

EXPENDITURE NON-CONSTRUCTION CONTRACT REVIEW FORM

"NEW CONTRACT"

Contract # <u>32400114</u>	Vendor #17252
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BLR-2023-026117 ✓

CONTRACTOR NAME: YMCA of the East Bay **Berkeley Business License #** BL-014529

Subject of Contract: YMCA Healthy Berkeley FY24/25 Contract

This contract package contains: <u>2 Original Contracts (Vital Record and Vendor) in folder</u>	Attached	Waiver Attached	Not Required
*The Vital Record contract MUST be in a folder. Vendor copies may be assembled with an Acco-fastener. **DocuSign Agreements only require 1 Original (Vital Record) copy.			
1. CONTRACT BOILERPLATE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Scope of Services (Exhibit A @ boilerplate)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Payment Provisions (Exhibit B @ boilerplate)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Evidence of <u>Competitive Solicitation</u> OR Waiver by CM or by Council Resolution <u>23-11597-C</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. CERTIFICATIONS			
a. Workforce Composition (<i>businesses with 5 or more employees</i>)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Nuclear Free Berkeley Disclosure	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Oppressive States Disclosure (<i>Exception: Community-based, non-profit organizations</i>)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Sanctuary City Compliance Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Certification of Compliance with Living Wage Ordinance (LWO): use current form on web*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Certification of Compliance with Equal Benefits Ordinance: use current form on web*	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Community Agency: Certification of Anti-Lobbying	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h. Community Agency: Certification of Drug-Free Workplace	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Insurance Certificate/s AND Endorsement/s OR Insurance Waiver/s (<i>originals, not copies</i>)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Authorizing Council Resolution # 70,971 - N.S.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Consultant Contracts: Form 700, Statement of Economic Interests	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
9. Federally Funded Project Requirement: Debarment status printout (SAM.gov)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Requisition # 12406200 ✓ (*Hard copy attached*) **Budget Code** HHH55B2301 Amt. _____

Contract Amount \$96,923.20 ✓ FY24:011-51-507-507-0000-000-459-636110- Amt. \$48,461.60 ✓

Council Approved Amount \$96,923.20 ✓ FY25:011-51-507-507-0000-000-459-636110- Amt. \$48,461.60 ✓

Was there any advance payment? No ☒ Yes ☐ **If Yes, Advanced Amount \$** _____

If Yes, Purchase Order # _____

Routing and signatures:

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

1. <u>Roberto Terrones</u> , Health, Housing, & Community Services Dept. <u>510-981-5324</u>	10/2/2023
Project Manager (PRINT NAME/SIGN)	Date
2. <u>Ann Song</u>	11/20/2023
Department Administrative Officer/Accounting (PRINT NAME/SIGN)	Date
3. <u>Lisa Warhuus/ Amy Davidson</u>	11.20.2023
Department Head (PRINT NAME/SIGN)	Date
4. <u>Josh Roben</u>	01/09/2024
Contract Administrator (PRINT NAME/SIGN)	Date
5. <u>Sharon Friedrichsen</u>	01/10/2024
Budget Manager (PRINT NAME/SIGN)	Date

EXECUTED

JAN 18 2024

APPROVED

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

6. **City Manager** (*Will not sign unless all signatures and dates appear above*)

7. **City Clerk:** Destruct _____ Review _____

VIA EMAIL

COMMUNITY AGENCY CONTRACT COMMUNITY SERVICES

This contract is entered into on July 1, 2023, between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and YMCA of the East Bay ("Contractor"), a non-profit corporation under the laws of the State of California, doing business at 2111 Martin Luther King Jr. Way, Berkeley, CA 94704.

WHEREAS, the City has entered into a grant contract with the United States Department of Housing and Urban Development (HUD), for a Community Development Block Grant (CDBG), identified also as CFDA # 14.218, under the Housing and Community Development Act of 1974, as amended, and/or United States Department of Housing and Urban Development for an Emergency Solutions Grant (ESG), identified also as CFDA # 14.231, under the Stewart B. McKinney Homeless Assistance Act of 1988, as amended, and/or the HOME Investment Partnerships Program, identified also as CFDA # 14.239, under the National Affordable Housing Act of 1990 (NAHA), and/or Government Code Section 12725 et. seq., as amended, and 42 United States Code (USC) 9901 et. seq., as amended, the Community Services Block Grant Act as amended (CSBG), identified also as CFDA # 93.569, and under said grant contract(s) and/or through the use of its General Funds, the City is undertaking certain activities; and

WHEREAS, the City desires to engage Contractor to render certain assistance for such undertaking.

NOW, THEREFORE, the City and Contractor mutually agree as follows:

ARTICLE 1. SCOPE OF SERVICES

- A. Annually, Contractor agrees to perform all those services described in Exhibit A. Exhibit A is attached hereto and made a part hereof, in accordance with the terms and conditions stated therein.
- B. Contractor shall identify in Exhibit A the name, title, general program duties, and time allotted for all key personnel that Contractor proposes to perform the activities described in Exhibit A. Contractor shall provide the City with 5 days written notice prior to making any changes to the personnel proposed to perform the scope of services. The written notice shall include the resume and position of the new personnel.
- C. Contractor shall provide all necessary supplies, equipment, materials, clerical and all other services required for satisfactory performance of this contract as described in Exhibit A.

ARTICLE 2. TIME PERIOD OF CONTRACT

Contractor shall begin performance under this contract on July 1, 2023, and shall continue until June 30, 2025, unless earlier terminated as provided in this agreement. The City will pay Contractor an amount not to exceed \$48,461.60 per fiscal year, for FY 2024 and FY 2025, for a period of two years, for a total contract amount not to exceed \$96,923.20.

The not to exceed ("NTE") amount in Article 3 is the amount for each year of this four-year contract. If the City Council authorizes an increase or decrease to the NTE amount in Article 3, the City Manager or his/her designee shall notify Contractor in writing. The written notification to Contractor shall include the new NTE amount and revised Exhibits A and B, with a signature line for the Contractor to acknowledge its acceptance of the amended terms. If the NTE amount and scope of services will remain the same for subsequent years as in the first year, no further action is necessary from either Contractor or City. The City Manager may extend the term of this contract, using the written notification described in this paragraph, to allow the use of these funds for the extended term.

ARTICLE 3. PAYMENT

- A. For services referred to in Article 1, City agrees to pay Contractor an amount not to exceed \$48,461.60 annually, in accordance with the terms of Exhibit B, Budget and Method of Payment, attached hereto made a part hereof. It is mutually agreed that if the budget adopted by Council for the current year and/or any subsequent year covered under this agreement does not allocate sufficient funds for this contract or funding for any fiscal year from any source is reduced or deleted, the City may either terminate this contract without any liability occurring to the City in accordance with paragraph 28, or offer a revised Scope and Budget to Contractor to reflect the reduced amount.
- B. Payment by City shall be subject to receipt of Contractor's invoice(s) or advance-payment request form(s) and, if necessary, supporting documentation of expenditures. At the beginning of the contract period, City will inform Contractor of the necessary procedures for billing including submission of supporting documentation.
- C. Failure by Contractor to expend any portion of the funds allocated by the City to Contractor within the prescribed annual period, or failure by Contractor to properly account for funds allocated by the City to Contractor, shall be cause for the City to demand return of that portion of unspent or unaccounted City-allocated funds, irrespective of the source of the funds. Exceptions to this section may apply when the contract term is extended.

ARTICLE 4, BUDGET MODIFICATION

- A. A 10% variation among budget line item categories will be allowed, provided the total expenditure under all line items does not exceed the total contract amount.
- B. A variation among budget line items exceeding 10% will be allowed at Contractor's discretion, provided written approval is granted by the Manager of the Housing and Community Services Division ("HCS") or his/her designee prior to submission of Contractor's invoice, and provided that the contract total is not exceeded.
- C. Expenditures covered by unauthorized budget modifications will be subject to disallowance by City and repayment by Contractor.

ARTICLE 5, METHOD OF PAYMENT MODIFICATION

- A. Modifications in the Method of Payment requested by Contractor will be allowed provided the total contract amount is not exceeded and provided prior written approval is granted by the Manager of HCS or his/her designee.
- B. Modifications in the Method of Payment that exceed the total contract amount will require City Council approval.

ARTICLE 6, RECORDS

- A. Contractor shall keep and maintain full, complete, and appropriate books, records, and accounts necessary to evidence and substantiate in full detail Contractor's compliance with the terms and provisions of this Agreement. Books, records, and accounts relating to this Agreement shall be kept and maintained in compliance with 2 C.F.R. Part 200.
 - 1. Records of nonexpendable property shall be maintained in accordance with the procedures set forth in 2 C.F.R. Part 200 and shall contain any additional information that the City may require.
 - 2. Financial records of contract funds shall be kept separately and not co-mingled with records of other funds.

3. Solely for the purpose of verifying compliance with the terms of this Contract, Contractor shall maintain the following types of records:
 - a. Job description, minimum qualifications, and compensation for all positions funded under this contract;
 - b. Time sheets or comparable documentation for all personnel compensated with contract funds. Such records shall clearly show the time spent on contract activities. The City may require Contractor to use timesheets formatted to track funded activities distinctly from work funded by other funding sources that are not part of this contract.
4. Contractor assures that, for contracts exceeding one hundred thousand dollars (\$100,000), to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in the Child Support Compliance Act of 1998, subdivision (1) Public Contract Code 7110.
- B. Contractor agrees to maintain racial, Hispanic/Latino ethnicity, gender, head of household, age, income, family size, and neighborhood residence data, as may be required under the law, showing the extent to which, these categories of persons have participated in, or benefited from the contract activities. In certain cases, the City may require either less or more information than identified above, depending on the requirements of various funding sources.
- C. Contractor agrees to maintain records demonstrating that each activity undertaken meets one of the national objectives of the CDBG program set forth in 2 C.F.R. Part 200.
- D. Contractor agrees to maintain employee and applicant records in a confidential manner to assure compliance with the Information Practices Act of 1977, as amended, and the Federal Privacy Act of 1974, as amended.
- E. Contractor agrees to maintain and preserve such records during the period from start of contract performance until five (5) years from the audit referred to in Article 30, is conducted and Contractor receives City notification that said audit has been accepted, whichever is later, except as follows:
 1. Records that are subject of audit findings shall be retained for five years after such findings have been resolved.
 2. Records for non-expendable property that was acquired with contract funds shall be retained for five years after its final disposition.
 3. Records for any person displaced as a result of contract activities shall be retained for three years after the contract activities have been completed or the person has received his/her final relocation payment, whichever is later.
 4. Records pertaining to each real property acquisition shall be retained for five years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with paragraph (3) of this section, whichever is later.
- F. The Secretary of HUD, the Comptroller General of the United States, the State Department of Economic Development, the City, or any of their duly authorized representatives shall have access to and right to examine such records related to this contract during this period, unless prohibited by law.

ARTICLE 7, REPORTS AND ON-SITE REVIEWING

- A. Reports: Contractor agrees to submit periodic program status and financial reports to City in a timely manner, and other reports and information as City determines are necessary to carry out its responsibilities in accordance with 2 C.F.R. Part 200.
- B. On-Site Performance Review: Authorized representatives of HUD, the State of California, and the City shall have the opportunity to review Contractor's performance under this contract at the sites where such performance is being conducted. This review shall be in accordance with 2 C.F.R Part 200. Such review is solely for the purpose of verifying that the Contractor is providing the quality and quantity of services specified in this contract and includes:
1. Observation of service delivery and training, as agreed upon by Contractor, and administrative activities in support of this contract.
 2. Interview with Contractor personnel and staff currently involved in project operations.
 3. Validation of source data used in the preparation of reports to the City, provided this does not result in any breach of client confidentiality and is mutually agreed upon.
 4. Interviews with clients, when such interviews will not result in a breach of client confidentiality and are mutually agreed upon.
 5. Inventory of personal property acquired with contract funds.

Refusal or failure by Contractor to provide reviewing opportunities as described herein within ten (10) working days after notice from the City constitutes a violation of this contract and forms the basis for a for cause contract termination pursuant to Article 28 of this Agreement.

