BERKELEY CITY COUNCIL AGENDA COMMITTEE
SPECIAL MEETING

BERKELEY CITY COUNCIL
SPECIAL MEETING
MONDAY, MARCH 21, 2011
2:30 P.M.

6th Floor Conference Room, 2180 Milvia Street
Committee Members:
Mayor Bates, Councilmembers Linda Maio and Gordon Wozniak
(Alternate: Councilmember Anderson)

AGENDA

1. Roll Call
2. Public Comment
3. Approval of Minutes: March 14, 2011
4. Review and Action of draft agendas for March 29, 2011
   a. 3/29/11 – 5:30 p.m. Special City Council Meeting
   b. 3/29/11 – 7:00 p.m. Regular City Council Meeting
5. Upcoming Council Items:
   a. Proposed Upcoming Council Worksessions
6. Land Use Calendar – accept and file
7. Adjournment – next meeting Monday, April 11, 2011
Additional items may be added to the draft agenda per Council Rules of Procedure.

Rules of Procedure Resolution No. 64,235-N.S., Article III, C3c - Agenda - Submission of Time Critical Items

Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee’s published agenda.

The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.

The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.

This is a meeting of the Berkeley City Council Agenda Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Agenda Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Agenda Committee meeting.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Deanna Despain, CMC, City Clerk, 981-6900.

COMMUNICATION ACCESS INFORMATION:
This meeting is being held in a wheelchair accessible location.
To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6346(V) or 981-7075 (TDD) at least three business days before the meeting date.
Please refrain from wearing scented products to this meeting.

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on March 17, 2011.

Deanna Despain, CMC, City Clerk
BERKELEY CITY COUNCIL AGENDA COMMITTEE
SPECIAL MEETING MINUTES

BERKELEY CITY COUNCIL
SPECIAL MEETING
MONDAY, MARCH 14, 2011
2:30 P.M.

6th Floor Conference Room, 2180 Milvia Street
Committee Members:
Mayor Bates, Councilmembers Linda Maio and Gordon Wozniak
(Alternate: Councilmember Anderson)

1. Roll Call: 2:30 p.m. – Present: Councilmember Anderson and Mayor Bates.
   Absent: Councilmember Maio.

2. Public Comment: 1 speaker.

3. M/S/C (Bates/Anderson) to approve the minutes of February 28, 2011.

4. Review and Action of draft agendas for March 22, 2011
   a. M/S/C (Bates/Anderson) to approve the agenda of the 3/22/11 – 5:30 p.m.
      Special City Council Meeting.
   b. M/S/C (Bates/Anderson) to approve the agenda of the 3/22/11 – 6:30 p.m.
      Regular Redevelopment Agency Meeting.
   c. M/S/C (Bates/Anderson) to approve the agenda of the 3/22/11 – 7:00 p.m.
      Regular City Council Meeting revised to reflect the following:
         • Item 6. 2011 Berkeley Earth Day Festival: Relinquishment of Council Office
           Budget Funds to General Fund and Grant of Such Funds – Mayor Bates added
           as a co-sponsor.
         • Item 9. Proclamation of the 9th Annual Holocaust Remembrance Day Event –
           Revised report submitted.
         • Item 10. Holocaust Remembrance Day Event: Relinquishment of Council
           Office Budget Funds to General Fund and Grant of Such Funds – Revised report
           submitted.
         • Item 14. Consolidation of City Commissions for Workflow Efficiency and
           Staff Cost Reduction – Removed from Agenda.

5. Upcoming Council Items:
   a. Proposed Upcoming Council Worksessions

6. Land Use Calendar – accept and file

7. Adjournment: 2:35 p.m.
DRAFT PROCLAMATION
CALLING A SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

TUESDAY, MARCH 29, 2011
5:30 P.M.
Council Chambers – 2134 Martin Luther King Jr. Way

Preliminary Matters

Roll Call

Public Comment – Items on this agenda only

Worksession:

1. Refuse/Capital Improvement Plan
   From: City Manager
   Contact: Andrew Clough, Public Works, 981-6300

Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 24th day of March, 2011.

Tom Bates, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting.

ATTEST:

Deanna Despain, CMC, City Clerk

Date: 03/24/11
NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 65009(c)(1)(E), no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed and served on the City more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

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Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6908 or clerk@cityofberkeley.info for further information.

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Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.
This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Deanna Despain, City Clerk, 981-6900.

The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

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

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

Public Comment on Non-Agenda Matters: Five persons selected by lottery will have two minutes each to address matters not on the Council agenda. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a name card to the City Clerk in person at the meeting location and prior to commencement of that meeting. Five cards will be drawn by the City Clerk to determine the speakers who will be allowed to comment during the first round of public comment on non-agenda matters. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Name cards are not required for this second round of public comment on non-agenda matters.
Public Comment on Consent Calendar and Information Items Only: The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Up to three speakers will be entitled to two minutes each to speak in opposition to or support of a Consent Calendar Item. The Presiding Officer will ask additional persons in the audience to stand to demonstrate their respective opposition to or support of the item.

In the event that there are more than three persons wishing to speak either in opposition to or support of a “Consent” item, the Presiding Officer will move the item to the beginning of the Action Calendar. Prior to moving the item, the Presiding Officer will fully inform those persons in the audience of this process.

Consent Calendar

The Council will first determine whether to move items on the agenda for action or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to action. Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

After hearing from public speakers regarding items remaining on the Consent Calendar, any Council Member may move any Information or Consent item to “Action”, however no additional items can be moved onto the Consent Calendar at that point. Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items removed from the Consent Calendar to the Action Calendar for additional public comment, at the time the matter is taken up during the Action Calendar, public comment will be limited to persons who have not previously addressed that item during the Consent Calendar related public comment period.

1. Check for 2nd reading Ordinances and add them here.

2. Contract: Youth Engagement Advocacy Housing for Community Education & Supports Project
   From: City Manager
   Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Youth Engagement Advocacy Housing to provide services and supports to transition aged youth (aged 18-25) for the period November 1, 2010, through June 30, 2011 in an amount not to exceed $26,520.
   Financial Implications: See report
   Contact: Beth Meyerson, Health Services, 981-5100

3. Contract: State Department of Community Services and Development for the 2011 Low-Income Home Energy Assistance Program
   From: City Manager
   Recommendation: Adopt a Resolution:
   1. Authorizing the City Manager or his designee to execute a contract and any amendments with the State Department of Community Services and Development for the Low-Income Home Energy Assistance Program (LIHEAP) to receive revenues and provide weatherization and bill payment assistance to eligible residents of Berkeley, Albany, and Emeryville in the amount of $172,604 for the period January 1, 2011 through December 31, 2011, and
   2. Authorizing the City Manager to designate a representative to sign required fiscal and programmatic reports.
   Financial Implications: See report
   Contact: Jane Micallef, Housing, 981-5400
4. **Contract: Reject the Bid Protest of BHM Construction, Inc. and award of contract to Fine Line Construction for Renovation and Construction of the Claremont Branch Library**
   From: City Manager
   **Recommendation:** Adopt a Resolution:
   1. Approving plans and specifications for the Berkeley Public Library Claremont Branch Improvement Project;
   2. Rejecting the Bid Protest of BHM Construction, Inc.;
   3. Accepting the bid of Fine Line Construction; and
   4. Authorizing the City Manager to execute a contract, amendments, and any extensions or change orders until completion of the project in an amount not to exceed $3,300,000 which includes a contingency of approximately 11%.
   **Financial Implications:** See report
   Contact: Donna Corbeil, Library, 981-6100

5. **Contract No. 7760 Amendment: Siemens Industry, Inc. for Fire and Life Safety Systems Maintenance**
   From: City Manager
   **Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 7760 with Siemens Industry, Inc. to provide repairs to essential fire and life safety systems monitoring equipment, increasing the contract amount by $8,500 for a total contract amount not to exceed $58,500.
   **Financial Implications:** Building Purchases and Management Fund - $8,500
   Contact: Andrew Clough, Public Works, 981-6300

6. **Contract No. 7810A Amendment: Noll & Tam Architects and Planners for Architectural Services for the Transfer Station PC Scale Project**
   From: City Manager
   **Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 7810A in an amount not to exceed $25,000 with Noll & Tam Architects and Planners for architectural and electrical engineering services for the Transfer Station PC Scale Project, for a total contract not to exceed $188,000 and extending the contract period three months, through December 31, 2011.
   **Financial Implications:** See report
   Contact: Andrew Clough, Public Works, 981-6300

7. **Contract No. 8479 Amendment: Ghilotti Bros / Cooper Crane, JV for Marina Pile Replacement Project**
   From: City Manager
   **Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 8479 with Ghilotti Bros / Cooper Crane, JV, for the Marina Pile Replacement Project, increasing the contract not to exceed amount by $202,000, for a total contract amount not to exceed $490,000.
   **Financial Implications:** Marina Operations/Maintenance Fund - $202,000
   Contact: Andrew Clough, Public Works, 981-6300
8. **Contract: Community Design + Architecture, Inc. for Architectural and Engineering Services for the West Street Pathway Project**  
   **From:** City Manager  
   **Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments, extensions or other change orders with Community Design + Architecture, Inc. in an amount not to exceed $296,370 to provide architectural and engineering design services for the West Street Pathway project for the period March 30, 2011 through March 30, 2013.  
   **Financial Implications:** See report  
   **Contact:** Andrew Clough, Public Works, 981-6300

9. **Declaration of Intent: FY 2012 Street Lighting Assessment**  
   **From:** City Manager  
   **Recommendation:** Adopt a Resolution to:  
   1. Approve the Engineer's Report, Street Lighting Assessment District 1982-1, dated February 2011;  
   2. Set a public hearing to be held before Council at its May 17, 2011 meeting; and  
   3. Authorize the City Clerk to publish the notice of the public hearing for FY 2012 Levy of Assessments of Street Lighting Assessment District No. 1982-1.  
   **Financial Implications:** See report  
   **Contact:** Andrew Clough, Public Works, 981-6300

10. **Proposition 1B (Transportation Bond) Funding for Sacramento Street Overlay Project from University Avenue to Dwight Way**  
    **From:** City Manager  
    **Recommendation:** Adopt a Resolution approving use of Proposition 1B 2009 Allocation funding of $261,346 for the Sacramento Street Overlay Project from University Avenue to Dwight Way.  
    **Financial Implications:** See report  
    **Contact:** Andrew Clough, Public Works, 981-6300

11. **Contract: MCK Services, Inc. for Street Rehabilitation FY 2011 Project**  
    **From:** City Manager  
    **Recommendation:** Adopt a Resolution approving plans and specifications for the Street Rehabilitation FY 2011 Project, 11-10560-C; accepting the bid of MCK Services, Inc. and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed $1,557,466.  
    **Financial Implications:** See report  
    **Contact:** Andrew Clough, Public Works, 981-6300
Consent Calendar

12. Alameda Countywide Transportation Plan Update & Transportation Expenditure Plan Development
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit a list of transportation projects and programs, consistent with City Council direction as advised by the Transportation Commission, to the 2012 Alameda Countywide Transportation Plan, which, upon adoption, will be included in the Metropolitan Transportation Commission's Regional Transportation Plan.
Financial Implications: None
Contact: Andrew Clough, Public Works, 981-6300

13. Sweatfree Procurement for Berkeley Schools
From: Commission on Labor
Recommendation: Adopt a Resolution encouraging Berkeley Unified School District to adopt a Sweatfree Schools program.
Financial Implications: None
Contact: Delfina Geiken, Commission Secretary, 981-5400

14. Caldecott 4th Bore Settlement Project Recommendations
From: Transportation Commission
Recommendation: Adopt a Resolution:
1. Approving the July 8, 2010 list of priority projects, as approved by vote of the Transportation Commission on July 15, 2010, as the City's preferred mitigations to environmental impacts from the construction of the 4th Bore of the Caldecott Tunnel; and
2. Authorizing the City Manager to accept $2 million from Caltrans as reimbursements for Ashby corridor mitigation projects according to the terms outlined in the January 2009 settlement agreement with the 4th Bore Coalition; and
3. Authorizing the advance of General Funds to cover costs until reimbursement from Caltrans; and
4. Directing staff to implement as many of these projects as feasible in priority order for an amount not to exceed the $2 million of committed settlement funds, with the objective of completing project delivery in approximately 2 years so mitigations can be in place prior to the opening of Caldecott 4th Bore to traffic.
Financial Implications: See report
Contact: Farid Javandel, Commission Secretary, 981-6300

15. Water Emergency Transportation Authority (WETA) Ferry Overflow Parking Plan: Lease Conditions
From: Waterfront Commission
Recommendation: Refer to the City Manager the recommendations of the Waterfront Commission regarding overflow parking conditions for the lease with WETA for the proposed Ferry Terminal at the Berkeley Marina.
Financial Implications: None
Contact: John Mann, Commission Secretary, 981-6700
Consent Calendar

16. Audit: Police Property and Evidence Room: Further Improvements
   From: Auditor
   Recommendation: Request the City Manager to report back on or before September 27, 2011 on the implementation status of the City Auditor's recommendations. Report back no later than every six months until fully implemented.
   Financial Implications: See report
   Contact: Ann-Marie Hogan, Auditor, 981-675

Council Consent Items

17. Supporting Assembly Bill 1081, Regarding Local Government Participation in the Federal Secure Communities Program
   From: Councilmember Arreguin
   Recommendation: Adopt a Resolution supporting Assembly Bill (AB) 1081, authored by Assemblymember Tom Ammiano, which gives California local governments the discretion to decide whether to participate in the federal Secure Communities and would require those local governments that do participate in the Secure Communities program to implement plans to safeguard against racial profiling and exceptions to implementation to protect victims of domestic violence, juveniles and limiting the use of fingerprint information to only those convicted of a crime.
   Financial Implications: None
   Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

18. Mario's La Fiesta: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds
   From: Councilmembers Arreguin and Worthington
   Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $250 to Mario’s La Fiesta for the purposes of catering food to the City of Berkeley’s Cesar E. Chavez Commemoration celebration. The $250 total shall be equally relinquished from the discretionary Council Office Budgets of Councilmembers Jesse Arreguin and Kriss Worthington and any other Councilmembers who would like to contribute.
   Financial Implications: Councilmembers' Discretionary Fund - $250
   Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

19. Proclamation Congratulating the Winners of the 2011 César E. Chávez Commemoration Writing Contest
   From: Councilmembers Arreguin and Worthington
   Recommendation: Adopt a Proclamation to be awarded to the winners of the 2011 César E. Chávez Commemoration Writing Contest.
   Financial Implications: None
   Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
Council Consent Items

20. Honoring Maudelle Shirek’s 100 Year of Life and Service to the Community
   From: Councilmembers Worthington and Anderson
   Recommendation: Adopt a Proclamation Declaring Maudelle Shirek Day as June 18th and honoring her for a Lifetime of Service to help others.
   Financial Implications: Unknown
   Contact: Kriss Worthington, Councilmember, District 7, 981-7170

21. Maudelle Shirek’s 100th Birthday Celebration: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds
   From: Councilmembers Worthington and Anderson
   Recommendation: Adopt a Resolution to approve the expenditure of up to $100 per Councilmember to Maudelle Shirek’s 100th birthday celebration, with funds relinquished to the City’s general fund for this purpose from each Councilmember’s discretionary Council Office Budget.
   Financial Implications: Councilmember’s Discretionary Fund - $100
   Contact: Kriss Worthington, Councilmember, District 7, 981-7170

22. San Francisco LGBT Pride: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds
   From: Councilmember Worthington
   Recommendation: Adopt a Resolution to approve the expenditure of $230 to the San Francisco LGBT Pride with funds relinquished to the City's general fund for this purpose that the City of Berkeley be represented at the SF LGTB Pride Parade and for costs of having a contingent in the parade from Councilmember Worthington’s discretionary Council Office Budget.
   Financial Implications: Councilmember's Discretionary Fund - $230
   Contact: Kriss Worthington, Councilmember, District 7, 981-7170

23. Support AARP’s Petition to Oppose Social Security and Medicare Benefit Cuts
   From: Councilmember Worthington
   Recommendation: Send a letter to Senator Dianne Feinstein and Senator Barbara Boxer supporting AARP’s petition to oppose cuts to Social Security and Medicare benefits.
   Financial Implications: See report
   Contact: Kriss Worthington, Councilmember, District 7, 981-7170

24. City Sponsorship of the 2011 Telegraph LastSundays Fest
   From: Councilmember Worthington
   Recommendation: Adopt a Resolution establishing that the City of Berkeley co-sponsor the 2011 Telegraph LastSundays Fests in collaboration with the Telegraph Business Improvement Association.
   Financial Implications: None
   Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Council Consent Items

25. Taxicab Improvements in Berkeley and Request for Formal Response to Berkeley Taxi Cab Association  
From: Councilmember Worthington  
Recommendation: Refer to the City Manager a comprehensive number of issues concerning taxi operations in the City of Berkeley, and request that the City Manager formally respond, in writing, to Berkeley Taxi Cab Association's October 4 letter and accompanying grievances.  
Financial Implications: See report  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170

26. Send a Letter to AC Transit Asking to Implement Ease-of-Boarding Features of BRT  
From: Councilmember Worthington  
Recommendation: Send a letter to AC Transit, asking to participate in two key aspects of Bus Rapid Transit (BRT): level boarding and prepaid boarding.  
Financial Implications: To be funded by regional or state transit funds.  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170

27. City Manager Referral: Replace Ineffective Shattuck and Oregon Street Sign with an Effective Pedestrian Sign  
From: Councilmember Worthington  
Recommendation: Referral to the City Manager to consider the replacement of an ineffective Shattuck and Oregon street sign with an effective pedestrian sign.  
Financial Implications: Unknown  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action Calendar

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up. Where an item was moved from the Consent Calendar to Action no speaker who has already spoken on that item would be entitled to speak to that item again.

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

Information Reports

From: Auditor  
Contact: Ann-Marie Hogan, Auditor, 981-6750
Public Comment – Including Items Not Listed on the Agenda –

Adjournment

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

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Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of the civic center located at 2180 Milvia Street as well as posted on the City's website at http://www.cityofberkeley.info.

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 weekdays
To: Honorable Mayor and Members of the City Council

From: Commission on Labor

Submitted by: Delfina Geiken, Secretary, Commission on Labor

Subject: Sweatfree Procurement for Berkeley Schools

RECOMMENDATION
Adopt a Resolution encouraging Berkeley Unified School District to adopt a Sweatfree Schools program.

FISCAL IMPACTS OF RECOMMENDATION
No impacts; this is an advisory resolution.

CURRENT SITUATION AND ITS EFFECTS
The Commission approved the following motion at their Regular Meeting of January 19, 2011:

M/S/C (Tregub/Perezvelez) to recommend to City Council that it encourage and work with Berkeley Unified School District to adopt a Sweatfree Schools Program.

Ayes: Freeman, Monk-Hallberg, Nardinelli, Perezvelez, Stadler, Tregub, Worthman, Zucker (Unanimous)

Noes: None

Absent: None

BACKGROUND
On July 17, 2007, the City of Berkeley signed on as a founding member of the Sweatfree Communities, Inc., Resolution 63,796–N.S. On June 23, 2009, the City Council adopted a first reading of the Ordinance adding Chapter 13.97 to the BMC mandating that vendors supplying apparel to the City of Berkeley provide information regarding the factories where the goods are manufactured.

The Commission on Labor after having worked for over two years to develop the ordinance in partnership with the Peace and Justice Commission continuously reviews and gathers information regarding the local policy and as such is very interested in how other institutions can join the City of Berkeley in developing policies that support Sweatfree procurement.
RATIONALE FOR RECOMMENDATION
The City of Berkeley has a longstanding partnership with the Berkeley Unified School District. The Commission on Labor would like Council to encourage the district to join the other 114 school districts and 4 individual high schools in the United States in adopting a Sweatfree procurement policy. In California, Santa Monica-Malibu Unified School District and the Los Angeles Unified School District have both adopted these policies.

ALTERNATIVE ACTIONS CONSIDERED
No other actions were considered.

CITY MANAGER
The City Manager takes no position on the content and recommendations of the Commission’s Report but recommends that this matter be referred to the Berkeley Unified School District Superintendent for review and possible action.

CONTACT PERSON
Delfina Geiken, Commission Secretary, H&CSD, 981-7551

Attachments:
1: Resolution
RESOLUTION NO. -N.S.

ENCOURAGING THE BERKELEY UNIFIED SCHOOL DISTRICT TO ADOPT A SWEATFREE PROCUREMENT POLICY

WHEREAS, in July 2007 the City of Berkeley was a founding member of the Sweatfree Communities; Inc., and

WHEREAS, on June 23, 2009 City Council adopted a first reading of the Sweatshop Free procurement ordinance; and

WHEREAS, in the United States, 114 school districts and 4 individual high schools have adopted Sweatfree procurement policies; and

WHEREAS, in the State of California to-date, Santa Monica-Malibu Unified School District and the Los Angeles Unified School District have both adopted these policies.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley encourages Berkeley Unified School District to adopt a Sweatfree Procurement Policy.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley, or its designee, will work with the school district to develop the policy.
CONSENT CALENDAR
March 29, 2011

To: Honorable Mayor and Members of the City Council

From: Transportation Commission

Submitted by: Farid Javandel, Secretary, Transportation Commission

Subject: Caldecott 4th Bore Settlement Project Recommendations

RECOMMENDATION

Adopt a Resolution:

1. Approving the July 8, 2010 list of priority projects, as approved by vote of the Transportation Commission on July 15, 2010, as the City’s preferred mitigations to environmental impacts from the construction of the 4th Bore of the Caldecott Tunnel; and

2. Authorizing the City Manager to accept $2 million from Caltrans as reimbursements for Ashby corridor mitigation projects according to the terms outlined in the January 2009 settlement agreement with the 4th Bore Coalition; and

3. Authorizing the advance of General Funds to cover costs until reimbursement from Caltrans; and

4. Directing staff to implement as many of these projects as feasible in priority order for an amount not to exceed the $2 million of committed settlement funds, with the objective of completing project delivery in approximately 2 years so mitigations can be in place prior to the opening of Caldecott 4th Bore to traffic.

SUMMARY

In January 2009 Caltrans reached a settlement with the 4th Bore Coalition, a collection of neighborhood and advocacy groups, to fund $2 million of improvements on the State Route 13 (Ashby Avenue) corridor in Berkeley with the objective of mitigating anticipated traffic impacts from the Caldecott 4th Bore tunnel. The list of actual improvements was to be developed and implemented by the City of Berkeley with input from the 4th Bore Coalition, and subject to review and approval of individual projects by Caltrans.

City staff and the Transportation Commission have worked with the Coalition and held a series of public meetings to develop and prioritize a list of potential projects to be funded and implemented by the settlement agreement. On July 15, 2010 the
Transportation Commission voted to recommend the prioritized project list to the City Council. With Council approval, staff will begin working with Caltrans to develop, approve, and deliver the top priority (Year 1) projects on the list, and use any remaining funds for projects in years 2, 3, and 4 in that order, until funds are exhausted.

FISCAL IMPACTS OF RECOMMENDATION

The Caldecott 4th Bore Improvement project is jointly managed by Caltrans, the Contra Costa Transportation Authority (CCTA), and the Alameda County Transportation Commission (ACTC). On January 6, 2010 CCTA and ACTC entered into an agreement that provides for ACTC to approve invoices submitted by the City of Berkeley for reasonable progress in implementing enhancements arising from the settlement agreement, and for CCTA to pay reimbursable expenses within 30 days after approval by ACTC, for a total not to exceed $2 million. Per the 4th Bore settlement, funds to be used for State Route 13/Ashby Corridor public improvements include $725,000 previously committed by Caltrans to the City of Berkeley for Signal improvements on SR 13. Reimbursable costs include capital costs and necessary staff, consultants, and contractor time to deliver the projects.

