Department  
General Services Division

**Spec. No.23-11548-C**

**Bid Date: 12/13/2022**

**FOR: Sanitary Sewer Rehabilitation – Parnassus Road, et al.**

required w/ bid

|    | Bidders                   | Base Bid        | Bid Bond | Addendum (3) | Sub-Contractor List | Experience - Fin. Qual. | Taxpayer ID | Opp.States | Nuclear Free | EBO | Sanctuary City |
|----|---------------------------|-----------------|----------|--------------|---------------------|-------------------------|-------------|------------|--------------|-----|----------------|
| 1  | ANDES CONSTRUCTION INC    | \$ 4,040,005.00 | X        | X            | X                   | X                       | X           | X          | X            | X   | X              |
| 2  | BAY PACIFIC PIPELINE INC  | \$ 4,241,599.50 | X        | X            | X                   | X                       | X           | X          | X            | X   | X              |
| 3  | CRATUS INC                | \$ 6,364,902.00 | X        | X            | X                   | X                       | X           | X          | X            | X   | X              |
| 4  | GLOSAGE ENGINEERING INC   | \$ 5,145,970.00 | X        | X            | X                   | X                       | X           | X          | X            | X   | X              |
| 5  | PACIFIC TRENCHLESS INC    | \$ 4,163,185.00 | X        | X            | X                   | X                       | X           | X          | X            | X   | X              |
| 6  | PRECISION ENGINEERING INC | \$ 6,492,528.00 | X        | X            | X                   | X                       | X           | X          | X            | X   | X              |
| 7  |                           |                 |          |              |                     |                         |             |            |              |     |                |
| 8  |                           |                 |          |              |                     |                         |             |            |              |     |                |
| 9  |                           |                 |          |              |                     |                         |             |            |              |     |                |
| 10 |                           |                 |          |              |                     |                         |             |            |              |     |                |

Bid Recorder: Talia Stewart

Talia Stewart (Dec 13, 2022 16:27 PST)

Dec 13, 2022

Bid Opener: Josh Roben

Josh Roben (Dec 13, 2022 14:53 PST)

Dec 13, 2022

Project Manager: Daniel Akagi

Daniel Akagi (Dec 13, 2022 14:54 PST)

Dec 13, 2022



Internal



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

CONSENT CALENDAR

January 31, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Rigel Robinson (Author), Councilmember Kate Harrison (Co-Sponsor), Councilmember Ben Bartlett (Co-Sponsor), and Councilmember Sophie Hahn (Co-Sponsor)

Subject: Parking/Towing Fines & Fees Reform

RECOMMENDATION

1. Adopt an Ordinance amending BMC 14.72.080 to allow individuals who are eligible for Residential Preferential Parking (RPP) permits and also for parking citation Indigent Payment Plans to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.
2. Direct the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows:
  - a. Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets.
  - b. Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.
3. Refer to the City Manager to:
  - a. Develop and return to Council with a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows.
  - b. Explore the possibility of raising the thresholds for 2A to 80% or 100% of AMI in the future, and explore the possibility of indexing fee reduction to income.
  - c. Consider allowing all undocumented individuals to participate in payment plans or fee reductions or waivers without the need to show proof of income or public benefits.
  - d. Look at simplification of payment plan administration and potentially allowing all parking and towing-related fines and fees to be paid through payment plans, regardless of income qualification, as a means to simplify administration. Consider software options for tracking and collection.

- e. Explore opportunities to coordinate outreach for payment plans with opportunities to engage residents in participation in other social services and public benefits.
4. Refer \$383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.

#### POLICY COMMITTEE RECOMMENDATION

On December 12, 2022, the Health, Life Enrichment, Equity, & Community Policy Committee adopted the following action: M/S/C (Taplin/Hahn) to forward the item to Council with a positive recommendation that the City Council approve the item with the Author's substitute recommendations as follows:

- (1) Adopt an Ordinance amending BMC 14.72.080 to allow individuals who are eligible for Residential Preferential Parking (RPP) permits and also for parking citation Indigent Payment Plans to purchase Residential Parking Permits even if they have outstanding parking tickets older than 21 days.
- (2) Direct the City Manager to implement reforms that reduce the disproportionate burden of parking and towing fines and fees on low-income individuals, as follows:
  - a) Expand eligibility for the City's parking citations indigent payment plan to encompass households making up to 50% of Alameda County's Area Median Income (AMI) and update these guidelines in accordance with AMI on an annual basis. Provide notice of the change to all individuals with unpaid tickets.
  - b) Amend City policy to formalize the current practice of not booting or towing cars when the sole reason for doing so is the vehicle having five or more outstanding parking tickets where payment is delinquent.
- (3) Refer to the City Manager to:
  - a) Develop and return to Council with a program to offer vehicle release fee waivers for low-income and/or homeless individuals and, if feasible, vehicle release fee reductions or waivers for first-time tows.
  - b) Explore the possibility of raising the thresholds for 2A to 80% or 100% of AMI in the future, and explore the possibility of indexing fee reduction to income (if at 30% AMI, pay 30% of fee, if at 50%, pay 50% of fee, etc.)
  - c) Consider allowing all undocumented individuals to participate in payment plans or fee reductions or waivers without the need to show proof of income or public benefits.
  - d) Look at simplification of payment plan administration and potentially allowing all parking and towing-related fines and fees to be paid through payment plans, regardless of income qualification, as a means to simplify administration. Consider software options for tracking and collection.
  - e) Explore opportunities to coordinate outreach for payment plans with opportunities to engage residents in participation in other social services and public benefits
- (4) Refer \$383,512 in ongoing annual funding to the FY 2024 Mid-Biennial Budget Update for 2 Associate Management Analyst FTEs to administer and expand the indigent payment plan program.



Vote: All Ayes.

### BACKGROUND

The fines and fees reform movement is growing across cities in the United States, including here in the Bay Area. Punitive fines and fees levied by governments — and the enforcement actions taken when they go unpaid — can create a cycle of economic hardship for the most vulnerable. In addition to the monetary consequences, the towing of a car or the loss of a license or vehicle registration can upend one’s life. This drives economic inequality and facilitates a breakdown of trust between community and government.

Instead of punishing people for being unable to pay their parking tickets, the City should look at expanding payment options, identifying alternative budget strategies to replace unnecessarily punitive fees, and moving away from enforcement strategies that disproportionately impact low-income people.

These reforms align with the direction given by the Reimagining Public Safety Taskforce. In their report presented to Council in March 2022, the Taskforce recommends a “review of transportation laws, fines and fees to promote safety and equity.” The relevant section reads:

*“Another issue is the matter of how Berkeley approaches fines and fees for violations issued. One example relates to our penalties for parking tickets, which can be devastatingly expensive to those experiencing poverty. While the city does offer an Indigent Payment Plan for Parking Citations where late fees are waived and payments can be spread over time, there are substantial administrative hurdles to jump through to apply to this program and there are still fees to be paid. In instances in which a vehicle is towed, the spiraling fines and fees could lead to the loss of a car or license, and this loss of mobility can further lead to loss of access to employment, education, or medical care. Ensuring that cars are parked properly often does have an important public safety component, but not always, and punitive fines and fees certainly do not improve public safety.”<sup>1</sup>*

The City Manager’s report, presented to Council in April 2022, echoes the Taskforce and recommends that the City “review Berkeley Municipal Code for proposed changes to increase equity and racial justice in the City’s existing transportation fines and fees, especially related to parking. Involve the Transportation Commission in the recommendation of such changes to Council.”<sup>2</sup> Through the subsequent FY 2023-2024 budget process, Council allocated \$150,000 to conduct a fines and fees analysis.

<sup>1</sup> [https://berkeley-rps.org/wp-content/uploads/2022/03/BerkeleyReport\\_032422FNL.pdf](https://berkeley-rps.org/wp-content/uploads/2022/03/BerkeleyReport_032422FNL.pdf)

<sup>2</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-04-21%20Agenda%20Packet%20-%20Council.pdf>

This item should align with and complement the upcoming assessment of fines and fees. Both will build off Council's past referrals related to fines and fees reform, including amendments to the indigent payment plan,<sup>3</sup> a referral to the Disability Commission to examine the impacts that the parking citation system may have on people with low income and disabilities,<sup>4</sup> and a referral expanding the community service in lieu of parking penalties program to non-residents.<sup>5</sup>

### ***RPP for Vehicles with Outstanding Parking Tickets***

The City's Residential Parking Permits (RPP) program allows Berkeley residents living in designated zones to purchase an annual parking permit for \$66. Under current policy, if a resident has any outstanding parking violations older than 21 days, they are ineligible to purchase an RPP permit.<sup>6</sup>

This policy can create a cycle of debt for residents who do not have the funds to pay off tickets, yet have no choice but to continue to park their car on City streets, either for work or because their apartment unit does not come with a parking space. For an individual experiencing financial hardship, a \$66 permit may be within financial reach even if paying off several hundreds of dollars in tickets all at once is not. If they are not allowed to obtain a permit, they may continue getting more and more citations for unpermitted parking with no way out of the situation. Combined with late fees, this racks up fines and fees and punishes people who are trying to come into compliance by purchasing a permit.

The City should be encouraging compliance, not prohibiting it. Amending the BMC to allow residents making below 50% of Area Median Income to purchase Residential Parking Permits even if they have outstanding parking tickets would enable them to stop the ongoing citations and focus on paying off their existing tickets.

### ***Eligibility for Indigent Payment Plan***

AB 503 (2017) established that low-income individuals are eligible for a payment plan for unpaid parking citations.<sup>7</sup> The City's program allows individuals to pay off their balance monthly over the course of 24 months or less, up to a limit of \$500.<sup>8</sup>

---

3

<https://records.cityofberkeley.info/PublicAccess/api/Document/AQOQRceMCzTaULeVOAA2odBETJ8DÁw cGNV911ÁdF8ZjqW2IEoRntIzlwfDSYIPb5u3gX4RBHOuzWVWoWBiaUcEc%3D/>

4

<https://records.cityofberkeley.info/PublicAccess/api/Document/AanANYizYnm9EVOkiYEpn1CRI60Sdf9vU 3UY3hzKBDUqngFpplÉsjT5za7N5EjkH69KILhA5ÉucrfpQPlqWAWc%3D/>

5

<https://records.cityofberkeley.info/PublicAccess/api/Document/ASÁplwGjflaUÁsb382hHTJR7BdOvBCibrp 2fGalYCIJTwp7PkiTMctUFRlbZvMGjfPTj4Mccz5wXn4500yCd7U4%3D/>

<sup>6</sup> <https://berkeley.municipal.codes/BMC/14.72.080>

<sup>7</sup> [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=40220.&lawCode=VEH](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=40220.&lawCode=VEH)

<sup>8</sup> <https://berkeleyca.gov/city-services/parking/parking-tickets>



Candidates may qualify based on income or proof of public benefits, as follows:

- Supplemental Security Income (SSI) or State Supplementary Payment (SSP)
- California Work Opportunity and Responsibility to Kids Act (CalWORKs) or a federal Tribal Temporary Assistance for Needy Families (Tribal TANF) grant program
- Supplemental Nutrition Assistance Program (SNAP) or the California Food Assistance Program (CFAP)
- County Relief, General Relief (GR) or General Assistance (GA)
- Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI)
- In-Home Support Services (IHSS)
- Medi-Cal

*Current vs. Suggested Income Caps to be Eligible for the Indigent Payment Plan*

| Household Size | Current Annual Income Cap (Federal Poverty Guidelines) | Suggested Annual Income Cap (Alameda County 50% AMI) |
|----------------|--------------------------------------------------------|------------------------------------------------------|
| 1              | \$13,590                                               | \$47,950                                             |
| 2              | \$18,310                                               | \$54,800                                             |
| 3              | \$23,030                                               | \$61,650                                             |
| 4              | \$27,750                                               | \$68,500                                             |
| 5              | \$32,470                                               | \$74,000                                             |
| 6              | \$37,190                                               | \$79,500                                             |
| 7              | \$41,190                                               | \$84,950                                             |
| 8              | \$46,630                                               | \$90,450                                             |

AB 503 establishes minimum requirements for indigent payment plan programs but does not prohibit municipalities from expanding eligibility. Federal poverty guidelines do not reflect the high cost of living in the City of Berkeley and the larger Bay Area. The federal caps fall well below 30% AMI, which is classified as extremely low income.<sup>9</sup> Acknowledging this reality, the City recently expanded eligibility for low-income commissioner stipends using 50% AMI for a household size of 3.<sup>10</sup>

<sup>9</sup> <https://www.acgov.org/cda/hcd/documents/2021IncomeandRentLimits.pdf>

<sup>10</sup> <https://berkeleyca.gov/sites/default/files/city-council-meetings/03-09-Annotated-Agenda.pdf>

While an individual does not have to meet the income guidelines if they are receiving any of the public benefits listed above, our current restrictions may not adequately serve undocumented immigrants, who are ineligible for many government programs.

Giving more people the option to enroll in an indigent payment plan will also shield low-income residents from the broader consequences of delinquent parking tickets. For example, the California Department of Motor Vehicles is required to refuse renewal of vehicle registration until all outstanding parking tickets have been paid, unless the individual is enrolled in a payment plan. Expired vehicle registration puts the vehicle at risk of being towed, which results in additional financial hardship and potential loss of wages for the vehicle's owner if they are not able to get to work without their car. Furthermore, barring vehicle owners from registering their vehicles is antithetical to public safety, since it serves the general public to ensure that drivers are insured and vehicles are regularly smog checked.

### ***Scofflaw Vehicle Enforcement/I-Tows***

California Vehicle Code Section 22651 grants local governments the authority to remove and impound scofflaw vehicles, or vehicles with five or more notices of parking violations where payment is delinquent.<sup>11</sup> This practice is also known as an I-Tow. AB 2876 (2018) placed certain limits on this authority, revising the CVC to read:

*“Any removal of a vehicle is a seizure under the Fourth Amendment of the Constitution of the United States and Section 13 of Article I of the California Constitution, and shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence. A removal pursuant to an authority, including, but not limited to, as provided in Section 22651, that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, such as ensuring the safe flow of traffic or protecting property from theft or vandalism.”<sup>12</sup>*

In San Francisco, vehicles towed for unpaid parking tickets made up only 9% of all vehicles towed but 55% of lien sales. Half of all the vehicles towed for parking ticket debt were sold, suggesting that this practice targets people who are simply unable to pay and is not a particularly effective strategy for collecting debt.<sup>13</sup> The staff and transportation costs associated with towing and lien sales often do not justify the small amounts of debt that are able to be collected in the end.

In 2019, Assemblymember David Chiu introduced AB 516, which would have ended the practice commonly referred to as a “poverty tow” but died in Senate Appropriations.<sup>14</sup> In

<sup>11</sup> [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=22651&lawCode=VEH](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=22651&lawCode=VEH)

<sup>12</sup> [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB2876](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2876)

<sup>13</sup> <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>

<sup>14</sup> [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB516](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB516)

February 2022, the City of Los Angeles temporarily suspended the towing of scofflaw vehicles in response to a federal court ruling against the City.<sup>15</sup>

The Berkeley Police Department does not currently conduct scofflaw enforcement due to both the “community caretaking” clause of AB 2876 and the impacts of the COVID-19 pandemic. Parking enforcement performs a critical public safety function by enforcing against cars that are unsafely parked or otherwise pose a risk to the general public. However, scofflaw vehicles that are legally parked are towed solely for the crime of poverty, which does not fall under “community caretaking.” In the interest of transparency and clarity, the City should formalize the current practice of not booting or towing scofflaw vehicles by updating relevant public-facing policy documents and internal employee manuals.

### ***Vehicle Release Fee Waivers***

When a vehicle is towed in the City of Berkeley, the vehicle’s owner must pay a release fee of \$75 to the City for certain infractions, in addition to towing fees and daily storage fees. If the vehicle was towed for unpaid parking citations, the owner must also pay off all outstanding parking fines and fees before they can obtain a vehicle release.

In the State of California, vehicle owners owe an average of \$499 in tow, storage, and administrative fees just three days after a tow.<sup>16</sup> This is in addition to the parking or registration fees that must be paid off. If they do not have the money to retrieve the vehicle, it can be sold at a lien sale after 30 days, resulting in a permanent loss of mobility and potentially jeopardizing their employment and access to other essential services such as school and health care.

These towing practices disproportionately burden low-income people due to the exorbitant fees and the time required to resolve a tow. An individual must first go to the City’s Customer Service Center or the DMV to pay outstanding parking and registration fines and fees, then to the Police Department to obtain a vehicle release, and finally to the tow yard to retrieve their car. If someone is not able to take time off work or school to do so on short notice, the daily storage fees accumulate quickly.

As part of San Francisco’s Financial Justice Project, the City and County of San Francisco implemented a tow waiver program for people experiencing homelessness or low income, as well as a fee reduction for first-time tows.<sup>17</sup> For low-income people, the \$325 administrative fee is waived and the tow fee is reduced from \$268 to \$100. For unhoused people, both the administrative and tow fees are waived. For first-time tows, the administrative fee is reduced to \$275.

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<sup>15</sup> <https://www.latimes.com/california/story/2022-02-08/los-angeles-stops-impounding-cars-for-unpaid-tickets>

<sup>16</sup> <https://wclp.org/wp-content/uploads/2019/03/TowedIntoDebt.Report.pdf>

<sup>17</sup> <https://www.sfmta.com/getting-around/drive-park/towed-vehicles/reduced-fees-first-time-tow-and-low-income-individuals>

San Francisco is a larger and more well-resourced jurisdiction that handles their own towing, as opposed to contracting it out to tow companies like the City of Berkeley does. While the case study of San Francisco cannot be directly applied to Berkeley, we should look to San Francisco's program as a model and offer waivers for fees that fall under the City's control.

ALTERNATIVES CONSIDERED

The City could reduce the tow and storage fees imposed on vehicle owners by amending our tow contracts at the next available opportunity. However, this would make it infeasible for any tow companies to operate in Berkeley without significant subsidies. The City could also consider municipalization of towing operations.

FINANCIAL IMPLICATIONS

Staff time and \$383,512 in ongoing annual funding for 2 Associate Management Analyst FTEs.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable negative environmental impacts associated with this action.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170  
Angie Chen, Legislative Assistant

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

ORDINANCE AMENDING THE MUNICIPAL CODE TO ALLOW ISSUANCE OF  
RESIDENTIAL PARKING PERMITS FOR VEHICLES WITH OUTSTANDING PARKING  
TICKETS

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

Section 1. That Berkeley Municipal Code Section 14.72.080 is amended to read as follows:

**14.72.080 Issuance of permits.**

A. Residential, local business and neighborhood-serving community facility parking permits shall be issued by the Department of Finance in accordance with requirements set forth in this chapter. Each such permit shall be designed to state or reflect thereon the identification of the particular residential, local business or neighborhood-serving community facility permit parking area for which it is issued. No more than one residential or local business parking permit shall be issued to each motor vehicle for which application is made.

B. When issuing local business and neighborhood-serving community facility permits, the Department of Finance in consultation with the traffic engineering division shall issue permits such that they will not unduly be concentrated on a specific block front in any given residential permit parking area.

C.

1. No permits shall be issued to residents in newly constructed residential units. The Current Planning division shall provide a listing of newly-constructed housing units to the Department of Finance.

2. No permits shall be issued to residents of Group Living Accommodations as defined in Chapter [23F.04](#) that are approved after January 1, 2012, unless the Zoning Adjustments Board specified otherwise when it approved the GLA. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.

3. In the R-2 and R-2A zoning districts, no permits shall be issued to residents of dwelling units with more than 5 bedrooms to which new bedrooms have been added subsequent to January 1, 2012. The Current Planning division shall provide a listing of addresses subject to this paragraph to the Department of Finance.

4. This subdivision shall not prevent issuance of permits to residents of permitted and legal nonconforming sororities, fraternities and student cooperatives who are not otherwise prohibited from obtaining them.

D. The Department of Finance and the Public Works Transportation Division are authorized to issue such rules and regulations necessary to implement this chapter, and are not inconsistent with it.

E. Parking permits shall not be issued for vehicles for which there is any outstanding City of Berkeley notice of violation of parking rules and restrictions that are unpaid for more than 21 calendar days from the issuance of the parking violation, except for vehicles belonging to individuals eligible for the City's Indigent Payment Plan.

~~E. Parking permits shall not be issued for vehicles for which there is any outstanding City of Berkeley notice of violation of parking rules and restrictions that are unpaid for more than 21 calendar days from the issuance of the parking violation.~~

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Office of the City Manager

PUBLIC HEARING  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning & Development Department  
 Subject: ZAB Appeal: 2065 Kittredge Street, Use Permit #ZP2021-0193

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Use Permit # ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an eight-story, mixed-use building at 2065 Kittredge Street with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces, and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On July 26, 2021, William Schrader submitted a Preliminary Application to vest rights pursuant to Senate Bill (SB) 330, the Housing Crisis Act of 2019 (Government Code Sections 65941.1 and 66300), for a housing development project.

On October 25, 2021, William Schrader submitted an application for Use Permit #ZP2021-0193 to construct an eight-story, mixed-use building with 187 dwelling units, 4,993 square feet commercial space and 43 parking spaces. The applicant also submitted an application for Landmark Structural Alteration Permit #LMSAP2021-0004 for the alteration of a City Landmarked site.

On June 1, 2022, the use permit application was deemed complete.

On April 21, 2022, the Design Review Committee (DRC) conducted a DRC Referral review for LMSAP2021-0004, and forwarded advisory comments for the Landmarks Preservation Commission (LPC) and Zoning Adjustments Board (ZAB).

On June 2, 2022 the LPC conducted a review of Structural Alteration Permit (SAP) #LMSAP2021-0004, and continued the discussion to a second meeting. On August 4, 2022, the LPC conducted a second meeting, approved the SAP for demolition and new

construction at the landmark site, adopted an Addendum to a previously certified and adopted Environmental Impact Report (EIR), and added a required condition of approval that the project obtain Final Design Review.

On September 22, 2022, the ZAB conducted a public hearing for the use permit application. After hearing public comments and holding discussion, the ZAB adopted the EIR Addendum and Revised Mitigation Monitoring and Reporting Program (MMRP) and approved the use permit by a vote of 7-0-0-1 (Yes: Duffy, Kahn, Kim, Sanderson, Thompson, Vincent, Tregub; No: None; Abstain: None; Absent: O' Keefe).

On October 11, 2022, staff issued a Notice of Decision of the ZAB approval.

On October 25, 2022, the City Clerk received an appeal filing from Adams, Broadwell Joseph and Cardozo, on behalf of East Bay Residents for Responsible Development.

On January 17, 2023, staff posted the public hearing notice at the site and three nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

### BACKGROUND

The project site is located within the Downtown Mixed-Use District (C-DMU), Core Sub-Area, as identified in the City's Downtown Area Plan (DAP). Directly adjacent to the project site and on the same block is the Shattuck Hotel, a City of Berkeley Landmark, whose main lobby and entrance are on Allston Way but which also occupies the airspace above the ground floor retail along the entire block's frontage on Shattuck Avenue. Below the hotel rooms along Shattuck Avenue is a row of commercial storefronts, as well as the entrance to the former commercial occupant known as Shattuck Cinemas, which is now closed.

Commercial land uses and a public parking structure are located north of the project site across Allston Way. South of the project site on Shattuck Avenue and across Kittredge Street is the Berkeley Central Library, a City of Berkeley and National historic landmark. West of the project site across Harold Way are the Dharma College and the Mangalam Center, both City of Berkeley Landmarks.

The project site is a single parcel that encompasses an entire City block with street frontage on Allston Way (north), Shattuck Avenue (east), Kittredge Street (south) and Harold Way (west) that is subdivided into commercial airspace condominium parcels A, B, and C of Parcel Map 6889. The project site is Unit B of the condominium subdivision, Parcel Map 6889, which was created in December, 2020. Entitlements were previously obtained for the project site in 2015 (UP13-10000010 and LM13-40000002, under the address 2211 Harold Way) to demolish historic structures and construct an 18-story, 302-unit, mixed-use building, with approximately 10,877 square feet of commercial space, a ten-theater cinema complex, and 177 underground parking spaces. Building



permits were never obtained for the project, and the City deemed the entitlements expired on January 17, 2020.

The proposed project would demolish a portion of the City Landmark Shattuck Hotel (the 1913 expansion) and fully demolish the City Landmark Hink's department store expansions completed in 1926 and 1959, and construct an eight-story, mixed-use building with 187 dwelling units.

The project is eligible for a density bonus under Government Code Section 65915, by including nine Very Low-income units (five percent of the base project), and qualifies for a 20 percent density bonus, or 33 bonus units, of which 24 are utilized, resulting in a 187-unit density bonus project, with a concession to reduce the usable open space requirement, and waivers of height maximums, front yard setback minimums, the landscaped usable open space minimum, and the commercial parking minimum. The ZAB found the project to be compliant with all vested and applicable, objective general plan and zoning standards, and without specific adverse impact on public health or safety, and approved it on September 22, 2022 without reductions to project's density, pursuant to the State Housing Accountability Act (HAA), Government Code Section 65589.5(j).<sup>1</sup>

For additional project background, please see Attachment 3, the ZAB staff report for this project.

#### RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter and staff's responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the appeal letter (Attachment 2) for the full text.

#### Issue:

**The appellants assert that the Project was approved by the ZAB without meeting the "non-detriment" finding in Berkeley Municipal Code Section 23.406.040(E)(1)<sup>2</sup>, and the project is detrimental to the general welfare of the City, its residents, and**

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<sup>1</sup> The Housing Accountability Act (HAA), Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that the development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

<sup>2</sup> Berkeley Municipal Code Section 23.406.040(E)(1) Findings for Approval:

"To approve a Use Permit, the ZAB shall find that the proposed project or use:

- (a) Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use; and
- (b) Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City."

**its workers, in violation of the City’s zoning code. Specifically, they assert that the Project Applicant has made no commitment to build using a local skilled and trained workforce, to provide apprenticeship training opportunities for City of Berkeley or East Bay residents, or to provide healthcare for its construction workforce. The appellants believe that the Project is therefore inconsistent with City plans, policies, and goals which seek to ensure that the City has an adequate supply of decent housing and living wage jobs. Further, the project previously approved on this site – the 2211 Harold Way Mixed Use Project – was approved with a community benefits package that included a labor agreement with other benefits.**

**The appellants further assert that the ZAB approval is inconsistent with the analyses presented in the staff report written in support of Council’s recent Referral to draft the Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (“HARD HATS”) Ordinance, which, if enacted, would implement apprenticeship program requirements and healthcare security for workers on General Plan area projects.**

Response:

Although the Berkeley Municipal Code (BMC) requires findings of general non-detriment for approval of discretionary permits, and the General Plan (GP) and Downtown Area Plan (DAP) goals and policies broadly guide development in the downtown zoning district, BMC non-detriment findings and GP/DAP goals and policies are not objective standards; they cannot provide a basis for denial of (or reduction in density for) a housing project due to protections provided by the HAA. Pursuant to the HAA, the City cannot deny or reduce the density of a housing development that is compliant with objective standards, unless it can meet the strict finding of specific adverse impact<sup>3</sup> on public health or safety – a level of impact which the State Department of Housing and Community Development considers to be rare.<sup>4</sup>

The project applicant submitted a Preliminary Application pursuant to SB 330 (Government Code Sections 65941.1 and 66300) to vest in policies, standards and fees in effect on July 26, 2021, when the application was determined to be complete, for the pendency of the project approval. Upon review of the SB 330 use permit application, the ZAB determined that the project was compliant with all vested and applicable objective general plan and zoning standards, that the findings for specific adverse impact on

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<sup>3</sup> Per Government Code Section 65589.5(d)(2), a “specific, adverse impact” means “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.”

<sup>4</sup> Housing Accountability Act Technical Assistance Advisory (Government Code Section 65589.5), p. 20; State Department of Housing and Community Development.

public health or safety in order to deny (or reduce) the project could not be made, and approved the project in accordance with SB 330 and the HAA.

In addition, though the project site is located in the C-DMU, Mixed Use Commercial District, where a “community benefits” package that includes a Project Labor Agreement is required of proposed buildings which exceed 75 feet in height, this project is not subject to the requirement because its Base Project<sup>5</sup> height does not exceed 75 feet, unlike the 2211 Harold Way project that the appellants reference.

Finally, the HARDHATS ordinance referenced in the appeal letter is not yet City policy. If the Berkeley City Council in the future were to adopt the proposed ordinance in its current form, it would still not be relevant to a land use permit review process, as “HARDHATS” is framed as a requirement of all projects of a certain size, not as a discretionary review criterion.

#### ENVIRONMENTAL SUSTAINABILITY

The project approved by the ZAB is compliant with all applicable State and local environmental requirements, would be located in a transit-rich area, and would be built and operated according to current codes for energy conservation, waste reduction, low toxicity, and other factors.

#### ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23.410.040(G), the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB’s decision, or (3) remand the matter to the ZAB.

#### Action Deadline:

Pursuant to BMC Section 23.410.040(I), if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

#### CONTACT PERSONS

Jordan Klein, Director, Planning & Development Department, (510) 981-7534  
Steven Buckley, Land Use Planning Manager, (510) 981-7411  
Sharon Gong, Project Planner, (510) 981-7429

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<sup>5</sup> Pursuant to Government Code Section 65915, the Base Project in a density bonus project is the objective standards-compliant project that represents the maximum allowable density on the site before adding the density bonus units, which are conferred by-right if the minimum amount of below-market-rate units are included in the project.

ZAB Appeal: 2065 Kittredge Street  
Use Permit #ZP2021-0193

PUBLIC HEARING  
January 31, 2023

Attachments:

1. Draft Resolution

- Exhibit A.1: Findings and Conditions
- Exhibit A.2: Mitigation Monitoring and Reporting Program, Revised July 2022
- Exhibit A.3: SAP Findings and Conditions
- Exhibit B: Project Plans, received September 1, 2022
- Exhibit C: EIR Addendum for 2065 Kittredge Mixed-Use Project
- Exhibit D: Supplemental Analysis Memorandum to EIR Addendum, dated September 8, 2022

2. Appeal Letter, dated received October 25, 2022

3. September 22, 2022 ZAB Hearing Staff Report

4. Index to Administrative Record

5. Administrative Record

6. Public Hearing Notice

Referenced Link:

2211 Harold Mixed-Use Project Final EIR and Statement of Overriding Considerations, available at: <https://aca.cityofberkeley.info/CitizenAccess/Default.aspx>. Click on Zoning tab; enter permit number ZP2021-0193; select permit ZP2021-0193; click on the "Record Info" drop down menu; click on Attachments for a list of all application materials.

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2021-0193 TO DEMOLISH PORTIONS OF EXISTING CITY LANDMARK COMMERCIAL BUILDINGS AND CONSTRUCT AN EIGHT-STORY, MIXED-USE BUILDING AT 2065 KITTREDGE STREET WITH 187 DWELLING UNITS (INCLUDING FOUR LIVE/WORK UNITS AND NINE VERY LOW-INCOME UNITS), 4,993 SQUARE FEET COMMERCIAL SPACE AND 43 PARKING SPACES, AND DISMISS THE APPEAL

WHEREAS, on July 26, 2021, William Schrader (“applicant”) submitted a Preliminary Application to vest rights pursuant to Senate Bill (SB) 330, the Housing Crisis Act of 2019 (Government Code Sections 65941.1 and 66300), for a housing development project.

WHEREAS, on October 25, 2021, William Schrader submitted an application for Use Permit #ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an eight-story, mixed-use building with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces (“project”); and also submitted an application for Landmark Structural Alteration Permit #LMSAP2021-0004 for the alteration of a City Landmarked site; and

WHEREAS, on June 1, 2022, staff deemed this application complete and determined that the level of California Environmental Quality Act (“CEQA”) review would be an Addendum to the certified 2211 Harold Way Mixed-Use Project Final Environmental Impact Report (“EIR”); and

WHEREAS, on April 21 2022, the Design Review Committee (DRC) conducted Design Review Referral for LMSAP2021-0004, and forwarded advisory comments for the LPC and ZAB.

WHEREAS, on June 2, 2022 the Landmarks Preservation Commission (LPC) conducted a review of Structural Alteration Permit #LMSAP2021-0004, and continued the discussion to a second meeting; and

WHEREAS, on August 4, 2022, the LPC and conducted a second meeting, approved the SAP for demolition and new construction at the landmark site, adopted an Addendum to the previous EIR, and conditioned the project for Final Design Review; and

WHEREAS, on September 8, 2022, staff mailed and posted a Notice of Public Hearing for the project at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on September 22, 2022, the Zoning Adjustments Board (ZAB) conducted a public hearing for the Use Permit. After hearing public comments and holding discussion, the ZAB adopted the EIR Addendum and Revised Mitigation Monitoring and Reporting Program, and approved the Use Permit by a vote of 7-0-0-1 (Yes: Duffy, Kahn, Kim,

Olson, Sanderson, Thompson, Vincent, Tregub; No: None; Abstain: None; Absent: O' Keefe); and

WHEREAS, on October 11, 2022, staff issued the notice of the ZAB decision; and

WHEREAS, on October 25, 2022, the City Clerk received an appeal filing from Adams, Broadwell Joseph and Cardozo, on behalf of East Bay Residents for Responsible Development; and

WHEREAS, on or before January 17, 2023, staff mailed and posted a Notice of Public Hearing at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on January, 31, 2023, the Council held a public hearing to consider the ZAB's decision, and in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A.1 to affirm the decision of the ZAB to approve Use Permit #ZP2021-0193, adopts the conditions of approval in Exhibits A.1, A.2 and A.3; adopts the project plans in Exhibit B; adopts the EIR Addendum and Supplemental Analysis Memo in Exhibits C and D; and dismisses the appeal.