ARTICLE 8, FINANCIAL MANAGEMENT

The Contractor shall maintain a financial management system in accordance with 2 C.F.R. Part 200 (including Subparts D, E & Appendix IV), which provide for:

- A. Records that identify adequately the source and application of funds for contract activities.
- B. Effective control over and accountability for all funds, property, and other assets. Contractor shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
- C. Comparison of actual outlays with budgeted amounts for contract funds.
- D. Procedures to minimize the time elapsing between the transfer of funds from the City and disbursement by the Contractor, whenever the City advances funds. CDBG funds shall be placed in an interest-bearing account, where appropriate.
- E. Procedures for determining the reasonableness, allowability, and allocability of costs.
- F. Accounting records that are supported by source documentation.
- G. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

ARTICLE 9, TANGIBLE PERSONAL PROPERTY

All procurement transactions funded under this contract for tangible personal property shall be conducted in a manner consistent with HUD regulations in 2 C.F.R. Part 200.

- A. Definitions

1. Personal Property: Personal property refers to all property, except real property, which is acquired with contract funds. Tangible property has physical existence. Intangible property has no physical existence.
2. Non-expendable Personal Property: Non-expendable personal property means tangible personal property, acquired with contract funds, having a useful life of more than one year and an acquisition cost of \$600 or more per unit.
3. Expendable Personal Property: Expendable personal property refers to all tangible personal property acquired with contract funds other than non-expendable property.

B. Acquisition

1. Purchase of personal property exceeding \$600 per item and not delineated in Exhibit B shall require prior approval from the City.
2. Contractor shall submit documentation to City for each item of non-expendable property at the time such property is acquired. Documentation shall demonstrate proof of purchase and indicate date of acquisition, cost, and description of the item, and any other information that the City may require.

C. Identification, Inventory, and Maintenance

1. Contractor shall conduct annual inventories to verify the existence, condition, current utilization, and future need for non-expendable property. Contractor shall submit a written report on each inventory conducted by Contractor to the City. Such report shall account for any differences between Contractor's property records and the inventory findings.
2. Contractor shall ensure adequate safeguards to prevent loss, damage, and theft of property. In case such property is stolen or lost, Contractor shall immediately notify the Police Department, obtain a written police report, and notify the City within three (3) working days of discovering stolen or lost property.

D. Use and Disposition

1. Non-Expendable Property

- a. Title to non-expendable personal property having a unit acquisition cost of less than \$1,000 shall vest in the Contractor. For non-expendable personal property having a unit acquisition price of \$1,000 or more, HUD/State/ City reserves the right to transfer the title to HUD/ State/City or to a third party when such third party is otherwise eligible under existing statutes.
- b. Contractor shall use the property for the project or program for which it is acquired as long as needed, whether or not the project or program continues to be supported by Government funds. When no longer needed for the original project/program, Contractor shall use the property in connection with other Government sponsored activities in the following order of priority:
 - 1) Activities sponsored by HUD/State/City.
 - 2) Activities sponsored by other Government agencies
- c. During the time the property is held for use on the project or program for which it was acquired, Contractor may make the property available for use on other projects or program if such other use does not interfere with the work on the project or programs for which it was originally acquired.
- d. When Contractor no longer needs the property as provided in (b) above, the property may be used

for other activities as follows:

- 1) Non-expendable property with a unit acquisition price of less than \$1,000 may be used by Contractor for other activities without reimbursement to the Government, or may be sold and the proceeds retained by the Contractor.
- 2) Non-expendable property with a unit acquisition price of \$1,000 or more may be retained by Contractor for other uses provided compensation is made to HUD/State/City or its successor(s). If Contractor has no further need for the property and the property has further use value, Contractor shall request and follow disposition instructions from the City.
- 3) Expendable Property
 - e. Title to expendable personal property shall vest in the Contractor upon acquisition. Upon termination of the contract, Contractor shall conduct an inventory to determine the amount of unused expendable personal property on hand that was acquired with contract funds. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the contract activities and if the property is not needed for any other Government sponsored project or program, the Contractor shall retain the property for use on non-Government sponsored activities or sell it, but in either case, compensate the Government for its share.

ARTICLE 10, INTANGIBLE PROPERTY

- A. Invention and Patents: Any discovery or invention arising out of or developed in the course of work aided by this contract shall be promptly and fully reported to the City. Contractor shall request City to determine whether patent protection on such invention or discovery should be sought, and to determine how the rights in the invention or discovery, including rights under the patent thereon, shall be allocated and administered to protect the public interest.
- B. Copyrights: Except as otherwise provided in this contract, Contractor is free to copyright any books, publications, or other copyrightable materials arising out of or developed during the course of work aided by contract funds, but the City, State and HUD reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.
- C. Publications: Books, publications, and other printed materials resulting from and developed in the course of work aided by this contract, whether copyrighted or not, shall acknowledge the support of HUD/State/City funds. Five (5) copies of each such publication are to be furnished to the City as the City may reasonably require.
- D. Publicity: Any publicity generated by Contractor for the project funded pursuant to this contract, during the term of this contract or for one year thereafter, will make reference to the contribution of the City in making the project possible. The words "City of Berkeley" and the specific funding source will be explicitly stated in any and all pieces of publicity, including but not limited to fliers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles.

The City's staff will be available whenever possible at the request of Contractor to assist Contractor in generating publicity for the project funded pursuant to this contract. Contractor further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

ARTICLE 11, PROCUREMENT STANDARDS

- A. All applicable procurement transactions funded under this contract shall be conducted in a manner that

provides, to the maximum extent practical, open and free competition consistent with HUD Regulations at 2 C.F.R. Part 200, 24 C.F.R. Part 570, and Executive Orders 11625, 12138 and 12432 to the extent such regulations are applicable.

- B. Contractor shall take all necessary affirmative steps to use small business and minority- and women-owned business sources of supplies and services (2 C.F.R. Part 200) and business concerns located in Berkeley or owned in substantial part by Berkeley residents (see also Article 18).
- C. For procurement of services, supplies, or other property, Contractor shall use one of the following procurement methods:
 - 1. \$1 to \$50. Items with a total value (per order) of \$50 or less may be procured using petty-cash procedures.
 - 2. \$51 to \$5,000. Contractor should obtain informal quotes from local Berkeley vendors prior to contacting non-Berkeley vendors. Local Berkeley vendor quotes must be discounted by five percent when comparing the bid with a bid from a non-local vendor.
 - 3. \$5,001 to \$24,999. Contractor must solicit three quotes that may be generated through telephone conversations or provided on a fax, but must be specifically referenced on the requisition by vendor, contact person, date, and cost. Local Berkeley vendors must be contacted for informal quotes and must be discounted by five percent when comparing the bid with a bid from a non-local vendor.
 - 4. \$25,000 and Over. Purchases over \$25,000 must undergo either an Invitation for Bid (IFB), used for construction contracts or goods, or Request for Proposal (RFP) process, used for the procurement of services, as provided below.
 - a. Competitive Sealed Bids: This method uses a formal procedure for securing services, supplies or other property that are expected to cost, in the aggregate, more the \$25,000. Sealed bids are publicly solicited and a firm, fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid is lowest and best in price.
 - b. Request for Proposal: When obtaining good or services, Contractor shall request proposals from at least three sources. A Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiations may be used if conditions are not appropriate for the use of formal advertising.
- D. Contractor shall maintain records documenting adherence to the above detailed procurement standards.

ARTICLE 12, RELEASE, INDEMNIFICATION AND INSURANCE

- A. Release: Contractor, upon final payment of amount due under this contract, less any credits, refunds, or rebates due to City, releases and discharges City from all liabilities, obligations and claims arising from this contract.
- B. Indemnification: Contractor, for itself, and its heirs, successors, and assigns, agrees to release, indemnify, hold harmless, and defend City, its officers, agents, volunteers, and employees, from and against any and all claims, demands, liability, economic loss of any type, damages, lawsuits, or other actions for damage or injury to persons or property arising out of or in any way connected with the Contractor's operations under this contract, or the performance of this contract by Contractor or its officers, employees, partners, directors, subcontractors, or agents, except to the extent such claim, suit or action arises out of the sole negligence or willful misconduct of City.
- C. Insurance:

1. The Contractor shall maintain at all times during the performance of this contract, a commercial general liability insurance policy with a minimum occurrence coverage in the amount of \$2,000,000; an automobile liability insurance policy (if applicable) in the minimum amount of \$1,000,000; and, if any licensed professional performs services under this contract, a professional liability insurance policy in the minimum amount of \$2,000,000 to cover any claims arising out of Contractor's performance of services under this contract. Said insurance, except professional liability, shall name the City, its officers, agents, volunteers, and employees as additional insureds on a separate form endorsement and shall provide primary coverage with respect to the City. All said insurance policies shall provide that the insurance carrier shall not cancel, terminate, or otherwise modify the terms and conditions of said policies except upon thirty (30) days prior written notice to the City; shall be evidenced by the original Certificate of Insurance. The original insurance certificates and all extensions to the insurance certificates should be emailed or sent to the address identified below:

Health, Housing and Community Services Department
2180 Milvia Street, 2nd Floor,
Berkeley CA 94704
HHCS-Contracts@berkeleyca.org

2. If the commercial general liability insurance referred to above is written on a Claims Made Form, then, following termination of this Agreement, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this contract.
3. If Contractor employs any person, it shall carry workers compensation and employer's liability insurance and shall provide a certificate of insurance to the City. Workers' compensation policy shall include Employer Liability Insurance with limits not less than \$1,000,000 each accident. 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 City; shall provide for a waiver of any right of subrogation against City to the extent permitted by law; and shall be approved as to form and sufficiency by the City's Contract Administrator.
4. Contractor shall have the insurance carrier mail all original insurance documents directly to the City of Berkeley Department referenced in section (C)(1) above.

ARTICLE 13. CONFORMITY WITH LAW AND SAFETY

- A. Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services or any part thereof, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. All services performed by Contractor must be in accordance with the applicable laws, ordinances, codes, and regulations including but not limited to the following:
 1. Environmental and Historic Preservation: Environmental review is triggered by reservation of a federal funding source for community-facility and housing projects that are not otherwise exempt from federal environmental regulations. The City will work with Contractor to ensure its compliance with HUD Regulations at 24 C.F.R. Part 58. No work or choice limiting actions will be undertaken until required reviews have been completed and HUD has authorized release of funds.
 2. Applicable Code of Federal Regulations: The requirements of 2 C.F.R. Part 200.
 3. Applicable OMB Circulars: The applicable policies, guidelines, and requirements of 2 C.F.R. Part 200.
 4. Faith Based Activities: The requirements of 24 C.F.R. Part 92.257 and 24 C.F.R. Part 570.200(j)

regarding eligible use of funds by organizations that are religious or faith-based.

5. Civil Rights, Housing & Community Development, and Age Discrimination Acts: The Fair Housing Act (42 U.S.C. 3601 *et seq.*) and implementing regulations at 24 C.F.R. Part 100 et seq.; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 50 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 100; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by executive Order 12608.
 6. Discrimination Against the Disabled: The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157), and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 *et seq.*), and federal regulations issued pursuant thereto.
 7. Uniform Administrative Requirements: The requirements of 2 C.F.R. Part 200 regarding cost and auditing requirements.
 8. Drug Free Workplace: Contractor shall provide a drug-free workplace and establish a drug-free awareness program in compliance with the Drug-Free Workplace Act of 1988, the required certification, when applicable, and implementing regulations at 2 C.F.R. Part 200 as defined in 41 U.S.C. 701.
 9. Anti-Lobbying; Disclosure Requirements: Contractor shall comply with Section 1352, Title 31, U.S. Code and implementing regulations at 24 C.F.R. Part 87 stipulating that no federal funds shall be spent for lobbying and agrees to disclose names of persons and amounts paid with non-federal funds to influence decisions by Congress or Executive Branch agencies, when applicable.
 10. HUD Regulations: Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the contract funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients.
- B. Contractor shall release, defend, indemnify, and hold City, its officers, agents, volunteers, and employees harmless from any and all damages, liability, fines, penalties, and consequences from any noncompliance or violation of such laws, ordinances, codes and regulations.
- C. If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, Contractor shall immediately notify the City's Employee Relations Officer by telephone. Contractor shall promptly submit to City a written report, in such form as may be required by City, of all accidents which occur in connection with this contract. This report shall include the following information: (1) name and address of the injured or deceased person(s), (2) name and address of Contractor's subcontractor, if any, (3) name and address of Contractor's liability insurance carrier, and (4) a detailed description of the accident and whether any of City's equipment, tools, or materials were involved.

ARTICLE 14. CONFLICT OF INTEREST PROHIBITED

- A. Interpretation of this Article 14 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.