Based on the current project priority list, funding will be allocated as follows:

- FY 2011 .................$250,000
- FY 2012 .............$1,000,000
- FY 2013 .............$750,000
- Total .................$2,000,000

Funding for the FY 2011 budget will be appropriated in the Caltrans Fund (674) Project Code 11TP11 through an adjustment to the annual appropriations ordinance. Funding in subsequent fiscal years also will be appropriated, as needed, through the annual appropriations ordinance.

Caltrans and the Caldecott 4th Bore Coalition allocated $2 million toward projects in Berkeley on a reimbursement basis that the City now has to implement. No City funds or in-kind resources have been allocated toward the project; however, the City has to front the initial $2 million to initiate the projects. Accordingly, there will be a loss of interest income for the period that the City is advancing funds prior to reimbursement from the State. The City will seek reimbursement from Caltrans on a monthly basis to ensure that all funds are fully recovered and that no City funds are expended on the project.

CURRENT SITUATION AND ITS EFFECTS

Caltrans began construction on the 4th bore of the Caldecott Tunnel in August 2010 and expects to complete the project in 2013. State Highway 13/Ashby Avenue is a major access into Berkeley from local freeways. City residents have made a clear appeal to the Transportation Commission for help in improving the safety of the pedestrian, auto, and bicycle routes in this corridor before the completion of the new 4th bore lanes. Safer
pedestrian crossings and more direct access to schools, transit, bike routes and local amenities were emphasized.

In addition, Caltrans is expected to repave part of Ashby Avenue in 2011, and if any of the priority projects can be coordinated with the repaving, it may be possible to increase the efficiency of the available financial resources. If funding of any projects on this list is shifted in whole or part to other grant funded sources, it may be possible to complete more of the projects on the prioritized list. Therefore the estimated cost of the projects on the list adds up to more than the $2 million settlement funds available from Caltrans. This assures that the full $2 million in available funds can be spent, and does not commit delivery of any projects beyond those that can be funded by the settlement funds.

The Fourth Bore Coalition, City staff, and the Transportation Commission have collaborated in a public process to select and assign priorities to a list of potential public improvement projects that our Traffic Engineers recommend to enhance pedestrian and bicycle safety in the Highway 13/Tunnel Road/Ashby Avenue Corridor in Berkeley.

With Council approval of the priority project list, staff will be able to begin the process of coordinating with Caltrans on project approvals and details, and make the most efficient allocation of resources with an emphasis on constructing the greatest number of high priority projects with the available funding.

BACKGROUND

Since 1998, when Caltrans and the Metropolitan Transportation Commission (MTC) first began to study the seismic safety of and traffic conditions in the Caldecott Tunnel, Council recognized the potential for increased traffic pressures on Berkeley’s busy Ashby Avenue corridor, and has been consistent in expressing its concerns about Caltrans proposals to add a 4th bore:

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 15, 1998</td>
<td>Rejected concept of study to add 4th Bore and called upon MTC and Caltrans not to participate in feasibility study.</td>
</tr>
<tr>
<td>July 18, 2000</td>
<td>Approved Transportation Commission recommendations to oppose the 4th bore proposal; oppose MTC or Caltrans use of County or City funds to plan or construct tunnel; if tunnel is built, develop and implement a mitigations program with City of Berkeley.</td>
</tr>
<tr>
<td>December 19, 2000</td>
<td>Sent letter to CA Transportation Commission protesting its funding of preliminary work on 4th bore before MTC study is complete.</td>
</tr>
<tr>
<td>July 10, 2001</td>
<td>Asked BART to consider rescinding endorsement of 4th bore and work with other transit agencies and MTC to develop services for reverse-commute trips on transit, and develop jobs and housing around stations.</td>
</tr>
</tbody>
</table>

The Lawsuit

At its November 15, 2007 meeting, the Transportation Commission learned that the project had been fully funded and that the City of Oakland had entered a lawsuit against
the EIR that could result in mitigation funding. The consensus of the Commission was that although they found the project environmental analysis flawed, and would support a lawsuit by the City of Berkeley, there would not be adequate time to produce a formal report to Council within the required deadlines. No action was taken.

The Caldecott Tunnel Fourth Bore Coalition (FBC), a group of neighborhood and civic organizations in Berkeley and Oakland,1 sued Caltrans in November 2007 over its approval to build the Caldecott improvement projects. The unmitigated adverse impacts to the Highway 13 corridor in Berkeley were among their concerns.

The lawsuit was settled in January 2009. The settlement agreement (Attachment 2) included a commitment of “$2 million to fund improvements on the State Route 13 corridor in the City of Berkeley, including but not limited to: Signalization and signal light timing, bicycle transit improvements, pedestrian improvements, and other such improvements as may be provided to Berkeley by a separate list from the FBC.”

The agreement also stated that “Projects will be selected by the City of Berkeley, with input of FBC, and subject to Caltrans’ approval for safety and feasibility… This amount includes the $725,000 previously committed to the City of Berkeley for local street improvements.”

The Process of Identifying Projects

The FBC initially identified proposed improvements using data from the Draft and Final Environmental Assessment and Impact Reports (FEA/EIR) for the Caldecott Improvement Project, the Berkeley Bicycle Master Plan, and the draft Berkeley Pedestrian Master Plan, and through a series of neighborhood and FBC meetings regarding existing conditions for pedestrians, bicyclists and motorists along the Highway 13 corridor.

The Transportation Commission held a public workshop on College Avenue in May 2009 to obtain public comments on possible projects, and expand its mailing list to reach FBC member networks. About 50 members of the community attended and identified the need to: calm traffic along the Tunnel Road/Ashby corridor; provide safer walking conditions to schools, transit stops, and local commercial areas; and provide safer conditions for bicyclists, particularly between the Oakland/Berkeley border on the east and Hillegass and Ashby on the west. They also asked the City to use the mitigation funds on projects in closer proximity to the Tunnel than to Interstate 80, since this area would be impacted most by traffic from the expansion; and not to select projects based solely on project readiness. Several commissioners supported community members’ request on project readiness, concurring that the easiest projects might not offer as much public benefit as others.

Following the workshop, City consultants Fehr & Peers developed cost estimates and next steps for the potential projects. The consultants used a list of projects identified by the City and, as specified in the settlement agreement, a list provided by FBC in a December 2009 letter to the City, which included photos of conditions on Ashby Avenue and Tunnel Road. Descriptions of projects in the City’s list can be found in the Pedestrian and Bicycle Master Plans.

At its June 17, 2010 regular meeting, the TC received both written and verbal comments from the community and took the following action:

It was moved/seconded and adopted (Bruzzone/Goddard) that Staff and Chair Smulka work together on 4th Bore Coalition projects lists to create one consolidated list, adding a Russell/College signal to the list, with emphasis on north/south bike crossings, adding the Commission’s rationale to the motion as bullet points: Safety, Traffic, and Improvements for other modes, and bring the resulting proposal back to the Commission on the July agenda for discussion and approval.

(Ayes: Betancourt, Broaddus, Bruzzone, Froehle, Goddard, Katz, McCaughrin, Smulka; Noes: None; Abstain: None; Absent: Syed)

Commission Chair Smulka worked with staff to combine projects on both lists and provide cost estimates entitled “4th Bore-Related Capital Improvement Projects – Summary by Year,” dated July 8, 2010 that was presented to the Transportation Commission at its July 15, 2010 regular meeting.

At the July 15 meeting, after hearing public comment and discussion, it was moved/seconded and adopted (Bruzzone/McCaughrin) that the Commission recommends the amended project list to Council and that staff provide the Commission with semi-annual updates on the status of the projects beginning in January 2011.

(Ayes: Broaddus, Bruzzone, Froehle, Goddard, Katz, McCaughrin, Smulka, Syed; Noes: None; Abstain: None; Absent: Betancourt)

RATIONALE FOR RECOMMENDATION

The Commission’s rationale for selection and prioritization of the final mitigation projects list was clearly expressed as safety, traffic, and improvements for alternate modes of travel. The Commission concurred with staff recommendation that the final priority list should include more projects than the $2 million would fund, to allow some additional choices in the event that some of the higher priority projects prove infeasible for any reason and are abandoned. If any Year 1 project (or its variant) is subsequently determined to be infeasible and implementation is impossible, the associated unspent funds would be available for Year 2 through Year 4 projects further down the priority list.

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2 December 20, 2009 letter from Dean Metzger, President, Claremont-Elmwood N.A., to Farid Javandel and Matt Nichols, Department of Public Works, regarding Caldecott Improvement Project Mitigation Funds on Highway 13 in Berkeley
The Commission hopes the City will be able to take advantage of opportunities to conserve resources by coordinating some of these mitigation projects with other construction planned for the Ashby corridor, such as Caltrans resurfacing Ashby Avenue or Utility Undergrounding projects.

ALTERNATIVE ACTIONS CONSIDERED

If the City chooses not to accept the $2 million settlement funds, the Caldecott Tunnel 4th Bore project could proceed without mitigations on the State Route 13 Corridor in Berkeley. This would not address potential adverse effects on local traffic, bicycle, and pedestrian operations resulting from the Caldecott 4th Bore project.

The City could proceed with a priority list that places greater emphasis on enhancing through-traffic capacity on the State Route 13 Corridor. However, the Transportation Commission and staff both concluded that it would be preferable to emphasize safety of local users of the State Route 13 Corridor.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission’s Report.

CONTACT PERSON

Farid Javandel, Transportation Manager and Commission Secretary, Public Works, 981-7061

Attachments:
1: Resolution
    Exhibit A: Caldecott Tunnel 4th Bore-Related Capital Improvement Projects – Summary by Year & Priority, Updated July 8, 2010
2: FBC letter to City of Berkeley (Mayor Bates and Phil Kamlerz) dated February 27, 2009
3: Fourth Bore Coalition settlement final agreement
4: Cooperative Agreement No. 01CS.01 between Contra Costa Transportation Authority and Alameda County Transportation Commission dated January 6, 2010
5: Caldecott Tunnel 4th Bore-Related Capital Improvement Projects – Condensed Summary by Year, Updated July 8, 2010
RESOLUTION NO. ##,###-N.S.

CALDECOTT 4TH BORE SETTLEMENT PROJECTS

WHEREAS, at its November 15, 2007 meeting the City of Berkeley Transportation Commission reached a consensus that they found the environmental analysis for the proposed Caldecott Tunnel 4th Bore to be flawed and would support a lawsuit by the City of Berkeley but lacked time to take formal action within the required deadlines; and

WHEREAS, in November 2007 the Caldecott Tunnel Fourth Bore Coalition a group of neighborhood and civic organizations in Berkeley and Oakland sued Caltrans over its approval to build a 4th Bore to the Caldecott Tunnel; and

WHEREAS, in January 2009 Caltrans reached a settlement with the Fourth Bore Coalition to fund $2,000,000 of improvements on the State Route 13 corridor in Berkeley in order to mitigate impacts of increased traffic associated with the 4th bore of the Caldecott Tunnel; and

WHEREAS, the settlement provided that the funds would be given to the City of Berkeley to implement a list of improvements to be developed by the City with input from the Fourth Bore Coalition and with approval from Caltrans; and

WHEREAS, $2 million in funding will be allocated as follows: FY 2011 $250,000, FY 2012 $1,000,000, FY 2013 $750,000; and

WHEREAS, funding in FY 2011 budget will be appropriated in the Caltrans Fund (674) Project Code 11TP11 through an adjustment to annual appropriations ordinance, and funding in subsequent years will be appropriated through the annual appropriations ordinance; and

WHEREAS, at its July 15, 2010 the Transportation Commission voted to send to the City Council for approval a prioritized list of projects (Exhibit A) for implementation using the $2,000,000 settlement funds.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the prioritized list of projects in Exhibit A as the City’s preferred mitigations to address impacts from construction of a 4th Bore of the Caldecott Tunnel is hereby approved.

BE IT FURTHER RESOLVED that The City Manager is authorized to enter into a cooperative agreement with the Alameda County Transportation Commission to accept $2,000,000 in settlement funds from Caltrans as reimbursements for implementation of projects from the prioritized list in Exhibit A, and direct staff to seek Caltrans approval for, and construct as many of the prioritized projects in Exhibit A as can be funded from the settlement.

Exhibit:
A: Caldecott Tunnel 4th Bore-Related Capital Improvement Projects – Summary by Year & Priority Updated July 8, 2010
### Capital Improvement Projects

#### Predetermined Evaluation of Projects

Updated July 6, 2010

<table>
<thead>
<tr>
<th>Description</th>
<th>Initial Cost Estimate</th>
<th>Next Stage Or Phase</th>
<th>Potential Delays</th>
<th>Notes/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>YEAR 1 (Top Priority)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clearwater A &amp; Abington intersection improvements (Phase 1)</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Clearwater A &amp; Abington intersection improvements (Phase 2)</td>
<td></td>
<td>2010</td>
<td>$2,300,000</td>
<td>$2,300,000</td>
</tr>
<tr>
<td>Linton Corner &amp; Kinkaid</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>McQuay @ Tunnel 1 (Phase 1)</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>McQuay @ Tunnel 2 (Phase 2)</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>College @ Abington (Phase 1)</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>College @ Abington (Phase 2)</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Abraham Crescent Bicycle/Roller Skate Park expansion</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Speed Limit Signs</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Safety &amp; Speed Feedback Signs</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Sidewalk repair and possible widening on Northside of Tunnel Rd.</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>S-24 Signs</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Drainage @ Tunnel entrance</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Oakleigh and Tunnel Rd. Safety signals (Phase 1)</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Oakleigh and Tunnel Rd. Safety signals (Phase 2)</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Gateway Sign at N Hoffman &amp; 63rd</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Abington @ Hillgrove (Phase 1)</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Abington @ Hillgrove (Phase 2)</td>
<td></td>
<td>2010</td>
<td>$1,500,000</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Project</td>
<td>Description</td>
<td>Initial Cost</td>
<td>Next Steps</td>
<td>Potential Delays</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>--------------</td>
<td>------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>6th Street/Bicycle Boulevard Extension @ Abbey (Phase 1), Berkeley Bicycle Manhattan Project 53</td>
<td>Modify turn signal for multi-use path crossing</td>
<td>$220,000</td>
<td>1. Field review to determine project scope (1 month) 2. Develop design alternatives for City review (1 month) 3. Meet with Caltrans to finalize permitting requirements (1 month) 4. Develop design documents and obtain subdivision permits (6 months)</td>
<td>Caltrans may require design-perception documents</td>
</tr>
<tr>
<td>6th Street/Bicycle Boulevard Extension @ Abbey (Phase 2), Berkeley Bicycle Manhattan Project 53</td>
<td>Modify turn signal for multi-use path crossing</td>
<td>$220,000</td>
<td>1. Field review to determine project scope (1 month) 2. Develop design alternatives for City review (1 month) 3. Meet with Caltrans to finalize permitting requirements (1 month) 4. Develop design documents and obtain subdivision permits (6 months)</td>
<td>Caltrans may require design-perception documents</td>
</tr>
<tr>
<td>Berkeley Polk/Clara, Manhattan Project 20, Abbey @ Telegraph (local street count down signals)</td>
<td>$9,000</td>
<td>1. Meet with Caltrans to finalize permitting requirements (1 month) 2. Develop design documents and obtain subdivision permits (1 month)</td>
<td>May need to make other ADA-compliant improvements to intersection</td>
<td>$0,000 - $5,000</td>
</tr>
</tbody>
</table>

**YEAR 2 (Second Priority - add as funds allow)**

<table>
<thead>
<tr>
<th>Project</th>
<th>Description</th>
<th>Initial Cost</th>
<th>Next Steps</th>
<th>Potential Delays</th>
<th>Next Steps Fee Range Low - High</th>
<th>Preliminary conclusions</th>
<th>Priority Based on EACs</th>
<th>Total Low</th>
<th>Total High</th>
<th>Notes/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abbey/Claremont: Controller Interconnect</td>
<td>Install 11,000 ft of signal interconnect @ $38/ft</td>
<td>$419,800</td>
<td>1. Field review to determine project scope (1 month) 2. Meet with Caltrans to finalize permitting requirements (1 month) 3. Develop design documents and obtain subdivision permits (6 months)</td>
<td>Controller assembly replacements to accommodate interconnect. Utility conflicts may need to be resolved for conduit and pole bases.</td>
<td>$40,000 - $85,000</td>
<td>Construction is likely feasible so long as controller and communication equipment all installed and connections to compatible with existing signals</td>
<td>Yes</td>
<td>$632,000</td>
<td>$982,000</td>
<td>Charting and design fees are included to interconnect collector and design fees</td>
</tr>
<tr>
<td>Abbey/Claremont: Video Detection @ Domingo</td>
<td>Add video detection to these legs</td>
<td>$2,000</td>
<td>1. Field review to determine project scope (1 month) 2. Meet with Caltrans to finalize permitting requirements (1 month) 3. Develop design documents and obtain subdivision permits (6 months)</td>
<td>Signal poles may need to be replaced to accommodate signal box from camera. Caltrans may need to replace to accommodate signal box. Video detection may not be possible with controller. Potential for ADA improvements and new equipment specifications</td>
<td>$4,000 - $150,000</td>
<td>Construction costs are estimated as per-engineer estimate. Additional costs on signal arms could increase construction cost to over $60,000 per location</td>
<td>Yes</td>
<td>$22,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abbey/Claremont: Video Detection @ Claremont</td>
<td>Add video detection to these legs</td>
<td>$2,000</td>
<td>1. Field review to determine project scope (1 month) 2. Meet with Caltrans to finalize permitting requirements (1 month) 3. Develop design documents and obtain subdivision permits (6 months)</td>
<td>Signal poles may need to be replaced to accommodate new signal boxes.</td>
<td>$50,000 - $100,000</td>
<td>Construction costs reflect changing out signal boxes. Signal modifications such as signal mast arm upgrades to meet current codes could increase construction cost to over $100,000</td>
<td>Yes</td>
<td>$21,500</td>
<td>$45,000</td>
<td>Priority is on construction cost, if new mast arms are not at sites, total cost could increase by $600K</td>
</tr>
<tr>
<td>Abbey/Claremont: Video Detection @ College</td>
<td>Add video detection to these legs</td>
<td>$2,000</td>
<td>1. Field review to determine project scope (1 month) 2. Meet with Caltrans to finalize permitting requirements (1 month) 3. Develop design documents and obtain subdivision permits (6 months)</td>
<td>Signal poles may need to be replaced to accommodate new signal boxes.</td>
<td>$50,000 - $100,000</td>
<td>Construction costs reflect changing out signal boxes. Signal modifications such as signal mast arm upgrades to meet current codes could increase construction cost to over $100,000</td>
<td>Yes</td>
<td>$11,000</td>
<td>$41,000</td>
<td>Priority is on construction cost, any above design fees need to be above line item</td>
</tr>
<tr>
<td>Abbey/Claremont: Video Detection @ Shattuck</td>
<td>Add video detection to these legs</td>
<td>$2,000</td>
<td>1. Field review to determine project scope (1 month) 2. Meet with Caltrans to finalize permitting requirements (1 month) 3. Develop design documents and obtain subdivision permits (6 months)</td>
<td>Signal poles may need to be replaced to accommodate new signal boxes.</td>
<td>$50,000 - $100,000</td>
<td>Construction costs reflect changing out signal boxes. Signal modifications such as signal mast arm upgrades to meet current codes could increase construction cost to over $100,000</td>
<td>Yes</td>
<td>$21,500</td>
<td>$45,000</td>
<td>Priority is on construction cost, if new mast arms are not at sites, total cost could increase by $600K</td>
</tr>
<tr>
<td>Battery back-up for controllers</td>
<td>35 battery back-ups @ $3,500 each</td>
<td>$125,000</td>
<td>1. Field review to determine project scope (1 month) 2. Meet with Caltrans to finalize permitting requirements (1 month) 3. Develop design documents and obtain subdivision permits (6 months)</td>
<td>Modification of service conduct wiring might be required</td>
<td>$10,000 - $50,000</td>
<td>Construction is likely feasible assuming minor changes to signal service control cabinets.</td>
<td>Yes</td>
<td>$161,250</td>
<td>$198,250</td>
<td>Good improvement for emergency preparedness purposes or key controller</td>
</tr>
<tr>
<td>Project</td>
<td>Description</td>
<td>Initial Cost Estimate</td>
<td>Next Step(s)</td>
<td>Potential Delays</td>
<td>Preliminary Conditions</td>
<td>Priority Based on Phase of Completion</td>
<td>Total Low</td>
<td>Total High</td>
<td>Notes/Comments</td>
<td></td>
</tr>
<tr>
<td>---------------------------------------------</td>
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<td></td>
</tr>
<tr>
<td>Berkeley Pedestrian Masterplan, Project 3</td>
<td>Ashley Drive CALTRANS improvements</td>
<td>$140,000</td>
<td>1. Complete pedestrian safety audit (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Yes</td>
<td>$315,000</td>
<td>$315,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2. Field review to determine project scope (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td>3. Meet with Caltrans to review permitting requirements (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>4. Develop design documents and obtain state permits (90 days)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td></td>
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<tr>
<td>Sidewalk Capes</td>
<td>Draft Pedestrian Plan</td>
<td>$12,000</td>
<td>1. Field review to determine project scope (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Yes</td>
<td>$34,000</td>
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<td>Traffic Domes</td>
<td>Draft Pedestrian Plan</td>
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<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Yes</td>
<td>$160,000</td>
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<td>Pedestrian Curb Changes</td>
<td>Draft Pedestrian Plan</td>
<td>$10,000</td>
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<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Yes</td>
<td>$30,000</td>
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<td>Countdown Signal Tasks</td>
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<td>Accessible Signals</td>
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<td>$30,000</td>
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<td>High Safety Crosswalks at University/Crosswalk Locations</td>
<td>Draft Pedestrian Plan</td>
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<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
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<td>$30,000</td>
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<td>Advance Warning Signs for Bikes</td>
<td>Draft Pedestrian Plan</td>
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<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
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<td>$14,000</td>
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<td>Parrocito Ave Curb Installation</td>
<td>Draft Pedestrian Plan</td>
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<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Construction is unlikely to be re-calculated. Costs include traffic control (1 month)</td>
<td>Yes</td>
<td>$30,000</td>
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YEAR 4 (Low Priority - unlikely to be completed)

<table>
<thead>
<tr>
<th>Project</th>
<th>Description</th>
<th>Initial Cost Estimate</th>
<th>Next Step(s)</th>
<th>Potential Delays</th>
<th>Preliminary Conditions</th>
<th>Priority Based on Phase of Completion</th>
<th>Total Low</th>
<th>Total High</th>
<th>Notes/Comments</th>
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<tbody>
<tr>
<td>Ashley Curbic - Video detection at Sacramento</td>
<td>Add video collection at four legs</td>
<td>$25,000</td>
<td></td>
<td>Signal poles may need to be replaced to accommodate the video camera.</td>
<td>Signal poles may need to be replaced to accommodate the video camera.</td>
<td>yes</td>
<td>$25,000</td>
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<tr>
<td>Alameda Countywide Bicycle Plan: Project 2</td>
<td>Add video detection at four legs</td>
<td>$20,000</td>
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<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>yes</td>
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<tr>
<td>22nd Avenue - 84th Street to 80th Street</td>
<td>Create video (1)</td>
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<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>yes</td>
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<tr>
<td>Centennial Boulevard - Project 1</td>
<td>New traffic signal - Ashley at and</td>
<td>$20,000</td>
<td>1. Field review to determine project scope (1 month)</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>yes</td>
<td>$20,000</td>
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</tr>
<tr>
<td>80th Street to 84th Street</td>
<td>Roosevelt and Rosecrans (2)</td>
<td></td>
<td>2. Develop design documents and obtain city permits (1 month)</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Yes</td>
<td>$57,000</td>
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<tr>
<td>80th Street to 84th Street</td>
<td>Roosevelt and Rosecrans (2)</td>
<td>$20,000</td>
<td>3. Field review to determine project scope (1 month)</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Yes</td>
<td>$57,000</td>
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<tr>
<td>80th Street to 84th Street</td>
<td>Roosevelt and Rosecrans (2)</td>
<td></td>
<td>4. Develop design documents and obtain city permits (1 month)</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Yes</td>
<td>$57,000</td>
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<td>80th Street to 84th Street</td>
<td>Roosevelt and Rosecrans (2)</td>
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<td>5. Traffic signal development (1 month)</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Yes</td>
<td>$57,000</td>
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<tr>
<td>80th Street to 84th Street</td>
<td>Roosevelt and Rosecrans (2)</td>
<td></td>
<td>6. Develop design documents and obtain state permits (90 days)</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Construction costs re-calculated. Additional costs may include additional traffic control.</td>
<td>Yes</td>
<td>$57,000</td>
<td>$57,000</td>
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Summary by Year & Priority

<table>
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<tr>
<th>Project Year</th>
<th>Total Cost Estimate</th>
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<tr>
<td>YEAR 1</td>
<td>$3,993,000</td>
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<td>YEAR 2</td>
<td>$7,700</td>
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<tr>
<td>YEAR 3</td>
<td>$160,000</td>
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<td>YEAR 4</td>
<td>$91,000</td>
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</table>

TOTAL PROJECTS: $5,172,000
February 27, 2009

The Honorable Tom Bates
Mayor, City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Mr. Phil Kamlarz
City Manager
2180 Milvia Street
Berkeley, CA 94704

Subject: Caldecott Tunnel Fourth Bore Coalition’s Settlement Agreement with Caltrans

Dear Mayor Bates and Mr. Kamlarz:

The Caldecott Tunnel Fourth Bore Coalition (FBC) settled its lawsuit against Caltrans last month, prompted by Governor Schwarzenegger’s announcement that he would not sign a budget bill unless it exempted several highway projects, including the Caldecott Improvement Project, from environmental review. FBC, which includes the Claremont-Elmwood Neighborhood Association and the East Bay Bicycle Coalition (EBBC) among its founding members, had sued Caltrans in November 2007 over its approval of the project without having addressed some significant environmental impacts. Impacts to Highway 13 in Berkeley – a major arterial leading to and from the tunnel – were among our concerns.