#### Exhibits

- Exhibit A.1: Findings and Conditions
- Exhibit A.2: Mitigation Monitoring and Reporting Program, Revised July 2022
- Exhibit A.3: SAP Findings and Conditions
- Exhibit B: Project Plans, received September 1, 2022
- Exhibit C: EIR Addendum for 2065 Kittredge Mixed-Use Project
- Exhibit D: Supplemental Analysis Memorandum to EIR Addendum, dated September 8, 2022

## ATTACHMENT 1, EXHIBIT A.1

FINDINGS AND CONDITIONS  
SEPTEMBER 22, 2022**2065 Kittredge Street**

**Use Permit #ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an 8-story, mixed-use building with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces. Project utilizes State Density Bonus.**

**PERMITS REQUIRED**

- Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use development
- Use Permit under BMC Section 23.204.020(A) to construct dwelling units
- Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more
- Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limits, up to 75 feet (plus 5-foot parapet, by right)

**CONCESSIONS/WAIVERS UNDER GOVERNMENT CODE SECTION 65915-65918**

- Concession to reduce the usable open space requirement – to provide 11,916 square feet where 14,960 square feet is required
- Waiver of BMC Section 23.204.130(E)(1) to exceed building height limits – to be 87 feet (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet, by right, with a use permit)
- Waiver of BMC Section 23.204.130(E)(3) to reduce setbacks to 0 feet, where 15 feet is required, where above 75 feet in height
- Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 0-20 feet, where 5 feet is required, at 0-20-foot building height
- Waiver of BMC Section 23.304.090(B)(7) to reduce the landscaped usable open space to 25 percent, where from 40 percent minimum is required
- Waiver of BMC Section 23.304.050(A) to exceed building height limits with rooftop architectural elements which exceed the maximum height limit for the district
- Waiver of BMC Section 23.322.030(B)(1) to reduce the minimum commercial parking requirement to zero, where eight is required

**I. CEQA FINDINGS**

1. Pursuant to the California Environmental Quality Act (CEQA), the City prepared an EIR Addendum for this Project.
  - A. CEQA Approach: Pursuant to Section 15164 of the CEQA Guidelines, codified in Sections 15000 et seq. of Title 14 of the California Code of Regulations, a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15612 calling for preparation of a subsequent

EIR have occurred. Under Section 15162(a), where an EIR has been certified for a project, no subsequent EIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are substantial changes in the project or circumstances or substantially important new information that will cause the project to have significant new impacts or substantially increase previously identified significant impacts.

As discussed in detail in the EIR Addendum, potential impacts associated with the modified project (the proposed changes compared to the project evaluated in the Final EIR) are consistent with potential impacts characterized and mitigated for in the Final EIR. Substantive revisions to the Final EIR are not necessary because no new significant impacts or significant impacts of substantially greater severity than previously described would occur. Thus, the conditions outlined in CEQA Guidelines Section 15162(a) requiring preparation of a subsequent EIR would not be met.

- B. EIR Addendum and Revised MMRP: An Addendum to the 2211 Harold Way Mixed-Use Project (UP 13-10000010) Final EIR, which was certified in December 2015, was prepared to evaluate the potentially significant environmental impacts of the proposed project, pursuant to the California Environmental Quality Act. The Addendum considered the Final EIR and Statement of Overriding Considerations, and evaluated the modified project. The modified project was found to be smaller and less impactful than the Final EIR project. The impacts related to demolition and alteration of historic buildings, would remain significant and unavoidable, and the same overriding considerations would apply to the modified project, except that the project is no longer required to provide community benefits, and cultural resource impacts were addressed in the modified design.

The Addendum described the changes in the modified project, and addressed the following issues in detail: Air Quality, Cultural Resources, Greenhouse Gas Emissions, Noise, Transportation, and Utilities and Service Systems. All other environmental issues were evaluated for impact from the modified project as well, with the conclusion that impacts to these areas will be less than significant with mitigation, similar to the original project. For each of the above-listed areas of evaluation, the EIR Addendum findings supported the conclusion that impacts from the modified project will not result in new significant effects or a substantial increase in the severity of previously identified significant effects on the environment. Therefore, no new mitigation measures will be necessary for any of these evaluated areas. Furthermore, several mitigation measures for Cultural Resources are no longer required, as discussed below.

Cultural Resources. No new or substantially more severe significant effects will occur to cultural resources, and no new mitigation measures will be necessary. Design changes in the modified project include a reduction in building height, design strategies to break up massing with varied rooflines and materials, and the projection of the second-floor level above the double-height street level, aligning with the cornice of the 1912 portion of the Shattuck Hotel. These design modifications have responded to the design measures adopted in Mitigation Measures CR-2(a), (b) and (c) of the Final EIR; therefore the measures do not apply to the modified project. In particular, the modified project avoids impact to the Allston Way elevation, in response to Mitigation Measure CR-2(a); the redesign of the Kittredge Street “hyphen” responds to Mitigation Measure CR-2(b); and the



removal of large-scale use of aluminum glazing systems responds to Mitigation Measure CR-2(c).

In conclusion, similar to the original project, cultural resource impacts from the modified project will be less than significant with mitigation, with the exception of impacts related to demolition and alteration of historic buildings, which will remain significant and unavoidable. Mitigation Measures CR-2(a) through (c) will be removed from the Mitigation Monitoring and Reporting Program (MMRP). All other measures adopted in the Final EIR for the purposes of mitigating cultural resources impacts remain applicable.

Revisions to the project were made after the LPC meeting on August 4, 2022, including the elimination of one unit (two bedrooms), the addition of 812 square feet of commercial area, and other minor revisions. The City reviewed the revised plans and concluded that the revisions did not change the conclusions of the EIR Addendum.

Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091(d) require the City to adopt a reporting or monitoring program for the changes to the project that it has adopted or made a condition of approval in order to avoid or substantially lessen significant effects on the environment. The monitoring program is designed to ensure compliance during project implementation. The MMRP for the 2211 Harold Way Mixed-Use Project Final EIR has been revised to reflect the changes to the mitigation measures that were described in the Addendum.

- C. The Zoning Adjustments Board finds that the modified project's significant environmental impacts to cultural resources are acceptable in light of the project's benefits. These benefits were set forth in the statement of overriding considerations that was adopted in connection with the 2211 Harold Way project, and, with the exception of that statement's inclusion of benefits regarding maintaining a cinema and community benefits required per BMC Section 23.E.68.090.E for the tower aspect of that project, the benefits and considerations in that statement are applicable to the modified project. The benefits set forth therein constitute overriding considerations warranting approval of the modified project, independent of the other benefits, despite each and every unavoidable impact.

The EIR Addendum, 2211 Harold Mixed-Use Project Final EIR and Statement of Overriding Considerations are available at this link: <https://aca.cityofberkeley.info/CitizenAccess/Default.aspx>. Click on Zoning tab; enter permit number ZP2021-0193; select permit ZP2021-0193; click on the "Record Info" drop down menu; click on Attachments for a list of all application materials.

## II. DENSITY BONUS FINDINGS

1. Pursuant to Government Code Section 65915, the Zoning Adjustments Board finds that:
  - A. Under the City's methodology for implementing density bonuses, the "base project" consists of 164 units;
  - B. The project will provide at least nine (9) Very Low-Income (VLI) qualifying units in the 163-unit "base project", as more fully set forth in Condition 70;
  - C. The project is entitled to a density increase of 20 percent over the otherwise maximum allowable residential density under the Zoning Ordinance and General Plan Land Use Element, under the requirements of Government Code Section 65915(b) and (f), plus one

concession or incentive. This equates to a density bonus of 24 units (33 units maximum) above the Base Project, for a total of 187 units.

2. In accordance with Government Code Section 65915(d) and (k), the Zoning Adjustments Board hereby grants the following concessions in order to provide for affordable housing costs:
  - A. Concession to reduce the usable open space requirement – to provide 11,916 square feet where 14,960 square feet is required
  
3. In accordance with Government Code Section 65915(d), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds that the approval of the concession is required to provide for affordable rents, as provided in Government Code Section 65915(d)(1)(A) because 1) approval of the concession will result in identifiable and actual cost reduction; 2) approval of the concession will not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) will not be contrary to State or Federal law.
  
4. In accordance with Government Code Section 65915(e) the Zoning Adjustments Board hereby grants the following waivers:
  - A. Waiver of BMC Section 23.204.130(E)(1) to exceed building height limits – to be 87 feet (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet, by right, with a use permit)
  - B. Waiver of BMC Section 23.204.130(E)(3) to reduce setback to 0 feet, where 15 feet is required, where above 75 feet in height
  - C. Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 0-20 feet, where 5 feet is required, at 0-20 foot building height
  - D. Waiver of BMC Section 23.304.090(B)(7) to reduce the landscaped usable open space to 25 percent, where from 40 percent minimum is required
  - E. Waiver of BMC Section 23.304.050(A) to exceed building height limits with rooftop architectural elements which exceed the maximum height limit for the district
  - F. Waiver of BMC Section 23.322.030(B)(1) to reduce the minimum commercial parking requirement to zero, where 8 is required

These waivers are required because state law requires the City to modify development standards as necessary to accommodate these density bonus units, and because the Zoning Adjustments Board hereby finds that the density bonus units can best be accommodated by granting these waivers.
  
5. In accordance with Government Code Section 65915(e), in order to allow construction of the proposed project with the density permitted under State law, the Zoning Adjustments Board finds approval of waivers is required 1) construct the proposed project at the density permitted under State law; 2) approval of requested waivers will not have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources; and 3) approval of the requested waivers will not be contrary to State or Federal law.

### III. FINDINGS FOR APPROVAL

6. The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local

agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that:

- A. The development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and
- B. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

The project includes construction of 187 dwelling units. Because the base project would comply with applicable, objective general plan and zoning standards, §65589.5(j) does apply to this project. No significant, quantifiable, direct and unavoidable impacts, based on objective, identified written public health or safety standards, polices, or conditions, have been identified by staff.

- 7. As required by Section 23.406.040(E)(1) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
  - A. The project is consistent with all applicable C-DMU District standards and qualifies for waivers and concessions for the listed district standards granted pursuant to State Density Bonus, Government Code, Section 65915;
  - B. Shadow impacts will affect commercial uses only, and will not affect residential uses; and
  - C. The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

#### **IV. OTHER FINDINGS FOR APPROVAL**

- 8. As required by Section 23.326.070(D) of the BMC, the Zoning Adjustments Board finds that the proposed demolition of the existing building at 2065 Kittredge Street will not be materially detrimental to the commercial needs and public interest of any affected neighborhood or the City, and meets the finding that demolition is required to allow a proposed new building or other proposed new use.
- 9. As required by Section 23.204.130(I) of the BMC, the Zoning Adjustments Board finds that the proposed use or structure:
  - A. Is compatible with the purposes of the district to implement the vision and goals of the Downtown Area Plan:
    - a. Environmental Sustainability and Access: DAP Goals ES-3, UL-1 AC-1, AC-4. The project provides higher-density development in proximity to regional transit, shops and amenities, and it will improve options to increase access to Downtown on foot, by bicycle and via transit will promote transit as an efficient and attractive choice through its location and through its Transportation Demand Management Plan and other associated Conditions of Approval.

- b. Land Use: DAP Goal LU-1 (Policies LU-1.1 and LU-1.3). The Project will include residential, and commercial uses that allow people who live, work and learn in the Downtown to meet daily needs on foot.
  - c. Historic Preservation and Urban Design: The LPC referred the project to DRC for design review recommendations, and considered the project in relation to its urban context, focusing on the application of the Downtown Design Guidelines, which implement the objectives and policies of the Historic Preservation and Urban Design chapter of the DAP. The LPC approved the SAP with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards. (See section IV.B for details.)
  - d. Streets and Open Space: DAP Goal OS-1. The project will enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster a sense of place.
  - e. Housing and Community Health and Services: DAP Goals HC-1, HC-2, HC-3. The project will encourage Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses, and play a significant role in meeting Berkeley's continuing need for additional housing.
  - f. Economic Development: DAP Goal ED-1. The project will serve the needs of the neighborhood and the City, make Downtown a more attractive regional destination, by promoting successful retail businesses and other attractions, with daytime and night-time populations to support them.
- B. Is compatible with surrounding uses and buildings:
- a. The project site currently includes office and retail uses. (Previous cinema and museum uses no longer occupy the site.) The proposed project will change uses on the site to ground-floor commercial (retail and food service) and residential uses above. Uses on the surrounding properties include retail, public parking, office, library, hotel, and residential. The project will not introduce new land uses that do not already exist in the Downtown, and as described above, will further the vision and goals of the DAP.
  - b. The DRC forwarded a positive recommendation for the project design, and the LPC voted to approve the SAP, with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards.
-

## **V. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS**

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

- 1. Conditions and Mitigation Monitoring and Reporting Program Shall be Printed on Plans**  
The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.
- 2. Compliance Required (BMC Section 23.102.050)**  
All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.
- 3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)**
  - A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
  - B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.
- 4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)**  
All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.
- 5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)**
  - A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
  - B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
  - C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
  - D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.
- 6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)**

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

**7. Permit Modifications (BMC Section 23.404.070)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

**8. Permit Revocation (BMC Section 23.404.080)**

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

**9. Pay Transparency Acknowledgement (BMC Section 13.104.030)**

Prior to the issuance of a building permit for any Project subject to this Chapter:

- A. A Responsible Representative of the Permittee shall certify under penalty of perjury that:
  - (1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter.
- B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the Permittee shall certify under penalty of perjury that the Contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.

**10. Pay Transparency Attestations Following Project Completion (BMC Section 13.104.040)**

Within 10 days of the approved final inspection of any Project subject to this Chapter, each Permittee shall provide to the City for each Contractor and Qualifying Subcontractor a Pay Transparency Attestation on a form approved by the City. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor shall attest under penalty of perjury that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City.

**11. Posting of Ordinance (BMC Section 13.104.050)**

Each day work is performed on the Project, each Permittee shall post, and keep posted in a conspicuous location where it may be easily read by employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.

**12. Conditions of Approval (BMC Section 13.104.060)**

The requirements of Sections 13.104.030 through 13.104.050 shall be included as conditions of approval of any Use Permit or Zoning Certificate for any Project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any Use Permit issued for the Project under Chapter 23B.60.

**13. Indemnification Agreement**

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney’s fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney’s fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant’s expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

**VI. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD**

Pursuant to BMC 23.406.040.E, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

**Prior to Submittal of Any Building Permit:**

**14. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

**Project Liaison** \_\_\_\_\_  
Name Phone #

**15. Final Geotechnical Report.** The Project Geotechnical Consultant shall coordinate with the project team and complete the analysis necessary to provide final recommendations and a signed and stamped report for the proposed project. Final recommendations shall consider final floor elevations and potential grading concepts. The final report shall include specifications for engineered fill for basement backfill where shallow footings may be proposed, and provide recommended bearing pressures for footings embedded into this engineered fill, if applicable. The applicant shall consider the benefits of drilling a boring along the northern side of the

property to investigate the subsurface conditions in the vicinity of the historic Strawberry Creek channel and installing and monitoring a piezometer(s) to better document groundwater conditions before and during construction. The Final Geotechnical Report shall be compiled, signed and stamped by the Project Geotechnical Consultant and submitted to the City for review by the City Geotechnical Consultant and City Engineer as part of building permit plan check.

16. Geotechnical Plan Review. The applicant's geotechnical consultant shall review and approve all geotechnical aspects of the final project building and grading plans (i.e., site preparation and grading including removal and replacement/treatment of expansive soils, site surface and subsurface drainage improvements including site runoff discharge, and design parameters for foundations and retaining walls, etc.) to ensure that their recommendations have been properly incorporated and to ensure that the project concept has not changed significantly since preparation of their report. The results of the plan review should be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.
17. Vapor Intrusion. Submit a vapor intrusion report (including subslab vapor samples and indoor air samples at the northwestern portion of the basement level of the Site) to the Toxics Division for review. See the project Phase I report, dated February 5, 2021 for details on the required report scope.
18. Final Design Review. The Project requires approval of a Final Design Review application by the Design Review Committee.
19. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection.
20. Construction Noise Reduction Program. The applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
  - A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
  - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
  - C. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
  - D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
  - E. Prohibit unnecessary idling of internal combustion engines.



- F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
- H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.
21. Damage Due to Construction Vibration. The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall take into account project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake an existing conditions study (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage. This study shall
- establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and
  - include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

22. Compliance with Conditions and Environmental Mitigations. The building permit application is subject to verification of compliance to the adopted **Mitigation Monitoring and Reporting Program (Attachment - Exhibit B)**. The applicant shall be responsible for demonstrating compliance with all conditions of approval and mitigation measures per the timeline set forth by this use permit. The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval

and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.

### **Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)**

23. Fee Deferrals. All zoning project application fees that were deferred at the time of application submittal shall be paid in full.
24. Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
25. Construction Phases. The applicant shall provide the Zoning Officer with a schedule of major construction phases with start dates and expected duration, a description of the activities and anticipated noise levels of each phase, and the name(s) and phone number(s) of the individual(s) directly supervising each phase. The Zoning Officer or his/her designee shall have the authority to require an on-site meeting with these individuals as necessary to ensure compliance with these conditions. The applicant shall notify the Zoning Officer of any changes to this schedule as soon as possible.
26. Demolition. Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
27. Construction and Demolition Diversion. Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.
28. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
- A. Environmental Site Assessments:
- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 2 years old\*) shall be submitted to TMD for developments for:
    - All new commercial, industrial and mixed use developments and all large improvement projects.
    - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).

- EMA is available online at: [http://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3 - General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
  - 3) If the Phase I is over 2 years old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
- B. Soil and Groundwater Management Plan:
- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
  - 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
  - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
- C. Building Materials Survey:
- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.
- D. Hazardous Materials Business Plan:
- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

**Prior to Issuance of Any Building (Construction) Permit**

29. Privately Owned Public Open Space (POPOS). The applicant shall submit proof of measures taken (i.e. signage, etc..) to ensure that the POPOS area at Allston and Harold Way are accessible to the public for the life of the project.
30. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
31. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
32. Streets and Open Space Improvement Plan: Street Frontage Improvements. Streets and Open Space Improvement Plan: Street Frontage Improvements. Consistent with the Downtown Streets and Open Space Improvement Plan (SOSIP) (or subsequent iterations as adopted by the City), the developer shall construct improvements along Harold Way, Kittredge Street, and Allston Way, to the centerline. Such improvements shall be included with the building permit submittal, designed and constructed as directed by the Public Works and Fire Departments, and constructed prior to certificate of occupancy.
33. Green Building Certification. The applicant shall submit documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation shall include proof of payment of the registration/application fee to the organization administering the green building certification system (e.g. USGBC/GBCI for LEED, Build It Green for GreenPoint Rated, etc.), a copy of the updated green building checklist that reflects anticipated points, and a statement from the appropriate project team professional (e.g. LEED Accredited Professional, GreenPoint Rater, etc.) verifying that the project is on track for certification at the required level or above. The submitted green building checklist must be a type that is appropriate for the project and a version that is being accepted by the organization granting the green building certification at the time of building permit application. Whenever applicable, measures from the green building checklist shall be incorporated and noted on site plans.
34. Solar Photovoltaic (Solar PV). A solar PV system, on the solar zone specified in Section 110.10 of the 2019 Energy Code, shall be installed (subject to the exceptions in Section 110.10) as specified by the Berkeley Energy Code (BMC Chapter 19.36). Location of the solar PV system shall be noted on the construction plans.
35. Electric Vehicle (EV) Charging. At least 20% of the project parking spaces for residential parking shall be "EV Charger Ready": equipped with raceway, wiring, and power to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, and at least 80%

of the project parking spaces for residential parking shall be "EV Spaces Raceway Equipped": equipped with a raceway between an enclosed, inaccessible, or concealed area and an electrical service panel/subpanel as specified by the Berkeley Green Code (BMC Section 19.37.040). Any Level 2 EV charging systems installed at parking spaces will be counted toward the applicable readiness requirement. Readiness for EV charging and EV charging station installations shall be noted on the construction plans.

36. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELO). MWELO-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET<sub>o</sub>) for Berkeley is 41.8.
37. Prohibition of Natural Gas Infrastructure in New Buildings. The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80).
38. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
39. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
40. Required Parking Spaces for Persons with Disabilities. Per BMC Section 23.322.040.H of the Zoning Ordinance, "If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces."

#### **Prior to Demolition or Start of Construction:**

41. Construction Meeting. The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

#### **During Construction:**

42. Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
43. Construction Hours- Exceptions. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the

expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.

44. Project Construction Website. The applicant shall establish a project construction website with the following information clearly accessible and updated monthly or more frequently as changes warrant:
- Contact information (i.e. "hotline" phone number, and email address) for the project construction manager
  - Calendar and schedule of daily/weekly/monthly construction activities
  - The final Conditions of Approval, Mitigation Monitoring and Reporting Program, Transportation Construction Plan, Construction Noise Reduction Program, and any other reports or programs related to construction noise, air quality, and traffic.
45. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
  - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
  - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
46. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with **one** of the following measures:
- A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
  - B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type

(Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

- An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
- A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

**47. Construction and Demolition Diversion.** Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

**48. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.

**49. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard



permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 50. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.
- 51. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
  - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
  - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
  - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
  - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 52. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate



the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

- 53. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.
- 54. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- 55. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
  - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
  - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater

pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

- D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
- E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
- F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
- G. All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).
- H. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
- I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- J. All loading areas must be designated to minimize "run-on" or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
- K. Restaurants, where deemed appropriate, must be designed with a contained area for cleaning mats, equipment and containers. This contained wash area shall be covered or designed to prevent run-on or run-off from the area. The area shall not discharge to the storm drains; wash waters should drain to the sanitary sewer, or collected for ultimate disposal to the sanitary sewer. Employees shall be instructed and signs posted indicating that all washing activities shall be conducted in this area. Sanitary connections are subject

to the review, approval and conditions of the waste water treatment plant receiving the discharge.

- L. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
  - M. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
56. Public Works. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
57. Public Works. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
58. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
59. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
60. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
61. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

62. Compliance with Conditions and Environmental Mitigations. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance to the Mitigation Monitoring and Reporting Program.

- 63. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **September 1, 2022**, except as modified by conditions of approval.
- 64. Geotechnical Construction Inspections.** The geotechnical consultant shall inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections shall include, but not necessarily be limited to: site preparation and grading including the removal and replacement of undocumented fill, site surface and subsurface drainage improvements, and excavations for foundations and other improvements prior to the placement of steel and concrete. The Consultant should be allowed to inspect site excavations to confirm areas of undocumented fill including areas of potential fill associated with the historic alignment of Strawberry Creek. The results of these inspections and the as-built conditions of the project shall be described by the geotechnical consultant in a letter and submitted to the City Engineer for review prior to final (granting of occupancy) project approval.
- 65. Transportation Demand Management.** Prior to issuance of a Certificate of Occupancy, the property owner shall facilitate a site inspection by Land Use Division staff to confirm that the physical improvements required in BMC Section 23.322.060 have been installed. A Parking and Transportation Demand Management (PTDM) compliance report documenting that the programmatic measures required in BMC Section 23.322.060 are implemented shall be submitted to the Land Use Division prior to occupancy, and on an annual basis thereafter, which demonstrates that the project is compliant with the applicable requirements in this section:
- A. New construction that results in an off-street total of more than 25 publicly available parking spaces shall install dynamic signage to Transportation Division specifications, including real-time garage occupancy signs at the entries and exits to the parking facility with vehicle detection capabilities and enabled for future connection to the regional 511 Travel Information System; or equivalent, as determined by the Land Use Division in consultation with the Transportation Division. The information panels shall be shown in the construction drawings and shall be installed prior to occupancy.
  - B. For any new building with residential units or structures converted to a residential use, required parking spaces shall be leased or sold separate from the rental or purchase of dwelling units for the life of the dwelling units. The property owner shall notify all residents of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of Certificate of Occupancy or final inspection.
  - C. For new structures or additions over 20,000 square feet, the property owner shall provide transportation benefits at no cost to every employee, residential unit, and/or group living accommodation resident, one pass for unlimited local bus transit service; or (subject to the review and approval of the Zoning Officer in consultation with the Transportation Division) a functionally equivalent transit benefit in an amount at least equal to the price of a non-discounted adult monthly local bus pass. A notice describing these transportation benefits shall be posted in a location or locations visible to all employee and residents.
  - D. For residential structures constructed or converted from a non-residential use that provide off-street parking, vehicle sharing spaces shall be provided in the amounts shown in BMC Table 23.322-6, to be offered to vehicle sharing service providers at no cost, for as long as providers request the spaces, and otherwise consistent with BMC Section 23.322.060(D).

- 66. Green Building Certification.** The applicant shall submit updated documentation demonstrating that the building will attain LEED Gold or higher, or attain a building performance equivalent to this rating that has been approved by the Zoning Officer for this project. Documentation expected at this stage includes proof of submission of the final application materials and payment of the certification fee. If this submission has not yet occurred, a detailed explanation and timeline indicating when it will happen must be submitted to the Zoning Officer for review and approval. Once awarded by the organization administering the green building certification system, the applicant shall forward a copy of the certification award to the Zoning Officer.

### **BELOW MARKET RATE UNITS**

- 67. Number of Below Market Rate Units.** The project shall provide **nine (9) Very Low-Income** rental dwelling units (“BMR Units”), which are required to comply with the State Density Bonus Law (Government Code Section 65915). The BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR Units shall conform to the addresses assigned to the building by the City.
- 68. Regulatory Agreement.** Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements Government Code Section 65915 and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for the BMR Units shall be 50 percent of area median income (AMI), and the maximum housing payment shall be 30 percent of 50 percent of AMI, as set forth in the following paragraphs of this condition. If the BMR units are occupied by very low-income tenants receiving a rental subsidy through the Section 8 or Shelter Plus Care programs, the rent received by the project sponsor may exceed the restricted rent to the payment standards allowed under those programs so long as the rent allowed under the payment standards is not greater than the market rents charged for comparable units in the development. The applicant shall submit the Regulatory Agreement to the Housing and Community Services Department (HHCS) via email to [affordablehousing@cityofberkeley.info](mailto:affordablehousing@cityofberkeley.info) for review and approval.
- 69.** In addition, the following provisions shall apply:
- A. Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to California Health & Safety Code Section 50052.5 (h).
  - B. Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.
  - C. BMR units will be provided for the life of the project under Section 22.20.065.
- 70. Determination of Area Median Income (AMI).**
- The “AMI” (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State

Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.

- The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

| Unit Size          | AMI Standard                     |
|--------------------|----------------------------------|
| Studio unit        | AMI for a one person household   |
| One-bedroom unit   | AMI for a two person household   |
| Two-bedroom unit   | AMI for a three person household |
| Three-bedroom unit | AMI for a four person household  |

71. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.
72. Percent for Public Art: Consistent with BMC §23C.23, the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
73. Affordable Housing Mitigation Fee: Consistent with BMC §22.20.065, and fee resolution applicable to this project, the applicant shall provide a schedule, consistent with a schedule approved by the City Manager or her designee, outlining the timeframe for payment of the AHMF, and they shall pay this fee.
74. Streets and Open Space Improvement Plan: Impact Fee: As required by BMC Section 23.204.130.F, the project shall pay an impact fee to implement the Streets and Open Space Improvement Plan (SOSIP) per the fee schedule adopted by the Council by resolution. The City shall deposit this payment into the Downtown Streets and Open Space Improvement Fund (SOSIF), or its equivalent, to pay for the design and construction of the SOSIP Major Projects. The fee shall apply to the project's "Gross Floor Area" as defined in BMC Section 23.502, less any existing Gross Floor Area removed as part of the project.

**At All Times:**

75. Transportation Demand Management Compliance. The property owner shall submit to the Land Use Division annual PTDM Compliance Reports, subject to the review and oversight of Land Use Division staff.
76. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
77. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
78. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Landmarks Preservation Commission approval.

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79. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
80. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
81. Loading. All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
82. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
83. Tenant Notification. The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.
84. Transit Subsidy Condition. The applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.
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## ATTACHMENT 1, EXHIBIT A.2

### MITIGATION MONITORING & REPORTING PROGRAM – JULY 2015

REVISED JULY 2022

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This Draft Mitigation Monitoring and Reporting Program (MMRP) was formulated based upon the findings of the Environmental Impact Report (EIR) and Infill Initial Study Checklist prepared for the 2211 Harold Way Mixed-Use Project. The MMRP, which is provided in Tables 1 and 2 of this section, lists mitigation measures recommended in the EIR and the Infill Checklist for the proposed Project and identifies mitigation monitoring requirements. The Final MMRP must be adopted when the City makes a final decision on the project.

This MMRP has been prepared to comply with the requirements of State law (Public Resources Code Section 21081.6). State law requires the adoption of an MMRP when mitigation measures are required to avoid significant impacts. The MMRP is intended to ensure compliance during implementation of the project.

The MMRP is organized in a matrix format. The first column identifies the impact and the second column identifies the mitigation measure that will be implemented for each project impact. The third column, entitled “Monitoring Responsibility,” refers to the agency responsible for oversight or ensuring that the mitigation measure is implemented. The fourth column, entitled “Monitoring Timing,” refers to when the monitoring will occur to ensure that the mitigation action is completed. The lead agency will provide verification that the measures have been implemented. These mitigation measures include any minor revisions made as a result of the Response to Comments Document.

*July 27, 2022*

*This MMRP was revised to reflect the findings in the EIR Addendum prepared for the 2065 Kittredge Mixed-Use Project (ZP2021-0193 & LMSAP2021-0004). Specifically, Cultural Resource Mitigation Measures CR-2(a) through (c) were deleted (because they no longer apply due to changes in the project design).*



**Table 1: 2211 Harold Way Mixed-Use Project EIR Mitigation Monitoring and Reporting Program**

| Impact Statement                                                                                                                                                                                                                             | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Monitoring Responsibility                                      | Monitoring Timing                                   | Verification (Date and Initials) |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|-----------------------------------------------------|----------------------------------|
| <b>I. CULTURAL RESOURCES</b>                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                |                                                     |                                  |
| <p><b>CR-1</b> The proposed project would involve demolition of the 1926 addition to the Hotel. Both of these additions contribute to the hotel's historical significance and are included in the property's local landmark designation.</p> | <p><b>CR-1(a) Documentation.</b> In consultation with the City of Berkeley Planning and Development, the project applicant shall complete Historic American Building Survey (HABS) Level II documentation of the Shattuck Hotel and its setting. This documentation shall include drawings, photographs, and a historical narrative.</p> <ul style="list-style-type: none"> <li>• Drawings: Existing historic drawings of the Shattuck Hotel (including the original 1910 building and the 1912, 1913, and 1926 additions), if available, shall be photographed with large-format negatives or photographically reproduce on Mylar. In the absence of existing drawings, full-measured drawings of the complex's plan, exterior elevations, and courtyard elevations should be prepared.</li> <li>• Photographs: Photo-documentation of the Shattuck Hotel (including the original 1910 building and the 1912, 1913 and 1926 additions) shall be prepared to HABS standards for archival photography. HABS standards require large-format black-and-white photography, with the original negatives having a minimum size of 4 x 5 inches. Digital photography, roll film, film packs, and electronic manipulation of images are not acceptable. All film prints, a minimum of 4 x 5 inches, must be hand-processed according to the manufacturer's specifications and printed on fiber base single weight paper and dried to a full gloss finish. A minimum of 12</li> </ul> | <p>City of Berkeley Planning Department, Land Use Division</p> | <p>Prior to the issuance of a demolition permit</p> |                                  |

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

| Impact Statement | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Monitoring Responsibility | Monitoring Timing | Verification (Date and Initials) |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-------------------|----------------------------------|
|                  | <p>photographs must be taken, detailing the site, building exteriors, and building interiors. Photographs must be identified and labeled using HABS standards. Color 35mm non-archival photographs of the historical building and grounds shall be taken to supplement the limited number of archival photographs required under the HABS standards described above. Photographs should include overall views of the site; individual views of important building features; exterior elevations of each façade of the complex; views of interior courtyard spaces; and detail views of specific materials or elements.</p> <ul style="list-style-type: none"> <li>• Historical Overview: In consultation with the City of Berkeley Planning and Development Department, a qualified historian or architectural historian shall assemble historical background information relevant to the Shattuck Hotel and its setting. Much of this information may be drawn from the Historic Context Report that architecture + history LLC has prepared for the property. The project applicant shall submit three hard copies and six electronic copies of the drawings and historical overview, along with two sets of photographic negatives, to the City of Berkeley. To ensure its public accessibility, the City of Berkeley will distribute the documentation to the Berkeley Public Library, UC Berkeley's Environmental Design Archives, Berkeley Architectural Heritage Association, the Berkeley Historical Society, and the Northwest</li> </ul> |                           |                   |                                  |

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

| Impact Statement | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Monitoring Responsibility                               | Monitoring Timing                                                                              | Verification (Date and Initials) |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------------------------------------------|----------------------------------|
|                  | Information Center of the California Historical Resources Information System (CHRIS).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                         |                                                                                                |                                  |
|                  | <p><b>CR-1(b) Salvage.</b> The project applicant shall salvage materials from the 1913 and 1926 additions to the Shattuck Hotel for reuse on-site if feasible , as determined by the Zoning Officer, and given local historical societies the opportunity to salvage remaining materials for public information or reuse in other locations. This effort is expected to focus on the additions’ multi-pane, metal-sash windows (currently painted over) as well as the ceiling plasterwork in the entry arcade. All salvaged materials shall be stripped of lead-based paint using safe handling methods. If, after 30 days, none of the societies is able and willing to salvage the materials, the materials shall be offered to local architectural salvage companies by placing an advertisement in a website and newspaper of general circulation for at least 30 days. Demolition may proceed only after any significant historic features or materials have been identified (at the applicant’s cost) and their removal completed, unless none of the above organizations are interested in salvaging the materials.</p> | City of Berkeley Planning Department, Land Use Division | Prior to the issuance of a demolition permit                                                   |                                  |
|                  | <p><b>CR-1(c) Onsite Interpretation.</b> The project applicant shall incorporate a wall display featuring historic photos of the Shattuck Hotel property and a description of its historical significance into the publicly accessible portion of any subsequent development on the site. This display shall be developed by professionals meeting the Secretary of the Interior’s Professional Qualifications (as verified by City of Berkeley planning staff) and experienced in creating such historical exhibits, with the assistance of City of Berkeley planning staff.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | City of Berkeley Planning Department, Land Use Division | Plans for the exhibit shall be approved by the LPC prior to the issuance of a building permit. |                                  |

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

| Impact Statement                                                                                                                                                                                                                                                                                                                                                                                        | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Monitoring Responsibility                                      | Monitoring Timing                                                                                                                                        | Verification (Date and Initials) |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                         | <p><b>CR-1(d) Contribution to the Historic Preservation Fund.</b> The project applicant shall contribute funds to the City to be applied to future historic preservation activities within Downtown Berkeley, including survey work; property research; and evaluation in accordance with the Secretary of the Interior’s Standards.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>City of Berkeley Planning Department, Land Use Division</p> | <p>Prior to the issuance of a building permit.</p>                                                                                                       |                                  |
| <p><b>CR-2</b> The proposed project would alter the setting of historic landmarks adjacent to and facing the project, including the Shattuck Hotel, the Public Library, and the former Elks Lodge and Armstrong College buildings because the project’s design elements would be partially inconsistent with the Secretary of the Interior’s Standards and the Downtown Berkeley Design Guidelines.</p> | <p><b>CR-2(a) Allston Way Elevation.</b> New construction on the Allston Way elevation shall incorporate horizontal façade elements that reference the roofline of the adjacent 1912 restaurant addition to the Shattuck Hotel. Specifically, new construction shall incorporate a horizontal belt course along its Allston Way façade that corresponds to the cornice and parapet of the 1912 addition. This belt course shall include a cornice element or other horizontal embellishment that projects from the face of the building. (This element could consist of a simple projecting molding, for example, that is stylistically in keeping with the contemporary design of the proposed project.) By incorporating this belt course, the proposed project, despite being considerably taller than the Shattuck Hotel, would better maintain the scale and feel of the historic building frontage along Allston Way.</p> | <p>City of Berkeley Planning Department, Land Use Division</p> | <p>Plans and designs for the Allston Way elevation shall be approved by LPC in Final Design Review (FDR) prior to the issuance of a building permit.</p> |                                  |