- B. In accordance with Government Code section 1090, B.M.C. 3.64, and Berkeley City Charter section 36, neither Contractor nor any person who is an employee, officer, director, partner, or member of contractor, or immediate family member of any of the preceding shall have served as either an elected officer, an employee, or a board, committee, or commission member of the City, who has either directly or indirectly influenced the making of this contract or the City program that created it.
- C. In accordance with Government Code section 1090 and the Political Reform Act, Government Code sections 87100 et seq., no person who is a director, officer, partner, trustee, employee, or consultant of the Contractor or immediate family member of any of the preceding shall make or participate in a decision made by the City or a board, committee, or commission thereof, if it is reasonably foreseeable that the decision will have a material effect on any source or amount of income, investment, or interest in real property of that person or Contractor.
- D. In the event that Contractor receives federal funds, then Contractor must also comply with federal conflict of interest statutes pursuant to federal regulation (24 C.F.R. Part 92.356; 24 C.F.R. Part 570.611).

ARTICLE 15, EMPLOYMENT OF NEAR RELATIVES PROHIBITED

Contractor hereby agrees to comply with the provisions of the City of Berkeley Employment of Near Relatives Policy. When employees are related, as specified below, such persons shall not engage formally or informally in supervisory relationships, except if the relationship existed prior to November 29, 2005, the effective date of this policy, and sufficient firewalls can be created to prevent actual or perceived conflict, or if approved in writing by the City of Berkeley.

A. Definitions

- 1. Near Relative: An individual's spouse, parent, sibling, child, grandparent, aunt, uncle, niece, nephew, cousin, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepparent, stepsibling, stepchild, grandchild, dependent, or domestic partner.
 - 2. Supervisory Relationship: A direct supervisor-subordinate relationship between employees.
 - 3. Firewalls: Accounting devices, procedures, practices, and relationships that prevent and negate the appearance or actuality of conflicts of interest in Contractor's personnel decisions and operations in fulfillment of the Contract's scope of services.
- B. No person shall be appointed, promoted, demoted, flexibly placed, or transferred to any position, whether permanent or temporary, where such persons near relative already holds a position which would create a supervisory relationship as described herein.
 - C. No employee shall interview, recommend, or in any way be involved in the selection or disciplinary process of an employees near relative.
 - D. Current employees of Contractor on the effective date of this policy will be allowed to remain in positions where they are in a supervisory relationship with a near relative under the following circumstances:
 - 1. The employee has been in the position for six months or longer as of the effective date of this policy; and
 - 2. Contractor creates sufficient firewalls to prevent actual or perceived conflict. Contractor must:
 - a. Immediately disclose the near relative relationship in writing to the City of Berkeley Contract Monitor; and

- b. The near relative may not provide direct supervision; and
 - c. The near relative may not sign time cards; and
 - d. The near relative may not participate, in any way, in decisions that affect hiring, promotion, demotion, discipline, or salary rate.
- E. Any Contractor who knowingly violates this policy may be subject to termination of the contract for cause.
- F. The City of Berkeley may authorize exceptions to this policy whenever the best interests of the City so require. If an exception is granted, it shall be in writing.

ARTICLE 16. BONUSES PROHIBITED

The City of Berkeley prohibits the payment of bonuses from funds awarded as part of this contract.

ARTICLE 17. REQUIREMENTS FOR SERVICES TO MINORS

- A. Criminal Background Checks: If Contractor provides services directly to minors, or provides services to participants, and these participants are accompanied by minors, Contractor shall conduct a criminal background check through the database of the California Department of Justice, and an FBI criminal database or equivalent national database (as required by the Contractor's liability insurance), on each of its employees and volunteers who have contact with or access to minors. Contractor shall not, at any time, allow its employees or volunteers to be in any position that allows for contact with or access to minors, if they have been convicted of any offense identified in the California Public Resources Code Section 5164. City and Contractor understand that the results of background checks on minors may be confidential under state law. Therefore, all employees or volunteers must be at least 18 years of age if they are to be in a position that allows for contact with or access to any minor. Contractor shall ensure that no person paid or unpaid by Contractor shall be permitted to provide services to minors unless appropriate background checks, including fingerprints, have been performed prior to the beginning of services under this Agreement, and the person meets the standards set forth above.
- B. Tuberculosis Testing: Contractor shall ensure that no person paid or unpaid by Contractor shall be permitted to provide services requiring contact with children unless Contractor has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code, verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than 2 (two) years old (if newly hired) or within 4 (four) years (if current employee) of the date of execution of this Agreement. For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. Grantee shall keep on file each "Certificate" of clearance for the persons described above, and shall also make available a copy of each Certificate to City, if requested and allowed by law. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association, which indicated freedom from active tuberculosis.

ARTICLE 18. CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST

The City's Conflict of Interest Code, Resolution No. 59,372-N.S., as amended, requires every consultant to disclose conflicts of interest by filing a Statement of Economic Interest (Form 700). Consultants agree to file such statements with the City Clerk at the beginning of the contract period and upon termination of the Contractor's service.

ARTICLE 19. ECONOMIC OPPORTUNITIES FOR LOCAL BUSINESSES AND LOW-INCOME RESIDENTS

To the greatest extent feasible, Contractor shall offer opportunities for training and employment to lower income Berkeley residents, and patronize and award contracts for work in connection with this contract to business concerns

which are located in Berkeley or owned in substantial part by Berkeley residents.

ARTICLE 20, PROGRAM INCOME

Program income is gross income generated from the use of CDBG funds received under this Agreement for purposes defined in 24 C.F.R. Part 570.500(a). The use of program income by Contractor shall comply with the requirements set forth at 24 C.F.R. Part 570.504.

- A. Service Fees: Revenue generating activities include, but are not limited to, fees charged for services provided under this Agreement. Income earned shall be considered additional revenue to be expended by Contractor during the term of this Agreement to provide additional services.
- B. Interest on Advances: Any interest earned on cash advances from the U.S. Treasury or from funds held in a revolving fund account is not program income and shall be remitted promptly to City.
- C. Proceeds from Sale of Real or Personal Property: Proceeds from the disposition of real or personal property acquired under this Agreement (see 24 C.F.R. Part 570.504).
- D. Unexpended Program Income: Unexpended program income received under this Agreement during or after the expiration of the term of the Agreement shall be remitted to City.
- E. Reports: Contractor shall report quarterly all program income generated by activities carried out with CDBG funds made available under this Agreement.

ARTICLE 21, DISCRIMINATION PROHIBITED

Contractor hereby agrees to comply with the provisions of City Ordinance No. 5876-N.S., as amended from time to time, and made a part hereof. In the performance of this agreement, Contractor agrees as follows:

- A. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40) sex, pregnancy, marital status, disability, sexual orientation, or AIDS. This requirement shall apply to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. No person shall, on the grounds of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation, or AIDS, be excluded from participation in the performance of this contract.
- C. In the performance of this contract, Contractor agrees to comply with all applicable provisions of Title II of the Americans with Disabilities Act of 1990 and any amendments thereto. Contractor shall further observe and comply with all applicable federal, state, municipal and local laws, ordinances, codes and regulations that prohibit discrimination against individuals with disabilities or require that individuals with disabilities are not excluded from participating in or receiving benefits, services or activities of the City.
- D. If Contractor is or becomes a "public accommodation" as defined in Title III of the Americans with Disabilities Act of 1990, Contractor 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 Contractor. All Contractor's activities must be in accordance with these laws, ordinances, codes, and regulations, and Contractor shall be solely responsible for complying therewith.
- E. Contractor agrees to review the City of Berkeley Grievance Procedure and Policy form(s) and to provide

them to individuals with disabilities who allege they have been discriminated against based on their disability or denied a requested disability accommodation by the Contractor's staff.

- F. Contractor shall permit City access to records of employment, employment advertisement, application forms, grievances and/or complaints, EEO-1 forms, and any other documents which, in the opinion of City are necessary to monitor compliance with the non-discrimination provisions, and will, in addition, fill-out in a timely fashion, forms supplied by City to monitor these non-discrimination provisions, to the extent required by HUD Regulations at 24 C.F.R. Part 570.

ARTICLE 22, NUCLEAR FREE BERKELEY

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

ARTICLE 23, SANCTUARY CITY CONTRACTING

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

- A. "Data Broker" means either of the following:
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.

ARTICLE 24, BERKELEY LIVING WAGE ORDINANCE

- A. Contractor hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Contractor is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Contractor will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in Chapter 13.27, as well as comply with the terms enumerated herein. Contractor expressly acknowledges that, even if Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts, grants or other monies received by the City may subject Contractor to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.
- B. If Contractor is currently subject to the Berkeley Living Wage Ordinance, Contractor shall be required to maintain monthly records of those employees providing service under the Contract. These records shall include the total number of hours worked, the number of hours spent providing service under this Contract, the hourly rate paid, and the amount paid by Contractor for health benefits, if any, for each of its

employees providing services under the Contract. These records are expressly subject to the auditing terms described in Article 32.

- C. If Contractor is currently subject to the Berkeley Living Wage Ordinance, Contractor shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Contractor engages to execute its responsibilities under this Contract. All contractor employees who spend 50% or more of their compensated time engaged in work directly related to this Contract shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein. All subcontractor employees who spend 25% or more of their compensated time engaged in work directly related to this Contract shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.
- D. If Contractor fails to comply with the requirements of this Section, the City shall have the rights and remedies described in this contract, in addition to any rights and remedies provided by law or equity.
- E. Contractor's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this Contract pursuant to Article 30. In the event that City terminates Contractor due to a default under this provision, City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.
- F. In addition, at City's sole discretion, Contractor may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Contractor's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

ARTICLE 25, BERKELEY EQUAL BENEFITS ORDINANCE

- A. Contractor hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Contractor is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Contractor will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this contract, as well as comply with the terms enumerated herein.
- B. If Contractor is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Contractor agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Article 32 of this contract.
- C. If Contractor fails to comply with the requirements of this Section, City shall have the rights and remedies described in this contract, in addition to any rights and remedies provided by law or equity.
- D. Contractor's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Article 30. In the event the City terminates this contract due to a default by Contractor under this provision, the City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.
- E. In addition, at City's sole discretion, Contractor may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Contractor's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not

intended as a penalty or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

ARTICLE 26, RELIGIOUS ACTIVITY PROHIBITED

There shall be no religious worship, instruction or proselytizing as part of or in connection with the performance of this contract.

ARTICLE 27, POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property or services contributed by the City under this contract shall be used in the performance of this contract to further the election or defeat of any candidate for public office, to support or defeat any ballot measure, for any partisan political activity, or for the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.

ARTICLE 28, NON-PROFIT STATUS

- A. Except as herein provided, Contractor must be a non-profit corporation. Contractor shall furnish the City with a copy of its articles of incorporation, a copy of its by-laws, and a current list of its Board of Directors. If there are any changes in Contractor's non-profit status with the California Secretary of State, Contractor shall notify City within five (5) working days of the notice of said change. Loss of non-profit status or failure to maintain a status of good standing with the Secretary of State is cause for termination of the contract.
- B. Contractor must be a neighborhood-based, non-profit organization, a small business investment company, or a local development corporation, according to the definitions set forth in 24 C.F.R. Part 570.204, to be eligible to undertake economic development or neighborhood revitalization activities pursuant to 24 C.F.R. Part 570.204(c). Contractor shall furnish the City with document(s), evidencing proof of such status. If there are any changes in such status, Contractor shall notify City within five (5) working days of said change. Failure to maintain eligible organizational status as required by Government regulations is cause for termination of the contract.
- C. This provision may not necessarily apply to Contractor if Contractor is undertaking only rehabilitation activities pursuant to 24 C.F.R. Part 570.202 or economic development activities pursuant to 24 C.F.R. Part 570.203.

ARTICLE 29, CHANGES

- A. The terms and conditions of this contract shall not be altered or otherwise modified except upon a duly executed written amendment to this contract.
- B. Contractor may request changes in the Scope of Services described in Exhibit A. Such changes, including any increase or decrease in the amount of the Contractor's compensation (Exhibit B), require City Manager approval and must be incorporated by written amendment to this contract.

ARTICLE 30, CONTRACT TERMINATION

This contract may be terminated for cause by Contractor upon thirty (30) days prior written notice. The City may terminate this contract in whole or in part without cause upon thirty (30) days' written notice to Contractor. The City may terminate this contract for cause upon five (5) days' written notice to Contractor. Causes for termination for cause may include, but are not limited to:

- A. Failure, for any reason, of Contractor to fulfill in a timely and proper manner its obligations under this contract, including compliance with City, State and Federal laws and regulations and applicable directives.