A copy of our settlement agreement is enclosed with this letter. It commits “$2 million to fund improvements on the State Route 13 corridor in the City of Berkeley, including but not limited to: Signalization and signal light timing, bicycle transit improvements, pedestrian improvements, and other such improvements as may be provided to Berkeley by a separate list from the FBC.”

The agreement also states that “Projects will be selected by the City of Berkeley, with input of FBC, and subject to Caltrans’ approval for safety and feasibility…This amount includes the $725,000 previously committed to the City of Berkeley for local street improvements.”

Since the FBC was instrumental in securing the additional funds for the City, we expect CENA and EBBC to be at the table when discussing the possible improvements for which the funds are used. We of course also expect a public process to be used. Many of the possible improvements, drawn from the bicycle and pedestrian plans, have been driven by metrics and already have gone through the public process. Others, such as some signal improvements, may need development. In any case, the City should identify a process for selecting which projects are the right ones for the limited settlement funds.

We propose to start with a small meeting between FBC representatives and the City’s Transportation Division management and staff. Either at this meeting or
a later meeting shortly thereafter, we would need the participation of Caltrans staff, since interagency coordination will be required for most of the improvements and since Caltrans must approve the projects. Given that Caltrans plans to repave a large stretch of Ashby Ave. this summer, this meeting should take place soon, so that the necessary coordination may begin.

Lastly, we understand that Berkeley’s Public Works, Disaster and Fire Safety, and Transportation Commissions are recommending that the City prioritize the undergrounding of utilities along Ashby Ave. If undergrounding of utilities along stretches of Ashby becomes a reality and affects any of the improvements, it also will require much interagency coordination.

We look forward to hearing from the City about all of the above.

Very truly yours,

(original signed)

Ann Smulka
Chairperson
Caldecott Tunnel Fourth Bore Coalition
510.845.9316

Enclosure – Settlement Agreement

cc: Cristina Ferraz, Project Manager, Caltrans District 4
Claudette Ford, Public Works Director, City of Berkeley
Farid Javandel, Transportation Division Manager, City of Berkeley
Calvin Fong, Aide to Mayor Bates
Gordon Wozniak, Berkeley City Councilmember, District 8
Kriss Worthington, Berkeley City Councilmember, District 7
Dean Metzger, CENA
Robert Raburn, EBBC
Dave Campbell, EBBC and Bicycle Friendly Berkeley Coalition
RONALD W. BEALS, Chief Counsel
DAVID GOSSAGE, Deputy Chief Counsel
LUCILLE Y. BACA, Assistant Chief Counsel
JANET WONG, State Bar No. 124272
HELEN YOON, State Bar No. 238421
595 Market Street, Suite 1700, San Francisco, CA 94105
Mail: P.O. Box 7444, San Francisco, CA 94120-7444
Telephone: (415) 904-5700, Facsimile: (415) 904-2333

Attorneys for Respondent and Defendant
CALIFORNIA DEPARTMENT OF TRANSPORTATION

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

CALDECOTT FOURTH BORE COALITION,

Case No. RG07355832

ASSIGNED FOR ALL PURPOSES
TO HON. FRANK ROESCH
DEPARTMENT 31

Petitioner and Plaintiff

v.

CALIFORNIA DEPARTMENT OF TRANSPORTATION,

Action Filed: November 13, 2007
Trial Date: October 31, 2008

Respondent and Defendant

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into between Petitioner CALDECOTT FOURTH BORE COALITION (FBC) and Respondent CALIFORNIA DEPARTMENT OF TRANSPORTATION (Caltrans) by and through their respective attorneys. The Parties stipulate and agree as follows:

RECITALS

WHEREAS, on November 13, 2007, Petitioner filed a Verified Petition for Writ of Mandate against Respondent in Alameda County Superior Court, Case No. RG07355832, under the California Environmental Quality Act ("CEQA") (Public Resources Code §§ 21000, et seq.), challenging the Caltrans' October 12, 2007, decision to certify a Final Environmental Impact
Report (FEIR) for the proposed Caldecott Improvement Project (PROJECT) in and around State Route 24 in and near the Caldecott Tunnel in order to provide a new bore.

WHEREAS, on November 4, 2008, the matter was submitted to the Honorable Frank Roesch of the Alameda County Superior Court and a decision is pending.

WHEREAS, all conditions, promises, and obligations in this Agreement for both Parties are subject to the appropriation of resources by the State Legislature and the allocation of resources by the California Transportation Commission (CTC) for the funding for the PROJECT.

WHEREAS, the Parties desire to adjust, compromise, settle and satisfy all claims asserted between them, or which could have been asserted between them, as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

I. Respondent Caltrans agrees to the following:

a. Construction Impacts

1) Caltrans will require the use of low sulfur diesel fuel for off-road construction vehicles and diesel-powered equipment used in the PROJECT.

2) Light impacts of the project: During construction, Caltrans will require light shielding measures during nighttime hours.

   i. These measures will shield direct light transmission away from residences.

   ii. Caltrans will require its contractors to include light shrouds or other measures on temporary lighting to shield direct light transmission away from residences near the construction area.

   iii. Caltrans will require its contractors to respond to violations of lighting restrictions within 24 hours of receiving a complaint.

SETTLEMENT AGREEMENT

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3) Noise impacts of the project:

i. A 1,000-foot long, 35-foot high temporary sound wall will be constructed along the staging area located between Caldecott Lane and State Route 24.

ii. Caltrans will require its contractor to hire an independent acoustical engineer to measure baseline (pre-construction) ambient noise levels during nighttime (7:00 p.m. to 7:00 a.m.) over a period of 14 consecutive days at 8 locations consistent with the August 4, 2008, City of Oakland Settlement Agreement. The measurements will be taken in the vicinity of various residential receptors near the project selected to represent noise-sensitive sites at varying distances from the construction zone, including four out of the 8 total locations identified by FBC where the line of sight to the construction area would not be broken by the temporary soundwall. The measurements will differentiate between weekdays and weekends and will establish the Baseline Hourly Leq and Baseline Hourly Lmax for each nighttime hour. The measurements also shall note any unusual Lmax events (i.e. events occurring fewer than three times during the monitoring period); such events shall be excluded from determinations of the construction Lmax limits described below.

iii. Caltrans will require its contractor to retain an independent acoustical engineer to provide, maintain, and monitor five sound level meters in the vicinity of the west portal in addition to the locations identified in the preceding paragraph throughout the entire construction period. The sound monitors shall be used to help identify the source of any construction sound that exceeds the nighttime sound level requirements. The exact locations will be adjusted to account for the layout of the staging areas and the locations of construction activities. Noise monitoring reports shall be posted on a daily basis on a public website, along with corresponding Leq and Lmax maximum acceptable levels. A public contact shall be identified by Caltrans, with a 24-hour phone number as well as email address, to which affected residents can direct complaints about violations.
iv. Caltrans will require that its contractor not exceed the baseline hourly Leq by more than 3 dba, and will require that its contractor not exceed the baseline hourly L_max at all, during nighttime hours. Caltrans shall further require that in the event of any violation of these requirements, the contractor shall immediately shut down the equipment or operation causing the violation. The equipment/operation shall not resume unless/until the cause of the violation has been identified and corrected. Complaining parties shall be notified in writing of the corrective action.

v. Caltrans will require its contractor to take specific steps to avoid nighttime noise spikes.

vi. Caltrans will request the Contractor to seek approval from Cal-OSHA for an alternative non-audible warning system for vehicle back-up other than the standard audible alarm.

4) Local area residents will be advised in advance of blasting times. No blasting shall occur between 7:00 p.m. and 7:00 a.m.

5) Caltrans will advise FBC regarding the projected time frame for the tunnel construction operations outside the tunnel and will use its best efforts to move the work inside the tunnel as quickly as possible.

6) Soils management:

i. Caltrans will require the use of a truck route and timing of hauling that minimizes impacts on the local streets in the project area, consistent with the City of Oakland Settlement Agreement dated August 4, 2008.
ii. Caltrans will meet with FBC and use its best efforts to agree upon the location and conditions of stockpiling soil that minimize impacts on the project area neighborhoods.

7) Caltrans will provide a Public Information Officer (PIO) who will be a point of contact for the project. The PIO will have access to Caltrans, the project engineer, and the project contractor. The PIO will arrange meetings with the communities on both sides of the tunnel to discuss the project, community concerns, and project impacts.

b. Transportation Management Issues

1. Caltrans will fund further study and analysis, not exceeding $250,000, engaging MTC, transit and transportation agencies, local governments, and community members, including the FBC. The study shall analyze and evaluate transportation management issues in the corridor of the project area, including, but not limited to:
   i. The use of tolls.
   ii. The use of High Occupancy Vehicle lanes.
   iii. The use of High Occupancy Toll lanes.
   iv. Opportunities for increasing transit ridership.
   v. Increases in the bicycle carrying capacity of Bay Area Rapid Transit (BART).
   vi. Bicycle and pedestrian improvements to increase connectivity in the project area, including reconstruction of Landvale Bridge.
   vii. Noise issues at the Rockridge BART station.

SETTLEMENT AGREEMENT 5
viii. Transportation improvements to decrease air pollution, congestion, and noise.

c. Surface Street Issues

1. In addition to the funds already committed to surface street improvements in the City of Oakland, Caltrans will commit $2 million to fund improvements on the State Route 13 corridor in the City of Berkeley, including, but not limited to:
   i. Signalization and signal light timing
   
   ii. Bicycle transit improvements
   
   iii. Pedestrian improvements
   
   iv. And such other improvements as may be provided to Berkeley by a separate list from the FBC

2. Projects will be selected by the City of Berkeley, with input of the FBC, and subject to Caltrans' approval for safety and feasibility. Caltrans' rejection of any proposed improvement shall be explained in detail in writing, a copy of which explanation will be provided to FBC.

3. This amount includes the $725,000 previously committed to the City of Berkeley for local street improvements.

d. Park and Recreation Issues

1. FROG Park

   i. Caltrans will negotiate a lease extension of FROG Park with the City of Oakland providing for an additional 10-year term with options to extend the term for 2 additional five-year periods.
ii. Caltrans will provide a debris barrier to protect FROG Park on the freeway structure consisting of a chain link fence with lattice inserts at a cost not to exceed $50,000.

iii. Caltrans will offer to negotiate a similar lease agreement with the City of Oakland for Caltrans-owned right of way, outside of existing operating right of way, adjacent to FROG Park, unless it interferes with Caltrans maintenance, operations, slope or structural stability, and if the park use of such land is found to be safe and feasible. Any Caltrans determination that such right of way is unusable for this purpose shall be accompanied by a detailed written explanation, copies of which will be provided to FBC and the FROG Park Committee.

e. Additional Commitments.

1. Caltrans will commit an additional $100,000 to be used for improvements to FROG Park, bicycle lane improvements in the Tunnel/Caldecott and the Broadway/Keith intersections, or the study of Transportation Management Issues in the Corridor.

2. Within 60 days of the filing of the dismissal of this action, Caltrans will pay to FBC and its attorneys of record the sum of $100,000 for attorneys’ fees and costs incurred by the FBC for issues related to the project.

f. Pavement Improvements

1. When the portion of State Route 24 immediately west of the tunnel is repaved, Caltrans shall use sound attenuating material (i.e. rubberized asphalt concrete or open-graded asphalt concrete) reasonably available to Caltrans.

2. Caltrans will evaluate the potential to improve the pavement surface on that portion of State Route 24 immediately adjacent to Claremont School by installing sound attenuating paving material.
II. Petitioner FBC agrees to the following:


1. Based upon the foregoing, FBC will file a dismissal of this action with prejudice, as soon as possible after execution of this Agreement, but no later than noon on Friday, January 23, 2009.

2. FBC releases and waives any and all claims, defenses, suits in law or equity, administrative proceedings or administrative action challenging or contesting Caltrans’ right or authority to plan, design, construct and permanently operate the Caldecott Improvement Project arising out of or based upon any failure to conform with, or a violation of the provisions and requirements of, the CEQA; the National Environmental Policy Act; the federal Clean Air Act; the California Clean Air Act; and any and all other federal and state environmental statutes, law, or regulations; and state or federal transportation planning requirements including, without limitation, the legal requirements under these statutes, their implementing regulations, and any other claim based upon a claim that the Caltrans has not obtained a necessary permit or approval for the PROJECT.

3. FBC further agrees that it will not institute in its own name, nor will it join with, finance or otherwise support any suits in law or equity and/or administrative proceedings or administrative actions, or claims challenging Caltrans’ right or authority to plan, design, construct, or operate the PROJECT arising out of or relating to any failure to conform with, or any violation of the provisions of the environmental and permitting provisions referenced in paragraph II.a.2. above.

4. The Parties do not waive any of their defenses, rights, immunities, or privileges under the law by this Agreement, except as expressly stated in the Agreement.

III. Caltrans and FBC agree to the following:
a. Dispute Resolution Provisions

1. In the event a party to this agreement believes that a provision of the agreement has been violated, the party will, as soon as possible, serve a written notice of violation on the alleged violator. The notice may be served personally, by mail, by fax, or by electronic mail, so long as a proof of delivery can be provided.

2. Within one week of receipt of a notice of violation, the parties shall meet and attempt in good faith to resolve the dispute.

3. If the dispute cannot be resolved immediately, the parties may mutually agree to continue meeting to resolve the dispute.

4. No legal action may be taken on a claim for violation of this agreement unless the provisions of this section have first been complied with.

b. Additional Provisions

1. Each individual executing this Agreement on behalf of any Party expressly represents and warrants that he/she has authority to execute and thereby bind the Party on behalf of which he/she executes this Agreement to the terms of this Agreement and agrees to indemnify and hold harmless each other Party from any claim that such authority did not exist.

2. In executing this Agreement, the Parties acknowledge that they have read and understood the contents of this Agreement, have conferred with their respective legal counsel, have chosen to sign this Agreement with a conscious understanding of their options and associated consequences, and have not relied on any statements, comments, warranties, or representations made by any person representing or claiming to represent the other Party.

3. The Parties represent that they have not abandoned, assigned or transferred to any person or entity the released claims or any part thereof, and stipulate that this is a full, complete, unconditional and final resolution of the released claims. Each Party warrants that it is presently the sole and exclusive owner of its respective claims, demands, causes of action, controversies, obligations and/or liabilities as set forth in the Action, and that no other person has any right, title or interest whatsoever in said causes of action and other matters referred to, assigned and/or released hereby.
therein, and that there has been no assignment, transfer conveyance or other disposition by them of any said causes of action and other matters referred to, assigned and/or released hereby.

4. Each Party cooperated in the drafting and preparation of this Agreement with advice of counsel. This Agreement shall not be construed against any Party on the ground that it was the drafter of this Agreement or on any other grounds. The Parties acknowledge that they have had the opportunity to seek advice of counsel of their choice in negotiations leading up to the execution of this Agreement and have read it and fully understand each and all of its provisions.

5. Each of the terms, conditions and provisions of this Agreement is an integral part hereof and cannot be severed from the whole of this Agreement.

6. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. The Parties acknowledge and agree that the execution of this Agreement and the respective performance under this Agreement are the result of compromise, and are entered into in good faith, and shall not be considered as an admission of any facts alleged in the Action, or of liability or fault or of responsibility concerning any of the allegations or disputes related to the claims in the Action, and no past or present wrongdoing on the part of any of the Parties shall be implied by this Agreement or its terms.
Dated: 1/22/09

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By [Signature]

Will Kempton
Director, California Department of Transportation

Dated: 1/23/09

CALDECOTT FOURTH BORE COALITION

By [Signature]

Ann Smulka
Chair, Fourth Bore Coalition

Approved as to Form:

Dated: 1/23/09

LAW OFFICES OF STUART FLASHMAN

By [Signature]

Stuart Flashman
Attorney for Petitioners Caldecott Fourth Bore Coalition

Dated: 1/23/09

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By [Signature]

Janet Wong
Attorney for Respondent
California Department of Transportation
COOPERATIVE AGREEMENT NO. 01CS.01
BETWEEN
CONTRA COSTA TRANSPORTATION AUTHORITY
AND
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY

This Agreement is made and entered into on January 6, 2009 by and between the ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY hereinafter referred to as "ACCMA" and the CONTRA COSTA TRANSPORTATION AUTHORITY hereinafter referred to as "CCTA".

RECITALS

1. The Caldecott Fourth Bore Improvement Project (PROJECT) is being jointly managed by ACCMA, CCTA and the California Department of Transportation (CALTRANS). PROJECT limits extend from the Route 24/Route 13 interchange in Alameda County to the Route 24/Gateway Boulevard interchange in Contra Costa County.

2. CALTRANS, ACCMA and CCTA signed a Memorandum of Understanding on November 3, 2004, agreeing to be partnering agencies working collaboratively to deliver the PROJECT.

3. Following certification of the Environmental Impact Report (EIR) for the PROJECT, which was prepared by CALTRANS as the lead agency under the California Environmental Quality Act (CEQA), CALTRANS entered into separate settlement agreements with the City of Oakland and the Fourth Bore Coalition resolving legal challenges to the EIR.

4. One aspect of the settlement agreements provided for funding certain enhancement projects in the general vicinity of the PROJECT. Budgets for the enhancement projects are $8 million relative to the settlement agreement with the City of Oakland, and $2 million relative to the settlement agreement with the Fourth Bore Coalition.

5. The enhancement projects, which are eligible for funding under the terms of the settlement agreements are listed in EXHIBIT A (City of Oakland), and EXHIBIT B (Fourth Bore Coalition).

6. The projects listed in EXHIBITS A and B are hereinafter referred to collectively as "ENHANCEMENTS."

7. ACCMA has included $8 million in its 25-year Countywide Transportation Plan for ENHANCEMENTS along and in the vicinity of the Route 24 corridor in Oakland.

8. ACCMA adopted Resolution 08-006 Revised at its July 31, 2008 meeting which approved an overall commitment of $8 million in Alameda County funds for ENHANCEMENTS described in EXHIBIT A (those related to the City of Oakland settlement agreement).

9. Resolution 08-006 Revised also acknowledged the already-approved programming of $2 million in Alameda STIP-RIP funds for PROJECT in the 2008 STIP (PPNo. 0057A), and the commitment to program another $2 million in STIP-RIP funds in the 2010 STIP for PROJECT. The balance of $4 million is to be programmed by ACCMA for ENHANCEMENTS in the 2012 STIP.

10. Recognizing that the initial programming of $4 million STIP-RIP funds by ACCMA in the
2008 and 2010 STIPs was for construction costs associated with PROJECT, and not directly for ENHANCEMENTS. CCTA agreed to make available, in the near term, $4 million of Measure J transportation sales tax funds as an “exchange” to fund those ENHANCEMENTS described in EXHIBIT A.

11. CCTA is the implementing agency for $50 million in Regional Measure 2 (RM-2) funds programmed for the PROJECT by the Metropolitan Transportation Commission (MTC).

12. MTC has allocated $2 million in RM-2 funds to CCTA for ENHANCEMENTS described in EXHIBIT B (those related to the Fourth Bore Coalition settlement agreement).

13. ACCMA and CCTA hereby desire to enter into a Cooperative Agreement to define a framework whereby CCTA can advance up to $4 million in Measure J transportation sales tax funds for ENHANCEMENTS included in EXHIBIT A, and $2 million in RM-2 funds for ENHANCEMENTS included in EXHIBIT B;

NOW, THEREFORE, in consideration of the foregoing, the ACCMA and CCTA agree as follows:

SECTION I

ACCMA AGREES:

1. If the STIP fund estimate adopted by CTC allows, to program $2 million in Alameda STIP-RIP funds in the 2010 STIP or 2012 STIP for PROJECT or other projects identified by CCTA.

2. If the STIP fund estimate adopted by CTC allows, to program $4 million in Alameda STIP-RIP funds for ENHANCEMENTS in the 2012 STIP.

3. To enter into separate agreements with the cities of Berkeley and Oakland to select specific projects drawn from ENHANCEMENTS listed in EXHIBITS A and B, to authorize CCTA to audit the projects selected from the ENHANCEMENTS and where necessary, to assist with approvals, permits, and other Caltrans issues and procedures.

4. To provide oversight to ensure compliance with state and federal standards and/or regulations that may apply to ENHANCEMENTS selected from EXHIBITS A and B, including coordination with CALTRANS for its review and approval of plans, specifications, and estimates.

5. Regarding the City of Oakland ENHANCEMENTS:
   a. To review all invoices from the City of Oakland, confirm that work has been completed consistent with the invoice, and approve for reimbursement if invoice is reasonable, and satisfactory progress is being made in implementing the relevant ENHANCEMENTS.
   b. To submit periodic requests to CCTA for electronic (wire) transfers for costs related to ENHANCEMENTS, including costs invoiced to ACCMA by the City of Oakland and ACCMA oversight or project-related costs as stipulated in an agreement between the City of Oakland and ACCMA. Each request package shall include copies of
any invoices from the City of Oakland to ACCMA certified as eligible for payment and a summary of any ACCMA oversight or project-related costs eligible for payment.

c. To pay the City of Oakland on a reimbursement basis, within ten (10) days after receipt of the requested funds via electronic (wire) transfer from CCTA.

d. To provide CCTA, within ten (10) days after the date of payment to the City of Oakland, a package of documentation supporting the entire amount of the electronic (wire) transfer received from CCTA, including all supporting details consistent with EXHIBIT C, confirmation of the date and amount of the payment to the City of Oakland, and a certification that the invoice is accurate and not the subject of a prior billing.

e. To coordinate with the City of Oakland and provide progress reports and the summary of expenditures to date to the CCTA.