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

| Impact Statement                                                                                                                                                                                               | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Monitoring Responsibility                                                                   | Monitoring Timing                                                                                                                                                                                         | Verification (Date and Initials) |
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|                                                                                                                                                                                                                | <p><b>CR-2(b) Kittredge Street Elevation.</b> At the Kittredge Street elevation, the proposed project includes a two-story “hyphen” that separates the Shattuck Hotel from the 12- and 18-story portions of the project to the west. Project drawings show the Kittredge Street façade of this portion of the project as a blank wall, potentially covered in vegetation. Such wall treatment is incompatible with the historic setting. Perforations (such as a door or windows) or other architectural elements shall be incorporated into the design of this wall so as to maintain an active street frontage that is more in keeping with the ground floors of the nearby historical resources and the larger Shattuck Avenue Commercial Corridor.</p>                | <p>Final Design Review<br/><br/>City of Berkeley Planning Department, Land Use Division</p> | <p>Plans and designs for the Kittredge Street elevation with architectural elements to maintain an active street frontage shall be approved by LPC in FDR prior to the issuance of a building permit.</p> |                                  |
|                                                                                                                                                                                                                | <p><b>CR-2(c) Glazed Aluminum Window Wall Systems.</b> While the glazed aluminum window wall systems proposed for much of the project would clearly differentiate the proposed project from nearby historical resources, the design of these wall systems needs to be modified to make them more compatible with those resources. The proportion and pattern of void to wall in the wall treatments of the proposed project shall be modified to more closely match Library, the former Elks Lodge and the former Armstrong College building. Potential ways to achieve this include replacing the window wall systems with punched curtain wall systems similar to those used elsewhere in the project, or breaking up the window wall systems with windowless bays.</p> | <p>City of Berkeley Planning Department, Land Use Division</p>                              | <p>Plans and designs for the glazed aluminum window wall systems with translucent panels shall be approved by LPC in FDR prior to the issuance of a building permit.</p>                                  |                                  |
| <p><b>CR-4</b> Construction activities associated with demolition of the 1959 Hink’s building and the 1926 addition to the Shattuck Hotel, and partial removal of the 1913 addition to the Shattuck Hotel,</p> | <p><b>CR-4(a) Foundations Investigation.</b> A registered structural engineer with a minimum of 5 years of experience in the rehabilitation and restoration of historic buildings, meeting the Secretary of the Interior’s Professional Qualifications, shall investigate the existing relationship of the foundations of the</p>                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>Applicant’s historical architecture and structural engineering consultants</p>           | <p>Prior to the issuance of a demolition permit</p>                                                                                                                                                       |                                  |

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| Impact Statement                                                                                                                                                              | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Monitoring Responsibility                                      | Monitoring Timing | Verification (Date and Initials) |
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| <p>could produce ground vibration or soil movement under the existing foundation of nearby historic resources, compromising the historic building's structural stability.</p> | <p>various portions of the Shattuck Hotel property. Any required test excavations shall be performed only in the presence of the structural engineer. The structural engineer shall prepare a report of findings that specifies modifications to the project design and/or associated construction activities that are necessary to retain the structural integrity of the Shattuck Hotel (including the original 1910 building, the 1912 addition, and the portion of the 1913 addition proposed for retention).</p> <p>In consultation with a historic preservation architect meeting the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, Professional Qualifications Standards, the structural engineer (with geotechnical consultation as necessary) shall determine whether, due to the nature of the excavations, soils, method of soil removal and the existing foundations of the Shattuck Hotel, the potential for settlement would require underpinning and/or shoring. If underpinning and/or shoring is determined to be necessary, appropriate designs shall be prepared and submitted for review and approval.</p> <p>Foundation and shoring shall not use driven or vibration piles. Only cast-in-place or auger piles or micropiles shall be used for shoring, underpinning, and/or new foundations. The existing structure shall be shored at each side of the location where the western portion of the hotel is to be demolished. After the existing structure is shored, an air gap shall be cut between the building to remain and the portion of the building to be demolished at the roof, floor levels and through the above grade walls prior to the demolition of the western portion of the building. The air gap shall</p> | <p>City of Berkeley Planning Department, Land Use Division</p> |                   |                                  |

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| Impact Statement | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Monitoring Responsibility                                                                                                                        | Monitoring Timing                                   | Verification (Date and Initials) |
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|                  | <p>be a minimum of 12 inches wide and also be wide enough that no debris can lodge in the gap and transfer vibrations into the portion of the building to remain. The contractor may elect to demolish an entire bay of the existing structure between two column lines so that additional shoring may be minimized or eliminated. This will prevent the transmission of vibrations from the demolition through the existing structural members and, therefore, limit the potential for structural damage due to the vibrations from the demolition. Any debris that becomes lodged in the gap shall be removed as soon as is safely possible.</p> <p>All documents prepared in accordance with this Measure shall be submitted to the City of Berkeley Planning and Development Department for approval, and all work required by this Measure shall be at the project sponsor's expense</p> |                                                                                                                                                  |                                                     |                                  |
|                  | <p><b>CR-4(b) Construction Monitoring.</b> Prior to demolition, the historic preservation architect and structural engineer referenced in Mitigation Measures CR-4(a) shall undertake an existing condition study of the Shattuck Hotel, including the location and extent of any visible cracks or spalls. Any existing damage to the hollow clay tile that could cause structural damage due to construction vibrations shall be noted. This initial survey will serve as a baseline to determine if any damage would occur during demolition or construction of the new building. The documentation shall take the form of written descriptions and photographs, and shall include those physical characteristics of the resource that conveys its historic significance and that justify its inclusion on the local register. The documentation shall be reviewed and</p>                 | <p>Applicant's historical architecture and structural engineering consultants</p> <p>City of Berkeley Planning Department, Land Use Division</p> | <p>Prior to the issuance of a demolition permit</p> |                                  |

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| Impact Statement | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Monitoring Responsibility | Monitoring Timing | Verification (Date and Initials) |
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|                  | <p>approved by the City of Berkeley Planning and Development Department.</p> <p>The historical architect and structural engineer shall monitor the Shattuck Hotel during construction and report any changes to existing conditions, including, but not limited to, expansion of existing cracks, new spalls, or other exterior deterioration. Any new cracks, new spalls, or other exterior deterioration shall be repaired to the pre-existing condition as indicated at the end of this section. Monitoring reports shall be submitted to the City of Berkeley Planning and Development Department on a periodic basis. The structural engineer shall consult with the historic preservation architect, especially if any problems with character-defining features of a historic resource are discovered. If in the opinion of the structural engineer, in consultation with the historic preservation architect, substantial adverse impacts to historic resources related to construction activities are found during construction, the historical architect and structural engineer shall so inform the project sponsor or sponsor’s designated representative responsible for construction activities.</p> <p>Vibrations shall be limited during demolition of the existing below grade wall and foundation concrete so as not to transmit significant vibrations to the remaining structures. The use of jackhammers and smaller hoe-rams with lower impact force shall be used wherever possible to limit vibrations. Larger hoe-rams (rated at greater than 2,000 foot-pounds) shall not be used without a written determination by a qualified testing agency that such rams will not cause vibrations greater than 0.2 inches per second of</p> |                           |                   |                                  |



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| Impact Statement | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Monitoring Responsibility | Monitoring Timing | Verification (Date and Initials) |
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|                  | <p>vertical movement at the existing hotel. Measurements for vibrations shall be taken at the same distance to the vibration source as the Shattuck Hotel building will be from the source during use for construction or demolition. The testing agency used for measuring vibrations shall be experienced in measuring vibrations, as determined by the City of Berkeley Planning and Development Department.</p> <p>The areas where the demolition will be closest to the existing building and therefore most likely to propagate vibrations to the remaining structures are: demolition of the eastern end of the existing cinema building along Kittredge Street; demolition for the new construction below the hotel at the corner of Shattuck Avenue and Kittredge Street; and demolition of the eastern portion of the former Hink’s Department Store addition at Allston Way and Harold Way. At these areas where demolition of below grade concrete will be close to the remaining structures, the concrete shall be demolished using methods that limit vibrations, such as the use of jackhammers and small hoe-rams with lower impact force, even if it is determined that larger hoe-rams can be used elsewhere on the site.</p> <p>The structural engineer shall consult with the historic preservation architect, especially if any problems with character- defining features of a historic resource are discovered. Because of the inherent unpredictability of large-scale excavation and construction, there is an unlikely but possible chance that unforeseen damage would occur. If substantial adverse impacts to historic resources related to construction activities are found during construction, and if in the opinion of the structural engineer, in consultation with the historic</p> |                           |                   |                                  |

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| Impact Statement | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Monitoring Responsibility | Monitoring Timing | Verification (Date and Initials) |
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|                  | <p>preservation architect, the historical architect and the structural engineer (monitoring team) shall so inform the project sponsor or sponsor’s designated representative responsible for construction activities. The historical architect and the structural engineer shall make specific recommendations to the project sponsor, including whether work should stop and whether construction activities should be modified.</p> <p>Once the historic architect and the structural engineer inform the project sponsor, the project sponsor shall adhere to the monitoring team’s recommendations for corrective measures, including halting construction or using methods which cause less vibration, in situations where construction activities would imminently endanger historic resources. The City of Berkeley Planning and Development Department shall establish the frequency of monitoring and reporting. The project sponsor shall respond to any claims of damage by inspecting the affected property promptly, but in no case more than 5 working days after the claim was filed and received by the project sponsor. A sign shall be posted in a visible place onsite and a letter shall be sent to the hotel owner or manager specifying the monitoring team’s contact information prior to the start of construction activities.</p> <p>Any new cracks or other changes in the Shattuck Hotel shall be compared to pre-construction conditions and a determination made as to whether the proposed project could have caused such damage. In the event that the project is demonstrated to have caused any damage, such damage shall be repaired to the pre-existing condition. Site visit reports and documents associated with claims processing shall be provided to</p> |                           |                   |                                  |

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| Impact Statement                                                                                                                                                             | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Monitoring Responsibility                                                                                                                          | Monitoring Timing                                     | Verification (Date and Initials) |
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|                                                                                                                                                                              | <p>the City of Berkeley Planning and Development Department.</p> <p>Monitoring reports shall be submitted to the City of Berkeley Planning and Development Department on a periodic basis. All work required by this Measure shall be at the project sponsor's expense.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                    |                                                       |                                  |
|                                                                                                                                                                              | <p><b>CR-4(c) Training Program.</b> The historic preservation architect referenced in Mitigation Measures CR-4(a) shall establish a training program for construction workers involved in the project that emphasizes the importance of protecting historic resources. This program shall include information on recognizing historic fabric and materials, and directions on how to exercise care when working around and operating equipment near the Shattuck Hotel, including storage of materials away from the historic building. It shall also include information on means to reduce vibrations from demolition and construction, and monitoring and reporting any potential problems that could affect the historic resource. A provision for establishing this training program shall be incorporated into the general contractor's contract with the project applicant regarding construction of the project, and the contract provisions shall be reviewed and approved by the City of Berkeley Planning and Development Department. All work required by this Measure shall be at the project sponsor's expense.</p> | <p>Applicant's preservation architecture and structural engineering consultants</p> <p>City of Berkeley Planning Department, Land Use Division</p> | <p>Prior to the issuance of a demolition permit</p>   |                                  |
| <b>II. TRANSPORTATION/TRAFFIC</b>                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                    |                                                       |                                  |
| <p>T-2 Development facilitated by the proposed project would increase future (years 2020 and 2035) traffic levels on the local circulation system. One of the 10 studied</p> | <p><b>T-2 Dedicated Right-Turn Pocket at Shattuck Avenue/Durant Avenue Intersection.</b> The northbound outside lane at the intersection of Shattuck Avenue and Durant Avenue shall be restriped to</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p>Applicant shall obtain a permit for the restriping of this intersection</p>                                                                     | <p>Prior to issuance of Certificate of Occupancy.</p> |                                  |

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| intersections would operate at levels of service that exceed its performance standards under the Year 2035 scenario. | provide a dedicated right-turn pocket by the applicant prior to issuance of Certificate of Occupancy. | City of Berkeley Public Works Department to review |                   |                                  |

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**Table 2: 2211 Harold Way Mixed-Use Project Infill Checklist Mitigation Monitoring and Reporting Program**

| Impacts                                                                                                                                                                                                                                                             | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Monitoring Responsibility                                                                              | Monitoring Timing                                                   | Verification (Date and Initials) |
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| <b>I. AIR QUALITY</b>                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                        |                                                                     |                                  |
| <p><b>AIR-2</b> This proposed project may expose sensitive receptors to TACs or odors through development of new residential units near non-residential development that may be sources of TACs or odors near existing residences or other sensitive receptors.</p> | <p><b>AIR-2 Buffer TAC and Odor Emission Sources and Sensitive Land Uses.</b> Consider potential air pollution and odor impacts from future development that may emit pollution and/or odors when locating (a) air pollution sources, and (b) residential and other pollution-sensitive land uses in the vicinity of air pollution sources (which may include areas where buses idle, diesel generators, parking garage vents, restaurants, and other similar uses). Buffer sensitive receptors from TACs whenever possible, and if buffering is not feasible, apply appropriate mitigation to reduce impacts to a less than significant level, such as air filtration systems or other technologies.</p> | <p>Applicant and Architect<br/><br/>City of Berkeley Planning Department, Division of Public Works</p> | <p>Prior to the issuance of Building Permit</p>                     |                                  |
| <p><b>AIR-3</b> The proposed project would result in temporary emissions of dust and diesel exhaust that may result in both nuisance and health impacts.</p>                                                                                                        | <p><b>AIR-3 Implement BAAMD-Recommended Measures to Control PM<sub>10</sub> Emissions during Construction.</b> Measures to reduce diesel particulate matter and PM<sub>10</sub> from construction are recommended to ensure that short-term health impacts to nearby sensitive receptors are avoided.</p> <p><b>Dust (PM<sub>10</sub>) Control Measures:</b></p> <ul style="list-style-type: none"> <li>• Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.</li> <li>• Cover all hauling trucks or maintain at least two feet of freeboard.</li> </ul>                                  | <p>Construction Contractor<br/><br/>City of Berkeley Planning Department, Division of Public Works</p> | <p>During demolition, site preparation and project construction</p> |                                  |

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| Impacts | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Monitoring Responsibility | Monitoring Timing | Verification (Date and Initials) |
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|         | <ul style="list-style-type: none"> <li>• Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.</li> <li>• Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.</li> <li>• Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).</li> <li>• Enclose, cover, water twice daily, or apply (non-toxic soil binders to exposed stockpiles.</li> <li>• Limit traffic speeds on any unpaved roads to 15 mph.</li> <li>• Replant vegetation in disturbed areas as quickly as possible.</li> <li>• Suspend construction activities that cause visible dust plumes to extend beyond the construction site.</li> </ul> <p><b>Measures to Reduce Diesel Particulate Matter and PM<sub>2.5</sub>:</b></p> <ul style="list-style-type: none"> <li>• Clear signage at all construction sites will be posted indicating that diesel equipment standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks</li> </ul> |                           |                   |                                  |

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| Impacts                                                                                                                                                                                             | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Monitoring Responsibility                                                                     | Monitoring Timing                                                                                                                                                    | Verification (Date and Initials) |
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|                                                                                                                                                                                                     | <p>could keep their engines running continuously as long as they were onsite or adjacent to the construction site.</p> <ul style="list-style-type: none"> <li>• Opacity is an indicator of exhaust particulate emissions from off-road diesel powered equipment. The project shall ensure that emissions from all construction diesel powered equipment used on the project site do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired immediately.</li> <li>• The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g., compressors).</li> <li>• Properly tune and maintain equipment for low emissions.</li> </ul> |                                                                                               |                                                                                                                                                                      |                                  |
| <b>II. CULTURAL RESOURCES</b>                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                               |                                                                                                                                                                      |                                  |
| <p><b>CR-3</b> The proposed project would result in the destruction or disturbance of unidentified subsurface archaeological resources, which would represent a potentially significant impact.</p> | <p><b>CR-3 Halt Work/Archaeological Evaluation/Site-Specific Mitigation.</b> If archaeological resources are uncovered during construction activities, all work within 50 feet of the discovery shall be redirected until a qualified archaeologist can be contacted to evaluate the situation, determine if the deposit qualifies as an archaeological resource, and provide recommendations. If the deposit does not qualify as an archaeological resource, then no further protection or study is necessary. If the deposit does qualify as an archaeological</p>                                                                                                                                                                                                                                               | <p>Construction Contractor</p> <p>City of Berkeley Planning Department, Land Use Division</p> | <p>Throughout site preparation and ground disturbing activities of project construction, and in the event that archaeological resources are encountered on-site.</p> |                                  |

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| Impacts                                                                                                                                                                   | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Monitoring Responsibility                                                                       | Monitoring Timing                                                                                                                                                     | Verification (Date and Initials) |
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|                                                                                                                                                                           | <p>resource, then the impacts to the deposit shall be avoided by project activities. If the deposit cannot be avoided, adverse impacts to the deposit must be mitigated. Mitigation may include, but is not limited to, archaeological data recovery. Upon completion of the archaeologist's assessment, a report should be prepared documenting the methods, findings and recommendations. The report should be submitted to the City, the project proponent and the NWIC.</p>                                                                                                                                                                                                                                                    |                                                                                                 |                                                                                                                                                                       |                                  |
| <p><b>CR-4</b> The proposed project could result in the destruction of unidentified subsurface paleontological resources.</p>                                             | <p><b>CR-4 Halt Work/Paleontological Evaluation/Site-Specific Mitigation.</b> Should paleontological resources be encountered during construction or site preparation activities, such works shall be halted in the vicinity of the find. A qualified paleontologist shall be contacted to evaluate the nature of the find and determine if mitigation is necessary. All feasible recommendations of the paleontologist shall be implemented. Mitigation may include, but is not limited to, in-field documentation and recovery of specimen(s), laboratory analysis, the preparation of a report detailing the methods and findings of the investigation, and curation at an appropriate paleontological collection facility.</p> | <p>Construction Contractor<br/><br/>City of Berkeley Planning Department, Land Use Division</p> | <p>Throughout site preparation and ground disturbing activities of project construction, and in the event that paleontological resources are encountered on-site.</p> |                                  |
| <p><b>CR-5</b> The proposed project could result in the disturbance of unidentified subsurface human remains, which would represent a potentially significant impact.</p> | <p><b>CR-5 Halt Work/Coroner's Evaluation/Native American Heritage Consultation/Compliance with Most Likely Descendent Recommendations.</b> If human remains are encountered during construction activities, all work within 50 feet of the remains should be redirected and the County Coroner notified immediately. At the same time, an archaeologist shall be contacted to assess the situation. If the</p>                                                                                                                                                                                                                                                                                                                    | <p>Construction Contractor<br/><br/>City of Berkeley Planning Department, Land Use Division</p> | <p>Throughout site preparation and ground disturbing activities of project construction, and in the event that unidentified subsurface human remains are</p>          |                                  |



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| Impacts                                                                                                                                                                                                                                                                                                                                                                                                | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Monitoring Responsibility                                      | Monitoring Timing                               | Verification (Date and Initials) |
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|                                                                                                                                                                                                                                                                                                                                                                                                        | <p>human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Native American Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and any associated grave goods. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion of the archaeologist's assessment, a report should be prepared documenting methods and results, as well as recommendations regarding the treatment of the human remains and any associated archaeological materials. The report should be submitted to the City, the project proponent and the NWIC.</p> |                                                                | <p>encountered on-site.</p>                     |                                  |
| <b>III. NOISE</b>                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                |                                                 |                                  |
| <p><b>NOI-1</b> The proposed project under the DAP could be exposed to excessive noise levels, noise levels along many Downtown Area roadways would exceed those considered compatible with exterior residential land uses. This would represent a potentially significant impact. Where exterior noise levels exceed 70 dBA Ldn, such as along University Avenue and Shattuck Avenue, residential</p> | <p><b>NOI-1 Site-Specific Noise Studies/Site Planning/Noise Control Treatments.</b> Future residential units proposed under the DAP would be exposed to outdoor noise levels in excess of 60 dBA Ldn and indoor noise levels in excess of 45 dBA Ldn, which would exceed the City's and state's established land use compatibility thresholds. In areas where residential development would be exposed to an Ldn of greater than 60 dBA, site-specific noise studies should be conducted to determine the area of impact and to present appropriate mitigation measures, which may include the following:</p>                                                                                                                                                                                                                                            | <p>City of Berkeley Planning Department, Land Use Division</p> | <p>Prior to the issuance of Building Permit</p> |                                  |

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| Impacts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Monitoring Responsibility | Monitoring Timing | Verification (Date and Initials) |
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| <p>units would not be able to meet the 45-dBA Ldn interior standard simply through typical construction methods. This would be a potentially significant impact. Retail units developed under the DAP along most of the area roadways would meet the exterior commercial land use compatibility guideline of 70 dBA Ldn established in the Noise Element. Exterior noise levels would exceed 70 dBA Ldn along University Avenue and Shattuck Avenue. This would be a potentially significant impact.</p> | <ul style="list-style-type: none"> <li>Utilize site planning to minimize noise in shared residential outdoor activity areas by locating these areas behind the buildings, in courtyards, or orienting the terraces to alleyways rather than streets, whenever possible.</li> <li>The California Building Code and the City of Berkeley require project specific acoustical analyses to achieve interior noise levels of 45 dBA Ldn or lower in residential units exposed to exterior noise levels greater than 60 dBA Ldn. Building sound insulation requirements would need to include the provision of forced-air mechanical ventilation in noise environments exceeding 70 dBA Ldn so that windows could be kept closed at the occupant’s discretion to control noise. Special building construction techniques (e.g., sound-rated windows and building façade treatments) may be required where exterior noise levels exceed 65 dBA Ldn. These treatments include, but are not limited to, sound rated windows and doors, sound rated exterior wall assemblies, acoustical caulking, etc. The specific determination of what treatments are necessary will be conducted on a unit-by-unit basis during project design. Result of the analysis, including the description of the necessary noise control treatments, will be submitted to the City along with the building plans and approved prior to issuance of a building permit. Feasible construction techniques</li> </ul> |                           |                   |                                  |

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| Impacts                                                                                                                                                                                                                                                                                                         | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Monitoring Responsibility                                      | Monitoring Timing                                 | Verification (Date and Initials) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|---------------------------------------------------|----------------------------------|
|                                                                                                                                                                                                                                                                                                                 | such as these would adequately reduce interior noise levels to 45 dBA Ldn or lower. Implementation of the above measure would reduce the impact to a level of less than significant.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                |                                                   |                                  |
| <p><b>NOI-5</b> The proposed project would intermittently expose businesses and residences throughout the Downtown Area to high levels of noise throughout the planning horizon. Construction would elevate noise levels at adjacent businesses and residences by 15 to 20 dBA or more, significant impact.</p> | <p><b>NOI-5 Develop Site-Specific Noise-Reduction Programs and Implement Noise Abatement Measures During Construction.</b> Prior to the issuance of building permits, the applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include appropriate time limits for construction (7:00 AM to 7:00 PM on weekdays and between the hours of 9:00 AM and 8:00 PM on weekends or holidays) as well as technically and economically feasible controls to meet the requirements of the Berkeley Municipal Code. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:</p> <ul style="list-style-type: none"> <li>• Construction equipment should be well maintained and used judiciously to be as quiet as practical.</li> <li>• Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.</li> <li>• Utilize “quiet” models of air compressors and other stationary noise sources where technology exists.</li> </ul> | <p>City of Berkeley Planning Department, Land Use Division</p> | <p>Prior to the issuance of a Building Permit</p> |                                  |

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

| Impacts | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Monitoring Responsibility | Monitoring Timing | Verification (Date and Initials) |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-------------------|----------------------------------|
|         | <p>Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.</p> <ul style="list-style-type: none"> <li>• Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.</li> <li>• Prohibit unnecessary idling of internal combustion engines.</li> <li>• If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.</li> <li>• Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.</li> <li>• Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.</li> </ul> |                           |                   |                                  |

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

| Impacts                                                                                                                                                                                                                                                                                             | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Monitoring Responsibility                                      | Monitoring Timing                                 | Verification (Date and Initials) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|---------------------------------------------------|----------------------------------|
|                                                                                                                                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>• Route construction related traffic along major roadways and away from sensitive receptors where feasible</li> <li>• Businesses, residences or other noise-sensitive land uses within 500 feet of construction sites should be notified of the construction schedule in writing prior to the beginning of construction. Designate a “construction liaison” that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the liaison at the construction site.</li> </ul> |                                                                |                                                   |                                  |
| <p><b>NOI-6</b> The proposed project would expose residences, businesses, and historic structures within or in the vicinity of the Downtown Area to construction-related vibration during the excavation and foundation work of the buildings constructed during the DAP, a significant impact.</p> | <p><b>NOI-6 Avoidance of Pile-Driving/Site-Specific Vibration Studies/Monitoring/Contingency Planning.</b> The following measures are recommended to reduce vibration from construction activities:</p> <ul style="list-style-type: none"> <li>• Avoid impact pile-driving where possible. Drilled piles causes lower vibration levels where geological conditions permit their use.</li> <li>• Avoid using vibratory rollers and tampers near sensitive areas.</li> <li>• In areas where project construction is anticipated to include vibration generating activities, such as pile-driving in close proximity to existing structures, site-specific vibration studies should be</li> </ul>                                                                 | <p>City of Berkeley Planning Department, Land Use Division</p> | <p>Prior to the issuance of a Building Permit</p> |                                  |

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

| Impacts | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Monitoring Responsibility | Monitoring Timing | Verification (Date and Initials) |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-------------------|----------------------------------|
|         | <p>conducted to determine the area of impact and to present appropriate mitigation measures that may include the following:</p> <ul style="list-style-type: none"> <li>○ Identification of sites that would include vibration compaction activities such as pile-driving and that have the potential to generate groundborne vibration, and the sensitivity of nearby structures to groundborne vibration. Vibration limits should be applied to all vibration-sensitive structures located within 200 feet of the project. A qualified structural engineer should conduct this task.</li> <li>○ Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions</li> <li>○ Construction contingencies would be identified for when vibration levels approached the limits.</li> <li>○ At a minimum, vibration monitoring should be conducted during initial demolition activities and during pile-driving activities. Monitoring results</li> </ul> |                           |                   |                                  |

MITIGATION MONITORING AND REPORTING PROGRAM

July 30, 2015 – Revised July 2022

| Impacts | Mitigation Measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Monitoring Responsibility | Monitoring Timing | Verification (Date and Initials) |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-------------------|----------------------------------|
|         | <p>may indicate the need for more or less intensive measurements.</p> <ul style="list-style-type: none"> <li>○ When vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.</li> <li>○ Conduct post-survey on structure where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of vibration.</li> </ul> |                           |                   |                                  |





## FINDINGS AND CONDITIONS

AUGUST 4, 2022

**2065 Kittredge Street****Structural Alteration Permit #LMSAP 2021-0004****PROJECT DESCRIPTION**

The application proposes to partially demolish the rear portion of the City Landmark Shattuck Hotel building, and to completely demolish the 1926 and 1959 Hink's department store expansions; and to construct a new multi-story, mixed-use building on the site, located in the Downtown.

**CEQA FINDINGS**

1. An Addendum to the Final Environmental Impact Report (EIR) to the 2211 Harold Way Mixed-Use Project, which was certified in December 2015, was prepared to evaluate the potentially significant environmental impacts of the proposed project, pursuant to the California Environmental Quality Act. The Landmarks Preservation Commission has considered the Addendum together with the previously certified Final EIR. The Addendum reflects the independent judgment of the Commission and has been completed in compliance with CEQA. The Addendum, together with the 2211 Harold Way Mixed-Use Project Final EIR, is adequate for the 2065 Kittredge Street Mixed-Use Project. On the basis of the whole record, including the Addendum, the previously certified Final EIR, and the public comments received, the Commission finds that the project changes described in the Addendum, i.e., the modified project, will not result in new significant effects or a substantial increase in the severity of previously identified significant effects on the environment.
2. The Addendum prepared for the project addressed the following issues: Air Quality, Cultural Resources, Greenhouse Gas Emissions, Noise, Transportation, and Utilities and Service Systems.
3. Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091(d) require the City to adopt a reporting or monitoring program for the changes to the project that it has adopted or made a condition of approval in order to avoid or substantially lessen significant effects on the environment. The Mitigation Monitoring and Reporting Program for the 2211 Harold Way Mixed-Use Project Final EIR, as modified in the addendum and reflected in the Conditions of Approval for the modified project, are hereby adopted as the reporting and monitoring program for this project; see Exhibit A. The monitoring program is designed to ensure compliance during project implementation.

**LANDMARKS PRESERVATION ORDINANCE FINDINGS**

Pursuant to Berkeley Municipal Code Sections 3.24.260.C.1.a, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The proposed project allows for the preservation of the Mission Revival style original hotel, together with all of its 1912 and most of its 1913 additions. The Hotel will still form a

significant presence on Shattuck Avenue, retaining its distinctive form, stucco walls, decorative tile work, wall surface ornamentation, squared towers, hipped roof forms, arched or arcaded wall openings, varied roof heights, red clay tile roof cladding, and broad eave overhangs with exposed rafter tails; with the new building rising behind. Mitigation measures are included to reduce any construction related impacts to the hotel, and as such the project will not adversely affect its features.

## **FINDINGS REGARDING THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION**

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Regarding the Secretary of the Interior's (SOI) Standards for Restoration/Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. SOI Standard #2: The proposed project will retain the City Landmark Shattuck Hotel building, including its early 1912 and 1913 building additions. The structure's Spanish Revival architectural design and character-defining features will not be removed or altered. The proposed demolition of a low-rise, rear portion of the 1913 addition building would not result alteration of the primary building facades, thereby avoiding loss of distinctive materials and features. The proposed wholesale demolition of the 1926 building addition is not found to be a significant loss of distinctive features, in part because the structure's significance lay primarily in its associations with historical events. As the significant architectural character of the Shattuck Hotel will not be completely removed, and will continue to be represented in the retained features of this site, the proposed project complies with Standard #2.
2. SOI Standard #9: The proposed new construction will be visually and physically separated from the street-facing façades of the Shattuck Hotel building; the Allston elevation will be separated by an existing alley that will remain, and the Kittredge elevation will feature a hyphen where the façade steps back and away from the historic structure. The new building will be located to the rear of the Shattuck Hotel, and the Hotel will retain its primacy and presence along Shattuck Avenue. The design of the new building is distinctively contemporary, thereby differentiating it from the historic structure.

## **ZONING ORDINANCE DESIGN REVIEW STANDARDS**

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Pursuant to BMC Chapter 23E.12.020, the Landmarks Preservation Commission of the City of Berkeley finds the project as proposed substantially conforms with the Southside Area Plan Design Guidelines (2011) in that the project:

1. General Guidelines - Similar to typical 20<sup>th</sup> century commercial design, like Shattuck Hotel, the new project generally maintains a band separating the building's base and creating a middle and a top. The upper most (or *top*) floor is present, though quiet as it steps back and features usable open space. The selection of proposed building materials is found to be comparable with new construction in Downtown, while the color palette is reflective of the historic Hotel building. The proposed window design comprises 25-50% of the upper façade, as recommended.

2. **Roof Forms.** - Owing to the proposed massing and color palette, much of the upper story visually serves as a successful termination to the building.
3. **Building Materials** - The materials proposed for this project are found to be durable and of high quality.
4. **Frontage, Setbacks & Heights** - The project height is comparable to the neighboring buildings, including the City Landmark Shattuck Hotel. As the results of refinements, the final proposal maintains a continuous build-to-line with the exception of the main, residential entry plaza. A step-back occurs throughout the project at approximately 65 to 75 ft. above street level.
5. **Open Spaces** – As the result of project refinements, the final design features public open space that is directly aligned with the existing open space at Berkeley Public Library.
6. **Public Serving Frontages for Kittredge, Harold and Allston Way** - The project features the recommended pattern and placement of entrances on all three street-facing facades, as well as the desired amount of glazing on Kittredge and Allston elevations. The Harold Way façade exceeds the recommended amount of glazing at the live/work entrances and comes close in the residential window pattern.

### **HISTORIC PRESERVATION & DESIGN REVIEW CONDITIONS**

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1. **Project plans.** Project shall conform to plans, facades restoration specifications, and photographs, dated July 22, 2022.
2. **Final Design Review.** Pursuant to BMC Section 23.406.070.C, prior to submittal of any building permit for this project, the project proponent shall obtain Final Design Review (FDR) approval from the Landmarks Preservation Commission. Prior to FDR consideration, the project proponent shall make the following improvements subject to Commission approval:
  - a) Enlarge and further refine the commercial tenant space at the corner of Kittredge Street and Harold Way.
  - b) Further refine the public open space areas.
  - c) Establish internal access between the bicycle parking area and the residential entry.
3. This Structural Alteration Permit approval is contingent upon Use Permit approval of this project.
4. **Mitigation monitoring & reporting program – Exhibit A.** The project proponent shall adhere to and demonstrate compliance with this plan to the satisfaction of the Zoning Officer. The project proponent shall bear the cost of monitoring to ensure compliance with the plan; a deposit of not less than \$10,000 may be required prior to building permit submittal in order to secure the services of a third-party monitor.
5. **Chemical Treatments.** Any chemical or physical graffiti removal treatments needed as construction progresses shall be undertaken using the gentlest means possible.

6. **Signage program.** For Final Design Review, the project proponent shall submit complete signage details, including colors, materials, letter heights, dimensions, placement on building, and installation details. All materials will be matte unless otherwise noted.
7. **Landscape & Irrigation.** For Final Design Review, the applicant shall submit a Landscape plan including the number, location, and species of all proposed plantings, and which existing plantings shall be removed. The applicant shall provide irrigation for all landscaped areas or provide drought tolerant plant palette. This shall be called out on Landscape building permit drawings. Further, the plans shall include irrigation for all landscaped areas.
8. **Exterior lighting detail.** For Final Design Review, the project proponent shall submit lighting details showing all proposed site and building lighting. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.