- B. Failure to meet the performance standards contained in Exhibit(s) A of this contract. When the City notifies the Contractor that its contract performance is below performance specifications as outlined in the contract Exhibits, a corrective action plan must be submitted in writing by Contractor to the City within thirty (30) days. Failure to achieve the performance specifications within a maximum of sixty (60) days is cause for immediate contract termination.
- C. Improper use or reporting of funds provided under this contract.
- D. Reduction, suspension or termination of funding or grant(s) to the City from any Federal or State sources under which this contract is made, or the full or portion of general funds earmarked for this contract or appropriated by the City Council for this contract.
- E. Non-compliance with the City of Berkeley Employment of Near Relatives Policy.
- F. A written notice shall be deemed served upon sending said notice in a postage-paid envelope addressed to the other party to this contract and depositing the same with the United States Post Office with postage prepaid. For purposes of this contract, all notices to the City shall be addressed as follows:

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

For purposes of this contract, all notices to Contractor shall be addressed to Contractor's authorized signee as indicated on the last page of this contract to the address indicated on page 1 of this contract.

- G. If either party terminates this contract before the Contractor completes the services in Exhibit(s) A, in addition to any other rights and remedies provided by law or under this contract, Contractor shall be entitled to compensation for services performed hereunder, through and including the date of termination, but not to exceed the payment according to the rate specified in Exhibit B. Contractor shall be entitled to all reasonable costs incurred in connection with such services. In no event will the amount paid exceed the full amount in Article 3 of this contract.

ARTICLE 31. CLOSE OUT PROCEDURES

Contractor shall prepare and submit a final invoice for final claims no later than sixty (60) days after the termination of this contract. The final invoice shall cover all claims for costs incurred by the Contractor during the period of the contract. All unexpended funds shall be returned to the City. Where funds are due the City, payment should be made to CITY OF BERKELEY and must accompany the final invoice.

ARTICLE 32. AUDIT

All contractors receiving \$750,000 or more in federal funds shall have their financial and compliance records, maintained in connection with the operations and services performed under this contract, audited annually by an independent auditing agent. The City reserves the right to select the auditing agent. This audit will be conducted in accordance with the Single Audit Act of 1984, 2 C.F.R. Part 200, and any other prescribed guidelines. Contractors receiving \$750,000 or more in federal funds and choosing to select their own independent auditor shall provide the City with a copy of the audited Financial Statement which is to be prepared in compliance with 2 C.F.R. Part 200. Contractors receiving less than \$750,000 in federal funds are exempt from audit pursuant to the Single Audit Act of 1984, but records must be available for review by appropriate officials. All contractors, regardless of the amount of federal funds received, are subject to State and Local regulations.

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Contractor's

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

The City will provide Contractor with the preliminary draft of the audit report and hold a conference with Contractor to discuss the report if any findings are noted. Contractor shall respond to all findings within ten (10) working days after the conference. The auditing agent will then prepare its final audit report and submit it to the City Manager. City will notify contractor of any disallowed expenses. Contractor shall make payment of disallowed expenses to City within thirty (30) days of such notification, unless otherwise specified by the City. Failure to reimburse the City may result in the discontinuance of any or all City contracts with Contractor and may make Contractor ineligible for additional or further funds from the City.

ARTICLE 33, GOVERNING LAW

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

ARTICLE 34, INDEPENDENT CONTRACTOR

- A. Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Contractor performs its obligations under this Agreement. Contractor shall be liable for its acts and omissions, and those of its employees and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationships between City and Contractor.
- B. Terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only and not as to the means or methods by which such a result is obtained.
- C. Nothing in this Contract shall operate to confer rights or benefits on persons or entities not party to this Contract.

ARTICLE 35, CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER

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

ARTICLE 36, ENTIRE AGREEMENT

- A. The terms and conditions of this contract and all exhibits attached hereto or documents expressly incorporated by reference therein represent the entire contract between the parties hereto with respect to the subject matter hereof, and this contract shall supersede any and all other prior contracts, either oral or written, regarding the subject matter between the City and Contractor. No other contract, statement, or promise relating to the subject matter of this contract shall be valid or binding except upon a duly executed written amendment to this contract.
- B. Should any conflicts arise between the terms and conditions of this contract and the terms and conditions of any exhibits attached hereto or documents expressly incorporated by reference therein, the terms and conditions of Federal Regulations shall control.

ARTICLE 37, OWNERSHIP OF DOCUMENTS

- A. When this contract is terminated Contractor agrees to return to City all documents, drawings, photographs

and other written or graphic material, however produced, that it received from City, its contractors or agents, in connection with the performance of its services under this contract. All materials shall be returned in the same condition as received.

- B. All internal work, papers, internal drawings, internal memoranda of any kind, photographs, and any written or graphic material, however produced, prepared by Contractor in connection with its performance of services under this contract, shall be, and shall remain after termination of this contract, the property of Contractor. Contractor may use that material for any purpose whatsoever. However, if either party terminates this contract before Contractor completes all services required under Article 1, the latest set of draft documents shall be and shall remain the property of the City.
- C. The final written product of this contract shall be the property of the City. City may use all or any part of the product for projects other than those contemplated by this contract. Contractor shall not be liable for any improper reuse of the product. City may also retain the original of any design documents upon request.

ARTICLE 38, SETOFF AGAINST DEBTS

Contractor agrees that City may deduct from any payments due to Contractor any monies that Contractor owes the City under any Ordinance, contract, or Resolution for any unpaid taxes, fees, licenses, unpaid checks, or other amounts.

ARTICLE 39, RECYCLED PAPER FOR WRITTEN REPORTS

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

ARTICLE 40, SAFETY DATA SHEETS

- A. To comply with the City's Hazard Communication Program, Contractor agrees to submit Safety Data Sheets (SDS) for all products Contractor intends to use in the performance of work under this contract in any City facility. The SDS for all products must be submitted to the City before commencing work. The SDS for a particular product must be reviewed and approved by the City's Employee Relations Officer before Contractor may use that product.
- B. City will inform Contractor about hazardous substances to which it may be exposed while on the job site and protective measures that can be taken to reduce the possibility of exposure

ARTICLE 41, SEVERABILITY OF PROVISIONS

Should a provision of this contract be held invalid by a court of competent jurisdiction, the remaining provisions hereof shall continue to be valid and enforceable.

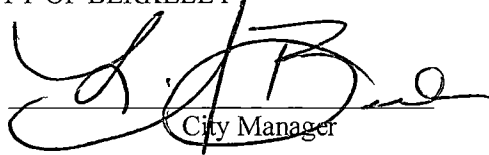
ARTICLE 42, ASSIGNMENT

This contract may not be assigned without the prior written consent of the City.

IN WITNESS WHEREOF, the City and Contractor have executed this contract through their duly authorized representatives as of the date first above written.

CITY OF BERKELEY

By:


City Manager

Registered on
behalf of the
City Auditor by:


Finance Department

THIS CONTRACT HAS
BEEN APPROVED AS TO
FORM BY THE CITY
ATTORNEY FOR THE CITY
OF BERKELEY
10/2019

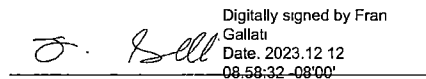
Attest by:


City Clerk

CONTRACTOR

Agency Name: YMCA of the East Bay

By:


Digitally signed by Fran
Gallati
Date: 2023.12.12
08:58:32 -08'00'

Title: President and CEO

IRS Tax I.D. No.: _____

B.M.C. § _____
Berkeley Business
License No.: BL-014529

Incorporated: Yes ☒ No ☐

Subject of Contract: Healthy Me! Program

EXHIBIT A

SCOPE OF SERVICES

Contractor Name:	YMCA of the East Bay
Contract Term:	July 1, 2023 to June 30, 2025

I. General Description

The YMCA Healthy Me! Program (HMP) targets high need populations including those at higher-than average risk for diabetes, obesity and tooth decay. The project addresses behavioral changes reflecting a preference for water or other non-sugary drinks by increasing the knowledge and awareness of non-sugar sweetened drinks through printed materials and information in YMCA early childhood programs and with collaborative partners.

The YMCA HMP serves low-income children birth through 5 years of age and their families residing or attending school in Berkeley, predominantly West and South Berkeley. Approximately 47% of the families are African American and 34% of the families are Latinx - groups statistically seen to be at higher risk for type 2 diabetes and heart disease. Many of the families regularly rely on beverages and food from corner stores near their homes. Historically, this population has had less health education provided, and in turn, less knowledge regarding nutrition and healthy beverages has been passed down within the families. As new children/families enter the programs each year, there is an opportunity to address this need. Behavior changes take place over time and we see the impact influence families that have participated in the program since the beginning – when their children were infants.

The YMCA proposes to partner with Berkeley Unified Early Childhood programs, also serving similar populations to provide education, training and materials to impact health outcomes and disparities for children/families in Berkeley.

II. Deliverables

How Much Goals

Activity	Measure	Units	Brief Description
Access to Water	ATW-999 Other Water dispensers for sites	6	Staff meetings and trainings will offer infused water
Access to Water	ATW-999 Other # of recipe cards for non-sugary beverages	300	Each region meeting, staff will offer a recipe card of what is in the spa water of the day.
Workshops, Classes and Events	WCE-100 # of classes/workshops & events	12	Offering families healthy cooking classes for families to learn healthy cooking techniques and food safety. Parent, family and community events around health education and nutrition
Workshops, Classes and Events	WCE-999 Other # of children served (unduplicated count)	1000	Movement and music curriculum in the classroom with Healthy Me/Saludable Soy! and Harvest of the Month in the classrooms
Workshops, Classes and Events	WCE-999 Other # of children served (duplicated count)	9000	Movement and music curriculum in the classroom with Healthy Me/Saludable Soy! and Harvest of the Month in the classrooms

Media	PAA-300 # of community members reached	600	Send out quarterly nutrition newsletters for the families and staff to read. Each newsletter will have a CalFresh approved recipe.
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How Well/ Better Off Goals

Activity	Measure	Units	#/%	Brief Description
Workshops, Classes and Events	WCE-999 Other % of families and staff who participate in the Healthy Me! program that download or listened to music from Healthy Me/Saludable Soy in class or at home	50	%	We would attendance to capture who was present on the day they were at the site.
Workshops, Classes and Events	WCE-999 Other % of parents that report positively to the question: As a direct result of participation in this program, my child is more motivated to reduce the amount and/or frequency he/she drinks sugary drinks	80	%	We would compare our parent nutrition questionnaires with the end of the year parent survey.
Workshops, Classes and Events	WCE-800 % that attain a healthier weight/Body Mass Index	50	%	Taking growth assessments or preschooler at the beginning, mid-year, and at the end of the year.
Workshops, Classes and Events	WCE-999 Other % of parents that report positively to the question: As a direct result of participation in this program, I feel more motivated to reduce the amount and/or frequency I drink sugary drinks	80	%	End of the year parent survey.
Workshops, Classes and Events	WCE-999 Other % of parents who report that they have tried at home a spa water or healthy meal or snack recipe they received from the YMCA	80	%	End of the year survey to all the parents
Workshops, Classes and Events	WCE-999 Other % of parents that would recommend the workshop to a family member or friend	80	%	End to the cooking class session we would have a post survey.

EXHIBIT B

PAYMENT

GENERAL: Contract Not to Exceed amount is \$ 96,923.20.

BILLING: Contractor will submit invoices for services rendered, Quarterly.

INVOICES: Invoices must be fully itemized, and provide sufficient information for approving payment and audit. Invoices must be accompanied by receipt for services in order for payment to be processed. **Email invoices to Accounts Payable and cc' RTerrones@berkeleyca.gov;** (List on invoice, Attn: Roberto Terrones/HH&CS) and reference the contract number.

City of Berkeley
Accounts Payable
P.O. Box 700
Berkeley, CA 94710-700
Email: AccountsPayable@cityofberkeley.info
Phone: 510-981-7310

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

METHOD OF PAYMENT: Agencies that have received an allocation from the City of Berkeley may receive an initial advance payment, equal to one-fourth of the amount of the allocation budgeted for ongoing operational costs. The agency is responsible for submitting a CITY OF BERKELEY COMMUNITY AGENCY REQUEST FOR ADVANCE PAYMENT by the following dates for the remainder to be paid as one-fourth of the allocation for ongoing operation costs:

1. Advance Payment Requests* are due Quarterly by:

FY 2024

- July 8, 2023
- October 7, 2023
- January 6, 2024
- April 7, 2024

FY 2025

- July 7, 2024
- October 6, 2024
- January 5, 2025
- April 6, 2025

*Advance payments may be held if program reports and statement of expense are more than one quarter late. Reports may be requested on a more frequent basis per the needs of the City.