6. Regarding the City of Berkeley ENHANCEMENTS:

   a. To review all invoices from the City of Berkeley, confirm that work has been completed consistent with the invoice, and approve for reimbursement if invoice is reasonable and satisfactory progress is being made in implementing the relevant ENHANCEMENTS.

   b. To submit approved invoices to CCTA consistent with EXHIBIT C including all supporting details, with a recommendation for direct payment to the City of Berkeley on a reimbursement basis, with a certification that the invoice is accurate and not the subject of a prior billing. The invoices are to include progress reports and the summary of expenditures to date.

8. To allow CCTA to audit all expenditures relating to ENHANCEMENTS funded through this agreement. For four (4) years following (i) completion of the projects selected as ENHANCEMENTS or (ii) earlier discharge of the agreement, ACCMA through its separate agreements with cities of Oakland and Berkeley, will make available to CCTA all records relating to expenses incurred implementing ENHANCEMENTS.

SECTION II

CCTA AGREES:

1. To make available an initial amount of $2 million in Measure J transportation sales tax funds to ACCMA, on a reimbursement basis, to defray the costs of City of Oakland ENHANCEMENTS described in EXHIBIT A. Such amount will be increased to $4 million following ACCMA programming $2 million in the 2010 STIP and/or 2012 STIP as envisaged in ACCMA Resolution 08-006 Revised to the PROJECT or other projects identified by CCTA, as stipulated in Section I, paragraph (1).

2. To secure $2 million in RM-2 funds to help defray the costs of ENHANCEMENTS described in EXHIBIT B.

3. Regarding the City of Oakland ENHANCEMENTS listed in EXHIBIT A:
a. To pay ACCMA by electronic (wire) transfer within ten (10) days of receiving a complete request package from ACCMA for costs related to ENHANCEMENTS, including costs invoiced to ACCMA by the City of Oakland and ACCMA oversight or project related costs stipulated in an agreement between the City of Oakland and ACCMA; the sum of such payments will not exceed $4 million.

4. Regarding the City of Berkeley ENHANCEMENTS listed in EXHIBIT B:

   a. On a reimbursement basis to pay the City of Berkeley directly within 30 days of receiving an approved invoice from ACCMA, with a informational copy of such payment transmittals sent to ACCMA; the sum of such payments will not exceed $2 million.

   b. To invoice MTC for reimbursement of funds paid to the City of Berkeley.

SECTION III

IT IS MUTUALLY AGREED:

1. Term: This Agreement will remain in effect until discharged as provided in Paragraph 2 below or as a result of paragraph 5 below.

2. Discharge: This Agreement shall be subject to discharge as follows:

   a. Either party may terminate this Agreement at any time for cause pursuant to a power created by the Agreement or by law, other than for breach, by giving written notice of termination to the other party which shall specify both the cause and the effective date of termination. Notice of termination under this provision shall be given at least ninety (90) days before the effective date of such termination.

   b. This Agreement may be canceled by a party for breach of any obligation, covenant or condition hereof by the other party, upon notice to the breaching party. With respect to any breach which is reasonably capable of being cured, the breaching party shall have 30 days from the date of the notice to initiate steps to cure. If the breaching party diligently pursues cure, such party shall be allowed a reasonable time to cure, not to exceed sixty (60) days from the date of the initial notice, unless a further extension is granted by the non-breaching party. On cancellation, the non-breaching party retains the same rights as a party exercising its right to terminate under the provisions of paragraph 2(a), except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

   c. By mutual consent of both parties, this Agreement may be terminated at any time.

3. Indemnity: It is mutually understood and agreed, relative to the reciprocal indemnification of CCTA and ACCMA:

   a. That neither CCTA, nor any officer or employee thereof, shall be responsible for, and ACCMA shall fully indemnify and hold harmless CCTA against any damage or liability occurring by reason of anything done or omitted to be done by CCTA under or in connection with
any work, authority or jurisdiction delegated to ACCMA under the Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, ACCMA shall fully indemnify and hold the CCTA harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by ACCMA under this Agreement or in connection with any work, authority, or jurisdiction delegated to ACCMA under this Agreement.

b. That neither ACCMA, nor any officer or employee thereof, shall be responsible for, and CCTA shall fully indemnify and hold harmless ACCMA against any damage or liability occurring by reason of anything done or omitted to be done by CCTA under or in connection with any work, authority or jurisdiction delegated to CCTA under the Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, CCTA shall fully indemnify and hold the ACCMA harmless from any liability imposed for injury as defined by Government Code Section 810.8 occurring by reason of anything done or omitted to be done by CCTA under this Agreement or in connection with any work, authority, or jurisdiction delegated to CCTA under this Agreement.

4. Notices: Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such addresses which may be specified in writing to the parties hereto:

Dennis Fay
Executive Director
Alameda County Congestion Management Agency
1333 Broadway, Suite 220
Oakland, CA 94612

Robert K. McCleary
Executive Director
Contra Costa Transportation Authority
3478 Buskirk Avenue, Suite 100
Pleasant Hill, CA 94523

5. Amendment: The parties agree to amend EXHIBITS A and B to this Agreement if additional ENHANCEMENT projects are approved consistent with the terms of the settlement agreements referenced in Recital 3. However, this Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

6. Assignment: The Agreement may not be assigned, transferred, hypothecated, or pledged by any party without the express written consent of the other party.

7. Binding on Successors, Etc.: This Agreement shall be binding upon the successor(s), assignee(s) or transferee(s) of the CCTA or ACCMA as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this Agreement other than as provided above.
8. Severability: Should any part of this Agreement be determined to be unenforceable, invalid, or beyond the authority of either party to enter into or carry out, such determination shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

9. Limitation: All obligations of CCTA under the terms of this Agreement are expressly subject to the CCTA’s continued authorization to collect and expend the sales tax proceeds provided by Measure J. If for any reason the CCTA’s right to collect or expend such sales tax proceeds is terminated or suspended or otherwise impaired in whole or part, the CCTA shall promptly notify ACCMA, and the parties shall consult on a course of action. If, after twenty five (25) working days, a course of action is not agreed upon by the parties, this Agreement shall be deemed terminated by mutual or joint consent; provided, that any obligation to fund from the date of the notice shall be expressly limited by and subject to (i) the lawful ability of the CCTA to expend sales tax proceeds for the purposes of the Agreement; and (ii) the availability, taking into consideration all the obligations of the CCTA under all outstanding contracts, agreements to other obligations of the CCTA, of funds for such purposes.

10. Survival: Section III, paragraph 3 (Indemnity) shall survive discharge or other termination of this Agreement

ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY

By: [Signature]
Dennis Fay
Executive Director

CONTRA COSTA TRANSPORTATION AUTHORITY

By: [Signature]
Maria T. Viramontes, Chair

Reviewed as to Budget/Financial Controls

By: [Signature]
G. Richard Swanson
Director of Finance and Administration

By: [Signature]
Robert K. McCleary
Executive Director

APPROVED as to form:

By: [Signature]
Wendel, Rosen, Black & Dean LLP
ACCMA Legal Counsel

APPROVED as to form:

By: [Signature]
Legal Counsel
COOPERATIVE AGREEMENT NO. 01CS.01
between
Contra Costa Transportation Authority
and
Alameda County Congestion Management Agency

EXHIBIT A

CALDECOTT IMPROVEMENT PROJECT—CITY OF OAKLAND/CALIFORNIA
DEPARTMENT OF TRANSPORTATION SETTLEMENT AGREEMENT

Potential Enhancement Projects
COOPERATIVE AGREEMENT NO. 01CS.01
between
Contra Costa Transportation Authority
and
Alameda County Congestion Management Agency

EXHIBIT B

CALDECOTT IMPROVEMENT PROJECT—CALDECOTT FOURTH BORE
COALITION/CALIFORNIA DEPARTMENT OF TRANSPORTATION SETTLEMENT
AGREEMENT

Potential Enhancement Projects
COOPERATIVE AGREEMENT NO. 01CS.01
between
Contra Costa Transportation Authority
and
Alameda County Congestion Management Agency

EXHIBIT C

Proponents Name
Project: XXXX
Project Description

Invoice Number: XXXX

INVOICE SUMMARY
Period Covered (9/1/09 to 10/1/09)

Coop. Agreement:

Proponent Expenditures - Direct Expenses

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<thead>
<tr>
<th>Vendor</th>
<th>Description</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>Quick Copy</td>
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<tr>
<td>The Blueprint Shop</td>
<td>Blueprints</td>
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<tr>
<td>Consultant YYY</td>
<td>Engineering</td>
<td>$200,000</td>
</tr>
<tr>
<td></td>
<td>Services</td>
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</tbody>
</table>

Total Direct Expenses

Certification
We hereby certify that the funds requested by ________________ are to reimburse for project costs already incurred and have not been included in a previous invoice request.
<table>
<thead>
<tr>
<th>Subject</th>
<th>Caldecott Tunnel Improvement Project (1001): Cooperative Agreement with Alameda County Congestion Management Agency relative to project enhancements.</th>
</tr>
</thead>
</table>
| Summary of Issues | In February 2008, the Authority approved an advance of $2 million in Measure J funds for Oakland’s enhancement projects, in order to resolve legal challenges to the Caldecott Tunnel EIR by the City of Oakland. In return Alameda CMA has included $2 million in STIP funding for the tunnel construction in the 2008 STIP. In June 2008, the Authority agreed to provide an additional $2 million in return for $2 million in future Alameda CMA STIP funds, to cement the Settlement Agreement with Oakland. The Settlement Agreement was subsequently approved and the Caldecott Tunnel avoided a major delay.  
Separately, Caltrans entered into settlement agreement with the Fourth Bore Coalition, whereby funding in the amount of $2 million is set aside for certain enhancement projects in the general vicinity of the project. |
| Recommendations | Staff is requesting the approval of Cooperative Agreement No. 01CS.01 with the Alameda CMA which defines a framework for the Authority to fund up to $4 million in Measure J funds for enhancement projects in the City of Oakland and $2 million in RM-2 funds for enhancement projects in the City of Berkeley. Staff recommends approval of Cooperative Agreement No. 01CS.01 with the Alameda CMA. |
| Financial Implications | Depending on the actual timing of reimbursement for the City of Oakland projects, the Authority could expend its funds several years before the STIP payback to Contra Costa occurs. But overall, the impact to Contra Costa would be neutral, because the advance would be balanced by future STIP programming. |
| Options | Propose other terms and conditions. |
| Attachments | A. Cooperative Agreement No. 01CS.01 |
| Changes from Committee | |

**Background**

Historically, the Alameda CMA has included $8 million in its Countywide Transportation Plan to provide certain Route 24 corridor enhancements beyond the mitigation addressed in the Caltrans environmental document. As negotiations proceeded on a Settlement Agreement, one of Oakland’s primary concerns was the degree of certainty associated with the timing of that funding, because it would be subject to future STIP programming by the Alameda CMA, and most likely not available until the “out years” of the STIP. This concern was recognized early in the negotiations and partially addressed in a February 29th letter to Oakland Mayor Ron Dellums. The letter committed $2 million in Measure J funds to be
available, on a reimbursement basis, to fund certain enhancements which are to be listed in the Settlement Agreement. The letter also provided, that if necessary the Executive Director would request Authority approval of an additional $2 million advance, contingent upon future STIP programming commitments by Alameda CMA. In June 2008, the Authority agreed to provide an additional $2 million in return for $2 million in future Alameda CMA STIP funds. The Settlement Agreement was subsequently approved and the Caldecott Tunnel avoided a major delay.

In return, the Alameda CMA programmed $2 million in Alameda’s share of STIP funds in the 2008 STIP for construction of the Fourth Bore and adopted Resolution 08-006 on April 24, 2008 agreeing to program the remaining $2 million in the 2010 STIP for a Contra Costa project, and another $4 million in the 2012 STIP for Oakland enhancement projects.

Cooperative Agreement No. 01CS.01 with the Alameda CMA defines a framework for the Authority to fund up to $4 million in Measure J transportation sales tax funds for enhancement projects in the City of Oakland and $2 million in RM-2 funds for enhancement projects in the City of Berkeley. The Authority’s action to advance the second $2 million in Measure J funds is contingent upon the Alameda CMA programming $2 million in the 2010 or 2012 STIP to a Contra Costa project.
<table>
<thead>
<tr>
<th>Project</th>
<th>Description</th>
<th>Total Low</th>
<th>Total High</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>YEAR 1</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claremont &amp; Ashby Intersection Improvement Study (Phase 1)</td>
<td>Left Turn lanes Study</td>
<td>$5,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Claremont &amp; Ashby Intersection Improvements (Phase 2)</td>
<td>Turning lanes Design/Construction</td>
<td>$302,500</td>
<td>$307,500</td>
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<tr>
<td>Upland Corner Radius</td>
<td>Reconstruct corner radius to slow right turning traffic onto Upland.</td>
<td>$19,750</td>
<td>$32,250</td>
</tr>
<tr>
<td>Uplands @ Tunnel (Phase 1)</td>
<td>Intersection study</td>
<td>$20,000</td>
<td>$30,000</td>
</tr>
<tr>
<td>Uplands @ Tunnel (Phase 2)</td>
<td>Install bike / pedestrian control device. Possible HAWK signal</td>
<td>$287,500</td>
<td>$287,500</td>
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<tr>
<td>College @ Ashby intersection study (Phase 1) - Left turn NB College to WB Ashby; Ped scramble; Ped signal instruction signs</td>
<td>Study pedestrian scramble phase + left turn control device vs Berkeley Pedestrian Masterplan: Project 18</td>
<td>$10,000</td>
<td>$20,000</td>
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<tr>
<td>College @ Ashby (Phase 2)</td>
<td>Berkeley Pedestrian Masterplan: Project 18 or install pedestrian scramble phase + left turn control device</td>
<td>$138,000</td>
<td>$138,000</td>
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<tr>
<td>Alameda Countywide Bicycle Plan, Project 22, Al: Domingo between Russell/Claremont and Tunnel</td>
<td>Create Class 3 residential street bikeway; Berkeley Bicycle Masterplan Project 18E (Bike Route signage)</td>
<td>$23,400</td>
<td>$23,400</td>
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<tr>
<td>Alameda Countywide Bicycle Plan, Project 22, AJ: Tunnel between Claremont and Caldecott</td>
<td>Create Class 2 bikeway; Berkeley Bicycle Masterplan Project 18F (stripe bike lane)</td>
<td>$37,200</td>
<td>$42,200</td>
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<tr>
<td>Speed Limit Signs</td>
<td>Replace 35 mph with 25 mph signs. Relocate signs to more visible location</td>
<td>$7,250</td>
<td>$8,750</td>
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<tr>
<td>Hard wire Speed Feedback Signs</td>
<td>Re-install two existing feedback signs for traffic entering the City. Install one new sign for traffic leaving the City prior to Uplands</td>
<td>$37,000</td>
<td>$44,500</td>
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<tr>
<td>Sidewalk repair and possible widening on North Side of Tunnel Rd.</td>
<td>Repair sidewalk (up to 700 feet) on Tunnel Road from city limit to Domingo to remove obstructions.</td>
<td>$37,500</td>
<td>$43,500</td>
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<tr>
<td>SR 24 Signs</td>
<td>Install guide sign &quot;Berkeley Next Three Exits&quot; i.e., Tunnel, College, and Telegraph</td>
<td>$13,000</td>
<td>$16,500</td>
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<tr>
<td>Domingo @ Tunnel</td>
<td>Reconstruct corner radii at northeast and southeast corners to enhance pedestrian crossings. Install advanced limit lines at crosswalks</td>
<td>$60,000</td>
<td>$72,500</td>
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<tr>
<td>Project</td>
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<tr>
<td>------------------------------------------------------------------------</td>
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</tr>
<tr>
<td><strong>YEAR 1</strong></td>
<td></td>
<td></td>
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<tr>
<td>Domingo @ Tunnel</td>
<td>Evaluate and modify type and placement of existing intersection signing related to turn restrictions and pedestrian awareness</td>
<td>$7,250</td>
<td>$8,750</td>
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<tr>
<td>Oakridge and Tunnel Rd. Safe egress (Phase 1)</td>
<td>Study safe egress solution for Oakridge motorists exiting onto Tunnel Rd.</td>
<td>$20,000</td>
<td>$30,000</td>
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<tr>
<td>Oakridge and Tunnel Rd. Safe egress (Phase 2)</td>
<td>Oakridge and Tunnel Flashing yellow until activated or regular signal</td>
<td>$287,500</td>
<td>$287,500</td>
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<tr>
<td>Gateway Sign at NB Hwy 13 entrance to Berkeley</td>
<td>Locate monument sign on Tunnel Road entering the City</td>
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<tr>
<td>Ashby @ Hillegass (Phase 1)</td>
<td>Study bike / pedestrian safe crossing at Bicycle Blvd</td>
<td>$20,000</td>
<td>$30,000</td>
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<tr>
<td>Ashby @ Hillegass (Phase 2)</td>
<td>Install bike / pedestrian control device. Possible HAWK signal</td>
<td>$287,500</td>
<td>$287,500</td>
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<tr>
<td>9th Street Bicycle Boulevard Extension @ Ashby (Phase 1); Berkeley Bicycle Masterplan Project 53</td>
<td>Modify traffic signal for multi-use path crossing</td>
<td>$25,000</td>
<td>$70,000</td>
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<td>9th Street Bicycle Boulevard Extension @ Ashby (Phase 2); Berkeley Bicycle Masterplan Project 53</td>
<td>Modify traffic signal for multi-use path crossing</td>
<td>$287,500</td>
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<tr>
<td>Berkeley Pedestrian Masterplan: Project 26</td>
<td>Ashby @ Telegraph (pedestrian countdown signals)</td>
<td>$16,500</td>
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<td>Project</td>
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<td>----------------------------------------------</td>
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<tr>
<td><strong>YEAR 2</strong></td>
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<tr>
<td>Ashby Corridor: Controller interconnect</td>
<td>Install 14,000 ft of signal interconnect @$35/ft</td>
<td>$603,500</td>
<td>$648,500</td>
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<tr>
<td>Ashby Corridor: Video detection at Domingo</td>
<td>Add video detection to three legs</td>
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<tr>
<td>Ashby Corridor: Video detection at Claremont</td>
<td>Add video detection to four legs</td>
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<td>$28,750</td>
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<tr>
<td>Ashby Corridor: Video detection at College</td>
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<tr>
<td>Ashby Corridor: Video detection at Shattuck</td>
<td>Add video detection to four legs</td>
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<td>$28,750</td>
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<td>Ashby Corridor: Video detection at Adeline</td>
<td>Add video detection to four legs</td>
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<td>Ashby Corridor: Video detection at MLK</td>
<td>Add video detection to four legs</td>
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<tr>
<td>Ashby @ Telegraph</td>
<td>Add signal heads to for left turn phasing</td>
<td>$21,500</td>
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<tr>
<td>Ashby @ MLK</td>
<td>Add signal heads for left turn phasing</td>
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<td>Battery backup for controllers</td>
<td>15 battery backups @$5,000 each</td>
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<td>$543,000</td>
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<td>Berkeley Pedestrian Masterplan: Project 3</td>
<td>Ashby BART Station Area Improvements</td>
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<td>Sidewalk Gaps</td>
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<td>Truncated Domes</td>
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<td>Perpendicular Curb Ramps</td>
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<td>Countdown Signal Heads</td>
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<td>Audible Signals</td>
<td>Draft Pedestrian Plan</td>
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<td>High Visibility Crosswalks at Uncontrolled Crosswalk Locations</td>
<td>Draft Pedestrian Plan</td>
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<td>Advance Warning Signs for Standard Crosswalks</td>
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<td>Painted Red Curb Installation</td>
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<tr>
<td>Project</td>
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<td>Total High</td>
</tr>
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<tr>
<td>Ashby Corridor: Video detection at Sacramento</td>
<td>Add video detection to four legs</td>
<td>$28,750</td>
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<tr>
<td>Ashby Corridor: Video detection at 7th</td>
<td>Add video detection to four legs</td>
<td>$28,750</td>
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<td>Alameda Countywide Bicycle Plan, Project 22, AF: 66th/Woolsey from Herzog to California/King</td>
<td>Create Class 3 (Bike Route signage)</td>
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<td>New traffic signal - Russell (Bicycle Boulevard parallel to Ashby at College or Telegraph)</td>
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<td>Berkeley Pedestrian Masterplan: Project 8</td>
<td>Ashby between California and San Pablo</td>
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| TOTAL ALL PROJECTS | $4,402,600 |

TOTAL FUNDS AVAILABLE FROM FBC SETTLEMENT $2,000,000
To: Honorable Mayor and Members of the City Council  
From: Waterfront Commission  
Submitted by: John Mann, Secretary, Waterfront Commission  
Subject: Water Emergency Transportation Authority (WETA) Ferry Overflow Parking Plan: Lease Conditions  

RECOMMENDATION  
Refer to the City Manager the recommendations of the Waterfront Commission regarding overflow parking conditions for the lease with WETA for the proposed Ferry Terminal at the Berkeley Marina.  

FISCAL IMPACTS OF RECOMMENDATION  
There are no direct financial impacts.  

CURRENT SITUATION AND ITS EFFECTS  
On February 9, 2011, the Waterfront Commission endorsed the Water Emergency Transportation Authority (WETA) Overflow Parking Plan as presented with the following conditions to be included in any lease with WETA for the proposed ferry terminal at the Berkeley Marina.  

1) The WETA spaces will be designated for their use on a nonexclusive basis, as is currently done with Skate’s and HsLordships restaurants, which means that no spaces are exclusively reserved for ferry passengers at any time.  
2) The crosswalk at University and Shorebird Park be improved with lighted crossings and signage.  
3) The WETA spaces shall be available during weekdays only.  
4) No WETA parking should be permitted on 4th of July nor during the Kite Festival.  
5) WETA may provide valet parking if it does not affect the access to the lot by non-ferry users.  

BACKGROUND  
In 2008, the Water Emergency Transportation Authority (WETA) proposed the construction of a new ferry terminal at the Berkeley Marina that would provide alternative transportation between the East Bay and San Francisco. Since that time, WETA has provided the Waterfront Commission with updates on the development of the plans on a regular basis. On February 9, 2011, WETA staff presented the Waterfront Commission with the latest draft of the Overflow Parking Plan at the Berkeley Marina.
The Overflow Parking Lot will be located at the existing L and M Lots (on the north side of University Ave across the street from the Shorebird Nature Center) and will provide parking in addition to the new parking lot that is included in the proposed Ferry Terminal. During discussion, the Waterfront Commission developed recommendations for specific conditions regarding the ferry overflow parking plan at the Berkeley Marina and passed a motion asking the Berkeley City Council to refer their recommendations to the City Manager for use during lease negotiations with WETA for the proposed Ferry Terminal at the Berkeley Marina. M/S/C: (Kamen/McGrathl; Aye’s/ Kamen, McGrath, Beier, Leonio, McKay, Catalfo; No’s/ None).