CITY OF BERKELEY - CITY CLERK  
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October 25, 2022

**Via Email and Hand Delivery**

Mayor Jesse Arreguín  
Members: Rashi Kesarwani, Terry  
Taplin, Ben Bartlett, Kate Harrison,  
Sophie Hahn, Susan Wengraf,  
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Re: **Appeal to City Council re 2065 Kittredge Street (Use Permit #ZP2021-0193)**

Dear Mayor Arreguín, Members: Kesarwani, Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, and Mr. Numainville:

We are writing on behalf of East Bay Residents for Responsible Development ("East Bay Residents" or "Residents") to appeal the Zoning Adjustment Board's ("ZAB") September 22, 2022 approval of the 2065 Kittredge Street Project (Use Permit #ZP2021-0193).<sup>1</sup> The Project, proposed by Bill Schrader and CA Student Living Berkeley (collectively "Applicant"), includes the proposed demolition of existing structures representing approximately 95,000 square feet of office, food service, and cinema uses. These uses would be replaced by approximately 4,993

<sup>1</sup> **Exhibit A:** City of Berkeley, Zoning Adjustment Board, Notice of Decision - 2065 Kittredge Street, Use Permit #ZP2021-0193 ("Date of Board Decision: September 22, 2022; Date Notice Mailed: October 11, 2022; Appeal Period Expiration: October 25, 2022; Effective Date of Permit (Barring Appeal or Certification): October 26, 2022") (hereinafter "Notice of Decision").

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By Fax



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square feet of commercial space (retail, food service, and live/work), 183 units of new residential units (four live/work units), and approximately 4,600 square feet in two privately-owned plazas (at Allston and Kittredge) that would be open for public use. The Project would be eight stories, 87 feet in height, with 9 very low-income units, and 43 residential vehicle parking spaces in ground-level garage.

This appeal is timely filed within 14 days of the City's mailing of the Notice of Decision of the ZAB decision, pursuant to Berkeley Municipal Code ("BMC" or "Municipal Code") Section 23.410-1. This Appeal is taken from the following ZAB actions, and is accompanied by payment of the required appeal fee of \$1500:

- Approval of Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building.
- Approval of Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use development.
- Approval of Use Permit under BMC Section 23.204.020(A) to construct dwelling units.
- Approval of Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more.
- Approval of Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limits, up to 75 feet (plus 5-foot parapet, by right).<sup>2</sup>

## I. SUMMARY OF REASONS FOR APPEAL

Residents appeals the ZAB's actions pursuant to BMC Sections 23.410.030 and 23.406.040(E) on the grounds that the Project is detrimental to the general welfare of the City, its residents, and its workers, in violation of the City's zoning code. For the reasons explained herein and in Residents' September 8, 2022 comments to the ZAB,<sup>3</sup> the Project is inconsistent with the City's construction workforce goals, and is inconsistent with the workforce and economic policies of the General Plan and Downtown Area Plan.

Unlike its predecessor, the original Harold Way Project developer HSR Berkeley Investments, who signed a labor agreement with the Building & Construction Trades Council of Alameda County that committed the Project to

<sup>2</sup> Notice of Decision, p. 1 of 4.

<sup>3</sup> **Exhibit B:** Letter from ABJC to ZAB re *Agenda Item 4 - 2065 Kittredge Street Project (Use Permit #ZP2021-0193)* (September 8, 2022).  
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using 100% union labor,<sup>4</sup> the current Project Applicant has made no commitment to build the Project using a local skilled and trained workforce, to provide apprenticeship training opportunities for City of Berkeley or East Bay residents, or to provide healthcare for its construction workforce. These shortcomings render the Project inconsistent with Berkeley plans, policies, and goals which seek to ensure that Berkeley has an adequate supply of decent housing and living wage jobs. Unless these inconsistencies are mitigated, Project construction and operation would be detrimental to the general welfare of the City, its residents, and its workers, in violation of the City's zoning code.<sup>5</sup>

The Municipal Code prohibits the City from approving a use permit if the project is "detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use.....or to the general welfare of the City."<sup>6</sup> Municipal Code Section 22.20.020 defines detrimental impacts to include, *inter alia*, increased demand for workforce housing, training, and benefits: "The increased demand for affordable housing, child care and public services, ***adequate employment training and placement facilities and amenities***, and the other impacts generated by development projects, unless mitigated, are detrimental to the City's public health, safety and general welfare."<sup>7</sup> Under Section 22.20.020, a detriment to the general welfare occurs when the City fails to mitigate the impacts of a development project, including the increased demand for housing, workforce training, and public services that may result from the Project.<sup>8</sup>

Housing development projects in the City must also implement the goals and policies of the General Plan, including the following:

- 1) Ensure that Berkeley has an adequate supply of decent housing, living wage jobs, and businesses providing basic goods and services.
- 2) New housing will be developed to expand housing opportunities in Berkeley to meet the needs of all income groups.<sup>9</sup>

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<sup>4</sup> Emilie Raguso, High-rise Developer in Berkeley to Use 100% Union Labor (October 31, 2014). Available at: <https://www.berkeleyside.org/2014/10/31/high-rise-developer-in-berkeley-to-use-100-union-labor>

<sup>5</sup> BMC §§ 23.406.040(E)(1); 22.20.020.

<sup>6</sup> BMC § 23.406.040(E)(1)(a), (b).

<sup>7</sup> BMC § 22.20.020 (emphasis added).

<sup>8</sup> *Id.*

<sup>9</sup> General Plan Economic Development and Employment Element, p. ED-5; HARD HATS Staff Report, p. 7.  
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General Plan Policy ED-1 requires the City to “[i]ncrease the number of jobs that go to Berkeley citizens by coordinating economic development efforts with employment placement,”<sup>10</sup> and provides that the City intends to “[w]ork with job training programs and encourage training for life skills, job readiness, and specific target industries.”<sup>11</sup> The City has determined that “it is in the City of Berkeley’s economic interest to support a pipeline of skilled workers to accomplish the construction objectives and policies of the Berkeley General Plan.”<sup>12</sup>

Finally, the Downtown Area Plan provides that “[a]ll new buildings shall deliver significant community benefits, many of which should be in proportion to building height.”<sup>13</sup> Projects above 75 feet, like the instant Project, must include significant community benefits, which may specifically include “job training, and/or employment opportunities.”<sup>14</sup>

Project construction will increase the local demand for a construction workforce. The Project’s lack of workforce standards and worker healthcare may exacerbate the existing demand for local affordable housing and public services by construction workers that currently receive low pay without benefits. These impacts are detrimental to the general welfare and render the Project inconsistent with City plans, requiring mitigation. Residents raised these issues to the ZAB prior to approval. However, the ZAB approved the Project without mitigating these impacts and despite substantial evidence in the record demonstrating that the Project’s failure to comply with the City’s workforce standards and policies would cause a detriment to the general welfare of the City and its residents. Without mitigation, these impacts remain significant and the ZAB’s findings that the Project complied with the zoning code were unsupported and should be set aside.

The City Council may take action on the subject of an appeal or any aspect of an appealed project (de novo review) pursuant to BMC Section 23.410.040(E)(1).<sup>15</sup> The Municipal Code grants the City Council the authority to:

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<sup>10</sup> Berkeley General Plan Economic Development and Employment Element, p. ED-5. Available at: [https://berkeleyca.gov/sites/default/files/documents/12\\_Economic%20Development%20and%20Employment%20Element-FINAL.pdf](https://berkeleyca.gov/sites/default/files/documents/12_Economic%20Development%20and%20Employment%20Element-FINAL.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> HARD HATS Staff Report, p. 7.

<sup>13</sup> City of Berkeley, Downtown Area Plan (2012) p. LU-12. Available at: <https://berkeleyca.gov/sites/default/files/2022-03/Downtown-Area-Plan.pdf> (emphasis added).

<sup>14</sup> *Id.*

<sup>15</sup> Berkeley Municipal Code (“BMC”) Section 23.410.040(E)(1). 6287-003acp



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- Modify, reverse, or affirm, wholly or partly, any decision, determination, condition or requirement of the prior review authority; or
- For appeals to the City Council, remand the matter to the prior review authority to reconsider the application, and/or any revisions to the application submitted after the review authority's action.<sup>16</sup>

Pursuant to the Code, the City Council should find that the Project is detrimental to the general welfare of the City and its residents such that the Project's use permit should not be issued without mitigation. We urge the Council to modify the ZAB's approval of the Project to apply conditions to the Project which mitigate the Project's detrimental impacts by implementing workforce standards that satisfy zoning code, General Plan and Downtown Area Plan requirements. The conditions should include public benefits such as apprenticeship opportunities, local hire provisions, and healthcare, which promote the general welfare. Such conditions would be consistent with the Municipal Code and would increase compliance with the General Plan and Downtown Are Plan. Mitigating the Project's adverse workforce impacts would also be consistent with the City's stated goals of "help[ing] address the growing need for skilled and trained construction workers," and "to make sure the people that are building the thousands of needed homes in Berkeley and across the state will have health care and a decent standard of living."<sup>17</sup>

## I. STATEMENT OF INTEREST

East Bay Residents for Responsible Development is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. The association includes the UA Plumbers and Pipefitters Local 342, International Brotherhood of Electrical Workers Local 595, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, their members and families, and City and Alameda County residents.

The individual members of Residents live, work, and raise their families in the Berkeley and Alameda County. They would be directly affected by the Project and its impacts. The organizational members of Residents also have an interest in

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<sup>16</sup> *Id.* at 23.140.040(G).

<sup>17</sup> Nico Savidge, Berkeley May Mandate Health Coverage for Workers in Big Construction Projects: Builders of apartments and other large projects could be required to provide apprenticeships and health care coverage for workers under a new proposal, Berkeley side (September 1, 2022) <https://www.berkeleyside.org/2022/09/01/berkeley-construction-labor-standards-housing-worker-shortage>.

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enforcing public interest, health and safety, labor and environmental laws that encourage sustainable development and ensure a safe working environment for its members. Residents' members are also concerned about projects that are built without providing opportunities to improve the recruitment, training, and retention of skilled workforces.

**II. THE ZAB'S APPROVAL OF THE PROJECT VIOLATED BMC SECTION 23.406.040 BECAUSE THE PROJECT IS DETRIMENTAL TO THE GENERAL WELFARE**

The Project contravenes Municipal Code Section 23.406.040(E)(1) which requires that, in order to approve a Use Permit for a Project, the ZAB must find that the Project will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.<sup>18</sup> Pursuant to Municipal Code Section 22.20.020, these impacts require mitigation.

**A. The Project is Detrimental to the General Welfare of the City, Residents, and Workers Due to A Lack of Workforce Standards and Public Benefits**

In addition to the existing workforce standards contained in the Municipal Code, General Plan, and Downtown Area Plan, on September 20, 2022, the City Council authorized the City Attorney and City Manager to draft the Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards ("HARD HATS") Ordinance, which will implement apprenticeship program requirements and healthcare security for workers on General Plan area projects. Among the many general welfare concerns cited by the City was the detrimental role that the homebuilding industry plays in perpetuating income inequality by using low wage construction workers:

Homebuilding is supposed to reduce the number of people waiting in line for housing they can afford. But when the homebuilding industry itself generates excessive very low and low wage construction employment, that just increases the number of people needing subsidies from the taxpayer. Low wage employment is in fact a problem in both the residential +and commercial construction markets.<sup>19</sup>

<sup>18</sup> *Id.* at § 623.406.040(E)(1).

<sup>19</sup> *Id.* at pp. 4-5.



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The HARD HATS Staff Report provided substantial evidence demonstrating that housing projects that are constructed with low-wage or uninsured construction workers are detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or visiting the City and the Project's Downtown neighborhood, as well as to the general welfare of the City. In evaluating the need for the HARD HATS Ordinance, the Council relied on numerous studies documenting the negative impacts that low wage construction employment has on workers, communities, and on the sustained development of housing in California.

For example:

- Shortages of skilled construction workers, particularly residential trade workers, threaten to delay or derail development plans.
  - In San Francisco, many entitled projects with thousands of units awaiting construction are stalled due to skilled labor shortages, diminished contractor productivity, and construction costs that spiked. These shortages are attributable to factors such as reduced utilization of state-approved apprenticeships, fewer young labor force entrants, dwindling contractor offerings of health and retirement plans, and the related trend of lagging construction productivity growth.<sup>20</sup>
  - Only 1,250 construction sector employees lived in Berkeley in 2018.<sup>21</sup>
- Low wage employment is a problem in both the residential +and commercial construction markets. Fifty-five percent of Alameda County construction workers' households are Extremely Low Income, Very Low Income, or Low Income.<sup>22</sup>
- Jobsite Health, Healthcare and Safety:
  - Construction trade workers experience exceptionally high rates of serious injury on the job, especially on sites with inadequately trained workers.
  - One of every five serious workers' compensation insurance claims which involve death, permanent total disability or major permanent partial disability - is related to a construction employee, despite the fact that construction jobs account for less than one out of every 25 California jobs.
  - For a working life in construction, the risk of fatal injury is approximately one death per 200 full-time-equivalent employees

<sup>20</sup> HARD HATS Staff Report, p. 4.

<sup>21</sup> *Id.*, citing U.S. Census Bureau LEHD Origin-Destination Employment Statistics, Version 7, Residence Area Characteristics.

<sup>22</sup> *Id.*, citing Analysis of U.S. Census, ACS 2015-2019 Microdata.  
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according to a recent study in the American Journal of Industrial Medicine.

- A recent Canadian study of workers' compensation claims from 58,837 construction companies found that unionization was associated with a 25% lower incidence of lost-time allowed injury claims, a 23% lower incidence of musculoskeletal lost-time allowed injury claims, and a 16% lower incidence of lost-time allowed critical injury claims. In California too, employers of lower paid construction workers make more serious and non-serious workers compensation claims.<sup>23</sup>
- Construction workers who live in Alameda County are uninsured at rates 3-4 times higher than the rate of non-construction workers. The under-performance of California contractors in providing health care security to employees constrains the supply of skilled construction labor. A peer-reviewed study in 2010 found that only 35 percent of blue-collar construction workers who are not covered by collective bargaining agreements had health insurance paid for at least in part by an employer. This same study found that health insurance funded through collectively bargained employer contributions to plans that are portable within the construction industry increased industry-retention rates by up to 40 percent compared to baseline retention rates of construction workers without any health insurance coverage.<sup>24</sup>
- California residential building was strongest when apprenticeship training was strongest:
  - During the 1970s, when California was producing housing at the average annual rate of 200,000 units, the state reported an average of 9,000 apprentices. California residential builders utilized apprentices every bit as much as commercial builders, according to a 1976 U.S. Bureau of Labor Statistics report.
  - De-unionization and the recession of the early 1990s, however, led to sharply reduced utilization of apprentices by residential contractors. Carpenter apprenticeship completions fell by 50 percent between 1996-2005 compared to 1973-1982.<sup>25</sup>

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<sup>23</sup> *Id.*, citing Workers Compensation Insurance Rating Bureau "Relativity Review Sheets," various years.

<sup>24</sup> (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. Smart Cities Preval. pp. 23-25. Downloaded 3/26/2021 via [https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP\\_HousingReport.0118\\_2.pdf](https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf)

<sup>25</sup> *Id.*, citing U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 1911, "Industry Wage Survey: Contract Construction September 1973," Washington, D.C.: 1976. See Tables 28 & 46. Downloaded via <http://fraser.stlouisfed.org>; Littlehale, Scott. (2019). Rebuilding California: The Golden State's Housing Workforce Reckoning. Smart Cities Preval. pp. 23-25. Downloaded 6287-003acp



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This evidence demonstrates that projects like this one, which do not utilize a local skilled construction workforce and do not provide health benefits, are likely to be detrimental to the general welfare of the City, its residents, and its workers. By contrast, there is no evidence in the record demonstrating that the Project would avoid these negative impacts. If the Project proceeds without mitigation, it would be detrimental to the general welfare.

### **1. The Project is Detrimental to the General Welfare Because It Does Not Provide Apprenticeship Opportunities**

The ZAB's failure to mitigate the Project's development impacts through an apprenticeship program is detrimental to the general welfare of the City of Berkeley. The ZAB therefore approved the Project in violation of BMC Section 23.406.040.

The HARD HATS Staff Report explained that “[t]he creation and utilization of apprenticeship along with the commitments to paid healthcare act to both recruit and retain an adequate base of construction workers and to be a pipeline for future supervisors and licensed independent contractors.”<sup>26</sup> It further provides that “[r]equiring contractors on major projects in Berkeley to employ apprentices results in a higher volume of apprentice training, and thus, an increase in the construction labor force available to carry out the construction anticipated by the general plan, and especially that targeted by the Housing Element.”<sup>27</sup>

Apprenticeship programs have historically been viewed as an “escalator to the middle class” providing an opportunity to build a stable, family supporting career that is not dependent on a college degree.<sup>28</sup> Research shows that apprenticeships not only substantially raise the lifetime earnings of their participants, but provide significant net social benefits through higher tax collections, private health care coverage, and reduced reliance on unemployment insurance and other forms of assistance.<sup>29</sup> Further research shows that

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3/26/2021 via

[https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP\\_HousingReport.0118\\_2.pdf](https://www.smartcitiesprevail.org/wpcontent/uploads/2019/01/SCP_HousingReport.0118_2.pdf)

<sup>26</sup> HARD HATS Staff Report.

<sup>27</sup> *Id.*

<sup>28</sup> Dan Calamuci, *Training the Golden State: An Analysis of California Apprenticeship Programs*, Smart Cities Prevail (December 2020). Available at: <https://www.smartcitiesprevail.org/wp-content/uploads/2021/12/Training-the-Golden-State.pdf>.

<sup>29</sup> Lantsberg Report, p. 2.  
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apprenticeship programs improve workmanship and expand the pool of skilled workers.<sup>30</sup>

Particularly, apprenticeship programs and union apprenticeship programs result in a more diverse workforce,<sup>31</sup> as shown in the figure below. Apprenticeship programs are serving to improve both racial and gender wage inequalities.<sup>32</sup>

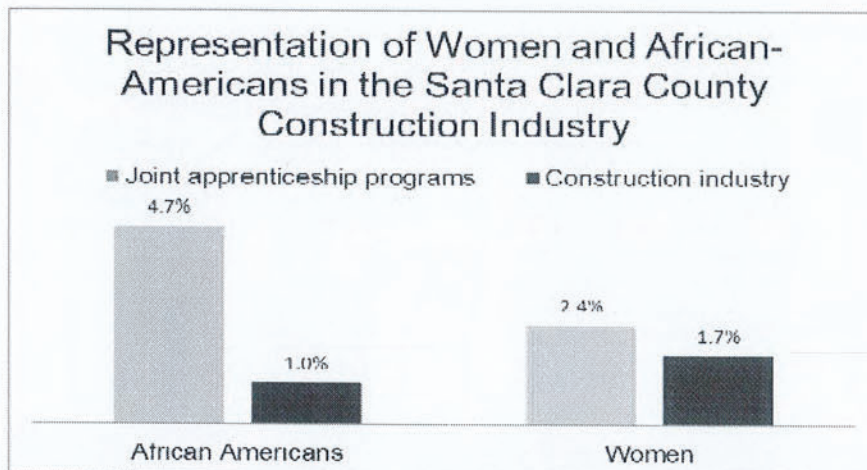


Figure 4. Data represents residents of Santa Clara County. "Construction industry" includes residents employed in non-supervisory construction occupations.

Source: DAS and ACS 2006-2008

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An analysis of joint apprenticeship program enrollments in Santa Clara County compared with construction industry employment from 2006-2008 shows that 126 African Americans residing in Santa Clara County enrolled in joint apprenticeship programs during this period, making up 4.7% of all enrollments.<sup>34</sup> Among all residents employed in non-supervisory construction occupations, African

<sup>30</sup> Philips, Peter, *Construction: The Effect of Prevailing Wage Regulations on the Construction Industry in Iowa*, Economics Department, University of Utah (2006).

<sup>31</sup> Larissa Petrucci, *Constructing a Diverse Workforce: Examining Union and Non-Union Construction Apprenticeship Programs and Their Outcomes for Women and Workers of Color*, University of Oregon Labor Education and Research Center (October 26, 2021). Available at: <https://lerc.uoregon.edu/2021/10/26/apprenticeship/>.

<sup>32</sup> Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011), p. 6. Available at: [https://www.wpusa.org/5-13-11%20prevailing\\_wage\\_brief.pdf](https://www.wpusa.org/5-13-11%20prevailing_wage_brief.pdf) ("Working Partnerships Report").

<sup>33</sup> Working Partnerships Report at Figure 4, p. 12.

<sup>34</sup> *Id.* at p. 12.



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Americans made up just 1.0%.<sup>35</sup> Joint apprenticeships were therefore 4.7 times more likely than the industry at large to employ an African-American.<sup>36</sup>

Examining the data by gender, the research showed that women comprised just 1.7% of construction industry workers, yet made up 2.4% of enrollments in joint apprenticeship programs.<sup>37</sup> Joint apprenticeships were therefore 1.4 times more likely than the industry at large to employ a woman.<sup>38</sup> While these numbers are still low, they indicate that the pipeline of workers currently being trained through apprenticeship programs, if they remain employed in construction, will diversify the industry relative to its current state.<sup>39</sup> Without apprenticeship opportunities, the opportunity to access construction careers for women, African Americans and other underrepresented groups in Berkeley could be considerably reduced.<sup>40</sup>

The City Council should mitigate the Project's detrimental impacts on the general welfare with apprenticeship training standards.

## **2. The Project is Detrimental the General Welfare Because It Does Not Include Local Hire**

Because the Project is not publicly funded, the Applicant is not required to provide local hire opportunities, and has not voluntarily agreed to do so. The lack of local hiring commitments for Project construction workers may result in longer commutes, and further exacerbate housing inaffordability.

Recent studies have confirmed that the absence of locally hired construction workers can exacerbate the impacts of construction project. For example, a Working Partnership case study in San Jose found that, in 2008, non-local construction workers employed in Santa Clara County cumulatively drove over 1 million miles per day to and from work.<sup>41</sup> If the work done by non-locals was instead performed by locals with shorter commutes, then the estimated savings would be 123,619,000 miles per year.<sup>42</sup> The study also found that, if the City of San Jose's major municipal buildings from 2007-2012 were not built under prevailing wage, then

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Working Partnerships Report, p. 12.

<sup>41</sup> Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011). Available at: [https://www.wpusa.org/5-13-11%20prevailing wage brief.pdf](https://www.wpusa.org/5-13-11%20prevailing%20wage%20brief.pdf).

<sup>42</sup> *Id.*



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major economic impacts would include reduction in total economic activity of \$164 million, net loss of 1,510 local jobs, and loss in local property and sales tax revenues of \$1.9 million.”<sup>43</sup> This includes a direct impact of 1,155 fewer construction jobs and indirect impacts of 355 fewer jobs in other sectors, a total loss in local property and sales tax revenues of \$1.9 million, and a decrease in sales taxes collected by the City of San Jose of \$181,000.<sup>44</sup>

Local hire policies provide local jobs and also incentivize the creation of career ladders by moving community members into apprenticeship programs and into middle-class careers.<sup>45</sup> By definition, local hire policies require that a certain number of journeyworkers and apprentices who are residents of the local area to be employed on development projects.<sup>46</sup> Condition of approval that mandate local hire in public projects have been found to be concrete mechanisms to ensure that the investment of public funds into the community helps low-income residents.<sup>47</sup>

Local hire commitments are a critical way not only to hire local residents, but to use project hiring needs to target opportunities to low-income residents and people of color who might otherwise not benefit from new development.<sup>48</sup> Local hire programs help address the fragmentation inherent in the development process, establishing better communication among developers, employers, community organizations, local job training resources, and the workforce development system that can provide job readiness and job retention support services.<sup>49</sup>

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<sup>43</sup> Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011), p. 6. Available at: [https://www.wpusa.org/5-13-11%20prevailing wage brief.pdf](https://www.wpusa.org/5-13-11%20prevailing%20wage%20brief.pdf).

<sup>44</sup> *Id.*

<sup>45</sup> Corinne Wilson, *Construction Apprenticeship Programs: Career Training for California's Recovery*, Center on Policy Initiatives (September 2009). Available at: <https://cpisandiego.org/research/construction-apprenticeship-programs-2009/>.

<sup>46</sup> Corinne Wilson, *Construction Apprenticeship Programs: Career Training for California's Recovery*, Center on Policy Initiatives (September 2009). Available at: <https://cpisandiego.org/research/construction-apprenticeship-programs-2009/>.

<sup>47</sup> Kathleen Mulligan-Hansel, PhD. 2008. *Making Development Work for Local Residents: Local Hire Programs and Implementation Strategies that Serve Low-Income Communities*. Partnership for Working Families.

<http://www.communitybenefits.org/downloads/Making%20Development%20Work%20for%20Local%20Residents.pdf>.

<sup>48</sup> Kathleen Mulligan-Hansel, *Making Development Work for Local Residents: Local Hire Programs and Implementation Strategies that Serve Low-Income Communities*, (July 2008). Available at: [https://s3.amazonaws.com/proggov21-uploads/uploads/asset/asset\\_file/Making\\_Development\\_Work\\_Local\\_Residents\\_Mulligan-HanselPWF2008.pdf](https://s3.amazonaws.com/proggov21-uploads/uploads/asset/asset_file/Making_Development_Work_Local_Residents_Mulligan-HanselPWF2008.pdf).

<sup>49</sup> *Id.*

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In voting to support the drafting of the HARD HATS Ordinance, the City Council found that it is in the general welfare of persons in the Berkeley area to utilize local labor for local projects.<sup>50</sup> Specifically, the Council concluded that “it is in the City of Berkeley’s economic interest to support a pipeline of skilled workers to accomplish the construction objectives and policies of the Berkeley General Plan.”<sup>51</sup> The HARD HATS Staff Report provided numerous examples of how a local skilled and trained workforce supports the general welfare of the community and the individual workers and their families.

Here, the Project Applicant has not made a commitment to ensure the Project is built with local skilled and trained workforce. The Project is therefore likely to be detrimental to City goals and the Berkeley community – particularly to its highly qualified construction workforce, who may not have the opportunity to build much-needed housing in their own community.

### **3. The Project Externalizes the Costs of Construction Because It Does Not Provide Healthcare Benefits**

The Project has not committed to healthcare standards or benefits for the construction workers building the Project. This results in a detriment to the general welfare of the City and its residents, including in particular its construction worker residents. By failing to provide healthcare for its construction workers, the Project leaves the responsibility of providing for the health, safety, and welfare of the workers and the community on the workers themselves, or on taxpayer-funded public assistance, thus externalizing the cost of construction.

The City’s HARD HATS Ordinance Staff Report explained that construction trade workers experience exceptionally high rates of serious injury on the job, especially on sites with inadequately trained workers.<sup>52</sup> For example, one of every five serious workers’ compensation insurance claims which involve death, permanent total disability or major permanent partial disability - is related to a construction employee, despite the fact that construction jobs account for less than one out of every 25 California jobs.<sup>53</sup> In authorizing drafting of the HARD HATS Ordinance, the Council reiterated the importance of providing paid healthcare for

<sup>50</sup> City of Berkeley, Agenda, Berkeley City Council, Tuesday September 20, 2022 6:00 PM, Council Consent Item 14 Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (HARD HATS) Referral, p. 77. Available at: <https://berkeleyca.gov/sites/default/files/city-council-meetings/2022-09-20%20Agenda%20Packet%20-%20Council%20-%20WEB.pdf> (“HARD HATS Staff Report”).

<sup>51</sup> HARD HATS Staff Report, p. 77.

<sup>52</sup> *Id.* at 81.

<sup>53</sup> *Id.*



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construction workers to support a sustainable construction workforce: “The creation and utilization of apprenticeship along with the commitments to paid healthcare act to both recruit and retain an adequate base of construction workers and to be a pipeline for future supervisors and licensed independent contractors.”<sup>54</sup>

Lack of paid healthcare and a deficit in wages are major factors in externalizing the costs of construction onto individual workers and public services. A study by Smart Cities Preval calculated that, if California’s multifamily residential construction resembled the rest of the industry on wage standards, worker income would increase by more than \$1 billion, state and local government coffers would grow \$55 million a year, and public assistance payments for direct expenditures like MediCal would decrease by at least \$30 million per year.<sup>55</sup> A typical non-union construction employee on a non-prevailing wage project without health benefits would be eligible for \$916 to \$8,032 in public assistance for his or her family.<sup>56</sup> At prevailing wage with health benefits, the same worker would earn enough to support his or her family with no public assistance.<sup>57</sup>

By failing to provide healthcare standards, the Project would perpetuate existing income and healthcare inequities for construction workers, causing a detriment to the general welfare by failing to provide for the health and safety of its workers. The City should ask the Applicant to provide healthcare benefits as a public benefit of the Project.

#### 4. Providing Workforce Benefits Furthers Berkeley’s Goals as Laid out in the Municipal Code

The Municipal Code provides that the “Zoning Ordinance establishes *minimum* requirements to promote the public health, safety, and general welfare.”<sup>58</sup> The Municipal Code also provides that, “[t]o the extent possible, it is the government’s responsibility to balance the responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmentally sustainable manner.”<sup>59</sup> It is therefore the responsibility of the City Council to promote the general welfare beyond the minimum required by law.

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<sup>54</sup> *Id.* at 77.

<sup>55</sup> Lantsberg Report, p. 2.

<sup>56</sup> Working Partnerships USA, *Economic, Fiscal and Social Impacts of Prevailing Wage in San Jose, California* (April 25, 2011). Available at: [https://www.wpusa.org/5-13-11%20prevailing\\_wage\\_brief.pdf](https://www.wpusa.org/5-13-11%20prevailing_wage_brief.pdf) (“Working Partnerships Report”).

<sup>57</sup> *Id.*

<sup>58</sup> BMC § 22.104.030.

<sup>59</sup> BMC § 2.09.020.

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Here, the City Council must ensure the health, safety, and general welfare is promoted in a fiscally and environmentally sustainable manner. The Council should endeavor to do so through the implementation of apprenticeship standards, healthcare benefits, and local hire commitments for the Project.

### **5. Utilizing a Skilled Construction Workforce Promotes the Goals Set Forth in the Regional Housing Needs Assessment**

One of the main rationales for the HARD HATS Ordinance was to increase the City's housing supply through the use of a local skilled and trained labor force. Berkeley has been assigned a Regional Housing Needs Assessment ("RHNA") by the State of roughly 9,000 units of housing to produce over an eight year period, or over 1,100 units per year.<sup>60</sup> But, the City has determined that Berkeley does not have an adequate supply of construction workers to build over 1,100 housing units per year while also building, altering, and maintaining public and private commercial nonresidential buildings and infrastructure.<sup>61</sup> Only 1,250 construction sector employees lived in Berkeley in 2018.<sup>62</sup> The City has also concluded that Berkeley cannot rely on contractors to reliably import surplus skilled construction workers from other cities.<sup>63</sup> Construction jobs – particularly residential construction jobs - have lost their competitive edge relative to other jobs in the Bay Area regional economy.<sup>64</sup> To meet its General Plan goals, Berkeley must create working conditions, on the Project site in particular, that will help to overcome the construction labor market's failures to make construction jobs attractive enough to recruit and retain productive trade workers.

At the September 20, 2022 HARD HATS hearing, City Councilmembers explained that there is a "shortage of qualified local construction workers" and that is one reason why it is hard to get housing built.<sup>65</sup> Councilmember Hahn explained that Berkeley should "develop more labor, have working conditions, and pay, and benefits that you need to live in the Bay Area."<sup>66</sup> Further Councilmember Hahn asserted that Berkeley needs to expand the available workforce of people who are able to build housing and other projects, and "to ensure they have protections."<sup>67</sup> Mayor Arreguin noted that the "key to addressing the significant shortage of

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<sup>60</sup> HARD HATS Staff Report, p. 80.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Statement by Councilmember Hahn, Oakland City Council Hearing (September 20, 2022 6 PM).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

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housing is addressing the shortage of a skilled and trained workforce.”<sup>68</sup> The Project does not meet this goal of addressing the housing shortage by utilizing local skilled and trained workers.

In order to ensure that the City remains on track to meet its State RHNA housing allocation, the Council must ensure that this Project, and every housing project constructed in Berkeley, includes workforce standards which promote the development and retention of a local skilled and trained workforce.

### **B. The Project is Inconsistent with the General Plan**

The Project is inconsistent with the General Plan Economic Development & Employment Element, and thus cannot be approved until consistency is demonstrated.<sup>69</sup>

The General Plan Economic Development and Employment Element Policy (ED-1) provides that the City must “[i]ncrease the number of jobs that go to Berkeley citizens by coordinating economic development efforts with employment placement.”<sup>70</sup> Further, the General Plan provides that the City intends to “[w]ork with job training programs and encourage training for life skills, job readiness, and specific target industries.”<sup>71</sup> The Project does not include any commitment to provide construction jobs to Berkeley or East Bay residents, and does not contribute to any apprenticeship or other construction job training programs. The Project therefore fails to comply with Policy ED-1.

The HARD HATS Staff Report explains that requiring contractors on major projects in Berkeley to employ apprentices results in a higher volume of apprentice training, and thus, an increase in the construction labor force available to carry out the construction anticipated by the general plan.<sup>72</sup> Further, the Staff report provides that, in order to meet its General Plan goals, Berkeley must create local working conditions that will help to overcome the construction labor market’s failures to make construction jobs attractive enough to recruit and retain productive trade workers.<sup>73</sup>

<sup>68</sup> Statement by Mayor Arreguin, Oakland City Council Hearing (September 20, 2022 6 PM).

<sup>69</sup> SB 330 requires conformance with applicable, objective general plan and zoning standards. Gov. Code § 65905.5. (a).

<sup>70</sup> Berkeley General Plan Economic Development and Employment Element, p. ED-5. Available at: [https://berkeleyca.gov/sites/default/files/documents/12\\_Economic%20Development%20and%20Employment%20Element-FINAL.pdf](https://berkeleyca.gov/sites/default/files/documents/12_Economic%20Development%20and%20Employment%20Element-FINAL.pdf).

<sup>71</sup> *Id.*

<sup>72</sup> HARD HATS Ordinance Staff Report, p. 80.

<sup>73</sup> *Id.*



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Providing a local skilled and trained workforce would further the goals laid out in the General Plan Economic Development and Employment Element, that the City enacted to promote the general welfare. The Project does not include any of these elements and therefore fails to demonstrate consistency with the General Plan Economic Development and Employment Element.