2. The agency is responsible for submitting a CITY OF BERKELEY COMMUNITY AGENCY STATEMENT OF EXPENSE verifying the use of the contract funds by the last working day of the month in October, January, April, and August as follows:

FY 2024

- October 29, 2023; for period ending September 30, 2023

- January 31, 2024; for period ending December 31, 2023
- April 29, 2024; for period ending March 31, 2024
- August 31, 2024; for period ending June 30, 2024

FY 2025

- October 29, 2024; for period ending September 30, 2024
- January 31, 2025; for period ending December 31, 2024
- April 29, 2025; for period ending March 31, 2025
- August 31, 2025; for period ending June 30, 2025

The City reserves the right to require contractor to submit monthly invoices and backup documentation in certain situations, i.e., new contractors, contractors that have previously had difficulties with financial reporting requirements or fail to comply with reporting requirements. Contractor will be notified if the Method of Payment difference from that state in paragraph one.

3. General Ledger and Statement of Revenues and Expenditures (for the Program) are due by:

- August 31, 2024; for the period covering July 1, 2023 to June 30, 2024
- August 31, 2025; for the period covering July 1, 2024 to June 30, 2025

4. Equipment Inventory Tracking Sheet is due by:

- August 31, 2024; for the period covering July 1, 2023 to June 30, 2024
- August 31, 2025; for the period covering July 1, 2024 to June 30, 2025

5. Program Budgets for FY 2024 and FY 2025

FY 2024 Program Budget (July 1, 2023 to June 30, 2024)

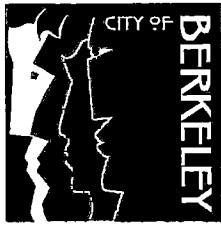
Total approved allocated amount for FY24: \$48,461.60

Approved Funding:			\$48,461.60					
Personnel Expense			GF		Other Funding		Total Program Budget	
Staff Position - Qty? <input type="text" value="1"/>	Staff Name	Salary (100% FTE)	%FTE	Salary	%FTE	Salary	%FTE	Salary
Nutrition Coordinator	Nicole Stovall	\$73,837.00	0%	\$0.00	25%	\$18,459.29	25%	\$18,459.29
Subtotal Salaries		\$73,837.00	0.00	\$0.00	0.25	\$18,459.29	0.25	\$18,459.29
Taxes and Benefits	27.44%			\$0.00		\$6,982		\$6,982.00
Total Personnel Exp				\$0.00		\$25,441.29		\$25,441.29
Operating Expense - Qty? <input type="text" value="3"/>								
Program Expense				\$3,241.60		\$0		\$3,241.60
Professional Svcs				\$45,220.00		\$0		\$45,220.00
Indirect Costs				\$0.00		\$0		\$0.00
Total Operating Expense				\$48,461.60		\$0.00		\$48,461.60
Total Expense				\$48,461.60		\$25,441.29		\$73,902.89

FY 2025 Projected Program Budget (July 1, 2024 to June 30, 2025)

Total approved allocated amount for FY25: \$48,461.60

Approved Funding:			\$48,461.60					
Personnel Expense			GF		Other Funding		Total Program Budget	
Staff Position - Qty? <input type="text" value="1"/>	Staff Name	Salary (100% FTE)	%FTE	Salary	%FTE	Salary	%FTE	Salary
Nutrition Coordinator	Nicole Stovall	\$73,837.00	0%	\$0.00	25%	\$18,459.29	25%	\$18,459.29
Subtotal Salaries		\$73,837.00	0.00	\$0.00	0.25	\$18,459.29	0.25	\$18,459.29
Taxes and Benefits	27.44%			\$0.00		\$6,982		\$6,982.00
Total Personnel Exp				\$0.00		\$25,441.29		\$25,441.29
Operating Expense - Qty? <input type="text" value="3"/>								
Program Expense				\$3,241.60		\$0		\$3,241.60
Professional Svcs				\$45,220.00		\$0		\$45,220.00
Indirect Costs				\$0.00		\$0		\$0.00
Total Operating Expense				\$48,461.60		\$0.00		\$48,461.60
Total Expense				\$48,461.60		\$25,441.29		\$73,902.89



Finance Department
General Services Division

REQUEST FOR PROPOSALS (RFP)
Specification No. 23-11597-C
FOR
HEALTHY BERKELEY 2-YEAR COMMUNITY FUNDING
PROPOSALS WILL NOT BE READ PUBLICLY

Dear Prospective Applicants,

The City of Berkeley is soliciting written proposals from qualified Community-Based Organizations (CBOs) serving Berkeley with a community-based focus to **promote reduction of consumption of sugar-sweetened beverages and to address the effects of sugar-sweetened beverage consumption on health.**

The **Healthy Berkeley Program** within the Public Health Division of the City of Berkeley is pleased to release its new Request for Proposals (RFP) for **FY2024 and FY2025** (July 1, 2023 through June 30, 2025; start date can shift based on approval of contracts).

The project scope, type of proposals sought, and vendor selection process are summarized in the RFP (attached). **Proposals must be received no later than 5 p.m., Friday, May 12, 2023** via electronic submission (instructions below). **Late applications will be denied. The funding application will only be accepted online at www.citydataservices.net.** Hard copies will **not** be considered.

If you already have a login with City Data Services for the City of Berkeley, log in with your usual credentials, and click on the button in the upper right corner, "Healthy Berkeley Application." If you do not have a login for City Data Services, go to www.citydataservices.net, and enter: **BERHB24** for both "USER" and "PWD" in the upper right corner. This will open up an online form for you to complete and submit and will generate an exclusive user name and password for your agency. Once you have your account credentials, use them to log in and start your application. A virtual workshop will be offered from **2-4pm on Monday, May 1, 2023**, to demonstrate the online application: <https://cityofberkeley-info.zoomgov.com/j/1613724895?pwd=bkl4WkVxRDFlKzdaZGVvZVNMV1J5QT09>
Meeting ID: 161 372 4895. Passcode: cds

For questions concerning the City Data Services online application, contact CDS technical support at citydataservices@yahoo.com or call 650-533-5933. **For questions concerning the Request for Proposal**, please contact JoAnn Evangelista, Senior Health Services Program Specialist, via email at jevangelista@cityofberkeley.info **no later than 5:00 p.m., Wednesday, May 3, 2023.** Please put in the e-mail subject line, "HB-RFP Questions." Answers to questions will **not** be provided individually. Answers to all the questions will be shared with everyone applying by **5:00 p.m., Friday, May 5, 2023.**

We look forward to receiving and reviewing your proposal.

Sincerely,

Darryl Sweet
General Services Manager

14 applications = 13 programs from 12 community agencies, 1 program from BUSD

	AGENCY	PROGRAM NAME	FY24 Request	FY25 request
1	18 Reasons	Cooking Matters	\$ 71,000.00	\$ 71,000.00
2	Bay Area Community Resources	HOPS, Healthy Checkout	\$ 78,352.00	\$ 77,766.00
3	Berkeley Youth Alternatives	Urban Agriculture and Team Nutrition Program	\$ 96,500.00	\$ 96,500.00
4	Community Health Education Institute	Artists Against Soda	\$ 38,668.00	\$ 38,668.00
5	Ecology Center	For Thirst Water First	\$ 91,253.00	\$ 91,253.00
6	Fresh Approach	A Holistic, Community Lead Approach to Veggie Rx Nutrition Education	\$ 17,558.00	\$ 17,558.00
7	LifeLong Medical Care	Healthy Berkeley, Chronic Disease and Oral Health Prevention	\$ 118,575.00	\$ 118,576.00
8	Multicultural Institute	Lif Skills/Day Laborer Program Health Activity	\$ 50,000.00	\$ 50,000.00
9	YMCA of the East Bay	Diabetes Prevention	\$ 59,500.00	\$ 59,500.00
10	YMCA of the East Bay	Healthy Me! Program	\$ 87,320.00	\$ 88,904.00
11	Berkeley Food Network	Establishing Food Pantries as Wellness Hubs	\$ 180,331.00	\$ 166,692.00
12	Healthy Black Families, Inc. (draft)*	Thirsty for Change!	\$ 239,658.00	\$ 225,515.00
13	Capoeira Arts Foundation, Inc. (draft)**	Saude	\$ 158,250.00	\$ 123,250.00
14	Berkeley Unified School District	Gardening and Cooking Program	\$355,422	\$355,422

*HBF, 5:05 PM phone call that had technical difficulties

** CAF, emails at 5:19, 5:41, 6:34pm that had technical difficulties and still needed LOS

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

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

Organization: YMCA OF THE EAST BAY

Address: 2111 MARTIN LUTHER KING JR. WAY, BERKELEY, CA 94704

Business Lic. #: 014546

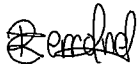
Occupational Category:	Total Employees		White Employees		Black Employees		Asian Employees		Hispanic Employees		Other Employees	
(See reverse side for explanation of terms)												
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
Official/Administrators	43	9	10	6	13	1	4	1	12		3	
Professionals	498	59	74	18	131	13	66	12	206	12	21	4
Technicians												
Protective Service Workers												
Para-Professionals												
Office/Clerical	49	15	13	6	9	7	7		18	1	1	
Skilled Craft Workers	3	6						1	3	4		
Service/Maintenance	206	50	37	18	44	13	22	9	90	6	13	4
Other (specify)												
Totals:	799	139	134	48	197	34	99	23	329	23	38	8

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

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

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

Signed:  Date: 7/11/2023

Verified by:  Date: 10/2/2023
City of Berkeley Contract Compliance Officer

Attachment D (page 1)

Occupational Categories

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

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

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

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

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

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

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

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

Attachment D (page 2)

CITY OF BERKELEY
Nuclear Free Zone Disclosure Form

I (we) certify that:

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

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

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

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

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

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

Printed Name: Fran Gallati Title: President/CEO

Signature:  Date: May 10, 2023

Business Entity: YMCA of the East Bay

Contract Description/Specification No: **Healthy Berkeley Community Funding / 21-11436-C**

Attachment E

CITY OF BERKELEY
Oppressive States Compliance Statement for Personal Services

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

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

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

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

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


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

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

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

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

Printed Name: Fran Gallati Title: President and CEO

Signature:  Digitally signed by Fran Gallati
Date 2023.12.12 08:55:14 -08'00' Date: _____

Business Entity: YMCA of the East Bay

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

Signature: _____ Date: _____

Contract Description/Specification No.: _____

CITY OF BERKELEY
Sanctuary City Compliance Statement

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

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

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

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

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

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10th day of May, 2023, at Oakland, California.

Printed Name: Fran Gallati Title: President/CEO

Signed:  Date: May 10, 2023

Business Entity: YMCA of the East Bay

Contract Description/Specification No: **Healthy Berkeley Community Funding / 21-11436-C**

CITY OF BERKELEY
Living Wage Certification for Providers of Services

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

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

Section I.

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

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

YES _____ NO _____

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

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

YES _____ NO _____

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

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

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

YES X NO _____

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

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

YES X NO _____

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

Section II

Please read, complete, and sign the following:

THIS CONTRACT IS SUBJECT TO THE LIVING WAGE ORDINANCE. ☒


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

Attachment H (page 1)

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

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

Printed Name: Fran Gallati Title: President/CEO

Signature:  Date: May 10, 2023

Business Entity: YMCA of the East Bay

Contract Description/Specification No: **Healthy Berkeley Community Funding / 21-11436-C**

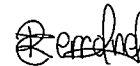
Section III

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

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

Health, Housing, and Community Services Department
Department Name

Roberto Terrones
Department Representative



Attachment H (page 2)

To be completed by
Contractor/Vendor



**Form EBO-1
CITY OF BERKELEY**

CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

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

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Name: YMCA of the East Bay			Vendor No.:	
Address: 2111 Martin Luther King Jr. Way		City: Berkeley	State: CA	ZIP: 94704
Contact Person: Anita Retzinger			Telephone: 510-708-0303	
E-mail Address: aretzinger@ymcaeastbay.org			Fax No.:	

SECTION 2. COMPLIANCE QUESTIONS

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

If you answered "No" to both Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.) If you answered "Yes" to both Questions C and D, please continue to Question E.
If you answered "Yes" to Question C and "No" to Question D, please continue to Section 3.

- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee? ☒ Yes ☐ No

If you answered "Yes," proceed to Section 4. (You are in compliance with the EBO.)
If you answered "No," continue to Section 3.

SECTION 3. PROVISIONAL COMPLIANCE

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

Attachment I (page 1)

- B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent?* ☐ Yes ☐ No

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

SECTION 4. REQUIRED DOCUMENTATION

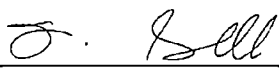
At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

SECTION 5. CERTIFICATION

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

Executed this 10th day of May, in the year 2023, at Oakland, California.
(City) (State)

Fran Gallati
Name (please print)


Signature

President/CEO
Title

Federal ID or Social Security Number

FOR CITY OF BERKELEY USE ONLY

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

Staff Name(Sign and Print): Roberto Terrones  Date: 10/2/2023

Attachment I (page 2)

Certification of Payments to Influence Federal Transactions

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0157 (Exp. 11/30/2023)

Page 25 of 33
Release Date 04/28/2023

Public reporting burden for this information collection is estimated to average 30 minutes. This includes the time for collecting, reviewing, and reporting data. The information requested is required to obtain a benefit. This form is used to ensure federal funds are not used to influence members of Congress. There are no assurances of confidentiality. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Applicant Name

YMCA of the East Bay

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

Fran Gallati

Title

President/CEO

Signature



Date (mm/dd/yyyy)

July 11, 2023

Certification for a Drug-Free Workplace

YMCA of the East Bay

U.S. Department of Housing
and Urban Development

Applicant Name

Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here ☐ if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.

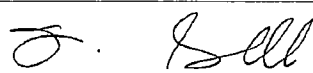
(18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official
Fran Gallati

Title
President/CEO

Signature

X



Date

May 10, 2023

CITY OF BERKELEY
Right to Audit Form

The contractor agrees that pursuant to Section 61 of the Berkeley City Charter, the City Auditor's office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this contract.

In the event of such audit, Contractor agrees to provide the Auditor with reasonable access to Contractor's employees and make all such financial, performance and compliance records available to the Auditor's office. City agrees to provide Contractor an opportunity to discuss and respond to any findings before a final audit report is filed.

Signed: Fran Gallati Date: Aug 8, 2023
Fran Gallati (Aug 8, 2023 10:41 PDT)

Print Name & Title: Fran Gallati/ President & CEO

Company: YMCA of the East Bay

Contract Description/Specification No: Healthy Berkeley Community Funding / 23-11597-C

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

Attachment L

CITY OF BERKELEY
Commercial General and Automobile Liability Endorsement

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

Policy No.	Company Providing Policy	Expir. Date
<u>CEYML1000001606</u>	<u>NOVA Casualty Company</u>	<u>07/01/2024</u>
<u>CFYAU1000001306</u>	<u>NOVA Casualty Company</u>	<u>07/01/2024</u>
<u>CFYUM1000001306</u>	<u>NOVA Casualty Company</u>	<u>07/01/2024</u>
<u>YMWC402566</u>	<u>Berkshire Hathaway Homestate Ins. Co.</u>	<u>07/01/2024</u>

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

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

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

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

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

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

Arthur J. Gallagher Risk Management Services LLC
Insurance Company

Date: 08/30/2023

By: Tara Summers
Signature of Underwriter's
Authorized Representative

Contract Description/Specification No: **Healthy Berkeley Community Funding / 23-11597-C**

Attachment M



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/29/2023

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

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

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 595 Market Street Suite 2100 San Francisco CA 94105 License#: 0D69293	CONTACT NAME: Angie Bray PHONE (A/C, No, Ext): 415-536-8467 FAX (A/C, No): 415-536-5743 E-MAIL ADDRESS: Angie_Bray@ajg.com														
INSURED YMCA of the East Bay 2330 Broadway Oakland CA 94612-2415	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : NOVA Casualty Company</td><td>42552</td></tr><tr><td>INSURER B : Berkshire Hathaway Homestate Insurance Company</td><td>20044</td></tr><tr><td>INSURER C :</td><td></td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : NOVA Casualty Company	42552	INSURER B : Berkshire Hathaway Homestate Insurance Company	20044	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES**CERTIFICATE NUMBER:** 248482150**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS														
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input checked="" type="checkbox"/> OTHER: Abuse			CFYML1000001606	7/1/2023	7/1/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 1,000,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 5,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 5,000,000</td></tr><tr><td>PRODUCTS - COMP/OP AGG</td><td>\$ 2,000,000</td></tr><tr><td>Incident/Aggregate</td><td>\$ 1M/\$2M</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	MED EXP (Any one person)	\$ 5,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 5,000,000	PRODUCTS - COMP/OP AGG	\$ 2,000,000	Incident/Aggregate	\$ 1M/\$2M
EACH OCCURRENCE	\$ 1,000,000																				
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	\$																				
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N <input type="checkbox"/> N / A			YMWCA402566	7/1/2023	7/1/2024	<table><tr><td><input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER</td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 1,000,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 1,000,000</td></tr></table>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER		E.L. EACH ACCIDENT	\$ 1,000,000	E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	E.L. DISEASE - POLICY LIMIT	\$ 1,000,000						
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E.L. EACH ACCIDENT	\$ 1,000,000																				
E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000																				
E.L. DISEASE - POLICY LIMIT	\$ 1,000,000																				
A	Social Services Professional Abuse/Molestation			CFYML1000001606 CFYML1000001606	7/1/2023 7/1/2023	7/1/2024 7/1/2024	<table><tr><td>Occurrence/Aggregate</td><td>\$1M/\$3M</td></tr><tr><td>Incident/Aggregate</td><td>\$1M/\$2M</td></tr></table>	Occurrence/Aggregate	\$1M/\$3M	Incident/Aggregate	\$1M/\$2M										
Occurrence/Aggregate	\$1M/\$3M																				
Incident/Aggregate	\$1M/\$2M																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Medical Expenses (Payments) under the General Liability Policy includes coverage for students. Insurance is Primary and Non-Contributory.

City, its officers, agents, volunteers and employees is named as an Additional Insured where required by written contract, as respects General Liability and Auto Liability per the attached endorsements. A blanket Waiver of Subrogation applies for the Worker Compensation policy. Insurance is Primary and Non-Contributory. A 30 day cancellation notice to the City of Berkeley will be provided. CMS# D15PC

CERTIFICATE HOLDER**CANCELLATION**

City of Berkeley
2180 Milvia Street,
Dpt Name: City Manager-Berkeley's 2020 Vision
Berkeley CA 94704
USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO EXTRA ENDORSEMENT

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM
COMMON POLICY CONDITIONS**

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply. Unless otherwise indicated, the following provisions amend the Business Auto Coverage Form.

A. ADDITIONAL INSUREDS

SECTION II - LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured is amended to add:

1. Additional Insured If Required By Contract Or Agreement

When you have agreed in a written contract or written agreement to provide insurance for an additional insured, such person or organization is included as an "insured":

- a. Only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under Paragraphs a. or b. of **Who Is An Insured**, with regard to the ownership, maintenance or use of a covered "auto", and
- b. The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:
 - (1) During the policy period, and
 - (2) Subsequent to the execution of such contract or agreement, and
 - (3) Prior to the expiration of time that the written contract or agreement requires such additional insured coverage to be provided.
- c. The most we will pay on behalf of such additional insured is the lesser of:
 - (1) The Limits of Insurance specified in the written contract or agreement; or
 - (2) The Limits of Insurance shown in the Declarations.
- d. The amount in c. above shall be a part of and not in addition to the Limits of Insurance shown in the Declarations.
- e. This insurance will be primary and noncontributory if a written contract between you and the additional insured specifically requires that this insurance be primary, otherwise this coverage is excess.

2. Broadened Named Insured

- a. Any legally incorporated business entity organized under the laws of the United States of America (including any state thereof, its territories or possessions), or Canada (including any province thereof) will qualify as a Named Insured if there is no similar insurance available to that organization, provided that one or more Named Insureds shown in the Declarations have, at the inception of the policy period, an ownership interest in such organization of more than 50%. The Named Insured does not include any organization that is an "insured" under any other automobile policy or would be an "insured" under such policy but for its termination or the exhaustion of its Limit of Insurance.
- b. Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the business entity.

3. Employees As Insureds

Any "employee" of yours while using a covered "auto" you do not own, hire, or borrow in your business or your personal affairs.

4. Lessors As Insureds

- a. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
 - (1) The agreement requires you to provide direct primary insurance for the lessor; and

- (2) The "auto" is leased without a driver.
- b. Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire. "Loss" to a covered leased "auto" is subject to the following:
 - (1) We will pay, as their interest may appear, you and the lessor named in this endorsement for "loss" to a "leased auto".
 - (2) The insurance covers the interest of the lessor unless the "loss" results from fraudulent acts or omissions on your part.
 - (3) If we make any payment to the lessor, we will obtain his or her rights against any other party.

B. AIRBAG COVERAGE

SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions, 3.a. does not apply to the accidental discharge of an airbag:

- 1. This coverage is excess of any other collectible insurance or warranty.
- 2. No deductible applies to this coverage.

C. AUTOS RENTED BY EMPLOYEES

- 1. Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.
- 2. **SECTION IV – BUSINESS AUTO CONDITIONS, Paragraph B. 5. Other Insurance** is amended by adding:
If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

D. CANCELLATION CONDITION

Paragraph **2.b. of A. Cancellation**, of the **COMMON POLICY CONDITIONS** is deleted and replaced by the following:

60 days before the effective date of cancellation if we cancel for any other reason.

E. ELECTRONIC EQUIPMENT – BROADENED COVERAGE

- 1. The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions, Paragraph 5.:**
Electronic navigation equipment that is not permanently installed in the covered "auto". However, if the equipment is stolen, the equipment and any mounting or power accessories must not have been visible from the exterior of the covered "auto".
- 2. The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance, Paragraph 2.:**
Electronic navigation equipment that is not permanently installed in the covered "auto."

F. EXTRA EXPENSE

We will pay up to \$2,500 for any expense incurred for the return of a covered stolen "auto" to you. This coverage does not apply to Hired Auto Physical Damage Coverage.

G. FELLOW EMPLOYEE COVERAGE

SECTION II - LIABILITY COVERAGE, Paragraph B. Exclusions, 5. Fellow Employee is deleted and replaced by the following:

- 1. "Bodily Injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

However, we will cover "bodily injury" caused by your "employee" to his or her fellow "employee" if the "bodily injury" results from the use of a covered "auto" you own or hire; the covered "auto" is used with your permission; and if you have workers' compensation insurance in-force covering all of your "employees."

- 2. Coverage is excess over any other collectible insurance.

H. HIRED AUTO PHYSICAL DAMAGE

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage:**

- 1. If hired "autos" are covered "autos" for Liability Coverage and if Physical Damage Coverage is provided under this Coverage Form for owned "autos", then the Physical Damage Coverages provided are extended to any "auto" you hire or borrow from someone other than your "employees", members or partners, or any member of their household.
- 2. The most we will pay for "loss" in any one "accident" is the lesser of:
 - a. \$50,000, subject to a policy annual aggregate limit of \$100,000;
 - b. The actual cash value of the damaged or stolen "auto" at the time of the "loss"; or
 - c. The cost of repairing or replacing the damaged or stolen "auto" with another "auto" of like kind and quality.
- 3. If you are legally liable for the "accident", we will also pay up to \$1,000 per "accident" for the actual loss of use to the owner of the covered "auto".
- 4. Paragraph 2. above is subject to a deductible, which is determined by the lowest deductible applicable to any owned "auto" for that coverage and vehicle type. If owned "autos" do not include this vehicle type, the lowest deductible on the policy for the same physical damage coverage will apply. No deductible applies to "loss" caused by fire or lightning.
- 5.
 - a. Hired Auto Physical Damage coverage is primary for any covered "auto" you hire without a driver, and excess over any other collectible insurance for any covered "auto" that you hire with a driver.
 - b. **SECTION IV – BUSINESS AUTO CONDITIONS, Paragraph B.5.b. Other Insurance** is amended to delete the following:
However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".
- 6. If symbol 8 is shown on the Covered Auto section of the Policy Declarations page for any of the physical damage coverages, then the Hired Auto Physical Damage Coverage described in this endorsement does not apply.
- 7. This coverage does not apply to leased "autos" for which you are required to provide physical damage coverage as part of a written lease agreement.