RATIONALE FOR RECOMMENDATION
WETA needs additional overflow parking to meet their parking projections for the new ferry terminal at the Berkeley Marina. Restrictions placed on them by the Bay Conservation and Development Commission (BCDC) prevent them from identifying enough parking in the lot adjacent to the proposed terminal and require additional weekday overflow parking on a remote site within the Marina. The southern sections of the Marina L and M lots are lightly used during the week and with restriping and reconfiguration would provide enough parking for both Marina patrons and guests and meet WETA’s weekday needs.

ALTERNATIVE ACTIONS CONSIDERED
Other possible sites within the Marina were considered but deemed too far from the terminal to be practicable.

CITY MANAGER
The City Manager takes no position on the content and recommendations of the Commission’s Report.

CONTACT PERSON
John Mann, Secretary, Waterfront Commission, 981-6737
To: Honorable Mayor and Members of the City Council

From: Ann-Marie Hogan, City Auditor

Subject: Audit: Police Property and Evidence Room: Further Improvements

RECOMMENDATION
Request the City Manager to report back on or before September 27, 2011 on the implementation status of the City Auditor’s recommendations. Report back no later than every six months until fully implemented.

SUMMARY
At the request of the Berkeley Police Department, we recently conducted an audit to determine the status of recommendations made by the California Commission on Police Officer Standards and Training (POST). During our audit work we also identified opportunities for improvement that POST did not include. The attached report addresses these concerns:

- **Security** – The alarm to the main property room is not used and the alarm to the drug vault is not alerting the appropriate police personnel. (Finding 1)
- **Oversight** – The Department’s audit methodology presents a fraud risk. (Finding 3)
- **Policies and Procedures** – The Department lacks a comprehensive operations manual for the property and evidence room. (Finding 2)
- **Inventory** – System records were not always updated. (Finding 4)
- **Employee Health** – Poor ventilation and mold in the large drug storage unit made breathing difficult. (Finding 4)

According to the Police Chief, most of the audit recommendations made in this report have been implemented (75%), and the remaining recommendations are targeted for completion by June 30, 2011. The Department’s appreciation of the importance of making improvements appears evident in the number of recommendations already implemented.

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2. "Audits" as conducted by Property Room staff should not be confused with audits conducted by an independent agency, such as the City Auditor’s Office.
FISCAL IMPACTS OF RECOMMENDATION
The Property and Evidence Room handled over 9,000 items of property and evidence in calendar year 2009. This includes narcotics evidence with an estimated street value of more than $1,500,000 and over $310,000 in currency.

Inadequately managed property rooms can further harm victims whose cases are dependent on the integrity of the evidence. It can also lead to a financial loss and a loss of public confidence.

RATIONALE FOR RECOMMENDATION
Implementing the recommendations will help ensure the integrity of evidence and help protect the City’s reputation.

CONTACT PERSON
Ann-Marie Hogan, City Auditor (510) 981-6750

Attachments:
1: Audit – Police Property and Evidence Room: Further Improvements
City of Berkeley

Police Property and Evidence Room: Further Improvements

Prepared by:

Ann-Marie Hogan, City Auditor, CIA, CGAP
Teresa Berkeley-Simmons, Audit Manager, CIA, CGAP
Claudette Biemeret, Auditor II, CGAP

Presented to Council March 29, 2011
# Police Property and Evidence Room: Further Improvements

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I. Executive Summary

We recently conducted an audit\(^1\) to determine the status of recommendations made by the California Commission on Police Officer Standards and Training (POST). The Commission focused on controls and operational weaknesses in the property and evidence unit. During our audit work, we also identified opportunities for improvement that POST did not include. This report addresses these concerns.

The Berkeley Police Department made recent organizational changes to improve efficiency, effectiveness, and accountability. The Department must take further action to improve:

- **Security** – The alarm to the main property room is not used. The alarm to the drug vault is not alerting the appropriate police personnel. (Finding 1)

- **Oversight** – The Department’s audit\(^2\) methodology presents a fraud risk. (Finding 3)

- **Policies and Procedures** – There is no comprehensive operations manual for the property and evidence room. This “answer book” would help ensure staff perform their duties as management intended. (Finding 2)

- **Inventory** – System records were not always updated. Discrepancies could give the appearance of missing or stolen property and evidence. (Finding 4)

- **Employee Health** – Poor ventilation and mold in the large drug storage unit made breathing difficult. (Finding 4)

According to the Police Chief, most of the audit recommendations made in this report have been implemented (75%), and the remaining recommendations are targeted for completion by June 30, 2011.

---

\(^1\) *Property and Evidence Room POST Study: Follow-Up Report* (January 18, 2011)

\(^2\) “Audits” as conducted by Property Room staff are intended to ensure the credibility of the automated property system. They should not be confused with audits conducted by an independent agency, such as the City Auditor’s Office.
II. Audit Objectives

This report identifies deficiencies that came to the auditors' attention during the fieldwork performed for the California Commission on Peace Officer Standards and Training follow-up audit\(^3\). Another objective was to determine if access to property rooms was changed in accordance with policy.

At the request of the Police Chief, fieldwork was expanded to include inventory tests of narcotics, currency/high-value items, and firearms.

III. Background

The Berkeley Police Department

The Berkeley Police Department (Department) is organized into the Office of the Chief and four divisions:

- Police Operations
- Police Support Services
- Police Professional Standards
- Police Investigations

The Office of the Chief includes the Internal Affairs Bureau and the Public Information Bureau. As of June 2010, the Department was comprised of 184 sworn officers and 117 non-sworn employees.

The Property and Evidence Unit

The Property and Evidence Unit (Unit) is part of the Berkeley Police Department’s Support Services Division. The Department staffs the Unit with one Community Services Supervisor and one Community Services Officer, who serve as the Property Officer and the Property Clerk. Staff are responsible for a number of administrative and technical tasks related to the handling and storage of property and evidence. Property Room hours are Monday to Friday from 7 a.m. to 5 p.m. The public may claim property between 8:30 a.m. and 4:30 p.m.

\(^3\) The primary objective for this audit was to determine the implementation status of the recommendations made by the California Commission on Peace Officer Standards and Training (POST) in their October 27, 2006 report. The results of that objective were reported to Council on January 18, 2011.
The Unit serves to safely store property collected as evidence, recovered from any source, or turned over as found property or for safekeeping. As of March 2010, the Unit was responsible for the management of over 40,000 pieces of property and evidence. Property is stored in one of four property rooms: main property room, drug vault, Conex (large, drug storage unit), or annex (oversized property and evidence storage).

IV. Findings and Recommendations

Finding 1: Improve Storage Security

Property and evidence storage areas are not adequately secured and monitored:

- The alarm to the main property room is not activated and the alarm to the drug vault is not alerting the appropriate police personnel. It appears the alarm systems could generate activity reports to monitor access.
- Two of the four storage areas are not equipped with an alarm. This includes an area for narcotics storage.
- Management is not reviewing access reports to the drug vault.
- The keypad entry system to the drug vault can be bypassed by using a key and there is no alert system to identify such entries.
- Access codes to the drug vault were not deactivated in accordance with policy.
- Past policy permitted the Police Chief and the Support Services Captain to have keys and access codes to property and evidence storage areas. Best practice is to limit regular access to property room staff and their supervisor.
- Existing policy for emergency, after-hours access does not clearly state that non-property room personnel are restricted from entering property rooms alone. Best practice is to require dual access.
- The Department maintains a set of spare property room keys for emergency access. At the time audit work was performed, the set included the key to the drug storage areas.

4 At the time the audit was performed, this policy was in place. Since completion of the audit, the Department has reported that it no longer permits this practice.
Entry to property or evidence storage areas must be controlled to ensure evidence integrity, and to prevent the alteration, theft, destruction, or compromise of the material.

City Manager’s Response to Finding

Agree.

Recommendations and City Manager Responses

1.1 Ensure the alarm to the main property room is activated nightly.

Agree and implemented September 19, 2010.

1.2 Modify the drug-vault alarm system so that it alerts the appropriate police personnel.

Agree and will implement by April 2011.

1.3 Equip all storage areas with an alarm and train staff to use the system. Ensure the new alarm system generates access logs.

Agree and will implement by June 30, 2011. The Department has received three bids for replacing and expanding the alarm system to secure all storage units. This is in addition to the motion detectors recommended by POST, which the Department has agreed to implement. The systems under consideration have the ability to generate access logs.

1.4 Perform bi-monthly review of access logs. Follow up as needed and document results.

Agree and implemented March 1, 2011.

1.5 Ensure that alarms are monitored. This includes system alerts that notify the appropriate personnel when keypad entry systems are bypassed.

Agree and will implement by June 30, 2011. This option will be included as a feature of the alarm system selected.

1.6 Update access codes to the drug vault so that only authorized personnel have active codes.

Agree and implemented February 17, 2011.
1.7 Limit unrestricted access to property and evidence storage areas to property room personnel and their direct supervisor.

Agree and implemented January 9, 2011.

1.8 Clearly require dual access to any property and evidence storage area by non-property room personnel.

Agree and implemented September 19, 2010. When the Property Officer is not onsite and an emergency arises, the Support Services commander is contacted. If it is determined that an emergency exists, the commander grants permission and accompanies the requesting party to the property room. If unavailable, the Support Services commander provides the watch commander with the access code to the lockbox in the sergeants’ office. The watch commander then obtains the key and escorts the requesting party to the property room. The in and out time and date are recorded to the property room entry log. The code to the lockbox is changed by the Support Services commander after each use.

1.9 Discontinue use of an emergency key to drug storage areas. If emergency access is required to the drug storage areas, recall authorized personnel.

Agree and implemented December 1, 2010. The emergency access key to the drug storage areas was removed from use. In the extremely rare situation that emergency access to a drug storage area is needed, authorized staff are recalled to assist.


The Property Room lacks a comprehensive operations manual. There is an ad hoc desk manual but it is outdated and incomplete. There is also written guidance for handling narcotics. In some cases, management’s understanding of practices does not align with actual practices, and there are day-to-day tasks that are not described in written format.
A comprehensive operations manual should cover:

- Processes and practices to ensure General Order P-65 procedures are performed.
- Scheduling and documenting purges and inventories.
- Changing the code to the office wall safe.
- Storing found / safekeeping property (the specific shelves used and reason for keeping items separate from evidence).
- Setting perimeter alarms.
- Staff rotation procedures.
- Additional information to ensure work is performed as management intended.

The development of a comprehensive operations manual, to supplement Department policy, would help align management’s expectations and staff practices. It would also help ensure consistent performance. The Department’s practice of rotating staff to other assignments makes the need for an operations manual even more compelling.

City Manager’s Response to Finding

Agree.

Recommendation and City Manager Response

2.1 Ensure that practices align with management expectations. Develop an operations manual that identifies all the tasks, duties, and other information needed. Incorporate the narcotics procedures manual into this operations manual.

Agree and will implement by June 30, 2011. As reported to Council on January 18, 2011, the Department is revising the General Order directing the policies and procedures for the Property Room. A manual describing narcotics, currency, firearms, and safekeeping and found property processing, as well as all property and evidence room procedures, will result from the revisions.

5 Separate, detailed procedures for purging narcotics are included in the narcotics-handling guidance.
Finding 3:  Improve Internal Controls

Department policy requires property room staff to conduct audits\(^6\) of property and evidence. However, property room staff identify the items that they confirm are in storage. This presents a fraud risk. Someone without regular access to the property room should select the items and assist in performing the audits.

City Manager’s Response to Finding

Agree.

Recommendation and City Manager Response

3.1 Require someone familiar with protocol, but not directly involved with the control of property and evidence, select the items for testing and participate in the audit.

Agree and implemented September 19, 2010. The International Association for Property and Evidence recommends bi-weekly auditing of shelved articles, as well as auditing from property logs. Our new practice is to have a lieutenant from investigations submit five or six case numbers and audit for proper storage of booked property. The lieutenant is present to ensure the evidence is in storage. In addition, we now have property room staff work in tandem. Staff will remove five or six random items from the shelf and audit the logs to ensure proper record keeping. This hybrid method tests both ends of property and evidence internal controls and exposes deficiencies.

Finding 4: Address Employee Health Concern and Inventory Test Discrepancies

Due to unsafe conditions in the Conex, narcotics testing could not be completed: Fourteen packages selected for testing could not be safely handled because they were covered with mold and/or damaged. The auditor reported the health concern to the Occupational Health and Safety Officer. He performed an inspection and recommended the use of disposable masks until improvements are made.

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\(^6\) Property and evidence room audits are intended to ensure the credibility of the automated property system and should not be confused with audits conducted by an independent agency, such as the City Auditor’s Office.
We tested 2667 pieces of evidence and found:

**Narcotics**

- One piece of evidence could not be adequately examined for tampering. The red evidence seal was covered with a chain of custody print out. This appeared to be inadvertent.
- One evidence package was re-sealed with scotch tape, giving the appearance of tampering.
- Forty-nine items selected for testing could not be located. It appears that this evidence was destroyed but the property and evidence management system was not updated with the appropriate disposition code.

**Firearms**

- Nine duplicate system records were identified.
- One firearm could not be located. According to the Police Chief, it was destroyed but the property and evidence management system was not updated with the appropriate disposition code.
- Firearms are not packaged consistently. Some are wrapped or boxed, while others are not. Most long guns are stored in such a way that they easily tip over. These concerns apply to all firearms stored in the property room, not only those selected for testing.

**Safe**

- Two items recorded as stored in the safe could not be located.
- One duplicate system record identified.

When items are not packaged or stored to prevent damage, it puts the integrity of the evidence at risk. Well-packaged property and evidence also allows staff to check for tampering and reduces the need to repackaging. The discrepancy between the management system and the actual items in storage could give the appearance of missing or stolen property and evidence.

---

7 The auditor tested 194 pieces of narcotics evidence, 38 firearms, and 34 items stored in the safe (reportedly used for high-value items) or recorded as property type “jewelry/precious metal.”

8 Disposition codes are used to identify the location or status of property and evidence, e.g., stored property, destroyed, court, sealed, and BPD bank account.

9 The Department reported to Council on January 18, 2011 that it will create a standardized packaging manual. The manual will address the packaging concerns identified in finding four.
City Manager’s Response to Finding

Agree.

Recommendations and City Manager Responses

4.1 Improve the Conex ventilation system to reduce employee health risks and protect evidence from damage and deterioration. In the interim, continue to have staff wear disposable facemasks.

Agree and will implement by June 30, 2011. Conex ventilation is sub-standard and a fan system is being installed. In the interim, staff continue to wear disposable facemasks.

4.2 Obtain a legal opinion to determine whether it is necessary to repackage the evidence covered with mold and/or torn, and to determine whether it is necessary to contact the District Attorney’s Office to report the damage.

Agree and implemented December 2010. Repackaging was discussed with the current District Attorney. The DA requested that we treat each case individually. If repackaging is required, the DA will let us know on a case-by-case basis. Alternatively, a penal code section allows sampling in lieu of storing the bulk of the evidence. The District Attorney will advise us if that is acceptable, also on a case-by-case basis. In the interim, we have taken steps to prevent further damage.

4.3 Document that the 49 items of narcotics evidence recorded as stored evidence were destroyed. Update CRIMES with the “destroyed” disposition code.

Agree and implemented September 19, 2010.

4.4 Establish written policies and procedures to help ensure that property and evidence disposition codes are properly recorded in CRIMES.

Agree and implemented November 2010. The Department implemented new software, which includes a new property and evidence module that replaces CRIMES. There are written policies and procedures for property and evidence system records maintenance. Staff have been trained to properly record disposition codes. We continue to work with officers and Property Room staff to ensure proper recording of disposition codes.
4.5 Follow up on the two pieces of narcotics evidence that were not packaged correctly to ensure there was no tampering.

*Agree and implemented July 2010. An internal audit was conducted and concluded that no tampering occurred.*

4.6 Update CRIMES to remove the duplicate records.

*Agree and implemented September 19, 2010.*

4.7 Document that the firearm recorded as stored evidence was destroyed. Update CRIMES with the “destroyed” disposition code.

*Agree and implemented September 19, 2010. The firearm was destroyed on March 19, 2001. The property management system has been updated to reflect the destruction.*

4.8 Install shelving units for long guns to prevent them from tipping over.

*Agree and alternative implemented September 19, 2010. Long guns have been removed from barrels and shelving space has been expanded. The long guns are firmly placed in these spaces so they remain upright and cannot easily tip over.*

4.9 Determine the location of the two items stored in the safe that could not be located. Document the discovery and update CRIMES accordingly.

*Agree and implemented September 19, 2010. One item was a money order, which was returned to the owner. The other item contained counterfeit bills, which were destroyed in accordance with policy. The property management system has been updated to reflect that the evidence is no longer in storage.*
V. Fiscal Impact

The Property and Evidence Room handled over 9,000 items of property and evidence in calendar year 2009. This includes narcotics evidence with an estimated street value of more than $1,500,000 and over $310,000 in currency.

Inadequately managed property rooms can further harm victims whose cases are dependent on the integrity of the evidence. It can also lead to a financial loss and a loss of public confidence.

VI. Conclusion

The property and evidence function is a critical element in the successful prosecution of criminals. Proper management helps ensure the integrity of the process and evidence. A poorly managed system can affect the City’s ability to prosecute criminals and increases the risk of theft. Continuing to implement the recommendations in this report will help protect employee health, the City’s reputation, and the integrity of evidence.

We would like to thank the Berkeley Police Department for requesting this audit, and for their continued cooperation and assistance. The Department’s appreciation of the importance of making these improvements appears evident in the number of recommendations already implemented. As of March 1, 2011, the Police Chief reported 15 (75%) of the 20 audit recommendations made in this report as implemented.
Appendix A

Scope and Methodology

The primary focus of the audit was to determine the implementation status of the October 2006 POST study recommendations. Results were reported to Council on January 18, 2011. The audit sub-objectives included identifying concerns that came to the auditor’s attention, determining whether property room access was updated in accordance with policy, and a testing of inventory. The sub-objectives are reported on in this audit.

Survey work and fieldwork were performed between February 2010 and July 2010. The audit objectives were met by:

- Reviewing the California Commission on Peace Officer Standards and Training (POST) management study.
- Reviewing the POST property / evidence management guide.
- Reviewing procedures, documentation, and forms related to the management of property and evidence.
- Reviewing best practices and other guidance for property and evidence management.
- Having discussions with employees involved with property and evidence management.
- Performing walkthroughs of the property storage areas.
- Reviewing inventory detail.
- Obtaining evidence of April 2009 narcotics destruction and inventory.
- Reviewing and discussing keypad access reports.

Inventory testing was based a specific request form the Police Chief. We judgmentally selected evidence from the inventory detail as of March 22, 2010. We located the selected items and matched the packaging description, including quantity and weight for narcotics evidence, to the inventory management system. Narcotics testing included examining packaging for tampering but package contents were not examined. We did not obtain case management records to determine whether the inventory was still required.

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10 Property and Evidence Room POST Study: Follow-Up Report (January 18, 2011)
Our audit findings and recommendations do not heavily rely on information obtained from data systems. We did obtain the inventory detail from the property and evidence management system, CRIMES, and a personnel access report from the management software, Velocity. However, additional audit work was done that provided reasonable assurance that data from these systems, as it relates to the audit findings and recommendations, was reliable.

Fieldwork did not include reviews of laws applicable to the handling and management of property and evidence. It also did not include a detailed analysis of General Order P-65, or the consistency of all practices with the procedures described in the General Order.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform our audit to obtain sufficient and appropriate evidence that provides a reasonable basis for our findings and conclusions, based on our audit objectives. We believe that the evidence obtained provides reasonable basis for our findings and conclusions, based on our audit objectives.

At the request of the Berkeley Police Department, this performance audit was initiated by the Auditor’s Office and scheduled as part of the fiscal year 2010 Audit Plan presented to Council on June 23, 2009.
Appendix B

BERKELEY POLICE DEPARTMENT MEMORANDUM

To: Ann-Marie Hogan, City Auditor      Date: March 2, 2011
From: Michael K. Meehan, Chief of Police

Subject: Police Property and Evidence Room: Further Improvements Report

The Berkeley Police Department would like to thank the City Auditor and her staff for their efforts in conducting the Police Property and Evidence Room: Further Improvements. This audit was the second requested of the City Auditor. In the previous audit, we requested a review of our controls and procedures to determine the implementation status of the recommendations made by the California Commission on Peace Officer Standards and Training (POST). This audit was borne from observations made from the first audit to determine if other issues were in need of improvement.

In our responses, you will note that we have implemented, or are in the process of implementing, all audit recommendations including:

• Improved Storage Security
  1. Areas are equipped with alarms and access is monitored to ensure only authorized personnel are accessing the storage facilities
  2. Keys are issued only to property room personnel and supervisor.

• Establish a Comprehensive Property and Evidence Room Operations Manual
  1. Revision of current General Orders is to be completed by June 2012.
  2. A manual describing property processing will be completed by June 2011.

• Improve Internal Controls
  1. Auditing of the property room has begun with two internal audits completed and one external inventory of all items scheduled for later this month.
  2. Random audits will be conducted at a minimum of twice a month.

• Address Employee Health Concern and Inventory Test Discrepancies
  1. Ventilation in the storage locker will be improved by June 30, 2011.
  2. All items that were not located during City Auditors inspection have been located and properly recorded in inventory data base.

Thank you again for conducting the Berkeley Police Department Property and Evidence Room: Further Improvements audit. We share the City Auditor’s commitment to ongoing review and enhancement and see this report as a guidepost to assist in the process.

Michael K. Meehan
Chief of Police

RECEIVED
MAR 8 2011
CITY AUDITOR
To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Supporting Assembly Bill 1081, Regarding Local Government Participation in the Federal Secure Communities Program

RECOMMENDATION:
Adopt a Resolution supporting Assembly Bill (AB) 1081, authored by Assemblymember Tom Ammiano, which gives California local governments the discretion to decide whether to participate in the federal Secure Communities and would require those local governments that do participate in the Secure Communities program to implement plans to safeguard against racial profiling and exceptions to implementation to protect victims of domestic violence, juveniles and limiting the use of fingerprint information to only those convicted of a crime.

BACKGROUND:
Alameda County was the fourth Bay Area county to participate in the federal Secure Communities program, a program administered by the federal Immigration and Customs Enforcement agency (ICE), but not created by statute, which requires that those participating state and local government law enforcement agencies automatically forward the fingerprints of all people arrested, whether or not they are in the country legally to ICE. With that information, ICE can coordinate with local law enforcement and target people suspected of immigration violations for detention and deportation.

The program, which was locally introduced on April 20, 2010 and is slowly expanding across the country, has been criticized by civil rights advocates who say its implementation could lead to racial profiling and the deportation of immigrants who do not pose a public safety threat.

Statistics released about Secure Communities show that a vast majority of individuals deported through the program have had no criminal charges or were picked up for low-level offenses. A report produced by the Center for Constitutional Rights in August 2010 found that 79 percent of the people deported due to Secure Communities have had no criminal charges or were picked up for low-level offenses, such as traffic offenses or petty juvenile mischief. ICE’s own data concurs that more than a quarter (28 percent) of the people transferred to ICE custody through Secure Communities have had no criminal charges.

In light of some of the problems with the implementation of Secure Communities, Assemblymember Tom Ammiano has introduced Assembly Bill (AB) 1081, which would
modify the May 8, 2009 memorandum of agreement between the State of California and the U.S. Department of Homeland Security regarding the implementation of ICE’s Secure Communities program.

AB 1081 modifies California’s participation in the program to “authorize a local government to participate in the Secure Communities program only upon the passage of an ordinance or resolution authorizing participation by the legislative body of the local government” and requires such local governments to submit a “a plan to guard against, and monitor, racial profiling associated with the local government's participation in the program,” including possible exceptions to protect domestic violence victims and juveniles and people suspected rather than convicted of a crime.