### C. The Project is Inconsistent with the Downtown Area Plan

The Project does not conform with the Downtown Area Plan because it fails to provide “significant community benefits” as required by the Plan.

The Downtown Area Plan provides that “All new buildings *shall* deliver significant community benefits, many of which should be in proportion to building height.”<sup>74</sup> The Downtown Area Plan requires projects above 75 feet to include significant community benefits in the form of affordable housing, supportive social services, green features, open space, transportation demand features, job training, and/or employment opportunities.<sup>75</sup> The applicable public benefit requirements are to be included as conditions of approval and the owner shall enter into a written agreement that shall be binding on all successors in interest.<sup>76</sup> The Project violates the Downtown Area Plan for failure to include community benefits as binding conditions of approval.

### III. CONCLUSION

For the reasons stated above, the Project was approved by ZAB in violation of the Municipal Code due to detrimental impacts to the general welfare associated with construction of the Project. The City Council should modify the ZAB’s approval to add mitigation measures or conditions of approval to the Project which require the Applicant to provide workforce standards and public benefits that are consistent with Municipal Code and local plan standards to provide local employment training and placement facilities and amenities for construction workers, healthcare benefits, and apprenticeship opportunities.

<sup>74</sup> City of Berkeley, Downtown Area Plan (2012) p. LU-12. Available at: <https://berkeleyca.gov/sites/default/files/2022-03/Downtown-Area-Plan.pdf> (emphasis added).

<sup>75</sup> *Id.*

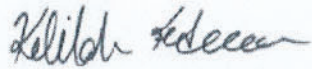
<sup>76</sup> *Id.*

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Thank you for your attention to these comments. Please include them in the City's record of proceedings for the Project.

Sincerely,



Kelilah D. Federman

Attachments  
KDF:acp

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Z O N I N G  
A D J U S T M E N T S  
B O A R D  
S T A F F R E P O R T

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FOR BOARD ACTION  
SEPTEMBER 22, 2022

## 2065 Kittredge Street

Use Permit #ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an 8-story, mixed-use building with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces. Project utilizes State Density Bonus.

### I. Background

#### A. Land Use Designations:

- General Plan: DT – Downtown; Downtown Area Plan
- Zoning: C-DMU (Core) – Downtown Mixed-Use Commercial District – Core Sub-area

#### B. Zoning Permits Required:

- Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use development
- Use Permit under BMC Section 23.204.020(A) to construct dwelling units
- Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more
- Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limits, up to 75 feet (plus 5-foot parapet, by right)

#### C. Concessions and Waivers and Pursuant to State Density Bonus Law (CA Gov't. Code Section 65915):

- Concession to reduce the usable open space requirement – to provide 11,916 square feet where 14,960 square feet is required
- Waiver of BMC Section 23.204.130(E)(1) to exceed building height limits – to be 87 feet (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet, by right, with a use permit)
- Waiver of BMC Section 23.204.130(E)(3) to reduce setback to 0 feet, where 15 feet is required, where above 75 feet in height

- Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 0-20 feet, where 5 feet is required, at 0-20-foot building height
- Waiver of BMC Section 23.304.090(B)(7) to reduce the landscaped usable open space to 25 percent, where from 40 percent minimum is required
- Waiver of BMC Section 23.304.050(A) to exceed building height limits with rooftop architectural elements which exceed the maximum height limit for the district
- Waiver of BMC Section 23.322.030(B)(1) to reduce the minimum commercial parking requirement to zero, where eight is required

**D. CEQA Recommendation:** Adopt the Environmental Impact Report (EIR) Addendum to the certified 2211 Harold Way Mixed-Use Project Final EIR (SCH #2014052063) and Revised Mitigation Monitoring and Reporting Program (MMRP) pursuant to the California Environmental Quality Act. The Addendum and MMRP are attached to this staff report. See Section V for discussion of the project's CEQA review.

**E. Parties Involved:**

- Applicant Bill Schrader, 164 Oak Road, Alamo, CA 94507
- Property Owner CA Student Living Berkeley, LLC, 130 Randolph Street, Suite 2100, Chicago IL, 60601

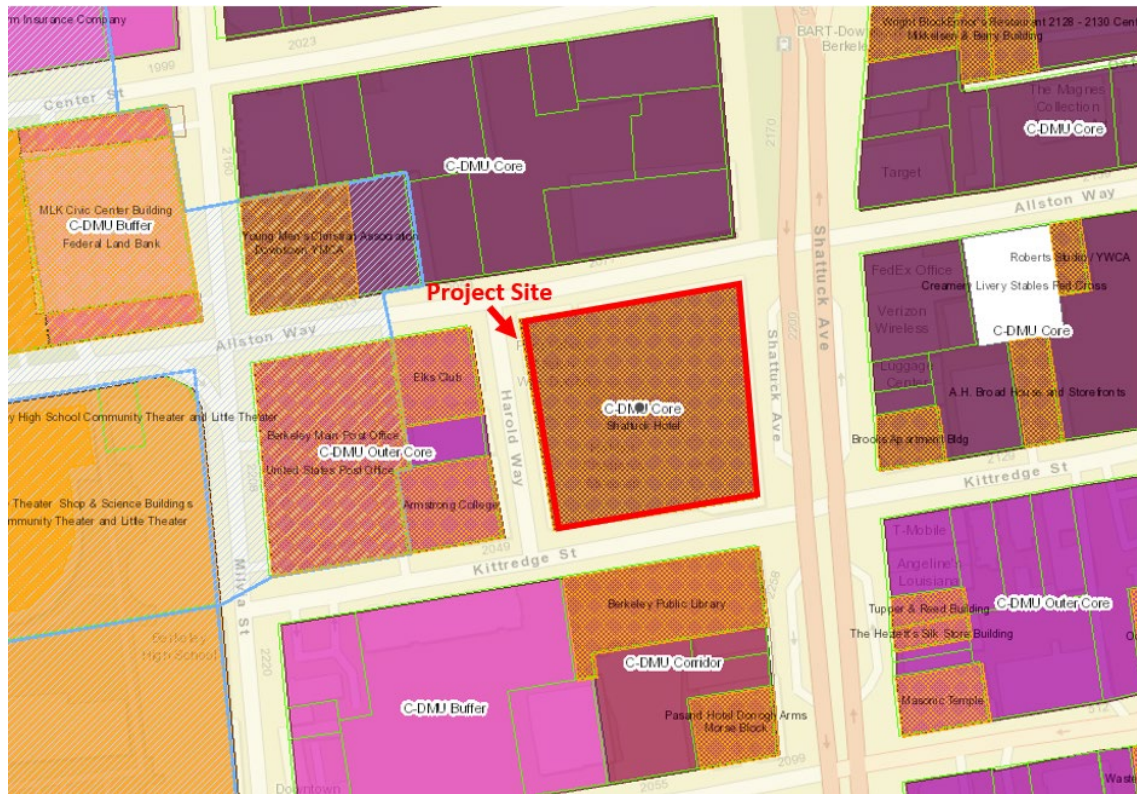
**F. Application Materials, Staff Reports and Correspondence are available on the Internet:**

<https://aca.cityofberkeley.info/citizenaccess/Default.aspx>

<https://cityofberkeley.info/your-government/boards-commissions/zoning-adjustments-board>



Figure 1: Zoning Map



Legend

- C-DMU: Downtown Mixed-Use District
- Core: C-DMU Core Sub-Area
- Buffer: C-DMU Buffer Sub-Area
- Corridor: C-DMU Corridor Sub-Area
- Outer Core: C-DMU Outer Core Sub-Area

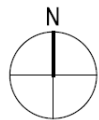


Figure 2: Project Location





Figure 3: City Landmarks and Demolition Boundaries



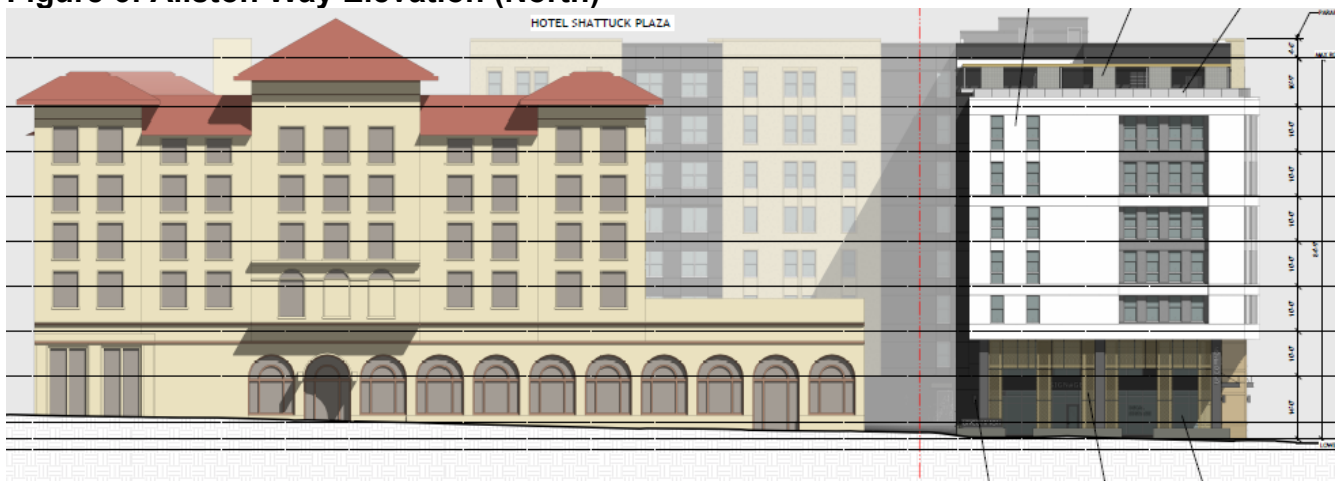
Figure 4: Kittredge Street Elevation (South)



Figure 5: Harold Way Elevation (West)



Figure 6: Allston Way Elevation (North)



**Table 1: Land Use Information**

| Location                              |       | Existing Use                                                                                                                                                                                                                                                                          | Zoning District            | General Plan Designation |                                     |
|---------------------------------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------|-------------------------------------|
| Subject Property                      |       | Office (combination of professional, institutional and medical)<br>Children’s Museum (closed)                                                                                                                                                                                         | C-DMU<br>Core Sub-<br>Area | DT                       |                                     |
| Surrounding<br>Adjacent<br>Properties | North | Retail (2190 Shattuck Ave);<br>Public parking structure with ground floor office and commercial                                                                                                                                                                                       |                            |                          |                                     |
|                                       | East  | Hotel Shattuck Plaza (2086 Allston Way) and ground floor retail on Shattuck Ave.<br>Mixed use retail and apartments (2219 Shattuck Ave.)<br>Mixed use retail and apartments (2225 Shattuck Ave.)<br>Mixed use retail and apartments (2231 Shattuck Ave.)<br>Shattuck Cinemas (closed) |                            |                          |                                     |
|                                       | South | Central Public Library (2090 Kittredge St.)                                                                                                                                                                                                                                           |                            |                          | C-DMU<br>Corridor<br>Sub-Area       |
|                                       | West  | Dharma College and the Mangalam Center (2018 Allston Way)                                                                                                                                                                                                                             |                            |                          | C-DMU<br>Outer<br>Core Sub-<br>Area |

**Table 2: Special Characteristics**

| Characteristic                                                                                                                         | Applies to Project? | Explanation                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affordable Child Care Fee & Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.) | No                  | These fees apply to projects with more than 7,500 square feet of net new non-residential gross floor area. The project includes no net new non-residential gross floor area. Therefore, the project would not be subject to these fees. |
| Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)                                            |                     |                                                                                                                                                                                                                                         |
| Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)                                                         | Yes                 | The project would include five or more market rate dwelling units and is therefore subject to the affordable housing provisions of BMC 22.20.065.                                                                                       |
| Alcohol Sales/Service                                                                                                                  | No                  | The project is not proposing alcohol sales or service with this permit.                                                                                                                                                                 |
| Coast Live Oaks                                                                                                                        | No                  | There are no oak trees on the project site.                                                                                                                                                                                             |
| Creeks                                                                                                                                 | No                  | The project site is not within a creek buffer.                                                                                                                                                                                          |



| Characteristic                                         | Applies to Project? | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Density Bonus                                          | Yes                 | The project would provide nine Very Low-Income units, or 5% of the Base Project units, and qualifies for a 20% density bonus, or 33 bonus units (24 taken). See Section III.B for discussion.                                                                                                                                                                                                                                                                                                                             |
| Green Building Score                                   | Yes                 | The Project is designed to achieve a LEED Gold (or equivalent) rating.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Historic Resources                                     | Yes                 | The project would involve removal of the 1926 addition and portions of the 1913 addition to the landmarked Shattuck Hotel. The project would involve demolition of the 1959 Hink's Building, which is not a historic resource.                                                                                                                                                                                                                                                                                            |
| Housing Accountability Act<br>(Govt. Code 65589.5(j))  | Yes                 | The project is a "housing development project" consisting of a mixed-use building, and requests no modifications to development standards beyond waivers and concessions requested under density bonus law. Therefore, the HAA findings apply to this project, and the project cannot be denied at the density proposed unless the findings for denial can be made. See Section III.C for discussion.                                                                                                                     |
| Public Art on Private Projects<br>(BMC Chapter 23C.23) | Yes                 | The project is subject to the Percentage for Public Art on Private Projects Ordinance. The applicant is electing to pay the fee (0.8% of total building permit valuation) to comply.                                                                                                                                                                                                                                                                                                                                      |
| Rent Controlled Units                                  | No                  | The project involves the partial demolition of non-residential structures and no rent-controlled units would be demolished.                                                                                                                                                                                                                                                                                                                                                                                               |
| Residential Preferred Parking                          | Yes                 | The site is located in RPP zone "I". However, newly constructed dwellings would not be eligible to participate in the RPP program.                                                                                                                                                                                                                                                                                                                                                                                        |
| Seismic Hazards (SHMA)                                 | No                  | The project site is located in an area susceptible to liquefaction, as defined by the State Seismic Hazards Mapping Act (SHMA). The applicant has submitted a geotechnical report that has been peer reviewed by the City's consultant. Conditions of approval will be included in the permit to ensure oversight by the applicant's geotechnical consultant.                                                                                                                                                             |
| Soil/Groundwater Contamination                         | No                  | The project site is located within the City's Environmental Management Area. The project site is not listed on the Cortese List. The Phase I submitted by applicant indicated a potential for vapor intrusion associated with previous dry-cleaning activities at the site. A condition of approval will be included in the permit requiring a vapor intrusion report for Toxics Division review, as recommended in the Phase I report. Also, standard Conditions of Approval related to hazardous materials would apply. |
| Transit                                                | Yes                 | The project site is served by multiple bus lines (local, rapid, and Transbay) that operate along Shattuck Avenue, and is approximately one block from the Downtown Berkeley BART Station.                                                                                                                                                                                                                                                                                                                                 |

**Table 3: Project Chronology**

| Date               | Action                                                                               |
|--------------------|--------------------------------------------------------------------------------------|
| July 26, 2021      | SB 330 Preliminary Application deemed complete                                       |
| October 25, 2021   | SB 330 Use Permit Application submitted                                              |
| June 1, 2022       | Application deemed complete; level of CEQA review determined by staff – EIR Addendum |
| April 21 2022      | DRC Design Review Referral for LMSAP2021-0004                                        |
| June 2, 2022       | LPC Structural Alterations Permit LMSAP2021-0004 Hearing                             |
| August 4, 2022     | LPC Structural Alterations Permit LMSAP2021-0004 Hearing                             |
| September 8, 2022  | Public hearing notices mailed/posted                                                 |
| September 22, 2022 | ZAB Hearing                                                                          |

**Table 4: Development Standards**

| C-DMU Standards,<br>Core Sub-Area           |                   | Existing            | Proposed                              | Permitted/Required                                                                      |
|---------------------------------------------|-------------------|---------------------|---------------------------------------|-----------------------------------------------------------------------------------------|
| Lot Area (sq. ft.)                          |                   | 33,582 <sup>1</sup> | 33,582                                | n/a                                                                                     |
| Gross Floor Area (sq. ft.)                  |                   | 92,531              | 186,354                               | n/a                                                                                     |
| Commercial Floor Area                       |                   | 95,000              | 4,993 <sup>2</sup>                    | n/a                                                                                     |
| FAR                                         |                   | 2.8                 | 5.5                                   | n/a                                                                                     |
| Dwelling Units                              |                   | 0                   | 183                                   | n/a                                                                                     |
| Live/Work Units                             |                   | 0                   | 4                                     | n/a                                                                                     |
| Building Height                             | Maximum           | 36'-0"              | 87'-0"                                | 50' min./60' max.<br>(75' max. w/use permit <sup>3</sup> ;<br>5' max. parapet by right) |
|                                             | Stories           | 3                   | 8                                     | n/a                                                                                     |
| Building Setbacks                           | Front (Kittredge) | 0'-0"               | 0'-0"                                 | 0'-5' (bldg. ht.≤20')<br>0' (bldg. ht.>20' and ≤75')<br>15' (bldg. ht.>75')             |
|                                             | Front (Harold)    | 0'-0"               | 0'-0"<br>(2'-6" overhang<br>into ROW) | 0'-5' (bldg. ht.≤20')<br>0' (bldg. ht.>20' and ≤75')<br>15' (bldg. ht.>75')             |
|                                             | Front (Allston)   | 0'-0"               | 0'-0"                                 | 0'-5' (bldg. ht.≤20')<br>0' (bldg. ht.>20' and ≤75')<br>15' (bldg. ht.>75')             |
| Lot Coverage (%)                            |                   | 100                 | 82                                    | n/a                                                                                     |
| Usable Open Space (sq. ft.)                 |                   | n/a                 | 11,916                                | 14,960 min.<br>(80 s.f./d.u.)                                                           |
| Privately Owned Public Open Space (sq. ft.) |                   | n/a                 | 4,593 <sup>4</sup>                    | 100<br>(1 s.f./50 s.f. of commercial)                                                   |

| C-DMU Standards, Core Sub-Area                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                         | Existing | Proposed                         | Permitted/Required                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|----------|----------------------------------|----------------------------------------|
| Parking                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Commercial (4,993 sq. ft.)              | 0        | 0                                | 8 min.<br>(1.5 space/1,000 s.f.)       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Residential                             | 0        | 41                               | 0 min./92 max.<br>(0.5 spaces/du max.) |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Carshare                                | 0        | 2                                | 2 min.                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Total                                   | 0        | 43                               | 6 min./92 max.                         |
| Bicycle Parking                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Commercial - Short Term (4,993 sq. ft.) | 0        | 3                                | 3<br>(1 spc/2,000 s.f. commercial)     |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Residential - Long Term                 | 0        | 122                              | 112<br>(1 space/3 bedrooms)            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Residential - Short Term                | 0        | 8                                | 8<br>(1 space/40 bedrooms, or 2)       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Total                                   |          | 122/11<br>(long term/short term) | 112/11<br>(long term/short term)       |
| <p><sup>1</sup> Area of Unit B of Parcel Map 6889</p> <p><sup>2</sup> Includes commercial area in live/work units, 4 x 433.5 sq.ft.=1,734 sq.ft..</p> <p><sup>3</sup> The use permit to allow height up to 75 feet is included in the Base Project for the calculation of the density bonus, and is not a requested waiver. Additional height beyond 75' is being requested as a waiver.</p> <p><sup>4</sup> Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site usable open space.</p> <p> = Waiver requested to modify the district standard.</p> <p> = Concession, pursuant to State Density Bonus Law, requested to modify the district standard.</p> |                                         |          |                                  |                                        |

## II. Project Setting

**A. Neighborhood/Area Description:** The project site is located within the Downtown Mixed-Use District (C-DMU), Core Sub-Area, as identified in the City’s Downtown Area Plan (DAP). Directly adjacent to the project site and on the same block is the Shattuck Hotel, a City of Berkeley Landmark, whose main lobby and entrance are on Allston Way but which also occupies the airspace above the ground floor retail along the entire block’s frontage on Shattuck Avenue. Below the hotel rooms along Shattuck Avenue is a row of commercial storefronts, as well as the entrance to the former commercial occupant, Shattuck Cinemas, which is now closed. The hotel consists of guest rooms, a restaurant, a bar, and meeting rooms.

Commercial uses are located along Shattuck Avenue north of and across from the project site. South of the project site on Shattuck Avenue and across Kittredge Street is the Berkeley Central Library, a City of Berkeley and National historic landmark. West of the project site across Harold Way are the Dharma College and the Mangalam Center, both City of Berkeley Landmarks. Commercial land uses and a public parking structure are located north of the project site across Allston Way. (See Figure 1: Zoning Map and Figure 2: Project Location.)



Building heights in the vicinity range from two to three-stories (portions of the Dharma College complex on Harold Way and U.S. Post Office along Kittredge Street) to the 12-story 2140–2144 Shattuck Avenue Chamber of Commerce Building (173 feet) and 14-story 2150 Shattuck Avenue First Savings/Great Western Building (180 feet). The adjacent Shattuck Hotel is five stories in height, not including the basement. Most buildings around the project site are in the two- to five-story range. One block north, around the intersection of Center Street and Shattuck Avenue, are several AC Transit and UC Berkeley Shuttle bus stops serving a number of bus lines, as well as the Downtown Berkeley BART Station on Shattuck Avenue between Allston Way and Addison Street.

**B. Site Conditions/Background:** The project site is a portion of the fully urbanized city block discussed above, which is generally level, sloping slightly downward towards the west and south. The project site is a single parcel that encompasses an entire City block with street frontage on Allston Way (north), Shattuck Avenue (east), Kittredge Street (south) and Harold Way (west) that is subdivided into condominium parcels A, B, and C of Parcel Map 6889. (See Figure 3: City Landmarks and Demolition Boundaries) The site is occupied by a City Landmark, The Shattuck Hotel, which has four primary components: the original hotel building constructed in 1910; 1913 hotel expansion and Hink’s Department store addition facing Shattuck Avenue and Kittredge Street; 1926 Hink’s expansion facing Kittredge and Harold Way; and the 1959 Hink’s addition facing Harold Way and Allston Way. The 1913 expansion previously housed the Shattuck Cinema’s movie theaters, part of the Habitot Children’s Museum, and office space. Both the Shattuck Cinemas and Habitot spaces are currently vacant. All portions of the expansions proposed to be demolished are two stories in height with a partial third story and a basement level.

The project site is Unit B of the condominium subdivision, Parcel Map 6889, which was created December, 2020. Entitlements were previously obtained for the project site in 2015 (UP13-10000010 and LM13-40000002, under the address 2211 Harold Way) to demolish historic structures and construct an 18-story, 302-unit, mixed-use building, with approximately 10,877 square feet of commercial space, a ten-theater cinema complex, and 177 underground parking spaces. Building permits were never obtained for the project, and the City deemed the permits expired on January 17, 2020.

### III. Project Description

- A.** The proposed project would demolish a portion of the City Landmark Shattuck Hotel (the 1913 expansion) and fully demolish the City Landmarks 1926 and 1959 Hink’s department store expansions; and construct a mixed-use building with the following main components:
- Eight stories, 87 feet in height
  - 183 dwelling units – 41 studios, 30 one-bedroom 101 two-bedroom, and 11 three-bedroom
  - Four live/work units

- 583 bedrooms total
- Nine Very Low Income (VLI) units
- 4,993 square feet of ground-floor commercial space
- 11,916 square feet of usable open space – two ground-floor public plazas (off of Kittredge and Allston frontages) and a seventh-floor roof deck
- 43 residential vehicle parking spaces in ground-level garage (two carshare spaces)
- 122-space bike room

(See Figure 4, 5 and 6: Elevations.)

**B. Base Project and Density Bonus:** By committing to provide nine VLI units, the project is eligible for a density bonus under Government Code Section 65915. Under the City’s density bonus procedures, the Base Project was calculated to have 163 units, as the maximum allowable density for the site.<sup>1</sup> The Base Project has an average unit size of 995 square feet in a 7-story building. Nine VLI units, or 5 percent of the Base Project, qualifies the project for a 20 percent density bonus or 33 bonus units, of which the project would utilize 24. The resulting Proposed Project would be an eight-story building with 187 units, with an average unit size of 997 square feet. (See Table 5: Density Bonus.)

**Table 5: Density Bonus – CA Gov’t Code 65915**

| Base Project Units*                                                                         | Qualifying Units    | Percent Density Bonus | Number of Density Bonus Units* | Proposed Project Units |
|---------------------------------------------------------------------------------------------|---------------------|-----------------------|--------------------------------|------------------------|
| 163                                                                                         | 9 VLI<br>(5% of BP) | 20%                   | 24 (33 max.)<br>(20%x163)      | 187                    |
| *Per Gov’t Code 65915(q), all unit calculations are rounded up to the nearest whole number. |                     |                       |                                |                        |

**C. Housing Accountability Act:** The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

- 1) The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
- 2) There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

<sup>1</sup> Per the City’s Density Bonus Procedures (DBP), the Base Project is the largest project allowed on the site that is fully compliant with district development standards (i.e. height, setbacks, usable open space, parking, etc.), or, the *maximum allowable density* for the site. The City uses the DBP to calculate the maximum allowable density for a site where there is no density standard in the zoning district, and to determine the number of units in the Proposed Project, which is the number of Base Project units plus the number of density bonus units that can be added according to the percentage of BMR units proposed, per Government Code, §65915(f).

The Base Project complies with applicable, objective general plan and zoning standards. Further, Section 65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” Therefore, the City may not deny the Base Project or density bonus request or reduce the density with respect to those units without basing its decision on the written findings under Section 65589.5(j), above. Staff is aware of no specific adverse impacts that could occur with the construction of the Base Project or the density bonus units. Therefore, Section 65589.5(j) **does apply** to the Proposed Project. All findings discussed below are subject to the requirements of Government Code Section 65589.5.

#### IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting the application to the City on October 25, 2021, the applicant installed yellow Proposed Development Project signs at the project site.

October 6, 2021 a neighborhood outreach meeting was held by the applicant. Four members of the public attended and discussed questions about: construction timeline and noise mitigation, shared service access on the alley at Allston Way; the extent of the demolition and impact to internal circulation in the existing buildings to remain; the proposed retail and shared utilities with existing buildings to remain; and exterior materials and finishes.

On March 2, 2022, staff received a letter from a neighbor raising concerns over the demolition of a portion of the Shattuck Cinemas. On April 20 and 21, 2022, prior to the Design Review Committee referral meeting, staff received two letters letter from neighbors raising similar concerns about the demolition of the movie theater, and the loss of a “cultural resource”.

On September 8, 2022, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations, and posted notices within the neighborhood in three locations. No further communications regarding the project were received as of the writing of this staff report.

- B. Design Review Committee Referral and Landmarks Preservation Commission:** In accordance with BMC Section 3.24.200 of the Landmarks Preservation Ordinance and BMC Section 23.406.070 of the Zoning Ordinance, the Landmarks Preservation Commission (LPC) must grant approval of the proposed demolition and complete Design Review for the new development under a Structural Alteration Permit, because the new construction shares the site with the landmarked structures. The project proposes to demolish the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink’s department store expansions. All are components of the designated Shattuck Hotel City Landmark, and two structures – the 1913 and 1926 expansions – are eligible for listing on the National Register of Historic Places as well

as the California Register of Historic Resources.<sup>2</sup> Staff referred the project to the Design Review Committee (DRC) to obtain advisory comments on the design of the new building and its adherence to the Downtown Design Guidelines for consideration by both the ZAB and LPC.

The DRC met to review the project on April 21, 2022, and forwarded comments and recommendations for improvements to the project design. The applicant made revisions per DRC recommendations and the revised project was reviewed by the LPC under the Structural Alteration Permit (LMSAP2021-0004) on June 2, 2022 and August 4, 2022.

At the August 4, 2022 meeting, the LPC approved the Structural Alteration Permit (SAP) for demolition and new construction at the Shattuck Hotel site, adopted an Addendum to a previous EIR, and conditioned further refinements for Final Design Review (Vote: 5-2-1-1). The SAP Findings and Conditions can be found at this [link](#). Further revisions to the project were made based on comments received from the LPC at this meeting, including the elimination of one unit (two bedrooms), the addition of 812 square feet of commercial area, and other minor revisions. (See Attachment 2.) The revisions did not affect the conclusion of the EIR Addendum (discussed in section V.B).

## V. Environmental Review

**A. CEQA Approach:** Pursuant to Section 15164 of the CEQA Guidelines, codified in Sections 15000 et seq. of Title 14 of the California Code of Regulations, a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15612 calling for preparation of a subsequent EIR have occurred. Under Section 15162 (a), where an EIR has been certified for a project, no subsequent EIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are substantial changes in the project or circumstances or substantially important new information that will cause the project to have significant new impacts or substantially increase previously identified significant impacts.

As discussed in detail in the EIR Addendum, potential impacts associated with the modified project (the proposed changes compared to the project evaluated in the Final EIR) are consistent with potential impacts characterized and mitigated for in the Final EIR. Substantive revisions to the Final EIR are not necessary because no new significant impacts or significant impacts of substantially greater severity than previously described would occur. Thus, the conditions outlined in CEQA Guidelines Section 15162 requiring preparation of a subsequent EIR would not be met.

**B. EIR Addendum and Revised MMRP:** An Addendum to the 2211 Harold Way Mixed-Use Project (UP 13-10000010) Final EIR, which was certified in December 2015, was prepared to evaluate the potentially significant environmental impacts of the proposed

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<sup>2</sup> The 1959 Hink's expansion does not have cultural resource status pursuant to CEQA.

project, pursuant to the California Environmental Quality Act. The Addendum considered the Final EIR and Statement of Overriding Considerations, and evaluated the modified project (see Figure 7). The modified project was found to be smaller and less impactful than the Final EIR project. The impacts related to demolition and alteration of historic buildings, would remain significant and unavoidable, and the same overriding considerations would apply to the modified project, except that the project is no longer required to provide community benefits, and cultural resource impacts were addressed in the modified design.

**Figure 7: Changes to Previously Approved Project (from EIR Addendum)**

| <b>Project Characteristic</b>  | <b>Previously Approved Project</b>        | <b>Updated Project</b>                                  |
|--------------------------------|-------------------------------------------|---------------------------------------------------------|
| Total Building Size            | 389,470 sf                                | 220,982 sf                                              |
| Residential                    | 278,185 sf                                | 149,678 sf <sup>1</sup>                                 |
| Retail                         | 10,535 sf                                 | 4,181 sf <sup>2</sup>                                   |
| Cinema                         | 21,641 sf                                 | N/A                                                     |
| Parking                        | 79,109 sf                                 | 20,881 sf                                               |
| Building Height                | 180 feet; 18 stories                      | 87 feet; 8 stories                                      |
| <b>Total Residential Units</b> | <b>302 units<sup>3</sup></b>              | <b>188 units<sup>4</sup></b>                            |
| Studio                         | 76 units                                  | 41 units                                                |
| 1-Bedroom                      | 145 units                                 | 31 units                                                |
| 2-Bedroom                      | 75 units                                  | 101 units                                               |
| 3-Bedroom                      | 6 units                                   | 11 units                                                |
| Live/Work                      | N/A                                       | 4 units                                                 |
| Affordable Units               | 28 units                                  | 9 units                                                 |
| <b>Open Space</b>              |                                           |                                                         |
| Private Roof Terrace           | 16,406 sf                                 | 2,930 sf                                                |
| Private Balconies              | 9,762 sf                                  | N/A                                                     |
| Public Open Space              | 713 sf                                    | 9,186 sf <sup>5</sup>                                   |
| Outdoor deck                   | 18th floor, 4,354 sf                      | N/A                                                     |
| Cinema                         | 641 seats<br>10 screening rooms           | Demolished                                              |
| Main Pedestrian Entrance       | Corner of Kittredge Street and Harold Way | Kittredge Street between Harold Way and Shattuck Avenue |
| <b>Parking</b>                 | <b>3 subterranean levels</b>              | <b>1 subterranean level</b>                             |
| Automobile                     | 171 spaces                                | 43 spaces                                               |
| Bicycle                        | 100 spaces                                | 129                                                     |

<sup>1</sup>Includes 9,019 sf of indoor residential amenity and 2,946 sf of elevated roof terrace amenity

<sup>2</sup>Includes 2,666 sf retail suite (coffee shop) and 1,515 sf work space in live/work units

<sup>3</sup>Units were approved to range in size from 474 sf to 1,103 sf.

<sup>4</sup>Units would range in size from 295 sf to 1,374 sf.

<sup>5</sup>Includes a 6,186 sf public plaza on Kittredge Street and a 3,000 sf public plaza on Allston Way

sf = square feet

The Addendum described the changes in the modified project, and addressed the following issues in detail: Air Quality, Cultural Resources, Greenhouse Gas Emissions, Noise, Transportation, and Utilities and Service Systems. All other environmental issues were evaluated for impact from the modified project as well, with the conclusion that impacts to these areas would be less than significant with mitigation, similar to the original project. For each of the above-listed areas of evaluation, the EIR Addendum findings supported the conclusion that impacts from the modified project would not result in new significant effects or a substantial increase in the severity of previously identified significant effects on the environment. Therefore, no new mitigation measures would be necessary for any of these evaluated areas. Furthermore, several mitigation measures for Cultural Resources are no longer required, as discussed below.

Cultural Resources. No new or substantially more severe significant effects would occur to cultural resources, and no new mitigation measures would be necessary. Design changes in the modified project include a reduction in building height, design strategies to break up massing with varied rooflines and materials, and the projection of the second-floor level above the double-height street level, aligning with the cornice of the 1912 portion of the Shattuck Hotel. These design modifications have responded to the design measures adopted in Mitigation Measures CR-2(a), (b) and (c) of the Final EIR; therefore the measures do not apply to the modified project. In particular, the modified project avoids impact to the Allston Way elevation, in response to Mitigation Measure CR-2(a); the redesign of the Kittredge Street “hyphen” responds to Mitigation Measure CR-2(b); and the removal of large-scale use of aluminum glazing systems responds to Mitigation Measure CR-2(c).

In conclusion, similar to the original project, cultural resource impacts from the modified project would be less than significant with mitigation, with the exception of impacts related to demolition and alteration of historic buildings, which would remain significant and unavoidable. Mitigation Measures CR-2(a) through (c) would be removed from the Mitigation Monitoring and Reporting Program (MMRP). All other measures adopted in the Final EIR for the purposes of mitigating cultural resources impacts remain applicable.

As mentioned in section IV.B, revisions to the project were made after the LPC meeting on August 4, 2022, including the elimination of one unit (two bedrooms), the addition of 812 square feet of commercial area, and other minor revisions. The City reviewed the revised plans and concluded that the revisions did not change the conclusion of the EIR Addendum (see Attachment 4).

Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091(d) require the City to adopt a reporting or monitoring program for the changes to the project that it has adopted or made a condition of approval in order to avoid or substantially lessen significant effects on the environment. The monitoring program is designed to ensure compliance during project implementation. The MMRP for the 2211 Harold Way Mixed-Use Project Final EIR has been revised to reflect the changes

to the mitigation measures that were described in the Addendum. The revised MMRP is attached to the permit (see Attachment 1, Exhibit B).

## VI. Issues and Analysis

**A. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development projects. A “housing development project” means a use that is: all residential; mixed use with at least two-thirds of the square footage as residential; or transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code Section 65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, then the city shall not conduct more than five hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act [Chapter 4.5 (commencing with Section 65920)].

The September 22, 2022 ZAB Hearing represents the fourth public hearing for the proposed project since the project was deemed complete. The City can hold one additional public hearing on this project, if needed. That hearing must be reserved for a potential appeal to the City Council.

2. Government Code Section 65913.10(a) requires that the City determine whether the proposed development project site is an historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is an historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

As discussed in Section IV.B, the structures proposed to be demolished – the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink’s department store expansions – components of the designated Shattuck Hotel City Landmark, and two structures – 1913 and 1926 expansions – are eligible for listing on the National Register of Historic Places as well as the California Register of Historic Resources. Since the project would involve demolition of these historic resources, and an EIR was previously prepared in 2015 for a project proposal with a similar demolition scope, the City determined that an EIR Addendum was required to evaluate the modified project’s impacts on the historic resources. (See Section V for more information regarding the CEQA review). Further, standard

conditions of approval have been included to halt work if any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code 65950(a)(2) requires a public agency to approve or disapprove a project within 90 days from the date of certification by the lead agency of the environmental impact report for a housing development project. The project was deemed complete on June 1, 2022. An EIR was certified in December 2015 for a similar project on the project site, and Staff determined on this date that the appropriate level of CEQA review was preparation of an EIR Addendum to evaluate the modified project's impacts on the environment. (See Section V for details on the CEQA Approach and EIR Addendum.) Therefore, this section does not apply to the project.
4. Government Code Section 66300(d) prohibits the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished. The project does not propose the demolition of housing units. Therefore, this section does not apply to the project.

**B. Density Bonus Waivers and Concessions:** The project is entitled to one concession (or incentive), under Government Code Section 65915(d) for providing at least 5 percent of total units to very low-income households, and an unlimited number of waivers, under Section 65915(e).

Concession. A concession or incentive is a modification of a zoning code requirement that results in identifiable and actual cost reductions to provide for affordable housing costs. The applicant is requesting one concession to reduce the Usable Open Space requirement to eliminate the cost of providing an additional roof deck or balconies.

The City may only deny the concessions if it finds that the concessions would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact<sup>3</sup> without rendering the development unaffordable to low income, very low income, and moderate-income households, or if the concession would be contrary to State or Federal law. Staff has identified no basis for making such a finding.

Waiver. A waiver is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus and concessions. Waivers for height (maximum height and rooftop projections), setbacks, commercial parking, and the amount of landscaped open space are requested because they are necessary to physically accommodate the full density bonus project on the site.

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<sup>3</sup> A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."



The City may only deny the waivers if it finds that the waivers would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low income, very low income, and moderate income households, or if the waiver would be contrary to State or Federal law. Staff has not identified any evidence that would support such a finding.

## VI. Other Considerations

The following analyses of conformance with district purposes, use permit findings for non-detriment, and the 2002 General Plan goals and policies are provided for informational purposes only, to provide context; they are not required because the proposed project is HAA-compliant.

- A. Use Permit for Demolition of Commercial Structures:** Pursuant to BMC Section 23.326.070(A), in order to approve a Use Permit to demolish a commercial structure, the Board must make the findings in BMC Section 23.326.070(D)(2), including the finding that the demolition would not be materially detrimental to the commercial needs and public interest of any affected neighborhood of the City, and if demolishing a building more than forty years old, the LPC, upon review, does not recommend against granting the permit.

The proposed demolition of the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink's department store expansions would not be materially detrimental to the commercial needs and public interest of the neighborhood because the proposed project would provide replacement commercial floor area, public open space, and new dwelling units within a mixed-use building that would bring more diversity of services to residents and workers in the vicinity and new housing to the neighborhood and the City at large. The existing structures to be demolished contain approximately 95,000 square feet of office, food service, and cinema uses. These uses would be replaced by approximately 4,993 square feet of commercial space (retail, food service, and live/work), 183 units of new residential units (four live/work units), and approximately 4,600 square feet in two privately-owned plazas (at Allston and Kittredge) that would be open for public use. The demolition is required in order to allow the proposed new mixed-use project to be built. The structures that are proposed for demolition are two stories in height with a basement level, and can be considered to be underutilized, as the DAP identifies two-story buildings near BART as Potential Development Opportunity Sites.

Further, as described above in Section IV.B., the proposed demolition referral and SAP were approved by the LPC on August 4, 2022.

- A. Findings for Use Permits in C-DMU District:** Pursuant to BMC Section 23.204.130(I), in order to approve any Use Permit in the district, the Board must make the findings that the proposed use or structure:

## 1. Is compatible with the purposes of the district:

The project would include 183 housing units, four live/work units, 4,993 square feet of ground floor commercial uses in Downtown Berkeley and within walking distance of the University of California. It is located in an area that is well served by transit; the Downtown Berkeley BART station is within one block of the site, and multiple AC Transit lines run on Shattuck Avenue and University Avenue. The Project is within the C-DMU Downtown Mixed-Use District, and as per Provisions of the BMC, the purpose of this district is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.

- Environmental Sustainability and Access: DAP Goals ES-3, UL-1 AC-1, AC-4. The project provides higher-density development in proximity to regional transit, shops and amenities, and it would improve options to increase access to Downtown on foot, by bicycle and via transit would promote transit as an efficient and attractive choice through its location and through its Transportation Demand Management Plan and other associated Conditions of Approval.
- Land Use: DAP Goal LU-1 (Policies LU-1.1 and LU-1.3). The Project will include residential, and commercial uses that allow people who live, work and learn in the Downtown to meet daily needs on foot.
- Historic Preservation and Urban Design: The LPC referred the project to DRC for design review recommendations, and considered the project in relation to its urban context, focusing on the application of the Downtown Design Guidelines, which implement the objectives and policies of the Historic Preservation and Urban Design chapter of the DAP. The LPC approved the SAP with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards. (See section IV.B for details.)
- Streets and Open Space: DAP Goal OS-1. The project would enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster a sense of place.
- Housing and Community Health and Services: DAP Goals HC-1, HC-2, HC-3. The project would encourage Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses, and play a significant role in meeting Berkeley's continuing need for additional housing.
- Economic Development: DAP Goal ED-1. The project would serve the needs of the neighborhood and the City, make Downtown a more attractive regional destination, by promoting successful retail businesses and other attractions, with daytime and night-time populations to support them.

## 2. Is compatible with surrounding uses and buildings.

The project site currently includes office and retail uses. (Previous cinema and museum uses no longer occupy the site.) The proposed project would change uses

on the site to ground-floor commercial (retail and food service) and residential uses above. Uses on the surrounding properties include retail, public parking, office, library, hotel, and residential. The project would not introduce new land uses that do not already exist in the Downtown, and as described above, would further the vision and goals of the DAP.

As noted above, the DRC forwarded a positive recommendation for the project design, and the LPC voted to approve the SAP, with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards.

**B. General Non-Detriment Finding:** BMC Section 23.406.040 states that before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.

Shadows: According to the shadow studies submitted for the project (See Attachment 2, Project Plans – Sheets A3-301 through A3-303). New shadow impacts would occur in the summer months, affecting commercial buildings on adjacent blocks to the west (Dharma College) and south (Downtown city public library) of the project site and the commercial buildings (offices and Shattuck hotel) that share the city block with the project site. New shadow impacts would also occur in the winter months, affecting commercial buildings on adjacent blocks to the northeast and north of the project site (YMCA, parking, and Walgreens) and the commercial buildings that share the city block with the project site (offices and Shattuck hotel). No residential buildings would be affected by new shadows from the project.

Non-Detriment: The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

## VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

- A. **ADOPT** the EIR Addendum and Revised Mitigation Monitoring and Reporting Program (MMRP)

- B. **APPROVE** Use Permit ZP2021-0193, pursuant to BMC Section 23.406.040 and subject to the attached Findings and Conditions and MMRP (see Attachment 1, Exhibit A and B).

**Attachments:**

1. Findings and Conditions
  - a. Exhibit A, Findings and Conditions
  - b. Exhibit B, Mitigation Monitoring and Reporting Program, Revised July 2022
  - c. The SAP Findings and Conditions document is available at this link:  
[https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-08-04\\_LPC\\_Agenda\\_linked\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-08-04_LPC_Agenda_linked_0.pdf)
2. Project Plans, received September 1, 2022
3. EIR Addendum for 2065 Kittredge Mixed-Use Project  
The 2211 Harold Mixed-Use Project Final EIR and Statement of Overriding Considerations are available at this link: <https://aca.cityofberkeley.info/CitizenAccess/Default.aspx>. Click on Zoning tab; enter permit number ZP2021-0193; select permit ZP2021-0193; click on the "Record Info" drop down menu; click on Attachments for a list of all application materials.
4. Supplemental Analysis Memorandum to EIR Addendum, dated September 8, 2022
5. Notice of Public Hearing

**Staff Planner:** Sharon Gong, [sgong@cityofberkeley.info](mailto:sgong@cityofberkeley.info), (510) 981-7429



Z O N I N G  
A D J U S T M E N T S  
B O A R D  
S T A F F R E P O R T

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FOR BOARD ACTION  
SEPTEMBER 22, 2022

## 2065 Kittredge Street

Use Permit #ZP2021-0193 to demolish portions of existing City Landmark commercial buildings and construct an 8-story, mixed-use building with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces. Project utilizes State Density Bonus.

### I. Background

#### A. Land Use Designations:

- General Plan: DT – Downtown; Downtown Area Plan
- Zoning: C-DMU (Core) – Downtown Mixed-Use Commercial District – Core Sub-area

#### B. Zoning Permits Required:

- Use Permit under BMC Section 23.326.070(A) to demolish a non-residential building
- Use Permit under BMC Section 23.204.020(A) to construct a new mixed-use development
- Use Permit under BMC Section 23.204.020(A) to construct dwelling units
- Use Permit under BMC Section 23.204.030(B)(1) to create new floor area of 10,000 square feet or more
- Use Permit under BMC Section 23.204.130(E)(1) to exceed the maximum building height limits, up to 75 feet (plus 5-foot parapet, by right)

#### C. Concessions and Waivers and Pursuant to State Density Bonus Law (CA Gov't. Code Section 65915):

- Concession to reduce the usable open space requirement – to provide 11,916 square feet where 14,960 square feet is required
- Waiver of BMC Section 23.204.130(E)(1) to exceed building height limits – to be 87 feet (plus 5-foot parapet, by right), where 75 feet is the limit (plus 5-foot parapet, by right, with a use permit)
- Waiver of BMC Section 23.204.130(E)(3) to reduce setback to 0 feet, where 15 feet is required, where above 75 feet in height

- Waiver of BMC Section 23.204.130(E)(3) to increase front setback maximum to 0-20 feet, where 5 feet is required, at 0-20-foot building height
- Waiver of BMC Section 23.304.090(B)(7) to reduce the landscaped usable open space to 25 percent, where from 40 percent minimum is required
- Waiver of BMC Section 23.304.050(A) to exceed building height limits with rooftop architectural elements which exceed the maximum height limit for the district
- Waiver of BMC Section 23.322.030(B)(1) to reduce the minimum commercial parking requirement to zero, where eight is required

**D. CEQA Recommendation:** Adopt the Environmental Impact Report (EIR) Addendum to the certified 2211 Harold Way Mixed-Use Project Final EIR (SCH #2014052063) and Revised Mitigation Monitoring and Reporting Program (MMRP) pursuant to the California Environmental Quality Act. The Addendum and MMRP are attached to this staff report. See Section V for discussion of the project's CEQA review.

**E. Parties Involved:**

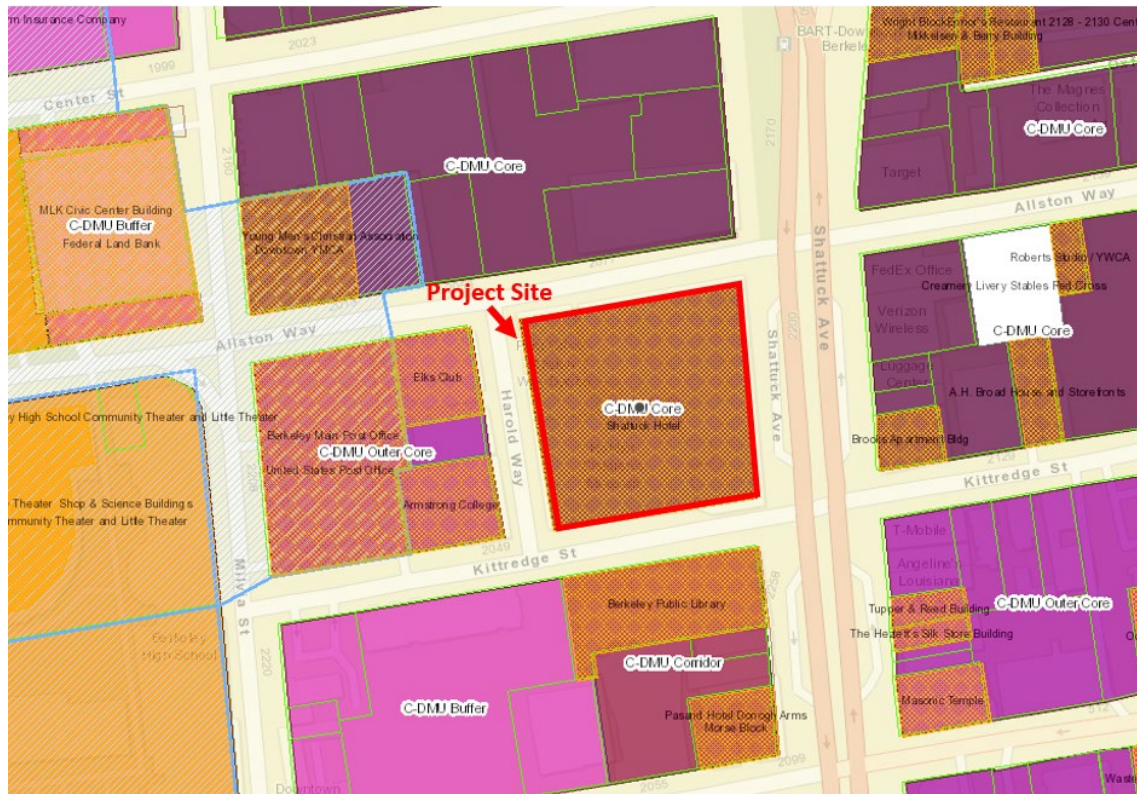
- Applicant Bill Schrader, 164 Oak Road, Alamo, CA 94507
- Property Owner CA Student Living Berkeley, LLC, 130 Randolph Street, Suite 2100, Chicago IL, 60601

**F. Application Materials, Staff Reports and Correspondence are available on the Internet:**

<https://aca.cityofberkeley.info/citizenaccess/Default.aspx>

<https://cityofberkeley.info/your-government/boards-commissions/zoning-adjustments-board>

Figure 1: Zoning Map



**Legend**

- C-DMU: Downtown Mixed-Use District
- Core: C-DMU Core Sub-Area
- Buffer: C-DMU Buffer Sub-Area
- Corridor: C-DMU Corridor Sub-Area
- Outer Core: C-DMU Outer Core Sub-Area

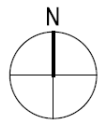




Figure 2: Project Location

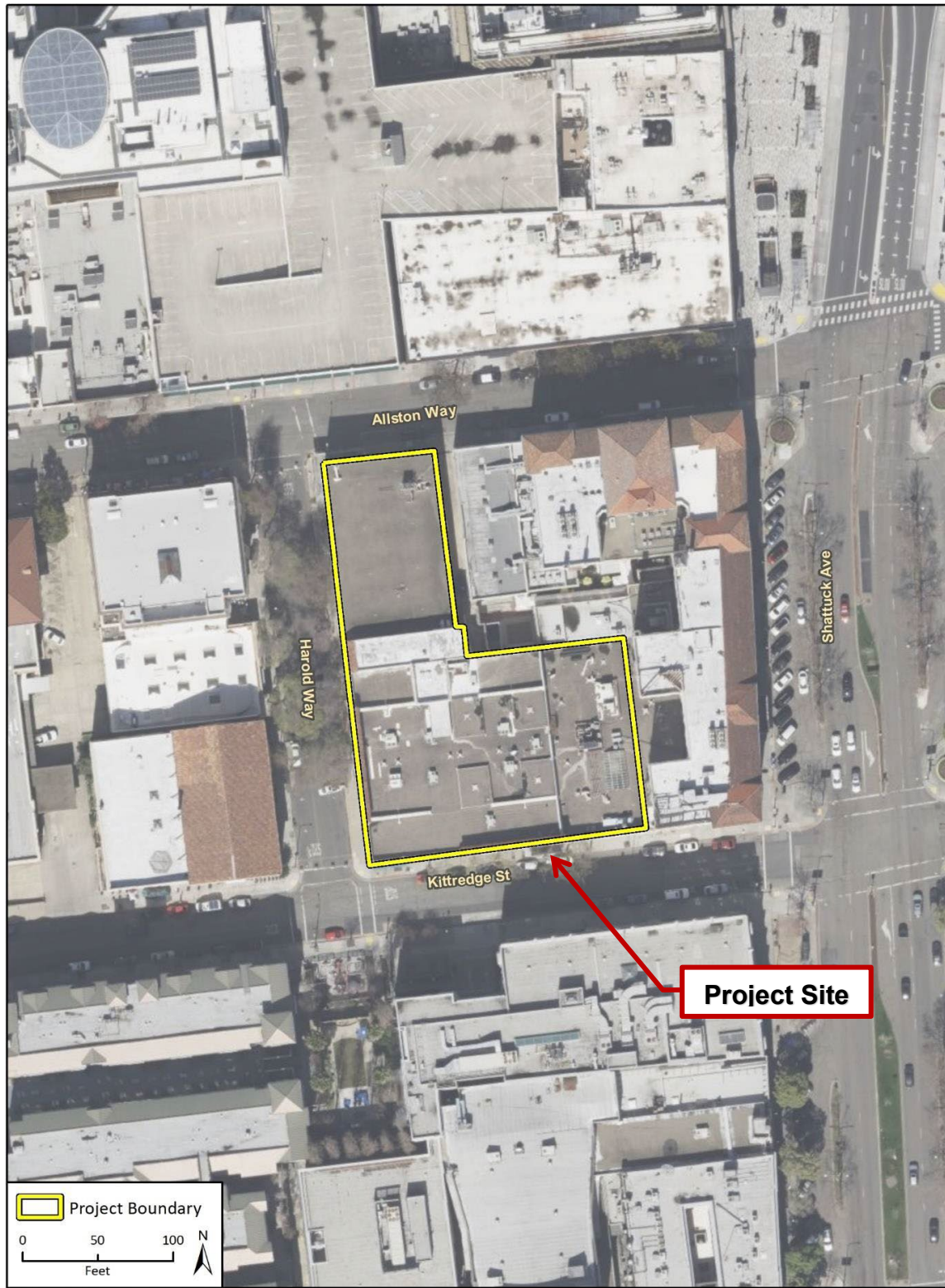




Figure 3: City Landmarks and Demolition Boundaries



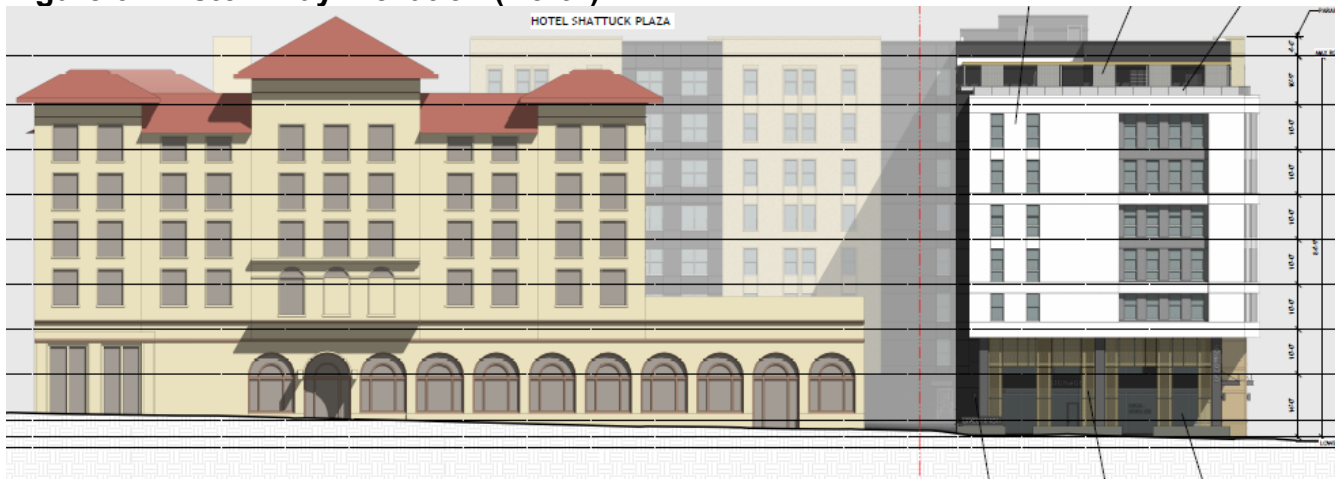
Figure 4: Kittredge Street Elevation (South)



Figure 5: Harold Way Elevation (West)



Figure 6: Allston Way Elevation (North)



**Table 1: Land Use Information**

| Location                              |       | Existing Use                                                                                                                                                                                                                                                                          | Zoning District            | General Plan Designation |                                     |
|---------------------------------------|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------|-------------------------------------|
| Subject Property                      |       | Office (combination of professional, institutional and medical)<br>Children’s Museum (closed)                                                                                                                                                                                         | C-DMU<br>Core Sub-<br>Area | DT                       |                                     |
| Surrounding<br>Adjacent<br>Properties | North | Retail (2190 Shattuck Ave);<br>Public parking structure with ground floor office and commercial                                                                                                                                                                                       |                            |                          |                                     |
|                                       | East  | Hotel Shattuck Plaza (2086 Allston Way) and ground floor retail on Shattuck Ave.<br>Mixed use retail and apartments (2219 Shattuck Ave.)<br>Mixed use retail and apartments (2225 Shattuck Ave.)<br>Mixed use retail and apartments (2231 Shattuck Ave.)<br>Shattuck Cinemas (closed) |                            |                          |                                     |
|                                       | South | Central Public Library (2090 Kittredge St.)                                                                                                                                                                                                                                           |                            |                          | C-DMU<br>Corridor<br>Sub-Area       |
|                                       | West  | Dharma College and the Mangalam Center (2018 Allston Way)                                                                                                                                                                                                                             |                            |                          | C-DMU<br>Outer<br>Core Sub-<br>Area |

**Table 2: Special Characteristics**

| Characteristic                                                                                                                         | Applies to Project? | Explanation                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affordable Child Care Fee & Affordable Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.) | No                  | These fees apply to projects with more than 7,500 square feet of net new non-residential gross floor area. The project includes no net new non-residential gross floor area. Therefore, the project would not be subject to these fees. |
| Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)                                            |                     |                                                                                                                                                                                                                                         |
| Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)                                                         | Yes                 | The project would include five or more market rate dwelling units and is therefore subject to the affordable housing provisions of BMC 22.20.065.                                                                                       |
| Alcohol Sales/Service                                                                                                                  | No                  | The project is not proposing alcohol sales or service with this permit.                                                                                                                                                                 |
| Coast Live Oaks                                                                                                                        | No                  | There are no oak trees on the project site.                                                                                                                                                                                             |
| Creeks                                                                                                                                 | No                  | The project site is not within a creek buffer.                                                                                                                                                                                          |



| Characteristic                                         | Applies to Project? | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------------|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Density Bonus                                          | Yes                 | The project would provide nine Very Low-Income units, or 5% of the Base Project units, and qualifies for a 20% density bonus, or 33 bonus units (24 taken). See Section III.B for discussion.                                                                                                                                                                                                                                                                                                                             |
| Green Building Score                                   | Yes                 | The Project is designed to achieve a LEED Gold (or equivalent) rating.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Historic Resources                                     | Yes                 | The project would involve removal of the 1926 addition and portions of the 1913 addition to the landmarked Shattuck Hotel. The project would involve demolition of the 1959 Hink's Building, which is not a historic resource.                                                                                                                                                                                                                                                                                            |
| Housing Accountability Act<br>(Govt. Code 65589.5(j))  | Yes                 | The project is a "housing development project" consisting of a mixed-use building, and requests no modifications to development standards beyond waivers and concessions requested under density bonus law. Therefore, the HAA findings apply to this project, and the project cannot be denied at the density proposed unless the findings for denial can be made. See Section III.C for discussion.                                                                                                                     |
| Public Art on Private Projects<br>(BMC Chapter 23C.23) | Yes                 | The project is subject to the Percentage for Public Art on Private Projects Ordinance. The applicant is electing to pay the fee (0.8% of total building permit valuation) to comply.                                                                                                                                                                                                                                                                                                                                      |
| Rent Controlled Units                                  | No                  | The project involves the partial demolition of non-residential structures and no rent-controlled units would be demolished.                                                                                                                                                                                                                                                                                                                                                                                               |
| Residential Preferred Parking                          | Yes                 | The site is located in RPP zone "I". However, newly constructed dwellings would not be eligible to participate in the RPP program.                                                                                                                                                                                                                                                                                                                                                                                        |
| Seismic Hazards (SHMA)                                 | No                  | The project site is located in an area susceptible to liquefaction, as defined by the State Seismic Hazards Mapping Act (SHMA). The applicant has submitted a geotechnical report that has been peer reviewed by the City's consultant. Conditions of approval will be included in the permit to ensure oversight by the applicant's geotechnical consultant.                                                                                                                                                             |
| Soil/Groundwater Contamination                         | No                  | The project site is located within the City's Environmental Management Area. The project site is not listed on the Cortese List. The Phase I submitted by applicant indicated a potential for vapor intrusion associated with previous dry-cleaning activities at the site. A condition of approval will be included in the permit requiring a vapor intrusion report for Toxics Division review, as recommended in the Phase I report. Also, standard Conditions of Approval related to hazardous materials would apply. |
| Transit                                                | Yes                 | The project site is served by multiple bus lines (local, rapid, and Transbay) that operate along Shattuck Avenue, and is approximately one block from the Downtown Berkeley BART Station.                                                                                                                                                                                                                                                                                                                                 |

**Table 3: Project Chronology**

| Date               | Action                                                                               |
|--------------------|--------------------------------------------------------------------------------------|
| July 26, 2021      | SB 330 Preliminary Application deemed complete                                       |
| October 25, 2021   | SB 330 Use Permit Application submitted                                              |
| June 1, 2022       | Application deemed complete; level of CEQA review determined by staff – EIR Addendum |
| April 21 2022      | DRC Design Review Referral for LMSAP2021-0004                                        |
| June 2, 2022       | LPC Structural Alterations Permit LMSAP2021-0004 Hearing                             |
| August 4, 2022     | LPC Structural Alterations Permit LMSAP2021-0004 Hearing                             |
| September 8, 2022  | Public hearing notices mailed/posted                                                 |
| September 22, 2022 | ZAB Hearing                                                                          |

**Table 4: Development Standards**

| C-DMU Standards,<br>Core Sub-Area           |                   | Existing            | Proposed                              | Permitted/Required                                                                      |
|---------------------------------------------|-------------------|---------------------|---------------------------------------|-----------------------------------------------------------------------------------------|
| Lot Area (sq. ft.)                          |                   | 33,582 <sup>1</sup> | 33,582                                | n/a                                                                                     |
| Gross Floor Area (sq. ft.)                  |                   | 92,531              | 186,354                               | n/a                                                                                     |
| Commercial Floor Area                       |                   | 95,000              | 4,993 <sup>2</sup>                    | n/a                                                                                     |
| FAR                                         |                   | 2.8                 | 5.5                                   | n/a                                                                                     |
| Dwelling Units                              |                   | 0                   | 183                                   | n/a                                                                                     |
| Live/Work Units                             |                   | 0                   | 4                                     | n/a                                                                                     |
| Building Height                             | Maximum           | 36'-0"              | 87'-0"                                | 50' min./60' max.<br>(75' max. w/use permit <sup>3</sup> ;<br>5' max. parapet by right) |
|                                             | Stories           | 3                   | 8                                     | n/a                                                                                     |
| Building Setbacks                           | Front (Kittredge) | 0'-0"               | 0'-0"                                 | 0'-5' (bldg. ht.≤20')<br>0' (bldg. ht.>20' and ≤75')<br>15' (bldg. ht.>75')             |
|                                             | Front (Harold)    | 0'-0"               | 0'-0"<br>(2'-6" overhang<br>into ROW) | 0'-5' (bldg. ht.≤20')<br>0' (bldg. ht.>20' and ≤75')<br>15' (bldg. ht.>75')             |
|                                             | Front (Allston)   | 0'-0"               | 0'-0"                                 | 0'-5' (bldg. ht.≤20')<br>0' (bldg. ht.>20' and ≤75')<br>15' (bldg. ht.>75')             |
| Lot Coverage (%)                            |                   | 100                 | 82                                    | n/a                                                                                     |
| Usable Open Space (sq. ft.)                 |                   | n/a                 | 11,916                                | 14,960 min.<br>(80 s.f./d.u.)                                                           |
| Privately Owned Public Open Space (sq. ft.) |                   | n/a                 | 4,593 <sup>4</sup>                    | 100<br>(1 s.f./50 s.f. of commercial)                                                   |

| C-DMU Standards, Core Sub-Area                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                         | Existing | Proposed                         | Permitted/Required                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|----------|----------------------------------|----------------------------------------|
| Parking                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Commercial (4,993 sq. ft.)              | 0        | 0                                | 8 min.<br>(1.5 space/1,000 s.f.)       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Residential                             | 0        | 41                               | 0 min./92 max.<br>(0.5 spaces/du max.) |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Carshare                                | 0        | 2                                | 2 min.                                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Total                                   | 0        | 43                               | 6 min./92 max.                         |
| Bicycle Parking                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Commercial - Short Term (4,993 sq. ft.) | 0        | 3                                | 3<br>(1 spc/2,000 s.f. commercial)     |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Residential - Long Term                 | 0        | 122                              | 112<br>(1 space/3 bedrooms)            |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Residential - Short Term                | 0        | 8                                | 8<br>(1 space/40 bedrooms, or 2)       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Total                                   |          | 122/11<br>(long term/short term) | 112/11<br>(long term/short term)       |
| <p><sup>1</sup> Area of Unit B of Parcel Map 6889</p> <p><sup>2</sup> Includes commercial area in live/work units, 4 x 433.5 sq.ft.=1,734 sq.ft..</p> <p><sup>3</sup> The use permit to allow height up to 75 feet is included in the Base Project for the calculation of the density bonus, and is not a requested waiver. Additional height beyond 75' is being requested as a waiver.</p> <p><sup>4</sup> Each square foot of usable open space provided as privately-owned public open space is counted as two square feet of required on-site usable open space.</p> <p> = Waiver requested to modify the district standard.</p> <p> = Concession, pursuant to State Density Bonus Law, requested to modify the district standard.</p> |                                         |          |                                  |                                        |

## II. Project Setting

**A. Neighborhood/Area Description:** The project site is located within the Downtown Mixed-Use District (C-DMU), Core Sub-Area, as identified in the City’s Downtown Area Plan (DAP). Directly adjacent to the project site and on the same block is the Shattuck Hotel, a City of Berkeley Landmark, whose main lobby and entrance are on Allston Way but which also occupies the airspace above the ground floor retail along the entire block’s frontage on Shattuck Avenue. Below the hotel rooms along Shattuck Avenue is a row of commercial storefronts, as well as the entrance to the former commercial occupant, Shattuck Cinemas, which is now closed. The hotel consists of guest rooms, a restaurant, a bar, and meeting rooms.

Commercial uses are located along Shattuck Avenue north of and across from the project site. South of the project site on Shattuck Avenue and across Kittredge Street is the Berkeley Central Library, a City of Berkeley and National historic landmark. West of the project site across Harold Way are the Dharma College and the Mangalam Center, both City of Berkeley Landmarks. Commercial land uses and a public parking structure are located north of the project site across Allston Way. (See Figure 1: Zoning Map and Figure 2: Project Location.)

Building heights in the vicinity range from two to three-stories (portions of the Dharma College complex on Harold Way and U.S. Post Office along Kittredge Street) to the 12-story 2140–2144 Shattuck Avenue Chamber of Commerce Building (173 feet) and 14-story 2150 Shattuck Avenue First Savings/Great Western Building (180 feet). The adjacent Shattuck Hotel is five stories in height, not including the basement. Most buildings around the project site are in the two- to five-story range. One block north, around the intersection of Center Street and Shattuck Avenue, are several AC Transit and UC Berkeley Shuttle bus stops serving a number of bus lines, as well as the Downtown Berkeley BART Station on Shattuck Avenue between Allston Way and Addison Street.

**B. Site Conditions/Background:** The project site is a portion of the fully urbanized city block discussed above, which is generally level, sloping slightly downward towards the west and south. The project site is a single parcel that encompasses an entire City block with street frontage on Allston Way (north), Shattuck Avenue (east), Kittredge Street (south) and Harold Way (west) that is subdivided into condominium parcels A, B, and C of Parcel Map 6889. (See Figure 3: City Landmarks and Demolition Boundaries) The site is occupied by a City Landmark, The Shattuck Hotel, which has four primary components: the original hotel building constructed in 1910; 1913 hotel expansion and Hink’s Department store addition facing Shattuck Avenue and Kittredge Street; 1926 Hink’s expansion facing Kittredge and Harold Way; and the 1959 Hink’s addition facing Harold Way and Allston Way. The 1913 expansion previously housed the Shattuck Cinema’s movie theaters, part of the Habitot Children’s Museum, and office space. Both the Shattuck Cinemas and Habitot spaces are currently vacant. All portions of the expansions proposed to be demolished are two stories in height with a partial third story and a basement level.