I. HYBRID AUTO PAYMENT COVERAGE

- 1. In the event of a total "loss" to a non-"hybrid auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under the Business Auto Coverage form, then Physical Damage Coverages are amended as follows:
 - a. If the "auto" is replaced with a "hybrid auto" or "electric auto" we will pay an additional 10% of the non-"hybrid auto's" actual cash value or replacement cost, to a maximum of \$2,500, whichever is less;
 - b. The "auto" must be replaced and a copy of a bill of sale or lease agreement must be received by us within 60 calendar days of the date of "loss"; and

- c. If more than one "auto" is damaged in any one "loss", the most we will pay under this Coverage for any one "loss" is \$5,000.
- 2. For the purpose of this coverage provision the following Definitions are added:
 - a. "Hybrid auto" is defined as an "auto", including a hybrid "electric auto" that is powered by two sources, an internal combustion engine, and an electric motor.
 - b. "Electric auto" is an "auto" that is powered by an electric motor instead of a gasoline engine. The "electric auto" uses energy stored in its rechargeable batteries, which are recharged by common household electricity.

J. KNOWLEDGE OF AN ACCIDENT, CLAIM, SUIT OR LOSS

The following Paragraph is added to **SECTION IV - BUSINESS AUTO CONDITIONS, A.2. Duties In The Event Of Accident, Claim, Suit Or Loss:**

Prompt notice of an "accident", claim, "suit" or "loss" to an agent or "employee" of the "insured" will not in itself constitute your knowledge of such "accident", claim, "suit" or "loss" unless an executive officer or manager of the "insured's" operation receives such notice from its agent or "employee".

K. SIGN COVERAGE

The following is added to **SECTION III – PHYSICAL DAMAGE COVERAGE, A. Coverage:**

We will pay for loss to signs, murals, paintings, or graphics, as part of equipment, which are displayed on a covered "auto".

- 1. The most we will pay for "loss" in any one "accident" is the lesser of:
 - a. The actual cash value of the property at the time of "loss"; or
 - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
 - c. \$1,000.
- 2. This coverage does not apply to Hired Auto Physical Damage Coverage.

L. TOWING AND LABOR COSTS

SECTION III – PHYSICAL DAMAGE COVERAGE, A. COVERAGE, 2. Towing is deleted and replaced by:

We will pay up to the limit shown in the Declarations or \$250, whichever amount is higher, for towing and labor costs incurred each time a covered "auto" is disabled. However, the labor must be performed at the place of disablement.

M. TRANSPORTATION EXPENSES

SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverages, 4.a. Transportation Expenses is deleted and replaced by:

- 1. We will pay up to \$75 per day, for up to 30 days, for temporary transportation expenses incurred by you because of "loss" to a covered "auto".
- 2. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.
- 3. If the "loss" is due to theft of a covered "auto" we will pay transportation expenses after the theft and ending when the covered "auto" is returned to use or we pay for its "loss".
- 4. We will pay up to \$500 for reasonable and necessary expenses incurred by you to remove and replace your materials and equipment from the covered "auto".

N. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

The following Paragraph is added to **SECTION IV – BUSINESS AUTO CONDITIONS, B.2. Concealment, Misrepresentation Or Fraud:**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, such failure will not prejudice the coverage provided to you. However, this provision does not affect our right to collect additional premium for any additional hazards or exercise our right of cancellation or non-renewal.

O. WAIVER OF DEDUCTIBLE – REPAIRED GLASS AND STOLEN AUTOS EQUIPPED WITH RADIO FREQUENCY TRANSCEIVERS

The following Paragraphs are added to **SECTION III - PHYSICAL DAMAGE COVERAGE, D. Deductible:**

1. A deductible does not apply to "loss" to glass used in the windshield, doors, and windows, if the glass is repaired rather than replaced.
2. A deductible does not apply to covered "autos" that are stolen if they are equipped with a radio frequency transceiver that is part of a stolen vehicle recovery system and:
 - a. You promptly report the theft to the police and inform them that the stolen "auto" is equipped with a radio frequency transceiver;
 - b. Such transceiver was installed, inspected and maintained according to guidelines provided by the transceiver's manufacturer; and either
 - c. The covered "auto" sustains damage as a result of being stolen; or
 - d. The covered "auto" is not recovered within 90 days of the theft.

P. WAIVER OF SUBROGATION

The following Paragraph is added to **SECTION IV – BUSINESS AUTO CONDITIONS, A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a written contract or written agreement with that person or organization.

All other terms and conditions of the policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOCIAL SERVICES - GENERAL LIABILITY EXTRA ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION I – COVERAGES, COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY,
Paragraph 2. **Exclusions** is amended as follows:

1. EXPECTED OR INTENDED INJURY EXTENSION

Paragraph a. **Expected Or Intended Injury** is deleted and replaced by the following:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

2. NON OWNED AIRCRAFT CHARTERED WITH CREW EXTENSION

Paragraph g. **Aircraft, Auto Or Watercraft** is amended to add an exception provision to the exclusion as follows:

- a. This exclusion does not apply to aircraft chartered with crew to any insured.
- b. This exception provision does not apply if the chartered aircraft is owned by any insured.
- c. This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess, or contingent.

3. NON OWNED WATERCRAFT EXTENSION

Subparagraph (2) of g. **Aircraft, Auto Or Watercraft** is deleted and replaced by the following:

- (2) A watercraft you do not own that is:

- (a) Less than 60 feet long; and
- (b) Not being used to carry persons or property for a charge;

This provision applies to any person who, with your consent, either uses or is responsible for the use of a watercraft.

This insurance is excess over any other valid and collectible insurance available to the insured for aircraft, auto or watercraft whether primary, excess, or contingent.

4. PROPERTY SOLD OR ABANDONED BY YOU

Subparagraph (2) of j. **Damage To Property** is deleted and replaced by the following:

- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises, and occurred from hazards that were known by you or should have reasonably been known by you at the time the property was sold, given away or abandoned.

5. DAMAGE TO PREMISES RENTED TO YOU

- a. The last Paragraph of 2. **Exclusions** is deleted and replaced by the following:

Exclusions c. through n. do not apply to damage to premises while rented to you, or temporarily occupied by you with the permission of the owner, when the damage is caused by fire, lightning, explosion, smoke, water or leaks from automatic fire protective systems. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

- b. Paragraph 6. of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises while rented to you, or temporarily occupied by you with permission of the owner, caused by fire, lightning, explosion, smoke, water or leaks from automatic fire protective systems. The Damage To Premises Rented To You limit will apply to all damage proximately caused by the same "occurrence", whether such damage results from fire, lightning, explosion, smoke, water or leaks from automatic fire protective systems, or any combination of any of these.

The Damage To Premises Rented To You Limit will be the higher of:

- (1) \$1,000,000; or
- (2) The amount shown on the Declarations for Damage To Premises Rented To You.

6. INVITEE PROPERTY DAMAGE LEGAL LIABILITY

- a. The following is added to subparagraph (4) of j. **Damage To Property**:

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However, this exclusion does not apply to "property damage" to your "invitee's" personal property in your care, custody or control caused by fire, lightning, explosion, smoke, water, leaks from automatic fire protective systems; or vandalism or malicious mischief:

- (a) On premises you own or rent or on ways next to premises you own or rent; and
- (b) Arising out of your operations.

For the purposes of this endorsement, personal property does not include any of the following:

- (c) Accounts, bills, currency, food stamps or other evidences of debt; deeds, money, notes, or securities;
- (d) Contraband, or property in the course of illegal transportation or trade; or
- (e) Blueprints, documents, drawings, manuscripts, records or valuable papers.

b. The following is added to **SECTION III – LIMITS OF INSURANCE**:

Subject to Paragraph 5. above, the most we will pay under Coverage A for the sum of all damages sustained by all "invitees" because of "property damage" to personal property of such "invitees" in your care, custody or control is \$15,000.

7. Paragraph 2. **Exclusions** is amended to add the following exclusion:

Willful Violation Of A Penal Code Or Statute

"Bodily injury", "incidental medical malpractice liability" or "property damage" arising out of the willful violation of a penal code, statute or regulation relating to the sale or distribution of pharmaceuticals by or with the knowledge or consent of the insured.

B. SECTION I – COVERAGES, COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY,

Paragraph 2. **Exclusions** is amended as follows:

1. Subparagraph a. **Knowing Violation Of Rights Of Another** is amended to add the following:

This exclusion does not apply to "personal and advertising injury" caused by malicious prosecution.

2. Subparagraph e. **Contractual Liability** is deleted and replaced by the following:

- e. Advertising injury for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

This provision does not apply if **COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY** is excluded by endorsement.

C. SUPPLEMENTARY PAYMENTS – COVERAGES A AND B, Paragraph 1. is amended as follows:

- 1. The limit in subparagraph b. is increased to \$2,500.
- 2. The limit in subparagraph d. is increased to \$500 a day.

D. ADDITIONAL INSURED

1. **SECTION II - WHO IS AN INSURED** is amended to include, as an additional insured, any person(s) or organization(s) for whom a written contract or written agreement between you and such person(s) or organization(s) exists and requires such person(s) or organizations(s) to be added as an additional insured to your Policy, but only for liability arising out of "bodily injury," "property damage" or "personal and advertising injury".

a. This endorsement applies only if the written contract or written agreement is:

- (1) Currently in effect or becomes effective during the term of this Policy; and
- (2) Executed prior to the "bodily injury," "property damage", or "personal and advertising injury".

b. The insurance afforded to such additional insured only:

- (1) Applies to the extent permitted by law; and
- (2) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

2. The insurance provided to the additional insured by this endorsement applies as follows:

a. The person(s) or organization(s) is an additional insured but only for liability caused in whole or in part by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with your premises owned by or rented to you; or
- (2) In the performance of your ongoing operations.

b. If the additional insured is an architect, engineer or surveyor, this insurance does not apply to "bodily injury," "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services including:

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- (1) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (2) Supervisory, inspection or engineering services.
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or the failure to render any professional services by or for you.
- c. If the additional insured is a lessor of equipment, this insurance only applies to liability caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such additional insured and does not apply to any "occurrence" which takes place after the equipment lease expires.
 - d. If the additional insured is a state or governmental agency or political subdivision and has issued a permit in connection with premises you own, rent or control, this insurance applies only with respect to the following hazards for which the state or political subdivision has issued such permit:
 - (1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decoration and similar exposures;
 - (2) The construction, erection or removal of elevators; or
 - (3) The ownership, maintenance, or use of any elevators covered by this insurance.
 - e. If the additional insured is a state or governmental agency or political subdivision that has issued a permit or authorization with respect to operations performed by you or on your behalf, then this insurance does not apply to:
 - (1) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
 - (2) "Bodily injury" or "property damage" included within the "products-completed operations hazard".
 - f. If the additional insured is a manager or lessor of insured premises, that person or organization is an additional insured only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you. This insurance does not apply to:
 - (1) Any "occurrence" that takes place after you cease to be a tenant in that premises; or
 - (2) Structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor of insured premises.
 - g. If the additional insured is grantor of franchise, that person(s) or organization(s) is only an additional insured with respect to liability as grantor of a franchise to you.
 - h. If the additional insured is an owner or other interest from whom land has been leased, that person(s) or organization(s) is only an additional insured with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you. This insurance does not apply to:
 - (1) Any "occurrence" that takes place after you cease to lease that land; or
 - (2) Structural alterations, new construction or demolition operations performed by or on behalf of the owner or other interest from whom land has been leased.
 - i. If the additional insured is a mortgagee, assignee, or receiver, that person(s) or organization(s) is only an additional insured with respect to their liability as such and arising out of the ownership, maintenance or use of the premises by you. This insurance does not apply to structural alterations, new construction or demolition operations performed by or for that mortgagee, assignee or receiver.
 - j. If the additional insured is a controlling interest, that person(s) or organization(s) is an additional insured but only for their liability arising out of:
 - (1) Their financial control of you; or
 - (2) Premises they own, maintain or control while you lease or occupy those premises;
 - (3) Their requirements for certain performance placed upon you, as a non-profit organization, in consideration for funding or financial contributions you receive from them; or

As respects Paragraph j.(2) above, this insurance does not apply to:

 - (4) Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization; or
 - (5) Any "occurrence" which takes place after you cease to be a tenant in that premises.