On December 14, 2010, the Berkeley City Council voted unanimously to send a letter to the Governor and State Attorney General requesting that the State “stop sharing arrestee fingerprint data with federal law enforcement agencies for the purpose of deporting illegal immigrants arrested for minor crimes” and that the “State of California should also opt out of the Secure Communities program altogether”.

Adoption of this resolution supporting AB 1081 would be consistent with the Berkeley City Council’s previous statement regarding Secure Communities.

However rather than opting out of Secure Communities, which is what the City Council’s previous statement recommended, AB 1081 would allow implementation of Secure Communities to continue in California by limiting the sharing of fingerprint data to those people convicted, while putting in place safeguards to protect victims of domestic violence, juveniles arrested due to minor crimes and prohibiting police checkpoints and other practices used to target illegal immigrants as a way to comply with Secure Communities.

Consistent with the City Council’s previous statement, the resolution also urges the author to amend AB 1081 to explicitly prohibit the sharing of fingerprint information for those individuals convicted of minor crimes.

The Peace and Justice Commission at their March 7, 2011 meeting recommended that the Council pass a resolution, similar to the one attached supporting AB 1081.

FINANCIAL IMPLICATIONS:
NONE

CONTACT PERSON:
Jesse Arreguin, Councilmember, District 4   981-7140

Attachments:

1. Resolution
2. Copy of Assembly Bill 1081
3. “Briefing Guide to Secure Communities” from the Center for Constitutional Rights
4. Description of Council Action on Secure Communities, December 14, 2010 Council meeting Annotated Agenda
RESOLUTION NO.

SUPPORTING ASSEMBLY BILL 1081 REGARDING LOCAL GOVERNMENT PARTICIPATION IN THE FEDERAL SECURE COMMUNITIES PROGRAM

WHEREAS, Alameda County was the fourth Bay Area county to participate in the federal Secure Communities program, a program administered by the federal Immigration and Customs Enforcement agency (ICE), which requires that those participating state and local government law enforcement agencies automatically forward the fingerprints of all people arrested, whether or not they are in the country legally. With that information, ICE can coordinate with local law enforcement and target people suspected of immigration violations for detention and deportation; and

WHEREAS, in 1971, the Berkeley City Council declared Berkeley to be a City of Refuge with the passage of Resolution No. 44,784 and reaffirmed that decision in 1986 relating to Central American refugees (Resolution No. 52,596); and

WHEREAS, on May 22, 2007, the Berkeley City Council reaffirmed its status of a “City of Refuge” through its passage of Resolution No. 63,711, which requires that “no department, agency, commission, officer or employee of the City of Berkeley shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information status of individuals in the City of Berkeley”; and

WHEREAS, the resolution further states “the spirit and intent of Berkeley’s refuge Resolutions would be violated if City funds, facilities or staff were utilized to assist the Federal government’s inhumane immigration policies and practices”; and

WHEREAS, as part of its “City of Refuge” policy, City departments and employees are specifically prohibited from “Requesting information about, or dissemination information regarding, the immigration status of any individual”; and

WHEREAS, Secure Communities is a voluntary federal program, not required by statute, and therefore participation in the program would appear to violate the City’s “City of Refuge” policy; and

WHEREAS, a report produced by the Center for Constitutional Rights in August 2010 found that the vast majority (79 percent) of the people deported due to Secure Communities have no criminal charges or were picked up for low-level offenses, such as traffic offenses or petty juvenile mischief; ICE’s own data concur that more than a quarter (28 percent) of the people transferred to ICE custody through Secure Communities have had no criminal charges; and

WHEREAS, in Alameda County, this program has led to the deportation of 558 people since its inception; and
WHEREAS, in light of some of the problems with the implementation of Secure Communities, Assemblymember Tom Ammiano has introduced Assembly Bill (AB) 1081, which would modify the May 8, 2009 memorandum of agreement between the State of California and the U.S. Department of Homeland Security regarding the implementation of ICE’s Secure Communities program; and

WHEREAS, AB 1081 specifically mentions the City of Berkeley’s concern about the local application of this federal program, referring to “the wishes of local jurisdictions, including San Francisco, Santa Clara [County], and Berkeley, which have actively worked for decades to build community trust in law enforcement and have expressed concern that the Secure Communities program has been deployed without adequate notice or consent”; and

WHEREAS, on December 14, 2010, the Berkeley City Council voted unanimously to send a letter to the Governor and State Attorney General requesting that the State “stop sharing arrestee fingerprint data with federal law enforcement agencies for the purpose of deporting illegal immigrants arrested for minor crimes” and that the “State of California should also opt out of the Secure Communities program altogether”; and

WHEREAS, AB 1081 modifies California's participation in the program to “authorize a local government to participate in the Secure Communities program only upon the passage of an ordinance or resolution authorizing participation by the legislative body of the local government” and requires such local governments to submit a “a plan to guard against, and monitor, racial profiling associated with the local government's participation in the program,” including possible exceptions to protect domestic violence victims and juveniles and people suspected rather than convicted of a crime.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby expresses its support for Assembly Bill (AB) 1081, authored by Assemblymember Tom Ammiano.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley urges the author of AB 1081 to include an explicit limitation in the bill on the sharing of fingerprint information under the program to those individuals convicted of a major crime.

BE IT FURTHER RESOLVED that the Council directs the City Clerk to send a copy of this resolution to Assembly Speaker John A. Perez, California State Assembly Members Tom Ammiano and Nancy Skinner and State Senator Loni Hancock.
An act to add Chapter 17.1 (commencing with Section 7282) to Division 7 of Title 1 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL’S DIGEST

AB 1081, as introduced, Ammiano. State government: federal immigration policy enforcement.

Existing law, setting forth the findings and declarations of the Legislature, provides that all protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, within the state, and further provides that, for purposes of enforcing specified state laws, a person’s immigration status is irrelevant to the issue of liability, and prohibits, in proceedings or discovery undertaken to enforce those state laws, an inquiry into a person’s immigration status except where the person seeking to make the inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

This bill would state the findings and declarations of the Legislature with respect to a memorandum of agreement with the United States Department of Homeland Security, regarding the implementation of the Immigration and Customs Enforcement’s Secure Communities program, that the Bureau of Criminal Identification and Information within the Department of Justice entered into on May 8, 2009. The bill
would require the bureau to modify that agreement, according to specified requirements, or to exercise its authority under the agreement to terminate the agreement.


The people of the State of California do enact as follows:

SECTION 1. Chapter 17.1 (commencing with Section 7282) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.1. FEDERAL IMMIGRATION POLICY ENFORCEMENT

7282. (a) The Legislature finds and declares all of the following:
(1) Both the State of Washington and Washington, D.C., have refused to enter into a memorandum of agreement with the United States Department of Homeland Security regarding the Immigration and Custom Enforcement’s Secure Communities program because the program undermines community policing and public safety.
(2) Pursuant to the program, federal officials have claimed the authority to enforce federal immigration laws, and in particular, the authority to detain individuals based on minimal contact with law enforcement.
(3) Immigrant residents who are victims or witnesses to crime, including domestic violence related crimes, are less likely to report the crime or cooperate with law enforcement because any contact with law enforcement could result in deportation, without regard to whether the arrest was wrongful or the result of a mistake.
(b) It is the intent of the Legislature that the Bureau of Criminal Identification and Information within the Department of Justice modify the memorandum of agreement with the United States Department of Homeland Security, regarding the implementation of the Immigration and Customs Enforcement’s Secure Communities program, it entered into on May 8, 2009, as specified in this act, thereby paying respect to the wishes of local jurisdictions, including San Francisco, Santa Clara, and Berkeley, which have actively worked for decades to build community trust in law enforcement and have expressed concern that the Secure
Communities program has been deployed without adequate notice or consent.

7282.1. (a) The Bureau of Criminal Identification and Information within the Department of Justice shall modify the memorandum of agreement with the United States Department of Homeland Security, regarding the implementation of the Immigration and Customs Enforcement’s Secure Communities program, entered into on May 8, 2009, in accordance with all of the following requirements:

(1) The modified agreement shall authorize a local government to participate in the Secure Communities program only upon the passage of an ordinance or resolution authorizing participation by the legislative body of the local government.

(2) The modified agreement shall require a local government that opts to participate in the program, as provided in paragraph (1), to submit to the Bureau of Criminal Identification and Information within the Department of Justice a plan to guard against, and monitor, racial profiling associated with the local government’s participation in the program.

(3) The modified agreement shall authorize local governments to adopt reasonable exceptions to the implementation of the program with respect to all of the following:

(A) Protections for domestic violence victims.

(B) Protections for juveniles.

(C) An explicit limitation on the sharing of fingerprints under the program to those of individuals convicted, rather than merely accused, of a crime.

(4) The modified agreement shall include, but not be limited to, all of the following safeguards against racial profiling:

(A) A prohibition against the use of driver’s license checkpoints to obtain fingerprints for the purposes of the Secure Communities program.

(B) A requirement that the Immigration and Customs Enforcement establish a complaint mechanism that allows for expedited review of claims by those put into immigration removal proceedings prior to conviction as a result of the program.
(b) If the bureau is unable to fulfill the requirements of subdivision (a), it shall exercise its authority under the agreement to terminate the agreement.
BRIEFING GUIDE TO “SECURE COMMUNITIES” --
ICE’S CONTROVERSIAL IMMIGRATION ENFORCEMENT PROGRAM
NEW STATISTICS AND INFORMATION REVEAL DISTURBING TRENDS AND LEAVE CRUCIAL QUESTIONS UNANSWERED

DESPITE CONCERNS, ICE CONTINUES TO DEPLOY S-COMM AT BREAKNECK SPEED

- “Secure Communities” (S-Comm) is an Immigration and Customs Enforcement (ICE) agency program that requires state and local law enforcement agencies to automatically forward the fingerprints of all people arrested through immigration databases at booking.\(^1\) ICE then coordinates with local law enforcement to target people suspected of immigration violations for detention and deportation.

- In February 2010, when the National Day Laborer Organization Network (NDLON), the Center for Constitutional Rights (CCR) and the Kathryn O. Greenberg Immigration Justice Clinic of the Benjamin N. Cardozo School of Law filed an administrative Freedom of Information (FOIA) request, ICE had activated S-Comm in 116 jurisdictions in 16 states.\(^2\) In the past six months, ICE has tripled the number of jurisdictions operating S-Comm and it now operates in 494 jurisdictions in 27 states.\(^3\) ICE aims to implement it in every jurisdiction in the nation by 2013.\(^4\)

S-COMM IS AN IMMIGRATION DRAGNET NOT A PROGRAM FOCUSED ON “HIGH THREAT” INDIVIDUALS AS ICE HAS TOLD LOCAL POLICE DEPARTMENTS

- In accordance with a congressional mandate,\(^5\) ICE has sold S-Comm to local police departments as a program focused on Level I “high-threat” criminal immigrants.\(^6\) The numbers tell a different story:

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\(^1\) Immigration and Customs Enforcement, Secure Communities State Identification Deployment Briefing, New York State, June 17, 2009, ICE FOIA 10-2674.000800 - ICE FOIA 10-2674.000826, at ICE FOIA 10-2674.000811. All documents obtained by Plaintiffs in NDLON et al. v. ICE et al are available at: http://ccrjustice.org/secure-communities.


\(^4\) Id.


The vast majority (79 percent) of the people deported due to S-Comm are non-criminals or were picked up for lower level offenses, such as traffic offenses or petty juvenile mischief.7

According to ICE’s own data, since the program was initiated, more than a quarter (28 percent) of the people transferred to ICE custody through S-Comm have been non-criminals.8

- As ICE expands S-Comm, the program moves even further away from Congress’s mandate:

In FY 2009, 22 percent of individuals transferred to ICE custody through S-Comm were non-criminals.9 Thus far, in FY 2010, that number has jumped to 32 percent.10

**S-COMM COERCES STATES AND LOCALITIES INTO WIDESPREAD ROUTINE CIVIL IMMIGRATION ENFORCEMENT WHILE MISREPRESENTING THE SCOPE OF THE PROGRAM AND THE BURDEN ON LOCAL LAW ENFORCEMENT AND COMMUNITIES**

- ICE markets S-Comm as posing no additional burden and “little or no change to current procedures”11 for local law enforcement. Previously unreleased correspondence between local law enforcement officials in Florida indicates otherwise:

  “Time is . . . a factor for our staff. Sending I.A.Q.’s, [Immigration Alien Queries], waiting for responses, making phone calls to different immigration officials for clarification on detainees status, gathering additional information for immigration such as photos, booking sheets, fingerprints, and palm prints [for S-Comm] takes away from the deputies regular duties within the facility.[.]”12

  “I was also informed today that Booking received multiple calls last night. You advised that the calls would be occasional. This is not what I was informed to expect.”13

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7 Immigration and Customs Enforcement, Secure Communities, IDENT/IAFIS Interoperability, Monthly Statistics through June 30, 2010, prepared on July 9, 2010, ICE FOIA 10-2674.000080 - ICE FOIA 10-2674.000079, at ICE FOIA 10-2674.000086. This statistic reflects the number of individuals deported through S-Comm from October, 2008 through June 2010. Id. The cumulative number of individuals deported through S-Comm in that time period is 46,929, while the total number of non-criminals and low level, Level II and Level III offenders deported through S-Comm is 37,107. Id.

8 Id., at ICE FOIA 10-2674.000080. This statistic reflects the number of individuals administratively arrested or booked into ICE custody through S-Comm from the program’s initiation in October 2008 through June 2010. Id. The cumulative number of individuals administratively arrested or booked into ICE custody through S-Comm is 89,019, while the total number of non-criminals administratively arrested or booked into ICE custody through S-Comm is 24,706. Id.

9 Id., at ICE FOIA 10-2674.000080. This statistic reflects the number of individuals administratively arrested or booked into ICE custody through S-Comm during Fiscal Year 2009. Id. The cumulative number of individuals administratively arrested or booked into ICE custody through S-Comm during that time period is 35,357, while the total number of non-criminals administratively arrested or booked into ICE custody through S-Comm is 7,728. Id.

10 Id., at ICE FOIA 10-2674.000080. This statistic reflects the number of individuals administratively arrested or booked into ICE custody through S-Comm from October 2009 through June 30, 2010. Id. The cumulative number of individuals administratively arrested or booked into ICE custody through S-Comm during that time period is 53,482, while the total number of non-criminals administratively arrested or booked into ICE custody through S-Comm is 16,978. Id.

11 Immigration and Customs Enforcement, State Identification Bureau Deployment Briefing, New York State, July 17, 2009, ICE FOIA 10-2674.000080 - ICE FOIA 10-2674.000082, at ICE FOIA 10-2674.0000818; see also Immigration and Customs Enforcement, Secure Communities Talking Points Police Executive Research Forum, Jan. 12, 2010, ICE FOIA 10-2674.000430 - ICE FOIA 10-2674.000433, at ICE FOIA 10-2674.000431 (“This enhancement and interoperability process takes place behind the scenes and does not impact your daily operations.”).


13 Public record obtained by the Florida Immigrant Advocacy Center, Orient Road, Florida, Email from Major Robert Lucas, Hillsborough County Sheriff’s Office [rlucas@hcso.tampa.fl.us], to George Hernandez, Department of Homeland Security [George
“...there is much to this that we are unsettled about. It is being rushed at us and it looks like a project that we will have to gauge as it goes. [ICE] is not communicating well within its departments and just seems anxious to get the project started.”

- Despite issues such as S-Comm’s potentially devastating impact on the community policing initiatives of local law enforcement agencies, early in S-Comm’s deployment, ICE shifted away from agreements with local police to signing top-down state level agreements without local input. This approach seems to have limited the right of localities to choose not to participate in the program.

- Widespread confusion persists about how jurisdictions can chose not to participate in S-Comm due to concern about how the program will impact community policing initiatives and public safety.

**DOCS. RAISE CRUCIAL QUESTIONS ABOUT RACIAL PROFILING AND CONSTITUTIONAL VIOLATIONS COVERED UP BY S-COMM**

- ICE states that S-Comm “reduces racial and ethnic profiling.” But preliminary data suggests the more logical conclusion is that S-Comm facilitates and conceals racial profiling. In S-Comm jurisdictions, unscrupulous police officers can stop and arrest people based solely on their appearance, expecting that those individuals will be deported, even if they were wrongfully arrested and are never convicted.

- Nationwide, an average of 26 percent of all S-Comm deportations are of non-criminals. In Maricopa County, Arizona, however, ICE categorizes more than half (54 percent) of people deported through S-Comm as non-criminals. The disparity between Maricopa and the national statistics provides evidence that Sheriff Joe Arpaio’s deputies use minor traffic and other offenses as pretext for arresting Latino immigrants.


14 Public record obtained by the Florida Immigrant Advocacy Center. Orient Road, Florida. Email from Robert Lucas Hillsborough County Sheriff’s Office (rlucas@hsco.tampa.fl.us), to Mark Walther, February 12, 2009, at Florida.ORR.0417, available at http://www.flacfla.org/flacsecurecommunities.html.

15 See Department of Homeland Security, Immigration and Customs Enforcement, 1st Quarterly Status Report (April – June 2008) for Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens, August 2008, ICE FOIA 10-2674.000095 - ICE FOIA 10-2674.000133, at ICE FOIA 10-2674.000150. (“ICE will aim to establish as many MOUs as possible at the state level instead of with each county or LEA to shorten deployment schedules and encourage state-wide support and coordination.”); see also Letter from David J. Ventrella, Executive Director, Secure Communities, to Linda Denly, Bureau of Criminal Identification and Information, California Department of Justice, Re ICE Secure Communities Memorandum of Agreement (MOA), January 23, 2009, available at http://www.ice.gov/doclib/foia/secure_communities-moa/california.4-10-09.pdf (“Deployment at the local level requires a signed Statement of Intent (SOI), by participating agencies that oversee booking locations to ensure those agencies understand and adhere to the principles set forth in the MOA and a set of Standard Operating Procedures.”).

**PROCEDURES.**


But Maricopa County is far from the worst. Compare the following as indicia of racial profiling:20

- Travis, TX 82 percent of S-Comm deportations are of non-criminals
- St. Lucie, FL 79 percent of S-Comm deportations are of non-criminals
- Yavapai, AZ 74 percent of S-Comm deportations are of non-criminals
- Tarrant, TX 73 percent of S-Comm deportations are of non-criminals
- Broward, FL 71 percent of S-Comm deportations are of non-criminals
- Suffolk, MA 68 percent of S-Comm deportations are of non-criminals
- Hillsborough, FL 66 percent of S-Comm deportations are of non-criminals
- Miami-Dade, FL 66 percent of S-Comm deportations are of non-criminals
- Pima, AZ 65 percent of S-Comm deportations are of non-criminals
- Wake, NC 64 percent of S-Comm deportations are of non-criminals
- Collin, TX 63 percent of S-Comm deportations are of non-criminals
- San Diego, CA 63 percent of S-Comm deportations are of non-criminals
- Santa Barbara, CA 58 percent of S-Comm deportations are of non-criminals
- Dallas, TX 56 percent of S-Comm deportations are of non-criminals
- Ventura, CA 56 percent of S-Comm deportations are of non-criminals
- Webb, TX 56 percent of S-Comm deportations are of non-criminals
- Maricopa, AZ 54 percent of S-Comm deportations are of non-criminals

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Regular Meeting Annotated Agenda
December 14, 2010

25. Response to Peace and Justice Commission report entitled "Opposition to Secure Communities" (PDF)
From: City Manager
Recommendation:

1. Do not adopt the proposed Resolution by the Peace and Justice Commission ("PJC") regarding the federal government's "Secure Communities" program, and

2. If Council would like to voice opposition to the Secure Communities program, direct the City Clerk to send a letter requesting the Governor-elect and the state Attorney General-elect to either:

   a. Stop the state Department of Justice ("DOJ") from sharing arrestee fingerprint data with federal law enforcement agencies for the purpose of deporting illegal immigrants arrested for minor crimes; or

   b. Have California opt out of the Secure Communities program altogether.

Financial Implications: None
Contact: Michael Meehan, Police, 981-5700

Action: 4 speakers. M/S/C (Worthington/Arreguin) to refer the item to the Agenda Committee and direct the City Clerk to send a letter requesting the Governor and the state Attorney General to either:

   a. Stop the state Department of Justice ("DOJ") from sharing arrestee fingerprint data with federal law enforcement agencies for the purpose of deporting illegal immigrants arrested for minor crimes; or

   b. Have California opt out of the Secure Communities program altogether.

Vote: Ayes - Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes - None.
CONSENT CALENDAR
March 29, 2011

To: Honorable Mayor and Members of the City Council
From: Councilmembers Jesse Arreguín and Kriss Worthington
Subject: Mario’s La Fiesta: Relinquishment of Council Office Budget Funds to
General Fund and Grant of Such Funds

RECOMMENDATION:
Adopt a Resolution approving the expenditure of an amount not to exceed $250 to
Mario’s La Fiesta for the purposes of catering food to the City of Berkeley’s Cesar E.
Chavez Commemoration celebration. The $250 total shall be equally relinquished from
the discretionary Council Office Budgets of Councilmembers Jesse Arreguín and Kriss
Worthington and any other Councilmembers who would like to contribute.

FISCAL IMPACTS OF RECOMMENDATION:
No General Fund impact; $250 is available from Councilmembers Arreguín and
Worthington’s Council Office Budget discretionary account.

BACKGROUND:
On March 31, 2011, the City of Berkeley sponsored Cesar Chavez Commemoration
celebration will be hosted on the first floor of 2180 Milvia St. This item is needed in order
to provide food for the event.

CONTACT PERSON:
Jesse, Councilmember, District 4 981-7140

Attachments:
1. Resolution
RESOLUTION NO. XXXXX

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS TO MARIO’S LA FIESTA FOR THE 3RD ANNUAL CESAR CHAVEZ COMMEMORATION EVENT

WHEREAS, Councilmember Arreguín has surplus funds in his office expenditure account 010-0242-410-55-01; and

WHEREAS, on March 31, 2011 in the Cyprus room at 2180 Milvia St, the employees of the City of Berkeley will be hosting the 3rd Annual Cesar Chavez Commemoration event; and

WHEREAS, Mario’s La Fiesta, a community business for over 50 years in Berkeley, seeks funds in the amount of $250 to cover the costs providing Mexican food for attendees to enjoy while learning about the legacy of Cesar Chavez; and

WHEREAS, the provision of such funds would fulfill the following municipal public purpose: to make the 3rd Annual Cesar Chavez Commemoration Event possible and successful so that attendees can enjoy Mexican food as they reflect on the impact that Cesar Chaves has had on our communities and be reminded of the values of Cesar Chavez to serve our community.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budgets totaling no more than $250 combined shall be granted to the Mario’s La Fiesta for the 3rd Annual Cesar Chavez Commemoration Event.
To: Honorable Mayor and Members of the City Council

From: Councilmembers Jesse Arreguín and Kriss Worthington

Subject: Proclamation congratulating the winners of the 2011 César E. Chávez Commemoration Writing Contest

RECOMMENDATION:
Adopt a proclamation to be awarded to the winners of the 2011 César E. Chávez Commemoration Writing Contest

BACKGROUND:
As a part of the 2011 César E. Chávez Commemorative Period, the Berkeley Unified School District is hosting the 2011 César E. Chávez Commemoration Writing Contest, which invites BUSD students from 2nd to 12th grade to write about the impact that César Chávez has had on our world today. The deadline for essay submission is Thursday, March 31, 2011 and essays for each grade level will be judged by a panel of BUSD, City of Berkeley and community representatives. BUSD will announce the winners the week of April 11, 2011 and the winners will be honored at a reception on April 26, 2011.