The project site is Unit B of the condominium subdivision, Parcel Map 6889, which was created December, 2020. Entitlements were previously obtained for the project site in 2015 (UP13-10000010 and LM13-40000002, under the address 2211 Harold Way) to demolish historic structures and construct an 18-story, 302-unit, mixed-use building, with approximately 10,877 square feet of commercial space, a ten-theater cinema complex, and 177 underground parking spaces. Building permits were never obtained for the project, and the City deemed the permits expired on January 17, 2020.

### III. Project Description

- A.** The proposed project would demolish a portion of the City Landmark Shattuck Hotel (the 1913 expansion) and fully demolish the City Landmarks 1926 and 1959 Hink’s department store expansions; and construct a mixed-use building with the following main components:
- Eight stories, 87 feet in height
  - 183 dwelling units – 41 studios, 30 one-bedroom 101 two-bedroom, and 11 three-bedroom
  - Four live/work units

- 583 bedrooms total
- Nine Very Low Income (VLI) units
- 4,993 square feet of ground-floor commercial space
- 11,916 square feet of usable open space – two ground-floor public plazas (off of Kittredge and Allston frontages) and a seventh-floor roof deck
- 43 residential vehicle parking spaces in ground-level garage (two carshare spaces)
- 122-space bike room

(See Figure 4, 5 and 6: Elevations.)

**B. Base Project and Density Bonus:** By committing to provide nine VLI units, the project is eligible for a density bonus under Government Code Section 65915. Under the City’s density bonus procedures, the Base Project was calculated to have 163 units, as the maximum allowable density for the site.<sup>1</sup> The Base Project has an average unit size of 995 square feet in a 7-story building. Nine VLI units, or 5 percent of the Base Project, qualifies the project for a 20 percent density bonus or 33 bonus units, of which the project would utilize 24. The resulting Proposed Project would be an eight-story building with 187 units, with an average unit size of 997 square feet. (See Table 5: Density Bonus.)

**Table 5: Density Bonus – CA Gov’t Code 65915**

| Base Project Units*                                                                         | Qualifying Units    | Percent Density Bonus | Number of Density Bonus Units* | Proposed Project Units |
|---------------------------------------------------------------------------------------------|---------------------|-----------------------|--------------------------------|------------------------|
| 163                                                                                         | 9 VLI<br>(5% of BP) | 20%                   | 24 (33 max.)<br>(20%x163)      | 187                    |
| *Per Gov’t Code 65915(q), all unit calculations are rounded up to the nearest whole number. |                     |                       |                                |                        |

**C. Housing Accountability Act:** The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

- 1) The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
- 2) There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

<sup>1</sup> Per the City’s Density Bonus Procedures (DBP), the Base Project is the largest project allowed on the site that is fully compliant with district development standards (i.e. height, setbacks, usable open space, parking, etc.), or, the *maximum allowable density* for the site. The City uses the DBP to calculate the maximum allowable density for a site where there is no density standard in the zoning district, and to determine the number of units in the Proposed Project, which is the number of Base Project units plus the number of density bonus units that can be added according to the percentage of BMR units proposed, per Government Code, §65915(f).



The Base Project complies with applicable, objective general plan and zoning standards. Further, Section 65589.5(j)(3) provides that a request for a density bonus “shall not constitute a valid basis on which to find a proposed housing development project is inconsistent, not in compliance, or not in conformity, with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision specified in this subdivision.” Therefore, the City may not deny the Base Project or density bonus request or reduce the density with respect to those units without basing its decision on the written findings under Section 65589.5(j), above. Staff is aware of no specific adverse impacts that could occur with the construction of the Base Project or the density bonus units. Therefore, Section 65589.5(j) **does apply** to the Proposed Project. All findings discussed below are subject to the requirements of Government Code Section 65589.5.

#### IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting the application to the City on October 25, 2021, the applicant installed yellow Proposed Development Project signs at the project site.

October 6, 2021 a neighborhood outreach meeting was held by the applicant. Four members of the public attended and discussed questions about: construction timeline and noise mitigation, shared service access on the alley at Allston Way; the extent of the demolition and impact to internal circulation in the existing buildings to remain; the proposed retail and shared utilities with existing buildings to remain; and exterior materials and finishes.

On March 2, 2022, staff received a letter from a neighbor raising concerns over the demolition of a portion of the Shattuck Cinemas. On April 20 and 21, 2022, prior to the Design Review Committee referral meeting, staff received two letters letter from neighbors raising similar concerns about the demolition of the movie theater, and the loss of a “cultural resource”.

On September 8, 2022, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations, and posted notices within the neighborhood in three locations. No further communications regarding the project were received as of the writing of this staff report.

- B. Design Review Committee Referral and Landmarks Preservation Commission:** In accordance with BMC Section 3.24.200 of the Landmarks Preservation Ordinance and BMC Section 23.406.070 of the Zoning Ordinance, the Landmarks Preservation Commission (LPC) must grant approval of the proposed demolition and complete Design Review for the new development under a Structural Alteration Permit, because the new construction shares the site with the landmarked structures. The project proposes to demolish the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink’s department store expansions. All are components of the designated Shattuck Hotel City Landmark, and two structures – the 1913 and 1926 expansions – are eligible for listing on the National Register of Historic Places as well

as the California Register of Historic Resources.<sup>2</sup> Staff referred the project to the Design Review Committee (DRC) to obtain advisory comments on the design of the new building and its adherence to the Downtown Design Guidelines for consideration by both the ZAB and LPC.

The DRC met to review the project on April 21, 2022, and forwarded comments and recommendations for improvements to the project design. The applicant made revisions per DRC recommendations and the revised project was reviewed by the LPC under the Structural Alteration Permit (LMSAP2021-0004) on June 2, 2022 and August 4, 2022.

At the August 4, 2022 meeting, the LPC approved the Structural Alteration Permit (SAP) for demolition and new construction at the Shattuck Hotel site, adopted an Addendum to a previous EIR, and conditioned further refinements for Final Design Review (Vote: 5-2-1-1). The SAP Findings and Conditions can be found at this [link](#). Further revisions to the project were made based on comments received from the LPC at this meeting, including the elimination of one unit (two bedrooms), the addition of 812 square feet of commercial area, and other minor revisions. (See Attachment 2.) The revisions did not affect the conclusion of the EIR Addendum (discussed in section V.B).

## V. Environmental Review

**A. CEQA Approach:** Pursuant to Section 15164 of the CEQA Guidelines, codified in Sections 15000 et seq. of Title 14 of the California Code of Regulations, a lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15612 calling for preparation of a subsequent EIR have occurred. Under Section 15162 (a), where an EIR has been certified for a project, no subsequent EIR shall be prepared for the project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that there are substantial changes in the project or circumstances or substantially important new information that will cause the project to have significant new impacts or substantially increase previously identified significant impacts.

As discussed in detail in the EIR Addendum, potential impacts associated with the modified project (the proposed changes compared to the project evaluated in the Final EIR) are consistent with potential impacts characterized and mitigated for in the Final EIR. Substantive revisions to the Final EIR are not necessary because no new significant impacts or significant impacts of substantially greater severity than previously described would occur. Thus, the conditions outlined in CEQA Guidelines Section 15162 requiring preparation of a subsequent EIR would not be met.

**B. EIR Addendum and Revised MMRP:** An Addendum to the 2211 Harold Way Mixed-Use Project (UP 13-10000010) Final EIR, which was certified in December 2015, was prepared to evaluate the potentially significant environmental impacts of the proposed

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<sup>2</sup> The 1959 Hink's expansion does not have cultural resource status pursuant to CEQA.

project, pursuant to the California Environmental Quality Act. The Addendum considered the Final EIR and Statement of Overriding Considerations, and evaluated the modified project (see Figure 7). The modified project was found to be smaller and less impactful than the Final EIR project. The impacts related to demolition and alteration of historic buildings, would remain significant and unavoidable, and the same overriding considerations would apply to the modified project, except that the project is no longer required to provide community benefits, and cultural resource impacts were addressed in the modified design.

**Figure 7: Changes to Previously Approved Project (from EIR Addendum)**

| <b>Project Characteristic</b>  | <b>Previously Approved Project</b>        | <b>Updated Project</b>                                  |
|--------------------------------|-------------------------------------------|---------------------------------------------------------|
| Total Building Size            | 389,470 sf                                | 220,982 sf                                              |
| Residential                    | 278,185 sf                                | 149,678 sf <sup>1</sup>                                 |
| Retail                         | 10,535 sf                                 | 4,181 sf <sup>2</sup>                                   |
| Cinema                         | 21,641 sf                                 | N/A                                                     |
| Parking                        | 79,109 sf                                 | 20,881 sf                                               |
| Building Height                | 180 feet; 18 stories                      | 87 feet; 8 stories                                      |
| <b>Total Residential Units</b> | <b>302 units<sup>3</sup></b>              | <b>188 units<sup>4</sup></b>                            |
| Studio                         | 76 units                                  | 41 units                                                |
| 1-Bedroom                      | 145 units                                 | 31 units                                                |
| 2-Bedroom                      | 75 units                                  | 101 units                                               |
| 3-Bedroom                      | 6 units                                   | 11 units                                                |
| Live/Work                      | N/A                                       | 4 units                                                 |
| Affordable Units               | 28 units                                  | 9 units                                                 |
| <b>Open Space</b>              |                                           |                                                         |
| Private Roof Terrace           | 16,406 sf                                 | 2,930 sf                                                |
| Private Balconies              | 9,762 sf                                  | N/A                                                     |
| Public Open Space              | 713 sf                                    | 9,186 sf <sup>5</sup>                                   |
| Outdoor deck                   | 18th floor, 4,354 sf                      | N/A                                                     |
| Cinema                         | 641 seats<br>10 screening rooms           | Demolished                                              |
| Main Pedestrian Entrance       | Corner of Kittredge Street and Harold Way | Kittredge Street between Harold Way and Shattuck Avenue |
| <b>Parking</b>                 | <b>3 subterranean levels</b>              | <b>1 subterranean level</b>                             |
| Automobile                     | 171 spaces                                | 43 spaces                                               |
| Bicycle                        | 100 spaces                                | 129                                                     |

<sup>1</sup>Includes 9,019 sf of indoor residential amenity and 2,946 sf of elevated roof terrace amenity

<sup>2</sup>Includes 2,666 sf retail suite (coffee shop) and 1,515 sf work space in live/work units

<sup>3</sup>Units were approved to range in size from 474 sf to 1,103 sf.

<sup>4</sup>Units would range in size from 295 sf to 1,374 sf.

<sup>5</sup>Includes a 6,186 sf public plaza on Kittredge Street and a 3,000 sf public plaza on Allston Way

sf = square feet

The Addendum described the changes in the modified project, and addressed the following issues in detail: Air Quality, Cultural Resources, Greenhouse Gas Emissions, Noise, Transportation, and Utilities and Service Systems. All other environmental issues were evaluated for impact from the modified project as well, with the conclusion that impacts to these areas would be less than significant with mitigation, similar to the original project. For each of the above-listed areas of evaluation, the EIR Addendum findings supported the conclusion that impacts from the modified project would not result in new significant effects or a substantial increase in the severity of previously identified significant effects on the environment. Therefore, no new mitigation measures would be necessary for any of these evaluated areas. Furthermore, several mitigation measures for Cultural Resources are no longer required, as discussed below.

Cultural Resources. No new or substantially more severe significant effects would occur to cultural resources, and no new mitigation measures would be necessary. Design changes in the modified project include a reduction in building height, design strategies to break up massing with varied rooflines and materials, and the projection of the second-floor level above the double-height street level, aligning with the cornice of the 1912 portion of the Shattuck Hotel. These design modifications have responded to the design measures adopted in Mitigation Measures CR-2(a), (b) and (c) of the Final EIR; therefore the measures do not apply to the modified project. In particular, the modified project avoids impact to the Allston Way elevation, in response to Mitigation Measure CR-2(a); the redesign of the Kittredge Street “hyphen” responds to Mitigation Measure CR-2(b); and the removal of large-scale use of aluminum glazing systems responds to Mitigation Measure CR-2(c).

In conclusion, similar to the original project, cultural resource impacts from the modified project would be less than significant with mitigation, with the exception of impacts related to demolition and alteration of historic buildings, which would remain significant and unavoidable. Mitigation Measures CR-2(a) through (c) would be removed from the Mitigation Monitoring and Reporting Program (MMRP). All other measures adopted in the Final EIR for the purposes of mitigating cultural resources impacts remain applicable.

As mentioned in section IV.B, revisions to the project were made after the LPC meeting on August 4, 2022, including the elimination of one unit (two bedrooms), the addition of 812 square feet of commercial area, and other minor revisions. The City reviewed the revised plans and concluded that the revisions did not change the conclusion of the EIR Addendum (see Attachment 4).

Public Resources Code Section 21081.6 and CEQA Guidelines Section 15091(d) require the City to adopt a reporting or monitoring program for the changes to the project that it has adopted or made a condition of approval in order to avoid or substantially lessen significant effects on the environment. The monitoring program is designed to ensure compliance during project implementation. The MMRP for the 2211 Harold Way Mixed-Use Project Final EIR has been revised to reflect the changes

to the mitigation measures that were described in the Addendum. The revised MMRP is attached to the permit (see Attachment 1, Exhibit B).

## VI. Issues and Analysis

**A. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development projects. A “housing development project” means a use that is: all residential; mixed use with at least two-thirds of the square footage as residential; or transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code Section 65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, then the city shall not conduct more than five hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act [Chapter 4.5 (commencing with Section 65920)].

The September 22, 2022 ZAB Hearing represents the fourth public hearing for the proposed project since the project was deemed complete. The City can hold one additional public hearing on this project, if needed. That hearing must be reserved for a potential appeal to the City Council.

2. Government Code Section 65913.10(a) requires that the City determine whether the proposed development project site is an historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is an historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

As discussed in Section IV.B, the structures proposed to be demolished – the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink’s department store expansions – components of the designated Shattuck Hotel City Landmark, and two structures – 1913 and 1926 expansions – are eligible for listing on the National Register of Historic Places as well as the California Register of Historic Resources. Since the project would involve demolition of these historic resources, and an EIR was previously prepared in 2015 for a project proposal with a similar demolition scope, the City determined that an EIR Addendum was required to evaluate the modified project’s impacts on the historic resources. (See Section V for more information regarding the CEQA review). Further, standard

conditions of approval have been included to halt work if any unanticipated discovery of archeological, paleontological, or tribal cultural resources.

3. Government Code 65950(a)(2) requires a public agency to approve or disapprove a project within 90 days from the date of certification by the lead agency of the environmental impact report for a housing development project. The project was deemed complete on June 1, 2022. An EIR was certified in December 2015 for a similar project on the project site, and Staff determined on this date that the appropriate level of CEQA review was preparation of an EIR Addendum to evaluate the modified project's impacts on the environment. (See Section V for details on the CEQA Approach and EIR Addendum.) Therefore, this section does not apply to the project.
4. Government Code Section 66300(d) prohibits the demolition of residential dwelling units unless the project will create at least as many residential units as will be demolished. The project does not propose the demolition of housing units. Therefore, this section does not apply to the project.

**B. Density Bonus Waivers and Concessions:** The project is entitled to one concession (or incentive), under Government Code Section 65915(d) for providing at least 5 percent of total units to very low-income households, and an unlimited number of waivers, under Section 65915(e).

Concession. A concession or incentive is a modification of a zoning code requirement that results in identifiable and actual cost reductions to provide for affordable housing costs. The applicant is requesting one concession to reduce the Usable Open Space requirement to eliminate the cost of providing an additional roof deck or balconies.

The City may only deny the concessions if it finds that the concessions would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact<sup>3</sup> without rendering the development unaffordable to low income, very low income, and moderate-income households, or if the concession would be contrary to State or Federal law. Staff has identified no basis for making such a finding.

Waiver. A waiver is a modification of a development standard that would otherwise physically preclude the construction of the project with the permitted density bonus and concessions. Waivers for height (maximum height and rooftop projections), setbacks, commercial parking, and the amount of landscaped open space are requested because they are necessary to physically accommodate the full density bonus project on the site.

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<sup>3</sup> A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

The City may only deny the waivers if it finds that the waivers would have a specific adverse impact upon public health and safety, or the physical environment, or on any real property listed in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low income, very low income, and moderate income households, or if the waiver would be contrary to State or Federal law. Staff has not identified any evidence that would support such a finding.

## VI. Other Considerations

The following analyses of conformance with district purposes, use permit findings for non-detriment, and the 2002 General Plan goals and policies are provided for informational purposes only, to provide context; they are not required because the proposed project is HAA-compliant.

- A. Use Permit for Demolition of Commercial Structures:** Pursuant to BMC Section 23.326.070(A), in order to approve a Use Permit to demolish a commercial structure, the Board must make the findings in BMC Section 23.326.070(D)(2), including the finding that the demolition would not be materially detrimental to the commercial needs and public interest of any affected neighborhood of the City, and if demolishing a building more than forty years old, the LPC, upon review, does not recommend against granting the permit.

The proposed demolition of the rear portion of the Shattuck Hotel (1913 expansion) and the 1926 and 1959 Hink's department store expansions would not be materially detrimental to the commercial needs and public interest of the neighborhood because the proposed project would provide replacement commercial floor area, public open space, and new dwelling units within a mixed-use building that would bring more diversity of services to residents and workers in the vicinity and new housing to the neighborhood and the City at large. The existing structures to be demolished contain approximately 95,000 square feet of office, food service, and cinema uses. These uses would be replaced by approximately 4,993 square feet of commercial space (retail, food service, and live/work), 183 units of new residential units (four live/work units), and approximately 4,600 square feet in two privately-owned plazas (at Allston and Kittredge) that would be open for public use. The demolition is required in order to allow the proposed new mixed-use project to be built. The structures that are proposed for demolition are two stories in height with a basement level, and can be considered to be underutilized, as the DAP identifies two-story buildings near BART as Potential Development Opportunity Sites.

Further, as described above in Section IV.B., the proposed demolition referral and SAP were approved by the LPC on August 4, 2022.

- A. Findings for Use Permits in C-DMU District:** Pursuant to BMC Section 23.204.130(I), in order to approve any Use Permit in the district, the Board must make the findings that the proposed use or structure:

## 1. Is compatible with the purposes of the district:

The project would include 183 housing units, four live/work units, 4,993 square feet of ground floor commercial uses in Downtown Berkeley and within walking distance of the University of California. It is located in an area that is well served by transit; the Downtown Berkeley BART station is within one block of the site, and multiple AC Transit lines run on Shattuck Avenue and University Avenue. The Project is within the C-DMU Downtown Mixed-Use District, and as per Provisions of the BMC, the purpose of this district is to implement the vision and goals of the Downtown Area Plan (adopted 2012), which include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.

- Environmental Sustainability and Access: DAP Goals ES-3, UL-1 AC-1, AC-4. The project provides higher-density development in proximity to regional transit, shops and amenities, and it would improve options to increase access to Downtown on foot, by bicycle and via transit would promote transit as an efficient and attractive choice through its location and through its Transportation Demand Management Plan and other associated Conditions of Approval.
- Land Use: DAP Goal LU-1 (Policies LU-1.1 and LU-1.3). The Project will include residential, and commercial uses that allow people who live, work and learn in the Downtown to meet daily needs on foot.
- Historic Preservation and Urban Design: The LPC referred the project to DRC for design review recommendations, and considered the project in relation to its urban context, focusing on the application of the Downtown Design Guidelines, which implement the objectives and policies of the Historic Preservation and Urban Design chapter of the DAP. The LPC approved the SAP with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards. (See section IV.B for details.)
- Streets and Open Space: DAP Goal OS-1. The project would enhance public open spaces and streets to benefit pedestrians, improve Downtown's livability, and foster a sense of place.
- Housing and Community Health and Services: DAP Goals HC-1, HC-2, HC-3. The project would encourage Downtown as a thriving, livable, diverse residential neighborhood with a mix of supportive uses, and play a significant role in meeting Berkeley's continuing need for additional housing.
- Economic Development: DAP Goal ED-1. The project would serve the needs of the neighborhood and the City, make Downtown a more attractive regional destination, by promoting successful retail businesses and other attractions, with daytime and night-time populations to support them.

## 2. Is compatible with surrounding uses and buildings.

The project site currently includes office and retail uses. (Previous cinema and museum uses no longer occupy the site.) The proposed project would change uses



on the site to ground-floor commercial (retail and food service) and residential uses above. Uses on the surrounding properties include retail, public parking, office, library, hotel, and residential. The project would not introduce new land uses that do not already exist in the Downtown, and as described above, would further the vision and goals of the DAP.

As noted above, the DRC forwarded a positive recommendation for the project design, and the LPC voted to approve the SAP, with findings for consistency with Landmarks Preservation, the Secretary of Interior standards for rehabilitation, and DAP design review standards.

**B. General Non-Detriment Finding:** BMC Section 23.406.040 states that before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.

Shadows: According to the shadow studies submitted for the project (See Attachment 2, Project Plans – Sheets A3-301 through A3-303). New shadow impacts would occur in the summer months, affecting commercial buildings on adjacent blocks to the west (Dharma College) and south (Downtown city public library) of the project site and the commercial buildings (offices and Shattuck hotel) that share the city block with the project site. New shadow impacts would also occur in the winter months, affecting commercial buildings on adjacent blocks to the northeast and north of the project site (YMCA, parking, and Walgreens) and the commercial buildings that share the city block with the project site (offices and Shattuck hotel). No residential buildings would be affected by new shadows from the project.

Non-Detriment: The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

## VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

A. **ADOPT** the EIR Addendum and Revised Mitigation Monitoring and Reporting Program (MMRP)

- B. **APPROVE** Use Permit ZP2021-0193, pursuant to BMC Section 23.406.040 and subject to the attached Findings and Conditions and MMRP (see Attachment 1, Exhibit A and B).

**Attachments:**

1. Findings and Conditions
  - a. Exhibit A, Findings and Conditions
  - b. Exhibit B, Mitigation Monitoring and Reporting Program, Revised July 2022
  - c. The SAP Findings and Conditions document is available at this link:  
[https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-08-04\\_LPC\\_Agenda\\_linked\\_0.pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-08-04_LPC_Agenda_linked_0.pdf)
2. Project Plans, received September 1, 2022
3. EIR Addendum for 2065 Kittredge Mixed-Use Project  
The 2211 Harold Mixed-Use Project Final EIR and Statement of Overriding Considerations are available at this link: <https://aca.cityofberkeley.info/CitizenAccess/Default.aspx>. Click on Zoning tab; enter permit number ZP2021-0193; select permit ZP2021-0193; click on the "Record Info" drop down menu; click on Attachments for a list of all application materials.
4. Supplemental Analysis Memorandum to EIR Addendum, dated September 8, 2022
5. Notice of Public Hearing

**Staff Planner:** Sharon Gong, [sgong@cityofberkeley.info](mailto:sgong@cityofberkeley.info), (510) 981-7429



This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

**City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

or from:

**The City of Berkeley, City Council's Web site**

<http://www.cityofberkeley.info/citycouncil/>

## NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL

### ZAB APPEAL: 2065 KITTREDGE STREET, USE PERMIT #ZP2021-0193

The public may participate in this hearing by remote video or in-person.

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, JANUARY 31, 2023 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of the decision by the Zoning Adjustments Board to APPROVE Zoning Permit #ZP2021-0095 to **demolish portions of existing City Landmark commercial buildings and construct an eight-story, mixed-use building with 187 dwelling units (including four live/work units and nine Very Low-Income units), 4,993 square feet commercial space and 43 parking spaces.**

The hearing will be held at the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of January 19, 2023. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Sharon Gong, Project Planner, (510) 981-7429 or [SGong@cityofberkeley.info](mailto:SGong@cityofberkeley.info). Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

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Mark Numainville, City Clerk

Mailed: **JANUARY 17, 2023**

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed.*

*Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*





ACTION CALENDAR  
January 31, 2023

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín

Subject: Resolution Authorizing Regional Early Action Planning Grants (REAP 2.0) for Higher Impact Transformative Activities

RECOMMENDATION

Adopt a resolution authorizing the City of Berkeley to request an allocation of Early Action Planning Grants (REAP 2.0) for Higher Impact Transformative Activities.

BACKGROUND

The Regional Early Action Planning Grants of 2021 (REAP 2.0) Higher Impact Transformative (HIT) Allocation is intended to made funding available to regional entities including Metropolitan Planning Organizations, rural counties, and tribal entities on a competitive basis to support novel, unique or innovative approaches that are scalable and that further REAP 2.0's Goals and Objectives. REAP 2.0 makes funding available to meet the state's Housing and equity goals, reduce Vehicle Miles Traveled (VMT) Per Capita, and advance implementation of the region's Sustainable Communities Strategy (SCS) or Alternative Planning Strategy.

The BART Equitable Transit-Oriented Development (TOD) Accelerator proposal aims to address two systemic challenges to advancing development near BART stations: a shortage of predevelopment financing for affordable housing, and the need to capture value of new development to support nearby communities who are vulnerable to displacement. The Equitable TOD Accelerator addresses these challenges through the innovative use of a revolving loan fund and enhanced infrastructure financing districts (EIFD).

Use #1: Revolving Loan Fund for Predevelopment Needs on BART-Owned Land

Smaller scale affordable housing developers working with BART have reported difficulties advancing projects due to the scale of financing needed to complete predevelopment activities for multiphase projects. BART would use the HIT grant to work with consultants and a Community Development Financial Institution (CDFI) to set up and operate a revolving loan fund specifically for predevelopment costs at affordable housing projects. The CDFI will also be tasked with leveraging the HIT grant to expand the fund, with the

HIT grant in a first-loss position. This structure would reduce the risk on these uncollateralized loans to a more standard level, making them attractive to private predevelopment investments. The initial loan would be made to the Lake Merritt/Chinatown TOD Senior Affordable Housing project, which has received its final approvals from the City of Oakland and, if funding is secured, could break ground as early as 1st Quarter 2024. Upon repayment at close of construction financing, BART would cycle funds to another affordable housing project in BART's portfolio, creating a perpetual loan fund to address the high predevelopment costs of multi-phase development on BART land. BART's robust TOD pipeline contains ample opportunities to accelerate affordable housing development at transit-rich, infill sites, and as such the HIT funds would have a lasting impact across multiple projects on public land.

#### Use #2: Value Capture for Community Benefits in Vulnerable Communities

The City of Berkeley and BART would use HIT funding to create an EIFD designed to capture the value of development on BART land as well as land nearby the Ashby Station, and create a reliable financing source to accelerate the development of affordable housing and other community-serving infrastructure. The EIFD would leverage tax increment financing to specifically fund anti-displacement efforts, which would be an innovative use of this tool. The scope would fund City of Berkeley staff time, consultant time, and creation of the work products needed to establish this EIFD. BART and the City of Berkeley are advancing development at the Ashby BART station with the goal of releasing a developer solicitation for BART property in mid-2023. BART and the City have a goal of making 50% of the homes on BART property affordable, and understand that the community wants the value generated by the development to accrue to the neighborhood, primarily through the funding of affordable housing. We believe this work, coupled with the development of a 700 – 1,200-unit housing project on the Ashby BART property, could create a new model for equitable infill development that ensures this development is truly serving the local community and benefiting surrounding areas.

#### FINANCIAL IMPLICATIONS

The City Manager or their designee is authorized to enter into, execute, and deliver a State of California Standard Agreement for the amount of a maximum of \$10,000,000 and any and all other documents required or deemed necessary or appropriate to evidence and secure the REAP 2.0 Allocation, the City of Berkeley obligations related thereto and all amendments the Department of Housing and Community Development deems necessary.

#### CONTACT PERSON

Jesse Arreguín, Mayor, 510-981-7100

#### Attachments:

1. Resolution



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

Authorizing Regional Early Action Planning Grants (REAP 2.0) for Higher Impact Transformative Activities

WHEREAS, the State of California (the "State"), Department of Housing and Community Development ("Department") Department is authorized to provide up to \$30,000,000 to Eligible Entities ("Applicant") listed in Health and Safety Code Section 50515.08, subdivisions (a)(1)-(6) under the Higher Impact Transformative (HIT) Allocation of the Regional Early Action Planning grants program (REAP 2.0), as detailed in Health and Safety Code Section 50515.08-10; and

WHEREAS, the Department issued a Notice of Funding Availability on November 9, 2022 for REAP 2.0 HIT Allocation funds available to Eligible Entities and

WHEREAS, the City of Berkeley is an Eligible Entity eligible to submit a Request for Funds pursuant to Health and Safety Code Section 50515.08(c) to develop and accelerate the implementation of the requirements described in Health and Safety Code section 50515.08(c)(1); and

WHEREAS, the San Francisco Bay Area Rapid Transit District ("BART") has been working on transit-oriented development ("TOD") at multiple Stations including ones located in disadvantaged communities such as Lake Merritt, and historically underserved communities such as South Berkeley, and has conducted extensive community engagement as part of these efforts; and

WHEREAS, BART has a formal relationship with the City of Berkeley ("City") to advance TOD at the North Berkeley and Ashby stations as evidenced by a Board- and Council-authorized Memorandum of Understanding dated March 6, 2020 and a Board- and Council-authorized Memorandum of Agreement dated June 30, 2022; and

WHEREAS, the Department requires that the ~~BART Board~~Berkeley City Council adopt this Resolution authorizing City of Berkeley staff to apply for funds and to partner with BART; and

WHEREAS, the Department shall approve the Request for Funds, subject to the terms and conditions of Eligibility, Guidelines, NOFAs, Program requirements, and the Standard Agreement by and between the Department and REAP 2.0 Grant Recipients.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley is hereby authorized and directed to request an allocation of funds not to exceed **\$10,000,000**.

BE IT FURTHER RESOLVED that the City Manager or their designee is authorized to execute the Request for Funds, on behalf of the City of Berkeley as required by the Department for receipt of REAP 2.0 funds.

BE IT FURTHER RESOLVED that when the City of Berkeley receives an allocation of REAP 2.0 funds in the authorized amount of a maximum of \$10,000,000 from the Department pursuant to the above referenced Request for Funds, it represents and certifies that it will use all such funds only for eligible activities as set forth in Health and Safety Code section 50515.08(c)(1), as approved by the Department and in accordance with all REAP 2.0 requirements, guidelines, all applicable state and federal statutes, rules, regulations, and the Standard Agreement executed by and between the City of Berkeley and the Department.

BE IT FURTHER RESOLVED that the City Manager or their designee is authorized to enter into, execute, and deliver a State of California Standard Agreement for the amount of a maximum of \$10,000,000 and any and all other documents required or deemed necessary or appropriate to evidence and secure the REAP 2.0 Allocation, the City of Berkeley obligations related thereto and all amendments the Department deems necessary and in accordance with REAP 2.0.



ACTION CALENDAR  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett  
Subject: Outcomes Based Funding, Pay-For-Success and Social Impact Bonds

RECOMMENDATION

Qualified Positive Recommendation from the Berkeley City Council Budget & Finance Committee to:

Refer to the City Attorney to provide guidance on how the City can implement an Outcomes Based Funding initiative; request implementation analysis from the City Manager; and request information on whether or not this program can be used with external funds (e.g. grants) or city funds only

POLICY COMMITTEE RECOMMENDATION

On October 13, 2022, the Budget & Finance Committee adopted the following action: M/S/C (Arreguin/Harrison) to send the item to the City Council with a Qualified Positive Recommendation to refer to the City Attorney to provide guidance on how the City can implement an Outcomes Based Funding initiative; request implementation analysis from the City Manager; and request information on whether or not this program can be used with external funds (e.g. grants) or city funds only. Vote: Ayes – Harrison, Arreguin; Noes – None; Abstain – None; Absent – Droste.

BACKGROUND

Outcome Based Funding is a financing strategy in which Government allocates funding to vendors only upon the demonstrable achievement of specific outcomes. Under an Outcome Based Funding approach, Government enters into Contracts with non-internal-government organizations to deliver services intended to result in positive measurable outcomes. Often, in outcomes based fundings, private investors provide the funding and are repaid later by the government only if the service meets agreed-on performance benchmarks.<sup>1</sup> Outcomes Based Funding, Social Impact Bonds, or Pay for Success (PFS) Contracts can be an effective way for Government to reduce its spending while simultaneously achieving better social outcomes.

Outcomes Based Funding initiatives often work in close collaboration with Community Development Finance Institutions (“CDFI”). CDFI’s direct resources in communities with the potential for high social returns but with a lack of resources.

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<sup>1</sup> Kasturi Rangan & Lisa A. Chase. “The Payoff of Pay-for-Success (SSIR).” <https://ssir.org/>, Stanford Social Innovation Review, 2015, [https://ssir.org/up\\_for\\_debate/article/the\\_payoff\\_of\\_pay\\_for\\_success#](https://ssir.org/up_for_debate/article/the_payoff_of_pay_for_success#)

Outcomes-based funding supports evidence-based strategies to create better community outcomes and save taxpayer money.

Pay For Success was introduced by the Obama Administration; and is a strategy of obtaining positive social or environmental outcomes by paying, in part or in whole, for an intervention only once it produces those outcomes. Through PFS, government (or another entity) enters into a contract to pay for concrete, measurable outcomes once they are achieved for specific people or communities in need. Instead of funding services regardless of the results, payments are made only if interventions actually achieve the outcomes agreed upon in advance. For example, instead of paying for job training simply to be provided, a community might use PFS to pay only when individuals gain stable employment in good jobs. Where government employs PFS strategies, taxpayers no longer bear the risk of paying for services that are ineffective because resources are not expended until the services have produced a specific benefit<sup>2</sup>.

Social Impact Bonds are an innovative financing mechanism in which governments or commissioners enter into agreements with social service providers, such as social enterprises or non-profit organizations, and investors to pay for the delivery of pre-defined social outcomes. More precisely, a bond-issuing organization raises funds from private-sector investors, charities or foundations. These funds are distributed to service providers to cover their operating costs. If the measurable outcomes agreed upfront are achieved, the government or the commissioner proceeds with payments to the bond-issuing organization or the investors. In reality, the term “bond” is more of a misnomer. In financial terms, SIBs are not real bonds but rather future contracts on social outcomes. They are also known as Payment-for-Success bonds (USA) or Pay-for-Benefits bonds<sup>3</sup>. There is healthy appetite for Social Impact Investing, currently there is more than \$700 billion in impact investment capital seeking deployment<sup>4</sup>.

Outcomes Based Funding and Social Impact Bonds are very similar in practice. They both include the practice of entering into a conditional contract with an organization to address social welfare programs. The payment to the organization is derived from the budgetary savings and other proceeds stemming from the resulting reduction in spending. This transfer of risk from Government to the vendor helps overcome resistance to funding innovative projects within a constrained budgetary environment.