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- k. If the additional insured is a vendor, that person(s) or organization(s) is only an additional insured with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, but only if this Policy provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard")

(1) This insurance afforded to the vendor does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked under the instructions of the manufacturer for the sole purpose of inspection, demonstration, testing or the substitution of parts and then repackaged in the original container;
- (e) Any failure by the vendor to make inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of "your products";
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of "your products";
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in subparagraphs k.(d) or k.(f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of "your products";

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products;

- l. If the additional insured is a member or volunteer this insurance only applies with respect to their liability for your activities or activities they perform on your behalf;

- m. If the additional insured is a trustee or member of the Board of Governors this insurance only applies with respect to their duties as such;

3. With respect to the insurance afforded to an additional insured as provided in Paragraphs D.1. and D.2. above, the most we will pay on behalf of the additional insured is the amount of insurance;

- a. Required by the contract or agreement; or
 - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less;

4. With respect to the insurance afforded to an additional insured as provided in Paragraphs D.1. and D.2. above, this insurance shall not increase the applicable Limits of Insurance shown in the Declarations;

5. If an Additional Insured endorsement is attached to this Policy that specifically names a person or organization as an insured, then the above subsection D. ADDITIONAL INSUREDS does not apply to such person(s) or organization(s);

6. Paragraph 4. Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is amended to include:

For the purposes of the coverage provided by this endorsement, regardless of whether other insurance is available to an additional insured on a primary basis, this insurance will be primary and noncontributory if a written contract between you and the additional insured specifically requires that this insurance be primary and noncontributory;

Primary
wording:

E. SECTION II - WHO IS AN INSURED is amended as follows:

1. BROADENED NAMED INSURED

Paragraph 3. is deleted and replaced by the following:

3. Any business entity organized under the laws of the United States of America (including any state thereof, its territories or possessions), or Canada (including any province thereof) will qualify as a

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Named Insured if there is no similar insurance available to that business entity, provided that one or more Named Insureds shown in the Declarations have, at the inception of the policy period, an ownership interest in such business entity of more than 50%. However, if a Named Insured has an ownership interest in a business entity of more than 50%, the business entity will not be a Named Insured if such business entity is an insured under any other liability policy or would be an insured under such policy but for its termination or the exhaustion of its Limit of Insurance.

2. CO-EMPLOYEE COVERAGE AND CO-VOLUNTEER WORKERS

Subparagraphs (a), (b) and (c) under Paragraph 2.a.(1) do not apply to "bodily injury" for which insurance is provided as follows:

- a. Your "employees" are insureds with respect to "bodily injury" to a co-"employee" in the course of the co-"employee's" employment by you, or to your "volunteer workers" while performing duties related to the conduct of your business, provided that this coverage for your "employees" does not apply to acts outside the scope of their employment by you or while performing duties unrelated to the conduct of your business.
- b. Your "volunteer workers" are insureds with respect to "bodily injury" to a co-"volunteer worker" while performing duties related to the conduct of your business, or to your "employees" in the course of the "employees" employment by you, provided that this coverage for your "volunteer workers" does not apply while performing duties unrelated to the conduct of your business.

3. INCIDENTAL MEDICAL MALPRACTICE – EMPLOYED NURSES, EMT'S AND PARAMEDICS

- a. Paragraph 2.a.(1)(d) does not apply to any registered nurse, licensed practical nurse, emergency medical technician or paramedic employed by you, but only:
 - (1) While performing the services described in the definition of "incidental medical malpractice injury"; and
 - (2) When acting within the scope of their employment by you.Any "employees" rendering "Good Samaritan Services" will be deemed to be acting within the scope of their employment by you.
- b. For the purposes of determining the applicable Limits of Insurance, any act or omission, together with all related acts or omissions in the furnishing of services for an "incidental medical malpractice injury" to any one person, will be considered one "occurrence".
- c. This provision as provided in Paragraph 3.a. and 3.b. does not apply if:
 - (1) You are in the business or occupation of providing any of the services described in "incidental medical malpractice injury"; or
 - (2) An endorsement is attached to this Policy that specifically provides liability coverage for registered or licensed practical nurses.
- d. The insurance provided by Paragraph 3.a. and 3.b. shall be excess over any other valid and collectible insurance available to the insured, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by you to be excess of this Policy.

4. LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIP OR JOINT VENTURE

- a. The last Paragraph of SECTION II – WHO IS AN INSURED is deleted and replaced by the following:

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, limited liability company or trust that is not shown as a Named Insured in the Declarations. This subparagraph does not apply to your liability with respect to your conduct of the business of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.
- b. SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 4.b. **Excess Insurance** is amended to add the following:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, which is available to you for your liability with respect to your conduct of the business of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations and which is issued to such partnership or joint venture.

F. SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

1. KNOWLEDGE AND NOTICE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

The notification requirements of Paragraphs 2.a. and 2.b. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** apply only when the "occurrence", offense, claim or "suit" is known to:

- a. You, if you are an individual;
- b. A partner or member, if you are a partnership or joint venture;

- c. An officer or director, if you are an entity other than a partnership, joint venture or limited liability company;
- d. A member or manager, if you are a limited liability company; or
- e. An insurance manager, risk manager or other "employee" you designate prior to loss to give notice to us.

Knowledge of an "occurrence", offense, claim, or "suit" by your agent, servant or "employee" shall not in and of itself constitute knowledge by you unless an individual in one of the positions listed above has actual knowledge.

2. FAILURE TO DISCLOSE HAZARDS

The following is added to Paragraph 6. **Representations:**

If you unintentionally failed to disclose all hazards or prior "occurrences" existing at the inception of this Policy, but reported such error or omission to us as soon as practicable after discovery, we will not deny coverage under this Coverage Part because of such failure.

This provision does not affect our right to collect any additional premium or exercise our right of cancellation or non-renewal.

3. SPECIAL EVENT PREMIUM RATING

The following is added:

Special Event Premium Rating

- a. The rating for this endorsement includes the following special events:

- (1) All indoor special events with less than 2,500 attendees that are less than 24 hours in duration; and
- (2) All outdoor special events with less than 2,500 attendees that are less than 24 hours in duration.

- b. The following special events shall be separately rated for additional premium:

- (1) Any special event that exceeds the number or attendees or duration as shown in 3.a.(1) or 3.a.(2) above;
- (2) Any parade, fair or carnival; or
- (3) Any athletic, sporting or motor vehicle event including walks, runs, tournaments, demonstrations, rallies or competitive activities.

4. ~~WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US~~

~~The following is added to Paragraph 8: **Transfer Of Rights of Recovery Against Others To Us:**~~

~~We waive any right of recovery we may have against any person or organization when such waiver is required by a written contract that you have agreed to prior to any "occurrence", "suit" or the offense which caused the "bodily injury", "property damage" or "personal and advertising injury", provided that the "occurrence", "suit" or the offense which caused the "bodily injury", "property damage" or "personal and advertising injury" arises out of operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.)~~

G. SECTION V – DEFINITIONS is amended as follows:

1. BODILY INJURY

The definition of "bodily injury" in Paragraph 3. is deleted and replaced by the following:

"Bodily injury" means bodily injury, "incidental medical malpractice injury", mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

2. PERSONAL AND ADVERTISING INJURY

If **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY** is not otherwise excluded from this Policy, the definition in Paragraph 14.b. is deleted and replaced by the following:

- b. Malicious prosecution or abuse of process;

The following is added:

"Personal and advertising injury" also means "discrimination" or humiliation that results in injury to a natural person or their reputation, but only if such discrimination or humiliation is:

- (a) Not done intentionally by or at the direction of, or with the knowledge or consent of:
 - i. Any insured; or
 - ii. Any executive officer, director, stockholder, partner or member of any insured organization;
- (b) Not directly or indirectly related to the employment, former or prospective employment, termination of employment, or application for employment, of any person or persons by any insured;
- (c) Not prohibited by or held in violation of law, public policy, legislation, court decision or administrative

ruling;

(d) Not arising out of any "advertisement" by the insured.

3. INSURED CONTRACT

a. Subparagraph a. of the definition of "insured contract" is deleted and replaced by the following:

a. A contract for a lease of premises.

b. Subparagraph f. of the definition of "insured contract" is deleted and replaced by the following:

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" "property damage" or "personal and advertising injury" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

4. PRODUCTS-COMPLETED OPERATIONS HAZARD

The definition of "products-completed operations hazard" in Paragraph 16. is amended to add the following:

Includes all "bodily injury" and "property damage" arising out of your "designated products" on premises you own or rent; on premises used by you for a special event related to your business; or on connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad, next to any such premises you own or rent, or use for a special event.

For the purpose of this definition, "designated products" means apparel, buttons, CD's, DVD's, posters, stickers, tapes and other similar products used to promote a special event related to your business.

The following definitions are added:

5. "Discrimination" means:

- a. Unfair treatment of a natural person or organization including but not limited to discrimination based upon race, color, ethnic or national origin, religion, age, gender, marital status, sexual orientation or preference, pregnancy, physical disability or impairment, or mental disability or impairment; or
- b. Any act or conduct that would be considered "discrimination" under any applicable federal, state, or local statute, ordinance or law.

6. "Good Samaritan services" means those medical services rendered or provided in an emergency and for which no remuneration is requested or paid.

7. "Incidental medical malpractice injury" means "bodily injury", mental anguish, sickness or disease sustained by a person, including death resulting from any of these at any time, arising out of the rendering of, or failure to render, the following services:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages;
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances; or
- c. First aid.

8. "Invitee" means any of your clients, customers, guests, members, patrons, supporters, and "volunteer workers"; however, it does not include any person who is your "employee", "temporary worker" or independent contractor.

All other terms and conditions of the policy remain unchanged.

RESOLUTION NO. 70,971-N.S.

CONTRACT: TOTAL FUNDING ALLOCATION OF \$96,923.20 FOR FY 2024 AND FY 2025 TO THE YMCA OF THE EAST BAY FOR THE HEALTHY ME! PROGRAM

WHEREAS, the consumption of Sugar-Sweetened Beverages (SSBs) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, the City Council is committed to decreasing the consumption of SSBs and mitigating the harmful impacts of SSBs on the population of Berkeley; and

WHEREAS, on April 11, 2023, the City Council allocated a total of \$1,495,180 for FY 2024 and FY 2025 toward funding two-year grants to BUSD and community-based organizations for the purpose of reducing consumption of SSBs and addressing the effects of SSB consumption on health; and

WHEREAS, a Request for Proposal (RFP) for CBOs was released on April 28, 2023, and the YMCA of the East Bay submitted a proposal in response to the RFP, which was evaluated by the SSBPPE Commissioners; determined to be responsive in meeting all aspects of the scope of the work and selection criteria; and stood out among the best selection for this contract; and

WHEREAS, funds in the total amount of \$96,923.20 to the YMCA of the East Bay will cover the expenses to implement the YMCA Healthy Me! (YHME) program, disbursed as follows: \$48,461.60 in FY 2024 and \$48,461.60 in FY 2025; and

WHEREAS, funds should go towards activities described in the grantee's RFP, with the understanding that the number and scope of activities may need to be adjusted given funding constraints; and

WHEREAS, in addition to the Council's approval of the funding recommendation, the City Council action is required to authorize advances for select community agency receiving funds in FY 2024 and FY 2025. The advances are to be equivalent to 25% of the agency's allocation.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager, or her designee, is authorized to execute a contract and any amendments with the YMCA of the East Bay in the amount not to exceed \$96,923.20 for the two-year period of July 1, 2023 to June 30, 2025.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on July 25, 2023 by the following vote:

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

Noes: None.

Absent: Harrison.



Jesse Arreguin, Mayor

Attest:



Mark Numainville, City Clerk

***City of Berkeley, California* 2023 BUSINESS LICENSE**

This license must be conspicuously posted. Business owner is responsible for renewing this business license by the 28th of february each year.

Business Type SOCIAL ORGANIZATION & HEALTH G

Location 2001 ALLSTON WAY

YMCA OF THE EAST BAY
CHERI MEZZAPELLE
4300 LAKESIDE DR
RICHMOND, CA 94806

License Number

BL-026117

Expires On

12/31/23

Nbr of tags:

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This license is issued without verification that the license is subject to an exemption from licensing by the state. It shall not be construed as authorizing the conduct or continuance of any illegal or unlawful business nor does it constitute conformity with zoning, toxic code, fire, building permit and/or health requirements. - compliance with bmc 9.04 only