FINANCIAL IMPLICATIONS:
NONE.

CONTACT PERSON:
Jesse Arreguín, Councilmember, District 4  981-7140

Attachments:
1. Proclamation
WHEREAS, César E. Chávez -labor leader, civil rights advocate, and prophet of non-violence- gave a voice to farm workers who labor in the fields to put food on our tables; and

WHEREAS, César Chávez was deeply committed to the values of service to others; sacrifice; a preference to help the most needy; determination; non-violence; tolerance; respect for life; celebrating community; knowledge; and innovation; and

WHEREAS, as part of the César E. Chávez Commemorative Period, the Berkeley Unified School District is hosting the 2011 César E. Chávez Commemoration Writing Contest; and

WHEREAS, many students submitted articulate and thoughtful essays about the impact that César Chávez has had on our world today; and

NOW, THEREFORE, BE IT RESOLVED that the Berkeley City Council hereby congratulates [NAME] as a 2011 César E. Chávez Commemoration Writing Contest Award Winner.

FURTHER BE IT RESOLVED, THAT THE BERKELEY CITY COUNCIL extends its best wishes of every success in future endeavors and may that success honor the legacy of César E. Chávez.
To: Honorable Mayor and Members of the City Council

From: Councilmember Kriss Worthington
Councilmember Max Anderson

Subject: Honoring Maudelle Shirek’s 100 Year of Life and Service to the Community

RECOMMENDATION
Adopt a Proclamation Declaring Maudelle Shirek Day as June 18th and Honoring her for a Lifetime of Service to help others.

BACKGROUND
Maudelle Shirek was a passionate and eloquent leader in Civil Rights for decades. She was a persistent advocate for peace, stopping military spending, investing in jobs, housing and human needs.

FINANCIAL IMPLICATIONS
Unknown.

CONTACT PERSON
Councilmember Kriss Worthington 510-981-7170
To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington
       Councilmember Max Anderson
Submitted by: Kriss Worthington, Councilmember, District 7
Subject: Maudelle Shirek’s 100th Birthday Celebration: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION
Adopt a Resolution to approve the expenditure of up to $100 per Councilmember to Maudelle Shirek’s 100th birthday celebration, with funds relinquished to the City’s general fund for this purpose from each Councilmember’s discretionary Council Office Budget.

FISCAL IMPACTS OF RECOMMENDATION
No General Fund impact; up to $100 would be made available from each Councilmember's and up to $200 from the Mayor's Office Budget discretionary account.

BACKGROUND
We are proposing that the City Council make a grant a contribution towards Maudelle Shirek’s 100th birthday celebration to help celebrate the former councilmember and her outstanding service to the City. Her hundredth birthday celebration is June 18, 2011. We ask that each member of the Council, and the Mayor, contribute up to $100 towards the event: one dollar for each year of Maudelle’s life of dedication to Berkeley.

CONTACT PERSON
Councilmember Kriss Worthington       510-981-7170
Councilmember Max Anderson            510-981-7130

Attachments:

1- Resolution
2- Daily Californian article on Maudelle Shirek’s life.
RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Kriss Worthington has surplus funds in his office expenditure account (budget code 010-0272-410); and

WHEREAS, Councilmember Max Anderson has surplus funds in his office expenditure account (budget code 010-0232-410); and

WHEREAS, a California non-profit tax exempt corporation (enter organization name) seeks funds in the amount of up to $100 per Council member and $200 by the Mayor to provide the following public service of a venue, entertainment, refreshments, and other equipment for Maudelle Shirek’s hundredth birthday celebration; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose of honoring and celebrating Maudelle Shirek’s 100th birthday.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract with (enter organization name) not to exceed up to the amount of $100 per Council member and $200 by the Mayor to fund the following services of offsetting partial costs of venue, entertainment, and refreshments for Maudelle Shirek’s 100th birthday celebration.
Local Legend a Lifelong Social Advocate

By VICTORIA PARDINI
DAILY CAL STAFF WRITER
Thursday, February 17, 2011
Category: News > City > City Council

Bundled up in a fleece snowman blanket with "The Oprah Winfrey Show" on the TV, Mandelle Shirek, a local activist and former Berkeley City Council member, contemplates her contributions to the community - which many agree are marked by a genuine passion to better the world - while admitting she personally does not think she has done much.

Shirek, who will celebrate her 100th birthday this June, is a Berkeley legend, having fought for many local and global causes, such as affordable housing and union rights. In 2007, Old City Hall - located on Martin Luther King Jr. Way - was named after her because of her devotion to social justice and the disadvantaged in the community, according to Mayor Tom Bates.

"She's a person who deeply cares about the poor ... and was interested in being sure their point of view was taken into consideration," he said.

Shirek, the granddaughter of slaves, first moved from Arkansas to the Bay Area in 1943 to work at the shipyards on the Richmond army base and then for the Berkeley Cooperative Center Federal Credit Union and the New Light Senior Center. Politics was something she began to "just grow into," said Shirek, who served as the District 3 council member from 1983 to 2004.

"Instead of cursing the dark, she lit a candle and jumped right in and has been active ever since (and) for the rest of her life," said Berkeley resident Carole Davis Kenneally, who first met Shirek in the late 60s or early 70s when the two were activists at the city credit union. Kenneally said Shirek worked specifically to secure loans for working class individuals in South and West Berkeley.

At 73 years old, Shirek was forced into retirement from her post at the senior center and decided to run for city council. Known by fellow council members as the "conscience of Berkeley," she worked diligently to empower the underprivileged in society and serve the community as a whole, according to Councilmember Kris Worthington, who was on the council with Shirek from 1996 to 2004.

"The thing that made her so compelling to me was she went up a stairway to deliver a meal to someone who was sick, and here she was, 80-something, climbing up a stairway to hand-deliver a meal to this senior citizen," Worthington said. "That kind of social service is a great form of compassion."

Dale Bartlett, who served as Shirek's City Council aide, said he sees Shirek less as a public figure and more as a mother. She and her husband Brownlee Shirek took Bartlett in when he was trying to avoid the Vietnam War draft in 1969, with "no questions asked."

"Her feminine spirit is so strong," he said. "I'd say she's a mother to us all. She's the kindest, wisest, most beautiful human being I've ever met in my life, and I've learned so much from her."

Bartlett praised Shirek for her work on the committee that created the Peralta Community College system in 1967 and for instigating a lawsuit to establish the Berkeley City College three years ago.

Jacqueline DelRose worked alongside Shirek, an advocate for organic food and cooking, at the New Light Senior Center from 1990 to 1995. DelRose said Shirek taught her more about global issues - in addition to their work at the center.

"Her phrase that I most commonly report is that, 'You have to choose your battles and the struggle continues,'" she said. "And the struggle is not necessarily a local struggle, it is a global struggle - what happens in the streets of Zimbabwe affects what happens in the streets of San Pablo Avenue."

Shirek said her curiosity and interest in improving the community motivated her to stay socially active throughout her life.

"It's a beautiful world - a lot of beautiful people, but a lot of bad people too," she said. "It's a struggle, but it's what you make it to be. You want the world to be a little better place because you had been there."
To: Honorable Mayor and Members of the City Council
From: Councilmember Worthington, District 7
Submitted by: Kriss Worthington, City Council
Subject: San Francisco LGBT Pride: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION
Adopt a Resolution to approve the expenditure of $230 to the San Francisco LGBT Pride with funds relinquished to the City's general fund for this purpose that the City of Berkeley be represented at the SF LGTB Pride Parade and for costs of having a contingent in the parade from Councilmember Worthington's discretionary Council Office Budget.

FISCAL IMPACTS OF RECOMMENDATION
No General Fund impact; $230 is available from Councilmember Worthington’s Council Office Budget discretionary account.

BACKGROUND
We are proposing that the City Council make a grant of $230 to San Francisco LGBT Pride for costs associated with having a contingent represent the City of Berkeley at the San Francisco LGBT Pride Parade.

CONTACT PERSON
Kriss Worthington, City Council, 510-981-7170
RESOLUTION NO. ##.###-N.S.

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Worthington has surplus funds in his/her office expenditure account (budget code 010-272-410); and

WHEREAS, a California non-profit tax exempt corporation San Francisco LGBT Pride seeks funds in the amount of $230 to provide the following public services of celebrating LGTB pride and for parade costs; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose to bring together the community in celebrating the LGTB community.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract with San Francisco LGBT Pride not to exceed the amount of $230 to fund the following services: provide contingent for the parade.
To: Honorable Mayor and Members of the City Council

From: Councilmember Kriss Worthington

Subject: Support AARP’s Petition to Oppose Social Security and Medicare Benefit Cuts

RECOMMENDATION
Send a letter to Senator Dianne Feinstein and Senator Barbara Boxer supporting AARP’s petition to oppose cuts to Social Security and Medicare benefits.

BACKGROUND
Social security has been an important and effective program for over 70 years. This program provides essential benefits to tens of millions of older Americans who have loyally paid into Social Security for their entire careers. In addition, Medicare provides the basic health care services necessary for older Americans to lead healthy lives. They, as well as future generations, need and deserve the benefits they have earned.

AARP is circulating a petition to oppose legislation supported by several Senators that may steeply cut Social Security and Medicare benefits. Social Security and Medicare are two very successful social programs. We must do everything we can to maintain these important programs.

FINANCIAL IMPLICATIONS
Minimal.

CONTACT PERSON
Councilmember Kriss Worthington 510-981-7170

Attached:
1- Letter to Senator Dianne Feinstein and Senator Barbara Boxer
Dear Senator Feinstein and Senator Boxer,

The City of Berkeley has been a strong advocate of Social Security and Medicare benefits that support many disabled citizens, senior citizens, and various ethnic groups in the community.

This is why the City of Berkeley urges “you to oppose legislation supported by some Senators that may steeply cut Social Security and Medicare benefits as a means of trimming the federal deficit. Social Security has been an important and effective program for over 70 years. This program provides essential benefits to tens of millions of older Americans who have loyally paid into Social Security for their entire careers. And Medicare provides the basic health care services necessary for older Americans to lead healthy lives. They, as well as future generations, need and deserve the benefits they have earned. I urge you to first find other forms of government spending and waste that can be cut. There are many forms of wasteful spending, from tax loopholes to pork barrel spending, but Social Security and Medicare are not among them.”

The City of Berkeley agrees with AARP that Social Security and Medicare are two very successful social programs. We must do everything we can to maintain these important programs.

Respectfully,
To: Honorable Mayor and Members of the City Council

From: Councilmember Kriss Worthington

Subject: City Sponsorship of the 2011 Telegraph LastSundays Fest

RECOMMENDATION:
Adopt a Resolution establishing that the City of Berkeley co-sponsor the 2011 Telegraph LastSundays Fests in collaboration with the Telegraph Business Improvement Association.

BACKGROUND:
The Telegraph Business Improvement District will coordinate the Telegraph LastSundays Fests on the dates of April 24, July 31, and August 28. This event is being created to economically revitalize Telegraph Avenue and promote it as a safe, fun destination for entertainment, culture, recreation, shopping and dining. The Fests offer a tremendous diversity of arts and children’s activities.

FINANCIAL IMPLICATIONS:
None. City co-sponsorship of the event will be limited to the use of the City’s name and logo on marketing material.

CONTACT PERSON:
Councilmember Kriss Worthington 981-7170

Attachments:
1. Resolution
RESOLUTION NO. ##.###-N.S.

CITY OF BERKELEY CO-SPONSORSHIP OF 2011 TELEGRAPH LASTSUNDAYS
FESTS

WHEREAS, the 2011 Telegraph LastSundays Fests will be held on Telegraph Avenue
on April 24, July 31, and August 28; and

WHEREAS, the festival promotes the revitalization and promote of Telegraph Avenue
as a safe, fun destination for entertainment, culture, recreation, shopping and dining; and

WHEREAS, the fair offers a tremendous diversity of arts and crafts, theatre
performance, music, children’s area, and non-profit and commercial booths; and

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the
City of Berkeley hereby co-sponsors the Telegraph LastSundays Fests.

BE IT FURTHER RESOLVED that the Telegraph LastSundays Fests has permission to
use the City’s name and logo in the event’s promotional materials and signage naming
the City of Berkeley as a co-sponsor for the purpose of the City indicating its policy
endorsement of the event.
To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington

Subject: Referral to the City Manager: Taxicab Improvements in Berkeley and Request for Formal Response to Berkeley Taxi Cab Association

RECOMMENDATION
That the Council refer to the City Manager a comprehensive number of issues concerning taxi operations in the City of Berkeley, and request that the City Manager formally respond, in writing, to Berkeley Taxi Cab Association's October 4 letter and accompanying grievances. Several suggested alternatives concerning taxi operations in Berkeley are:

SUGGESTED ALTERNATIVES:
1. Implement all preapproved taxi stands in the City, including at Berkeley Amtrak.
2. Designate additional taxi stands to be placed in high-traffic areas, including one specifically at the UC South Gate.
3. Allow leeway for taxi operators charged with loading/unloading disabled/needy passengers by alerting the Berkeley Police Department to the difficulties taxi operators undergo in assisting disabled passengers, so that BPD may avoid issuing parking violations to cases of operators engaged in loading/unloading disabled/needy passengers.
4. Coordinate with the Berkeley Police Department to authoritatively to decide to create a B.P.D. training bulletin for enforcement procedures on any taxicab found to be illegally operating in Berkeley by actively seeking out non-Berkeley taxicabs and rendering fines against such operators.
5. Heighten awareness of non-Berkeley-licensed taxicabs on certain high-traffic days in the City, such as when major sporting events or performances take place in the City.
6. Schedule reevaluation of rates to be in place for the new year, as well as evaluate the potential for a reasonable fee to transfer taxi licenses and medallions.
7. Send notifications of all to-be-changed business license fees to taxi operators in the City which might be affected by such fee changes.
8. Provide additional times for taxi operators to trade in their taxi scrip for money, as well as higher redemption limits.
9. Examine the need for the current system with two separate inspections during the permit-clearance process; a single comprehensive inspection by the City Corp Yard might prove to be more operationally- and cost-efficient.

10. Allow taxi operators to temporarily suspend their medallion agreements with the City when taking sick/vacation leave, so that drivers need not pay monthly medallion upkeep.

**BACKGROUND**

Taxi drivers, taxi riders, and taxi operators have requested the City of Berkeley to address serious issues related to providing the best possible taxi service in and to Berkeley. This item is focused on solutions to the range of problems affecting taxicab operations negatively in the City.

The City Manager's office received a letter from the newly-formed Berkeley Taxi Cab Association on October 4, 2010, detailing the grievances and difficulties members of the Berkeley taxi force have encountered in dealing with the City. The letter informed the recipients that local cab drivers and owners had joined together and formed the Berkeley Taxi Cab Association (BTCA). BTCA’s purpose is to discuss and remedy work-related hardships and problems associated with the City of Berkeley. Those common hardships and problems were outlined in a list of thirteen grievances.

We ask the City Manager to respond to the BTCA’s October letter and meet with the organization.

**FINANCIAL IMPLICATIONS**

Minimal.

**CONTACT PERSON**

Councilmember Kriss Worthington 510-981-7170

Attached:

1- Berkeley Taxi Cab Association letter to Phil Kamlarz, 10/4/10.
Berkeley Taxi Cab Association

P.O. Box 9457
Berkeley, CA 94709
email: btcassociation@yahoo.com
Phone: 510-866-7465 / 837-4699 / 472-5020

To
Mr. P. Kamlarz
City manager
City of Berkeley

October 4, 2010

Dear Mr. Kamlarz

We are pleased to inform you about the formation of Berkeley Taxi Cab Association endorsed by all Berkeley cab drivers unanimously with a chairman, vice chairman, secretary and 12 board members duly registered and certified by the Secretary of the state of California, registration number 3318732. (copy enclosed)

The purpose behind formation of this association is
• To protect and safeguard legitimate and rightful business interests of Berkeley cab drivers/owners
• To identify and address work related hardships and problems
• To discuss and work with the drivers/owners and the concerned authorities to resolve those problems

In addition to the submission of the aforesaid information we would also like to remind you about our various existing workplace problems that are verbally mentioned and conveyed to you in the past on number of occasions.

We think that we need to have a meeting with the concerned authorized city officials and the chief of police of the city of Berkeley at your earliest convenience to discuss and resolve our long pending concerns and workplace problem. We will send you a formal agenda for this meeting once we receive the meeting date and venue from your end.

We intend to cooperate and work closely with the city of Berkeley to resolve our existing workplace problems in order to create an ideal working atmosphere for the Berkeley cab drivers/owners to effectively serve our community.

We thank you and hope to hear from you soon.

Sincerely

Ali Said
Chairman

Sajjad Anwar
Vice chairman

Bashir Ahmed
Secretary

CC:
• Mr. Bates. T (The mayor of city of Berkeley)
• The Chief of Police city of Berkeley
• Mr. B. Hicks (Finance Director City of Berkeley)
• Ms. Heather Murphy (Divisional Manager City of Berkeley)
• Ms. Yolanda O. Crowder (Taxi detail City of Berkeley)
Berkeley Taxi Cab Association

Grievances:

1. We are so informed that the city has reached a decision that no cab owners can exercise “Change of Business Names” effective 1/01/10. As a party to the operative ownership we were not involved in this, (nor any letter to that effect) has been issued to us as Cab business owners.

2. In our last meeting we agreed that only new drivers will undergo finger printing, and this will not involve the old drivers. The system in Berkeley is contrary to other cities of the bay.

3. We also agreed for adjustment on redemption of Taxi Scripts to $300.00 per visit and this is yet to be realized.

4. Every Cab company should not have more than 2 cabs in a designated Taxi parking stand. This will enable all cab to have a share of fairness.

5. We are always engaged in handling people with special cases i.e. blind, disable, sickness and old age. These people need to be picked-up and dropped off at their door steps and helped through. As such if parking space is not available, Taxis should have to double park for that few minutes.

6. We have faced difficulties in obtaining temporary Parking stand during special events i.e. concerts football, conferences etc. To our knowledge there was a memorandum issued by the city to offer parking spaces during these events. Can this be made practical?
7. Citations/Fines on Taxis by city officials should be demonstrated in the ordinances passed by the council. It has been noted that fines <figure wise> are at times suspicious and look as if quoted from off-head (officials wish).

8. We want the city authority, to write an official letter to all hotels, motels, inn, etc and inform them of the existence of the Berkeley Regulated Taxi (120 +) and that it is illegal for them to utilize Taxis from other cities. This is very important to us.

9. Yearly inspections of the cabs (interior, exterior and mechanically), conducted by the city’s garage should be final and once the vehicle passes the test, without delay the yearly permit should be issued forthwith.

10. The City Police Department should be involved and have an acceptable knowledge of the Taxis operation in the legality aspect of it, as to who has the right to conduct business in Berkeley. Just as Oakland/San Francisco Police have a Taxi Detail unit and so exercise control and management over and on behalf of the Taxi’s. The city police should cite all Taxi’s that operate illegally and deprive us our business.

11. Current authorized parking stands issued by The City Stands at 14:
   Downtown 10 (to be slashed soon),
   Durant Hotel 2,
   Gilman 1
   Alta Bated Hosp. 1
   14 (Compared to Oakland 120 stands)

We are demanding 42 parking spots within the city and this issue has been on the top of the agenda since last we met with no avail of success.

10 – per every Bart Station < 3x =30 >
4 – At the UC South Gate (at Bancroft and Telegraph)
2 – At the Shattuck Hotel
1 – At Bancroft Hotel
1 – At the International House
1 – At the Amtrack Station
1 – At 4th Shopping Center
1 – At Alta Bates Hospital
1 – At the North Gate
42

12. Rates of Fare put in place in late 2008 early 2009, was standardized as City of Oakland yet discrepancies between us and them/why

13. On proceeding for Vacation, Owners are subjected to paying premiums on a parked Taxi, we need to create an understanding on this.
BERKELEY TAXI/CAB ASSOCIATION

State Registration No: 3318732

Rules and Regulations

Address:
P.O. Box 9457
Berkeley, CA 94709
Ph: 510-866-7465/837-4699/472-5020
Email: btcassociation@yahoo.com
BERKELEY CAB TAXI ASSOCIATION

RULES AND REGULATIONS:

1. This Association was officially formed on 8-26-2010, after signatory endorsements of 92 Cab/Taxi Owners and Drivers of City of Berkeley.

2. The name of the Association shall be "Berkeley Cabs/Taxi", hereinafter referred to in these rules and regulations as an Association".

3. Members of the Cab/Taxi Community of Berkeley, shall exclusively be Taxi’s legally registered and regulated by the City of Berkeley and such demonstrate an official Berkeley Permit.

4. The main objectives and functions of this Association shall be –
   a) To serve the Community of Berkeley in accordance’s to existing Taxi/Cab ordinances.
   b) To give service preferences to residents with special needs (i.e. seniors, disability cases and illnesses).
   c) To ensure Owners and Drivers don’t violate the existing City Ordinances in regard to Cab/Taxi operations and as such liase with City Authority in case of violations.
   d) To promote discipline and harmony among Owners, Drivers and Taxi Clients.
   e) To conduct study, on how to always improve the services offered to City’s residents.
   f) This Association shall act as the only official body in the matter’s of Cab/Taxi and City. As all Taxi/Cab Owners and Drivers shall channel their grievances to the Association Board Members, so is expected from the City to act Accordingly.
   g) If need be, the Board Members shall ask it’s Members to subscribe to a particular function’s or as such Monthly contribution in order to enhance it’s obligation.
   h) At this level, there will be no membership fees imposed to members, but it is at the discretion of the Association, to act accordingly.
   i) Any Cab Owner/ Driver, who loses his/her Permit of operation through revocation by the city, and all appeals and hearings are exhausted, that Owner/Driver shall so cease to be Member of the Berkeley Taxi Cab Community
   j) This Association Board, will have the authority to so instruct it’s Members to boycott provision of services to Hotels, Motels and Inn’s in the City of Berkeley, once it is
acknowledged with proof that they use Taxi's from other City's that are not regulated by
the City of Berkeley, and such deprive us of our Legal Business.

k) The Association Board has the full authority to call for a general strike of services of Cab/
Taxi's if deemed essential with appropriate notice to the City Authority.

l) This Association to be official has to be Registered or Certified by the State of California

Members of the committee:

1. The members of the Berkeley Cab/Taxi Association shall consist of:-
   12 Board Members and Ordinary Members.

2. It will hold offices of:

   - Chairman

   - Vice-Chairman

   - Secretary

   - 9 Members

3. There will be a possibility of appointed "Treasurer" along the way in the future

4. The Association will have a Box Number, Email Address, Phone and Bank Account.

5. The Association will hold election once every three years for Board Members and Office
   Bearers.

6. Any Office Bearer and members of the Board can be suspended or expelled due to Lack
   of meeting attendance, Misconduct, Loss of Association property and Breach of standing
   rules and regulations of the Association.

7. Any member of the Board and Association if expelled shall not be entitled to any
   contributions previously made.
8. **The Duties of Office Bearers of The Association**

I. **Chairman** – The Chairman shall preside over all of the meeting of the committee unless otherwise prevented by circumstances.

II. **Vice-Chairman** – Will perform all duties of the Chairman in his absence.

III. **Secretary** – Shall deal with all correspondences, the general servicing of the meetings, taking Minutes and preservation of all records of the Association. The Secretary has the authority under the guidance of the Chairman/Vice Chairman to summon a Meeting, specifying place, Date and Time.