The Benefits of Outcomes Based Funding, Pay for Success, and Social Impact Bonds include:

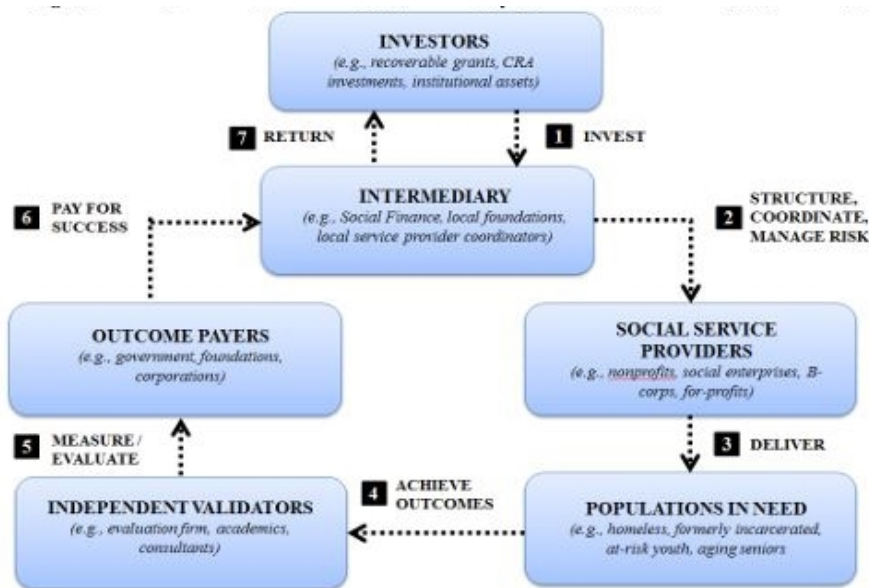
1. Spurs Innovation
2. Saves Money
3. Transfers Risk from Tax Payer to Vendor
4. Better Outcomes for the Community

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<sup>2</sup> “Pay for Success:” The White House, 2012, <https://obamawhitehouse.archives.gov/administration/eop/sicp/initiatives/pay-for-success>

<sup>3</sup> Organisation for Economic Co-operation and Development, et al. “Understanding Social Impact Bonds.” OECD Working Papers, 2016, <https://www.oecd.org/cfe/leed/UnderstandingSIBsLux-WorkingPaper.pdf>

<sup>4</sup> SG Analytics. “Impact Investing Market Size Is \$715 Billion: What Is the Future of Our Planet?” SG Analytics, SG Analytics, 2 Mar. 2021, <https://us.sganalytics.com/blog/impact-investing-market-size-is-715-billion-what-is-the-future-of-our-planet/>



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Here are a few examples of Outcomes Based Funding, Pay for Success, and Social Impact Bonds Models:

1. New York (1990s) – New York City dramatically changed the way it bought workforce development services from nonprofit providers working around the city. Instead of paying for the cost of services up front and hoping for the best, the city tied 100 percent of funding to measured performance. Job placement providers got paid only if they achieved clearly defined milestones (e.g., job placement, retention after set periods of time). The innovative focus on results yielded a number of benefits including, but not limited to, providers being incentivized to achieve outcomes that aligned with the city’s policy objectives, allowing the city to flexibly price (and re-price) outcomes it cared about while avoiding a more prescriptive, top-down approach to program design that can stymy innovation, and performance data helping the city make course corrections to the system as a whole. (When early program data showed poor job retention results, the city doubled down by changing payment formulas to incentivize longer-term retention outcomes.)<sup>6</sup>
2. Salt Lake City, Utah (2015) – Salt Lake County policymakers implemented innovative funding strategies to reduce incarceration and recidivism rates. In this particular case, a suite of evidence-based programs were funded through a social impact financing mechanism. If incarceration rates drop by an agreed-upon threshold percentage over a

<sup>5</sup> Organization for Economic Co-operation and Development, et al. “Understanding Social Impact Bonds.” OECD Working Papers, 2016, <https://www.oecd.org/cfe/leed/UnderstandingSIBsLux-WorkingPaper.pdf>

<sup>6</sup> Keele, Jeremy, and Sarah Peters. “HOW OUTCOMES-BASED FUNDING MODELS CAN IMPROVE THE EFFECTIVENESS OF STATE AND LOCAL GOVERNMENTS.” Sorenson Impact Center, 2017, pp. 134–37. [https://investinresults.org/sites/default/files/book-chapter/WM\\_14\\_Keele-Peters\\_0.pdf](https://investinresults.org/sites/default/files/book-chapter/WM_14_Keele-Peters_0.pdf)

certain time frame, the county will repay the funders who provided the upfront bridge financing. If the programs are not successful, the county won't pay.<sup>7</sup>

3. USA (2008-2016) - President Barack Obama Administration's in Pay For Success<sup>8</sup> initiative: The administration dedicated nearly \$100 million in funding to advance PFS through eight federal agencies. These federal dollars leveraged at least \$65 million in philanthropic, state and local funds for PFS. Among other important priorities, the Administration's PFS awards have been provided to help connect veterans with jobs<sup>9</sup>, build brighter futures for at-risk youth, support English language learners<sup>10</sup>, increase access to high-quality pre-K<sup>11</sup>, reduce childhood asthma, support at-risk moms and their children, reduce homelessness, incarceration, and recidivism, and even promote natural resources conservation<sup>12</sup>. Participants performed validation tests, feasibility studies<sup>13</sup>, transaction structuring, outcomes evaluation, outcomes payments, and cross-system data integration<sup>14</sup>. The U.S. is now the largest PFS market the world, with greater total outcome payment scale and impact investment dollars committed to projects than any other nation<sup>15</sup>.
4. Massachusetts (2014) Social Impact Bond Initiatives:
  - a. The Juvenile Justice Pay for Success Initiative was a managed Social Impact Bond project. The program's aim was to reduce recidivism and increase employment through intensive street outreach, targeted life skills training, education, and employment programming. The target group was 929 at-risk young men aged 17 to 23. Philanthropic grantors included The Kresge Foundation, Living Cities, Laura and John Arnold Foundation, New Profit Inc., and the Boston Foundation. Third Sector Capital Partners acted as the financial

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<sup>7</sup> Keele, Jeremy, and Sarah Peters. "HOW OUTCOMES-BASED FUNDING MODELS CAN IMPROVE THE EFFECTIVENESS OF STATE AND LOCAL GOVERNMENTS." Sorenson Impact Center, 2017, pp. 134–37. [https://investinresults.org/sites/default/files/book-chapter/WM\\_14\\_Keele-Peters\\_0.pdf](https://investinresults.org/sites/default/files/book-chapter/WM_14_Keele-Peters_0.pdf)

<sup>8</sup>"Pay for Success:" The White House, 2012, <https://obamawhitehouse.archives.gov/administration/eop/sicp/initiatives/pay-for-success>

<sup>9</sup>"New VA – CNCS Collaboration to Connect Funding to Better Outcomes For." Whitehouse.Gov, 5 Jan. 2017, <https://obamawhitehouse.archives.gov/blog/2016/11/11/new-va-%E2%80%93-cnccs-collaboration-connect-funding-better-outcomes-veterans>

<sup>10</sup> Office of the Press Secretary. "FACT SHEET: New Commitments Announced in Support of the My Brother's." Whitehouse.Gov, 17 Oct. 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/10/11/fact-sheet-new-commitments-announced-support-my-brothers-keeper>

<sup>11</sup> US Department of Education (ED). "Pay for Success." U.S. Department of Education, <https://www2.ed.gov/about/inits/ed/pay-for-success/index.html>. Accessed 2 July 2022.

<sup>12</sup> Goldfuss, Christy, and David Wilkinson. "Pay for Success: New Resources for Better Conservation Outcomes." Whitehouse.Gov, the White House, 5 Jan. 2017, <https://obamawhitehouse.archives.gov/blog/2015/12/17/pay-success>

<sup>13</sup> Munoz, Cecilia, and Shaun Donovan. "Administration Nearly Doubles Number of 'Pay for Success' Feasibility." Whitehouse.Gov, the White House, 19 Apr. 2016, <https://obamawhitehouse.archives.gov/blog/2016/04/19/administration-nearly-doubles-number-pay-success-feasibility-studies>

<sup>14</sup> Wilkinson, David, and Wendy Spencer. "How Data and Innovation Can Help People." National Service Archived Blog, 13 Oct. 2016, <https://nationalservice.tumblr.com/post/151761667357/how-data-and-innovation-can-help-people>

<sup>15</sup> "Pay for Success:" The White House, 2012, <https://obamawhitehouse.archives.gov/administration/eop/sicp/initiatives/pay-for-success>

intermediary and prime contractor. Third Sector was responsible for arranging project funding, overseeing project implementation, distributing funding to Roca and managing repayment to funders. It is worth noting that Third Sector Capital Partners is deferring \$50 000 USD of its management fees; it will only be paid that portion of its fees if results are achieved. New Profit Inc. The Juvenile Justice Pay for Success Initiative is an individual SIB, but it is also part of the Massachusetts Social Innovation Financing Trust Fund.<sup>16</sup>

- b. The State of Massachusetts, the nonprofit Roca, the financial intermediary Third Sector Capital Partners, and a group of investors entered into a contract under which Roca was paid by investors to operate a program designed to prevent formerly incarcerated young people from returning to jail. Under an Outcomes Based Funding and Pay for Success Model, the state would repay the investors only if Roca met or exceeded the contract goals. Massachusetts was willing to repay the loan with interest to investors because the program saved even more money by keeping young people out of prison. While the result of this program was inconclusive, the State of Massachusetts will only have to pay Roca if the model is successful.<sup>17</sup>
5. New York State (2012) – New York implemented a Social Impact Bond model where the State of New York partnered with Social Finance, a nonprofit social impact financing and advisory firm, to reduce recidivism through a Social Impact Bond contract. After analyzing the needs of high-risk formerly incarcerated individuals and conducting thorough due diligence on interventions and social service providers, Social Finance selected CEO, a nonprofit employment service agency for formerly incarcerated individuals, as the entity to deliver the intervention. The State of New York, Social Finance, and CEO worked together over the next year to structure the project with the help of law firm Jones Day. The State of New York also obtained pro bono technical assistance from the Harvard Kennedy School Social Impact Bond Technical Assistance Lab (“SIB Lab”) to develop and implement the project<sup>18</sup> This Social Impact Bond managed to reduce the number of bed days for former inmates therefore directly reducing the State of New York’s public spending and increasing the well being for the participants.
  6. Ohio State (2014) – Cuyahoga County, Ohio, the local government entered into a Social Impact Bond contract with FrontLine to reduce time spent in foster care for children of homeless mothers. FrontLine had devoted 26 years to providing comprehensive services to mentally ill homeless people, with the goal of transitioning its clients to

<sup>16</sup> Organization for Economic Co-operation and Development, et al. “Understanding Social Impact Bonds.” OECD Working Papers, 2016, <https://www.oecd.org/cfe/leed/UnderstandingSIBsLux-WorkingPaper.pdf>

<sup>17</sup> Kasturi Rangan & Lisa A. Chase. “The Payoff of Pay-for-Success (SSIR).” <https://ssir.org/>, Stanford Social Innovation Review, 2015, [https://ssir.org/up\\_for\\_debate/article/the\\_payoff\\_of\\_pay\\_for\\_success#](https://ssir.org/up_for_debate/article/the_payoff_of_pay_for_success#)

<sup>18</sup> The State of New York, et al. “Investing in What Works: ‘Pay for Success’ in New York State Increasing Employment and Improving Public Safety.” Harvard Kennedy School Government Performance Lab, 2014. <https://govlab.hks.harvard.edu/>, [https://govlab.hks.harvard.edu/files/govlabs/files/nys\\_ceo\\_pfs\\_project\\_summary.pdf](https://govlab.hks.harvard.edu/files/govlabs/files/nys_ceo_pfs_project_summary.pdf)



permanent supportive housing. FrontLine had also demonstrated that moving homeless mothers to stable housing increased their chances of recovering and regaining custody of their children from foster care. The county's data revealed that children of homeless mothers spent considerably more time in foster care than other children (724 days compared to 440 days) at a daily cost of \$75 per child. Keeping mothers in stable housing with their children therefore represented significant savings for the county.<sup>19</sup>

7. Saskatchewan, Canada (2014) – The Canadian Province of Saskatchewan Sweet Dreams, implemented a Social Impact Bond to increase the well being of lowincome families. The Government of Saskatchewan and the Ministry of Social Services, held direct contracts with the investors and the service provider, Saskatoon Downtown Youth Centre (EGADZ). The investors provided in May 2014 \$1 million CAD for a period of 60 months to the EGADZ to offer to single mothers with children under the age of eight, who are at risk of requiring services from Child and Family Services, with affordable housing and support. At the same time, the mothers can complete their education, secure employment, or participate in pre-employment activities, such as life skills training and parenting classes. In the end, the SIB succeeded in helping keep single mothers in the schools and helped keep those families together.<sup>20</sup>

The City's budgetary constraints are becoming more pronounced. Meanwhile a looming recession is poised to exacerbate the City's growing social needs. Berkeley should explore new tools to drive innovation to more cheaply achieve greater community outcomes.

### CURRENT SITUATION

The City has many challenges from homelessness, health, environmental impact, public safety, and many more that demands financial and external costs that could use more preventative measures to save on costs. The guidance on how the City can implement an Outcomes Based Funding and Social Impact Bond Initiative would allow the City to have more options to achieve greater outcomes for less money.

### FINANCIAL IMPLICATIONS

Staff time from the City Attorney's Office.

### CONTACT PERSONS

Councilmember Ben Bartlett  
James Chang  
Marcelo Garcia-Sarraf

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[jchang@cityofberkeley.info](mailto:jchang@cityofberkeley.info)  
510-981-7130

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<sup>19</sup> Kasturi Rangan & Lisa A. Chase. "The Payoff of Pay-for-Success (SSIR)." <https://ssir.org/>, Stanford Social Innovation Review, 2015, [https://ssir.org/up\\_for\\_debate/article/the\\_payoff\\_of\\_pay\\_for\\_success#](https://ssir.org/up_for_debate/article/the_payoff_of_pay_for_success#)

<sup>20</sup>"Sweet Dreams Supported Living Project." The Government Outcomes Lab, Sept. 2020, <https://golab.bsg.ox.ac.uk/knowledge-bank/indigo/project-database/sweet-dreams-supported-living-project/>





**ACTION CALENDAR**  
January 31, 2023

To: Honorable Mayor and Members of the City Council  
From: Councilmember Sophie Hahn (Author)  
Subject: Amending City Council Rules of Procedure & Order to Allow Policy Committee Track Items with Budget Referrals to be Referred to the Budget & Finance Committee and one Subject Matter Policy Committee

**RECOMMENDATION**

~~Adopt a resolution amending the City Council Rules of Procedure & Order to allow Policy Committee Track Items that include a Budget Referral to be assigned by the Agenda Committee to the Budget & Finance Committee and one additional Policy Committee.~~

That the City Council sets the following deadline:

In order to be considered for the June 2023 budget process, Policy Committee Track items (as defined in the City Council Rules of Procedure and Order) that have potential budget implications must be submitted to the agenda process to allow for consideration by the Agenda & Rules Committee no later than at the March 6, 2023 meeting (setting the Agenda for the March 21, 2023 Regular Meeting of the City Council).

**POLICY COMMITTEE RECOMMENDATION**

On January 4, 2023, the Agenda and Rules Committee adopted the following action: M/S/C (Hahn/Arreguin) to send the item to the City Council with a qualified positive recommendation that in order to be considered for the budget process that will take place in June 2023, policy committee track items (as defined in the City Council Rules of Procedure), that have the potential for budget implications, must be submitted to the agenda process to allow for consideration by the Agenda & Rules Committee no later than its March 6, 2023 meeting. Vote: All Ayes.

**BACKGROUND**

The City Council Rules of Procedure & Order currently prohibit the Agenda Committee from referring Council Policy Committee Track items to more than one Policy Committee. The purpose of this rule was to avoid delay and duplicative work by two Committees that may not result in consensus recommendations.

Subsequent to adoption of rules relating to Council Committees, numerous substantive items with “moderate to significant administrative, operational, budgetary, resource, or programmatic impacts” have come before the Agenda Committee in the form of Budget Referrals, or with budget referrals incorporated within the item.

Because the current rules only allow Policy Committee items to be sent to one Committee, items accompanied by budget requests that otherwise would have gone to one of the five other policy committees have been sent directly to the Budget & Finance Committee, without the benefit of review



by a Policy Committee with subject matter jurisdiction over the substance of the proposed policy or program.

The unintended consequence is that programs and policies that are “significant” are considered for funding without the benefit of subject matter review, including the opportunity for staff to provide input on associated costs and administrative implications, which would inform budget allocations.

To address this situation, which was not anticipated at the time Committees were first developed, this item asks that the City Council Rules of Procedure and Order be amended to allow (but not require) Policy Committee Track Council items with budget referrals to be referred by the Agenda Committee to both the Budget & Finance Committee and a Policy Committee.

This will allow funding to be considered in an appropriate timeframe while also giving subject matter Policy Committees and the City Council the opportunity to weigh in on programmatic, policy, implementation, and administrative details of proposed policies and programs with moderate to significant impacts.

In addition, this item requests that the City Manager advise as to appropriate cut-off dates for submission of Policy Committee Track budget referrals to each budget process, building in time for at least one policy committee meeting and for the City Council to vote on the policy or program prior to Council action on associated budgets.

These deadlines, once established, should be clearly indicated on the Clerk’s meeting timelines so all Councilmembers and members of the public are aware of deadlines to submit items with budget referrals that may qualify as Policy Committee Track items.

Councilmember items with budget referrals submitted after established deadlines may go forward and be referred to one or two Committees, but will be considered for funding in the subsequent budget cycle. Exceptions to the deadline can be made by the Agenda Committee utilizing the existing “Time Critical Track” process.

Proposed amendments to City Council Rules of Procedure & Order, Section III(G)(1) are shown in redline, below.

**Policy Committee Track**

Items submitted by the Mayor or Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the Agenda & Rules Committee on a draft City Council agenda.

The Agenda & Rules Committee must refer an item to a Policy Committee at the first meeting that the item appears before the Agenda & Rules Committee.



The Agenda & Rules Committee may only assign the item to a single Policy Committee except that Policy Committee Track items that include a budget referral may be assigned to both the Budget & Finance Committee and one other Policy Committee.

The Agenda and Rules Committee shall set deadlines for submission of Council items with budget referrals so they may be considered in time for budget processes, with exceptions for items that may qualify for the Time Critical Track.

[City Council Rules of Procedure and Order](#) - see Page 19.

FINANCIAL IMPLICATIONS

N/A

CURRENT SITUATION AND ITS EFFECTS

See Background.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

N/A

CONTACT PERSON

Councilmember Sophie Hahn      Council District 5      510-981-7150

ATTACHMENTS

1. Resolution



RESOLUTION #####-N.S.

AMENDING THE CITY COUNCIL RULES OF PROCEDURE & ORDER TO ADDRESS  
POLICY COMMITTEE TRACK ITEMS THAT INCLUDE A BUDGET REFERRAL

WHEREAS, the City Council Rules of Procedure & Order currently prohibit the Agenda Committee from referring Council Policy Committee Track items to more than one Policy Committee; and

WHEREAS, subsequent to adoption of rules relating to Council Committees, numerous substantive items with “moderate to significant administrative, operational, budgetary, resource, or programmatic impacts” have come before the Agenda Committee in the form of Budget Referrals, or with budget referrals incorporated within the item;

WHEREAS, items accompanied by budget requests that otherwise would have gone to one of the five other policy committees have been sent directly to the Budget & Finance Committee, without the benefit of review by a Policy Committee with subject matter jurisdiction over the substance of the proposed policy or program;

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Berkeley that the Council Rules of Procedure and Order shall be amended so that the Agenda & Rules Committee may only assign an item to a single Policy Committee, except that Policy Committee Track items that include a budget referral may be assigned to both the Budget & Finance Committee and one other Policy Committee;

BE IT FURTHER RESOLVED, that the Agenda and Rules Committee shall set deadlines for submission of Council items with budget referrals so they may be considered in time for budget processes, with exceptions for items that may qualify for the Time Critical Track.



Office of the City Manager

INFORMATION CALENDAR

January 31, 2023

To: Honorable Mayor and Members of the City Council

From: Farimah Brown, City Attorney

Submitted by: Iris Mattes, Deputy City Attorney

Subject: Updated Sanctuary City Contracting Compliance Report for FY 2021

INTRODUCTION

City Council adopted ordinance 7,650-N.S., which is referred to as the Sanctuary City Contracting Ordinance (SCCO), in 2019. The SCCO states that the City shall not enter into a new, amended, or extended contract or agreement with any entity that provides United States Immigration and Customs Enforcement with data broker or extreme vetting services.

Section 13.105.040 requires the City Manager to report annually regarding compliance with section 13.105.030 for the prior year. Section 13.105.030 of the Berkeley Municipal Code details the prohibition on the use of City resources.

This report is an updated version of the FY 2021 report that appeared on the July 26, 2022 agenda. This version reflects that the City Council approved a waiver of the City's contract with AG Witt, LLC on December 13, 2022.

CURRENT SITUATION AND ITS EFFECTS

The Sanctuary City Contracting Ordinance establishes the City as a leader in social responsibility. The SCCO is a Strategic Plan Priority Project, advancing our goal to champion and demonstrate social and racial equity.

## Report Requirements

*(1) detail with specificity the steps taken to ensure compliance with Section 13.105.030:*

City solicitations include invitations for bids (IFB), requests for proposals (RFP), and requests for qualifications (RFQ). IFB, RFP, and RFQ public postings generally contain the SCCO language. Signed compliance certificates are submitted with proposals and bid responses.

New and amended contracts and agreements include the Compliance Certificate attesting review of and compliance with the SCCO. Signed certificates are required as part of the City's contract documents.

*(2) disclose any issues with compliance, including any violations or potential violations of this Ordinance:*

Previously reported: City Council issued a waiver of ordinance 7,650-N.S. related to Berkeley Tuolumne Camp Projects. The waiver was issued on 12/10/2019 in order to ensure compliance with FEMA contracting provisions as required for the City to receive a federal reimbursement grant for the construction project.

City Council approved a waiver of the SCCO for contracting with Westlaw, a Thomson Reuters Company, on 6/1/2021, as no reasonable alternative exists.

A contract was entered into with AG Witt, LLC, for an initial amount of \$50,000. The City's social responsibility provisions in the contract form were left intentionally blank so that the contract did not violate federal contracting requirements. The contract scope is for disaster cost recovery and is partially reimbursable by FEMA. The contract was later amended to \$150,000 with approval from City Council (Resolution 69,566-N.S.), and then amended to \$250,000 with approval from City Council (Resolution 69,759-N.S.). The City anticipates this contract to be valid for several more years as cost recovery efforts for Covid-19 expenses continue.

New: The City received a notice of violation concerning its contract with AG Witt, LLC. Although the City does not believe that its contract with AG Witt, LLC violates the SCCO, the City sought a waiver out of an abundance of caution. The City Council approved the waiver on December 13, 2022.

The City also received a notice of violation alleging that the July 26, 2022 FY 21 Compliance Report was itself a violation of the SCCO, because it was issued untimely. Although any violation relating to the timeliness of the July 26, 2022 Compliance Report was cured by the act of issuing that report, this Updated report has been revised to expressly acknowledge that the July 26, 2022 report was issued untimely.

*(3) detail actions taken to cure any deficiencies with compliance:*

As described above, City Council approved a waiver of the AG Witt, LLC contract on December 13, 2022. This report will serve as the notice required under BMC 13.105.050. Regarding the untimeliness of the FY 21 Compliance Report, the City cured that violation by issuing the July 26, 2022 report and by issuing this updated report.

BACKGROUND

This report is an updated version of the report that was approved by City Council on July 26, 2022. It is intended to supplement the July 26, 2022 report for the purpose of curing alleged violations that were first raised after the issuance of the July 26, 2022 report.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental impacts from this report.

POSSIBLE FUTURE ACTION

This report will be submitted annually.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

1. Resolution 69,907-N.S. Westlaw (Thomson Reuters)
2. Resolution 69,566-N.S. AG Witt, LLC
3. Resolution 69,756-N.S. AG Witt, LLC
4. Resolution 70,635-N.S. AG Witt, LLC

RESOLUTION NO. 69,907-N.S.

ADOPT A RESOLUTION WAIVING THE CONTRACT REQUIREMENTS OF THE SANCTUARY CITY CONTRACTING ORDINANCE PURSUANT TO CHAPTER 13.105 OF THE BERKELEY MUNICIPAL CODE, IN ORDER TO ENTER INTO A CONTRACT WITH WESTLAW, A THOMSON REUTERS COMPANY

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, in order to enter into a contract with Westlaw, a Thomson Reuters Company, the City Council must determine that no reasonable alternative exists based on consideration of three factors; and

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

WHEREAS, the use of services provided by Westlaw is indispensable to the practice of law; and

WHEREAS, contracting with Westlaw will not violate the intent of the Ordinance as its services will be used to promote the interest of the immigrant community in conformance with the intent and purpose of the Ordinance; and

WHEREAS, no other contractors are available who can provide the services required by this contract; and

WHEREAS, no additional costs are quantifiable as there are no available alternatives; and

WHEREAS, failing to provide this waiver would result in additional costs to use Westlaw on an ala carte basis.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver to the "no-contract" provision of the B.M.C. Section 13.105 is approved because no reasonable alternative exists to the services that will be provided under contract with Westlaw, a Thomsen Reuters Company.

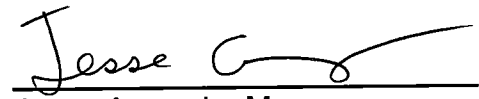


The foregoing Resolution was adopted by the Berkeley City Council on June 1, 2021 by the following vote:

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

Noes: None.

Absent: Droste.

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

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

RESOLUTION NO. 69,566-N.S.

CONTRACT NO. 32000282 – AG WITT, LLC FOR COVID-19 DISASTER COST RECOVERY CONSULTING SERVICES

WHEREAS, in May 2020 the City underwent a Request for Proposal process for a consultant firm to provide disaster cost recovery services; and

WHEREAS, the City determined after evaluating the proposals received that AG Witt, LLC. was the best qualified firm meeting the City’s needs to provide COVID-19 disaster cost recovery consulting services; and

WHEREAS, the City contract costs with AG Witt, LLC will now exceed the City Manager authorization spending amount of \$50,000; and

WHEREAS, the FY 2021 Adopted Budget had funds up to \$150,000 for disaster cost recovery consulting services allocated as part of an approved General Fund allocation of \$1.0 million for the City’s COVID-19 response.

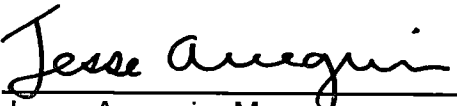
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000282 with AG Witt, LLC to increase the contract amount by \$100,000 to a not to exceed amount of \$150,000. A record signature copy of said contract amendment to be on file in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on September 22, 2020 by the following vote:

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

Noes: None.

Absent: None.

  
Jesse Arreguin, Mayor

Attest:   
Mark Numainville, City Clerk

RESOLUTION NO. 69,756-N.S.

CONTRACT NO. 32000282 - AG WITT, LLC FOR COVID-19 DISASTER COST RECOVERY CONSULTING SERVICES

WHEREAS, in May 2020 the City underwent a Request for Proposal process for a consultant firm to provide disaster cost recovery services; and

WHEREAS, the City determined after evaluating the proposals received that AG Witt, LLC. was the best qualified firm meeting the City's needs to provide COVID-19 disaster cost recovery consulting services; and

WHEREAS, on May 26, 2020, the City Manager entered into Contract No. 32000282 with AG Witt, LLC for COVID-19 Emergency Operations Cost Recovery Consulting, for a total not to exceed amount of \$50,000; and

WHEREAS, on September 22, 2020 the City Council adopted Resolution No. 69,566-N.S. authorizing the City Manager to execute an amendment to this contract, increasing the amount by \$100,000 for a total not to exceed amount of \$150,000; and

WHEREAS, the City contract costs with AG Witt, LLC will now exceed the Council authorization spending amount of \$150,000; and

WHEREAS, the FY 2021 Adopted Budget had funds up to \$250,000 for disaster cost recovery consulting services allocated as part of an approved General Fund allocation of \$1.0 million for the City's COVID-19 response; and

WHEREAS, staff expects that this engagement with AG Witt will last for multiple years, due to the extended duration of the FEMA cost recovery process and ongoing nature of the COVID-19 pandemic; and

WHEREAS, staff and AG Witt expect that AG Witt's contract costs will be partially reimbursable through the FEMA PA Program.

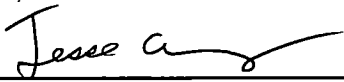
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute an amendment to Contract No. 32000282 with AG Witt, LLC to increase the contract amount by \$100,000 to a not to exceed amount of \$250,000. A record signature copy of said contract amendment to be on file in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on March 23, 2021 by the following vote:

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

Noes: None.

Absent: Kesarwani.

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

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

RESOLUTION NO. 70,635-N.S.

APPROVE A WAIVER OF THE SANCTUARY CITY CONTRACTING ORDINANCE'S REQUIREMENTS FOR THE CITY'S COST-RECOVERY CONTRACT WITH AG WITT, LLC

WHEREAS, Pursuant to Ordinance No. 7650-N.S. and Chapter 13.105, the Sanctuary City Contracting Ordinance, prohibits the City from doing business with a vendor that provides the United States Immigration and Customs Enforcement agency with "data broker" or "extreme vetting" services; and

WHEREAS, the City entered into a contract with AG Witt, LLC to provide valuable services related to the City's COVID -19 cost recovery efforts but a notice regarding the Sanctuary City Contracting ordinance was not included in the RFP process and the City did not obtain a signed declaration from AG Witt, LLC related to its compliance with the Ordinance; and

WHEREAS, a waiver is being sought out of an abundance of caution; and

WHEREAS, the waiver does not conflict with the intent of the Ordinance, because AG Witt, LLC has attested that it does not provide any of the services prohibited by the Ordinance; and

WHEREAS, no reasonable alternative to the City's actions existed at the time because the President of the United States had repeatedly threatened to withhold FEMA reimbursement to "Sanctuary Cities"; and

WHEREAS, the City has applied for significant reimbursements and has no alternative source for this funding; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that a waiver of the Ordinance's requirements for the City's cost-recovery contract with AG Witt, LLC is approved.

The foregoing Resolution was adopted by the Berkeley City Council on December 13, 2022 by the following vote:

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

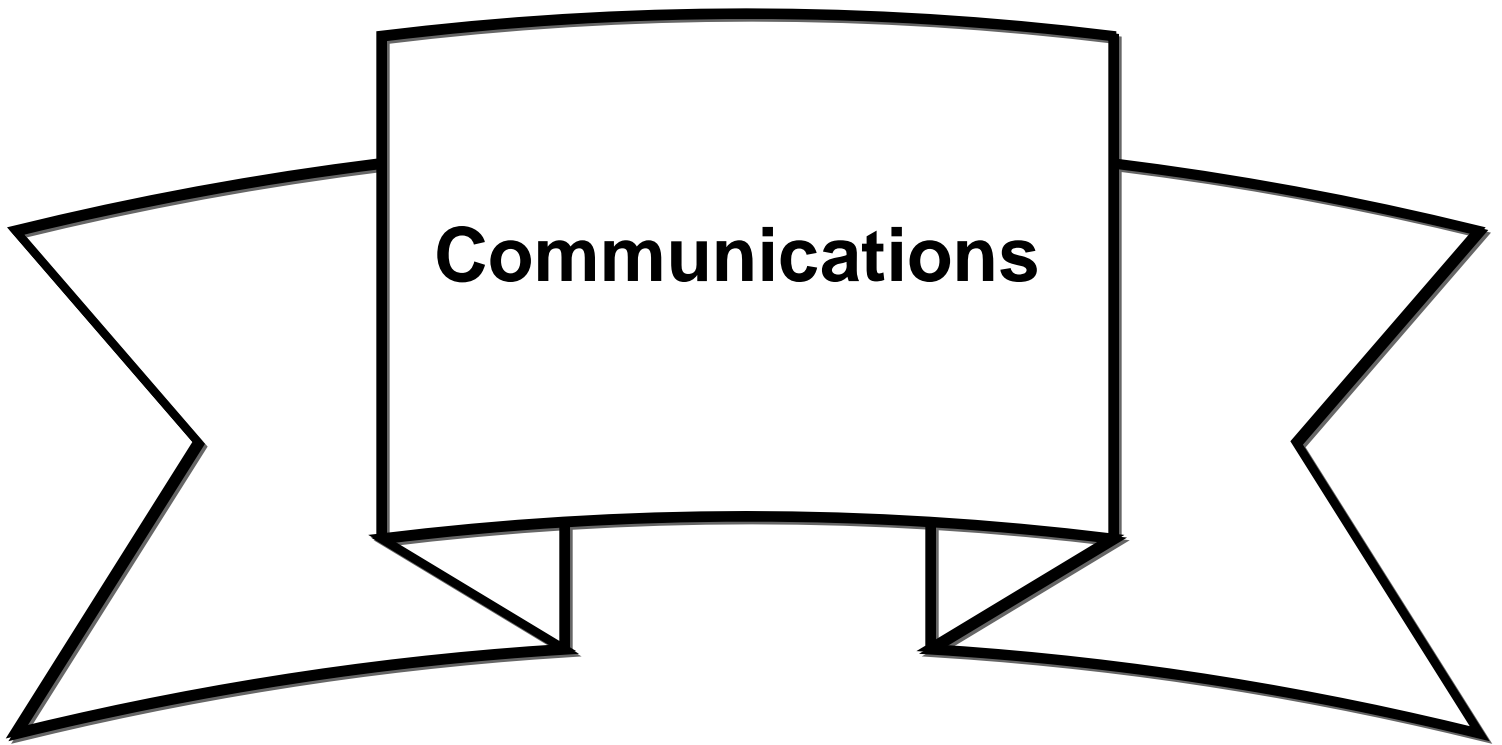
Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest:   
Mark Numainville, City Clerk



All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

**City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**Records Online**

<https://records.cityofberkeley.info/>

To search for communications associated with a particular City Council meeting using Records Online:

1. Select Search Type = “Public – Communication Query (Keywords)”
2. From Date: Enter the date of the Council meeting
3. To Date: Enter the date of the Council meeting (this may match the From Date field)
4. Click the “Search” button
5. Communication packets matching the entered criteria will be returned
6. Click the desired file in the Results column to view the document as a PDF