IV. **The Treasurer** – Shall receive and also dispose under the direction of the Board members, all moneys belonging to the Association. The Treasurer is responsible for maintenance of proper book keeping and financial reporting.

V. The quorum of the Board meeting shall not be less than two thirds.

VI. In a Board Meeting, a Chairman or Vice Chairman or in there obscene by any appointed Member, shall run the Meeting.

VII. Resolutions will be decided by simple majority of show of hands. In the case of equality of votes, The Chairman shall have a second casting vote.

VIII. Each full member will have one vote.

IX. The Association shall abide by any Laws, Rules, Ordinances pertaining to formation of such an Association within the City County and State, In order also to create and maintain good working relationship.

END
Article of Incorporation
Of
BERKELEY TAXI-CAB ASSOCIATION

I

The name of the corporation is BERKELEY TAXI-CAB ASSOCIATION.

II

A. This corporation is a nonprofit Mutual Benefit Corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

B. The specific purpose of this corporation is to represent the taxi-cab owners and drivers before City, County and other Government authorities. To help taxi-cab owners and drivers in getting permits, licenses etc, protecting their legal rights and all other related activities.

III

The name and address in the State of California of this corporation's initial agent for service of process is:

Varinder P Singh
1700 Shattuck Ave, #103
Berkeley, CA 94709

IV

Notwithstanding any of the above statements of purpose and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this corporation.

Varinder P Singh
Incorporator
# BERKELEY TAXI CAB ASSOCIATION
## BOARD MEMBERS

<table>
<thead>
<tr>
<th>S.NO</th>
<th>NAME</th>
<th>CAB.CO.</th>
<th>CONTACT</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>ALI SAID</td>
<td>INTER CITY CAB CO.</td>
<td>(510) 866-7465</td>
<td>CHAIRMAN</td>
</tr>
<tr>
<td>2.</td>
<td>SAJJAD ANWAR</td>
<td>AMERICAN CAB EXPRESS</td>
<td>(510) 837-4699</td>
<td>V-CHAIRMAN</td>
</tr>
<tr>
<td>3.</td>
<td>BASHIR AHMED</td>
<td>YANKEE CAB CO.</td>
<td>(510) 472-5020</td>
<td>SECRETARY</td>
</tr>
<tr>
<td>4.</td>
<td>GURBINDER SINGH</td>
<td>LOCAL AIRPORT</td>
<td>(510) 563-9345</td>
<td>MEMBER</td>
</tr>
<tr>
<td>5.</td>
<td>HAKIM AHMED</td>
<td>ADVENTURE CAB CO.</td>
<td>(510) 706-1833</td>
<td>MEMBER</td>
</tr>
<tr>
<td>6.</td>
<td>SHAHENSHA BUKHARI</td>
<td>AIRPOR LUXOR CAB</td>
<td>(510) 914-4451</td>
<td>MEMBER</td>
</tr>
<tr>
<td>7.</td>
<td>G.TESFONDRIA</td>
<td>EAST BAY CAB CO.</td>
<td>(510) 485-3091</td>
<td>MEMBER</td>
</tr>
<tr>
<td>8.</td>
<td>SANJAY SHARMA</td>
<td>SUNNY CAB CO.</td>
<td>(510) 815-1122</td>
<td>MEMBER</td>
</tr>
<tr>
<td>9.</td>
<td>ALHAGGAGI SINAN</td>
<td>CAL CAB CO.</td>
<td>(510) 200-1111</td>
<td>MEMBER</td>
</tr>
<tr>
<td>10.</td>
<td>GURPRIT DHILLON</td>
<td>ROYAL CAB CO.</td>
<td>(510) 843-1111</td>
<td>MEMBER</td>
</tr>
<tr>
<td>11.</td>
<td>PARMJIT DAKHA</td>
<td>DAKHA CAB CO.</td>
<td>(510) 277-7460</td>
<td>MEMBER</td>
</tr>
<tr>
<td>12.</td>
<td>BOBBY FOSTER</td>
<td>YELLOW CAB EXPRESS</td>
<td>(510) 499-4877</td>
<td>MEMBER</td>
</tr>
</tbody>
</table>
To: Berkeley Taxi/Cab Owners and Drivers

Subject: The confirmation of the Berkeley Taxi Committee

This is in reference to the letter(s) that were distributed on 8/15/2010 concerning the appointment of a Committee for Taxi Drivers in the City of Berkeley. It was overwhelmingly agreed upon by a margin of 93 out of 120 of combined owners and drivers as such officiated Berkeley Taxi Committee.

It is with this sincere promise that we accept the responsibility of having the unmitigated support of the Taxi Community at all times. We will now begin to organize and prioritize our concerns and speak with one clear voice in our next course of action.

Thank you again for your support.

Sincerely,

Bashir Ahmed

Secretary
To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington  
Subject: Send a Letter to AC Transit Asking to Implement Ease-of-Boarding Features of BRT  

RECOMMENDATION  
Send a letter to AC Transit, asking to participate in two key aspects of Bus Rapid Transit (BRT): level boarding and prepaid boarding.  

BACKGROUND  
Several of BRT’s ease-of-boarding features would benefit the City of Berkeley, as well as the full corridor through which BRT will travel. Three components in particular would be great to support.  

Level boarding facilitates the boarding of all passengers, especially those with mobility impairments, and would make bus arrangements significantly more streamlined. The second feature which we ask to have AC Transit implement is prepaid boarding. Prepaid boarding allows passengers to board buses at all doors, having paid their fare prior to stepping onto the bus. This decreases boarding time.  

Both features would likely increase ridership, decrease carbon emissions and traffic, and decrease travel times—increasing rider satisfaction. The third feature, bus stop improvements, would also increase rider satisfaction. Such improvements, which could include additional lighting and other safety features, would also contribute towards making our community a safer one.  

All three components (prepaid fares, level boarding, and bus stop improvements) could be done all through the BRT corridor, and could be consistent features. These certain features could be done all the way from San Leandro on up to Oakland and Berkeley.  

We ask that the Council send a letter to AC Transit’s Board of Directors, supporting the implementation of these aspects of BRT. We want to work with AC Transit to implement BRT ease-of-boarding policies in Berkeley and the whole of the BRT route.  

FINANCIAL IMPLICATIONS  
To be funded by regional or state transit funds.  

CONTACT PERSON  
Councilmember Kriss Worthington 510-981-7170  

Attached:  
1- Letter to AC Transit Board of Directors
Members of the AC Transit Board of Directors,

The City of Berkeley would like to work with AC Transit to implement ease-of-boarding elements of Bus Rapid Transit. Certain features of BRT, which feasibly might be done all the way from San Leandro on up to Oakland and Berkeley, are ones we encourage the consistent implementation of.

The features in question, level boarding and prepaid boarding, would significantly improve the public transportation experience. Providing riders a faster and smoother boarding process would help decrease traffic and gas emissions, while increasing ridership and rider satisfaction. Allowing prepaid boarding and level boarding means faster and more convenient public transit.

Other bus stop improvements, such as additional lighting, could also be done throughout the BRT corridor with great potential results.

The ease-of-boarding features represent some of the best that BRT has to offer. We fully support and encourage implementing level boarding, prepaid boarding, and bus stop improvements. We strongly support the process of consideration of implementation of these features.

Thank you for your consideration,
To: Honorable Mayor and Members of the City Council
From: Councilmember Kriss Worthington
Subject: City Manager Referral: Replace Ineffective Shattuck and Oregon Street Sign with an Effective Pedestrian Sign

RECOMMENDATION
Referral to the City Manager to Consider the Replacement of an Ineffective Shattuck and Oregon Street Sign with an Effective Pedestrian Sign.

BACKGROUND
Residents in the area have described the sign as “shockingly insensitive” to pedestrians. The sign is contrary to the common sense that pedestrian signs are meant to be visible warnings to protect pedestrians, not drivers from potential legal liability. The language of the sign is ineffective. It reads “Caution Cars May Not Stop.” It suggests to drivers a legal protection in an accident involving a pedestrian. Moreover, the sign does not appear to be consistent with the “Pedestrian Master Plan,” which was recently adopted by the City Council on June 22, 2010.

Shattuck and Oregon Street is a high-traffic intersection given its immediacy to Walgreens and Berkeley Bowl. The lack of proper signage puts pedestrians at risk of an accident every day. As a city which values the use of public transportation and walkability, it is unacceptable that pedestrians are faced with such dangers as they navigate city streets.

There are examples of effective signs and pedestrian crossings throughout the city that could inform what can be done to solve the existing conditions on Shattuck and Oregon Street. Bright yellow pedestrian crossing signs on each side of the street with a black arrow pointing to the location of the crosswalk are a practical option for their visibility from a distance and their adequate size. There are identical pedestrian signs on Dana Street and Bancroft Way that also include motion sensor lights that flash when pedestrians are crossing. Another option is to put pedestrian signs in the middle of the road where they are most visible. Photos of these options are attached.

We request the city manager to consider these and other alternative choices and select the one that will provide permanent safety and is most cost effective.

FINANCIAL IMPLICATIONS
Unknown.

CONTACT PERSON
Councilmember Kriss Worthington 510-981-7170

Attached:
1- Street Sign Alternatives
Oregon and Shattuck
Sign at Issue

Bancroft and Dana
Sign with flashing lights as a more efficient alternative

Sacramento Street
North Berkeley BART
Possible Alternative

Sacramento Street
North Berkeley BART
Possible Alternative
To: Honorable Mayor and Members of the City Council  
From: Ann-Marie Hogan, City Auditor  
Subject: Business License Tax Audit Program Report Fiscal Year 2010

SUMMARY
The Business License Tax (BLT) Audit Program Report conveys the results of the Auditor’s Office BLT audit program during fiscal year 2010 (FY10). In FY10, the Auditor’s Office worked on a joint venture (special) project with the Department of Finance. Its focus was to identify suspected unlicensed Berkeley businesses and bill those found to be unlicensed for unpaid Business License tax, penalties, and interest. The special project covered businesses ranging from professional to personal and repair services; from a grocer to retail, manufacturing, and wholesale trade, recreation and entertainment, and real property rental. In addition to the special project, performance audit work continued on cases carried over from the prior fiscal year, primarily real property rental and auto repair.

CURRENT SITUATION AND ITS EFFECTS
Our Business License Tax audits identified $143,631 in revenue during FY10; collections totaled $122,899. The Business License Tax Audit Program had 145 open cases, which included 60 cases carried forward from the prior year. Forty one businesses were billed a net total of $143,631 for unpaid taxes, penalties, and interest. There were 32 dropped/closed cases and no provisionally billed cases at fiscal year-end. As of June 30, 2010, 19 Business License Tax auditees owed the City $140,987. Seven of these audit cases, with billed amounts totaling $42,333, have been charged to the owner’s property tax bills by the Finance Department.

Since inception of the audit program in 1982, auditors have billed tax, penalties, and interest totaling over five million dollars. Revenue identified is not a one-time windfall but becomes part of the future revenue stream, assuming auditees pay the correct tax in subsequent years. For each $100,000 identified by audit, about $19,000 in recurring tax can be expected for each future year, as long as the audited businesses continue to generate consistent gross receipts. In about five years, revenue identified this year would double.

BLT audit work also acts as a deterrent to those who might consider underreporting or neglect to obtain a license.
POSSIBLE FUTURE ACTION AND FISCAL IMPACTS
The one-time revenue that BLT audits provide could likely result in increased future BLT revenue. Assuming audited businesses continue to pay the higher tax resulting from an audit for the next five to six years, the City should again collect an amount equal to the taxpayer’s original audit tax assessment.

We will continue to allocate staff resources to identify underreporting, delinquent and/or unlicensed businesses. As a result, the City will receive tax revenue it may not otherwise receive.

The City is finalizing selection of new software to replace the City’s SunGard Public Sector Occupational License module. This could result in increased efficiencies in identifying underreported gross receipts.

CONTACT PERSON
Ann-Marie Hogan, City Auditor, 981-6750

Attachment
1: Business License Tax Audit Program Report Fiscal Year 2010
City of Berkeley

Business License Tax Audit Program Report

For Fiscal Year Ending June 30, 2010

Prepared by:

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Frank Marietti, Sr. Auditor, CIA, CGAP, CFE
Myrna Ortiz, Auditor I

Presented to Council March 29, 2011

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<th>Page No.</th>
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I. PURPOSE AND OBJECTIVE

The purpose of this report is to present the results of the City Auditor’s Business License Tax (BLT) Audit Program for fiscal year 2010 (FY10).

The objective of the BLT Audit Program is to recover Business License revenues that the City might not otherwise receive because businesses or persons doing business in Berkeley did not procure a Business License, were delinquent in payment of tax, or under-paid the tax due.

II. EXECUTIVE SUMMARY

The Auditor’s Office assessed 41 businesses $143,631 in unpaid taxes, penalties, and interest during FY10. However, an estimated $8,166 may be forgiven as part of a Council proposed amnesty program for large in-home family daycare providers. About $45,000 of the $143,631 is attributed to four residential rental property owners and four auto repair shops carried over from prior years. The remainder is from cases initiated during FY10.

In addition to the one-time revenue that BLT audits provide, they most likely result in increased future BLT revenue. Assuming audited businesses continue to pay the higher tax resulting from an audit for the next five to six years, the City should again collect an amount equal to the taxpayer’s original audit assessment. This is because 19% of a typical billing equates to one year of unpaid tax, excluding interest and penalties. To illustrate, during FY10, $143,631 was billed. During the next five to six years, the City should receive another $143,631 from these taxpayers if they continue to pay the higher tax. This would bring the return on time invested to about $300,000 over the course of five or six years. An additional but unquantifiable impact is the deterrence value of the program.

During FY10 three rental property owners requested an appeal for their BLT audit assessment. In all three cases, the Administrative Hearing Examiner found no grounds for waiving taxes and/or penalties and interest.

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1 BLT assessments are comprised of three to four years of unpaid tax, penalties and interest. Approximately 19% of each billing represents one year of unpaid tax. At 19%, additional revenue of $136,449 over five years, or $163,739 over six years, would be gained.
III. BACKGROUND

A. General Information

The BLT ordinance was enacted in 1977 and is codified under Berkeley Municipal Code (BMC) Chapter 9.04. It was established solely for revenue purposes and is not meant to be regulatory. The Finance Department is responsible for the administration and collection of BLT revenue. The City received revenue from BLT totaling $14,147,734 during FY10. This is a 2.2% increase from last year.

B. Annual Licensing Procedure

The BMC requires all individuals and entities engaged in business within Berkeley to obtain a Berkeley business license and to pay an annual license fee. Each December the Finance Department sends a BLT renewal form (Tax Declaration) to all applicable licensed businesses listed in the City’s Occupational License (OL) database. Taxpayers are instructed to report their gross receipts, calculate the tax due, and return the form to the Finance Department with payment. Newly established businesses are required to obtain a business license within 15 days of commencing business.

BLT is generally assessed on a business’ prior year gross receipts generated within Berkeley. However, in some instances the tax is assessed based on gross payroll, value added (gross receipts less value of raw materials), or a flat fee. BLT rates for the FY10 audit cases included 1) Rental properties, taxed at a flat fee of $77, or at the rate of $10.81 for each $1000 of gross receipts, whichever is higher; 2) Manufacturing, Retail and Wholesale Trade, taxed at a flat fee of $51, or at the rate of $1.20 for each $1000 of gross receipts, whichever is higher; 3) Professional Services, taxed at a flat fee of $51, or $3.60 for each $1000 of gross receipts, and 4) Business, Personnel and Repair Services, taxed at a flat fee of $51, or at the rate of $1.80 for each $1000 of gross receipts, whichever is higher.

All licenses are effective January 1 and expire December 31st. A business license is delinquent if not paid within thirty days after commencing business. A business license renewal is delinquent if payment is not received annually on or before February 28th. Delinquent businesses are assessed the penalties shown below, and interest at the rate of one percent each month on unpaid taxes and penalties. Interest continues to accrue until all taxes, penalties and interest have been paid.

<table>
<thead>
<tr>
<th>Penalty for Non-payment or Underpayment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Business</strong></td>
</tr>
<tr>
<td>New</td>
</tr>
<tr>
<td>New</td>
</tr>
<tr>
<td>Renewal</td>
</tr>
<tr>
<td>Renewal</td>
</tr>
</tbody>
</table>
IV. SUMMARY OF FY10 PROGRAM RESULTS

A. Cases Initiated

The City Auditor’s Office initiated 85 new cases in FY10. These cases covered a broad range of industry classification categories. The categories ranged from professional to personal and repair services; from a grocer to retail, manufacturing, and wholesale trade; recreation and entertainment, as well as real rental properties. All of the cases selected were unlicensed businesses, except one business that was later determined delinquent (tax was not paid on the license for one or more years) and one licensed business that appears to have paid taxes based on underreported gross receipts. In addition to the 85 cases, 60 cases were carried over from the previous year: 44 residential rental properties, 2 professional services, and 14 automotive repair businesses.

Summary of FY10 Case Activity

<table>
<thead>
<tr>
<th>Audit Activity (Residential Rental Properties, Auto Repair Shops and Other Businesses)</th>
<th>Audit Cases Carried Over From FY09 (I)</th>
<th>FY10 Initiated Audit Cases (II)</th>
<th>FY10 Total Audit Cases (I)+(II)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Audit Activity</td>
<td>60*</td>
<td>85</td>
<td>145</td>
</tr>
<tr>
<td>Less: Billed Audits</td>
<td>(8)</td>
<td>(33)</td>
<td>(41)</td>
</tr>
<tr>
<td>Closed/Dropped Audits</td>
<td>(3)</td>
<td>(29)</td>
<td>(32)</td>
</tr>
<tr>
<td>Audit Cases Carried Over to FY11</td>
<td>49**</td>
<td>23</td>
<td>72</td>
</tr>
</tbody>
</table>

* Two cases were added when information revealed two additional properties owned by an audited property owner appeared to inaccurately report business license tax due.

** Seven of the 49 Audit Cases carried over to FY11 consist of Auto Shops.

B. Case Activities and Assessments

The Auditor’s Office assessed a total net amount of $143,631 in unpaid taxes, penalties, and interest, of which, a net amount of $44,911 in unpaid taxes, penalties, and interest was attributed to four residential rental property owners and four auto repair shops.

2 The Auditor’s Office compared Rent Board data to the City’s Occupational License (OL) data using Audit Command Language (ACL) data extraction and analysis software to identify the residential rental property audit cases. Properties were selected for audit if Rent Board data indicated a property owner could charge significantly higher total rents than the gross receipts taxpayers self-reported and used to calculate BLT due.

3 Automotive repair shops carried over from FY08 had been selected for audit by comparing OL data to Franchise Tax Board, telephone directory, and City search website information. The automotive repair shops selected appeared to be unlicensed or reporting much lower gross receipts than similar businesses in the same industry.

4 The Auditor’s Office reduced one billing by $325 based on supporting documentation provided during an Appeal Hearing.
carried over from prior year(s). From the cases initiated in FY10, thirty three cases resulted in total billings of $98,720. However, an estimated $8,166 may be forgiven as part of a Council proposed amnesty program for large in-home family daycare providers.

**FY10 Assessment Composition**

<table>
<thead>
<tr>
<th>Assessment Composition</th>
<th>Audit Assessments for Cases Carried Over from FY08 Auto Body Repair Shops (I)</th>
<th>Audit Assessments for Cases Carried Over from FY09 Real Rental Properties (II)</th>
<th>Assessments for Cases Initiated in FY10 Mixed Categories (III)</th>
<th>FY10 Total Assessment (I)+(II)+(III)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpaid BLT</td>
<td>$ 16,695</td>
<td>$ 5,458</td>
<td>$ 60,337</td>
<td>$ 82,490</td>
</tr>
<tr>
<td>Penalty Assessments</td>
<td>$ 8,348</td>
<td>$ 2,729</td>
<td>$ 24,853</td>
<td>$ 35,930</td>
</tr>
<tr>
<td>Interest Charges</td>
<td>$ 9,982</td>
<td>$ 2,024</td>
<td>$ 13,530</td>
<td>$ 25,536</td>
</tr>
<tr>
<td>Adjustment</td>
<td>($ 325)*</td>
<td></td>
<td></td>
<td>($ 325)*</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$ 35,025</td>
<td>$ 9,886</td>
<td>$ 98,720</td>
<td>$ 143,631</td>
</tr>
</tbody>
</table>

*Adjustment based on supporting documentation provided at Appeal Hearing.

Large In-home Family Daycare Providers
Four large in-home family daycare providers were part of a joint venture special project with Finance. Like the other special project cases, these suspected unlicensed daycare providers were notified of their obligation to register for a Berkeley business license and report gross receipts. Two provided the Auditor’s Office with the requested gross receipt information and were billed.

Berkeley has 36 large in-home family daycares registered with the State. Our review of 16 found all 16 had not obtained a Berkeley business license. Assuming all 36 are unlicensed, it is estimated that a total of $140,000 in one-time business license tax revenue, penalties, and interest may have been generated from these large in-home daycare providers.

City Council members stated that in-home family daycare is a large and critical component of the daycare network and that a loss of providers would result in a serious negative impact on the families and workers within the Berkeley community. Therefore, at the May 18, 2010, City Council meeting, Council proposed that City staff review the zoning code requirement for large family day care businesses; consider changing their business license tax rate from $3.60 to $1.80 per $1,000 in gross receipts; and possibly create an amnesty period that exempts qualifying large family in-home daycares from all business license taxes, fees, and fines accrued before January 1, 2010. Final action and determination by Council is pending the analysis of the required fees and zoning requirements by the City Manager.
C. Provisional Audit Assessments

Provisional audit assessments are tentative billings based on Rent Stabilization Board data. If a residential rental property owner declines several requests to provide gross receipt documentation that support the BLT due, they are provisionally billed. When a provisional bill is issued, the auditee is asked to pay the assessment and/or file an appeal, or provide the requested documentation. If the auditee continues to be non-responsive, the provisional bill becomes final. Because provisional assessments are subject to change prior to finalization, they are not included in the “FY10 Assessment Composition” table above.

One provisional audit assessment totaling $2,829 was carried over to FY10. The property owner was requested to provide supporting documentation to substantiate their reported gross receipts. After review of the supporting documentation, the Auditor's Office finalized the billing. No provisional assessments were issued in FY10.

D. Audits Dropped/Closed

A review of City records and documentation provided by the business owners resulted in thirty two cases being dropped or closed. Cases are “closed” if an auditee provides documentation which substantiates they are in compliance with the BLT Ordinance. Cases are “dropped” when it is determined that an audit should not be performed. For example, a case is dropped when a business thought to be located in Berkeley is found to be located in another City and is not subject to Berkeley BLT.

E. Issuance of Administrative Citations

Two administrative citations were issued during FY10. In December 2006, Council granted the auditor job classifications the authority to issue administrative citations to auditees who are not in compliance with BMC 9.04.285 or 9.04.035. An administrative citation provides a means to address BMC violations and to promote quick resolution. In most cases, an administrative citation issued by the Auditor’s Office is $200; however, the citation is a fine that can be as much as $1000.

F. Business License Tax Appeals

Three rental property owners requested an appeal for their BLT audit assessment. In all three cases, the Administrative Hearing Examiner found no grounds for waiving taxes and/or penalties and interest. Auditees have the opportunity to appeal BLT audit

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5 BMC Section 9.04.285 Examination of books, records, witnesses—Information confidential—Penalty. “The Director of Finance or any authorized employee, is authorized to examine the books, papers and records of any person subject to this chapter for the purpose of verifying the accuracy of any return made or, if no return was made, to ascertain the license fees due under this chapter”.

BMC Section 9.04.035 License required. “It shall be unlawful for any person, either for himself/herself or for any other person, to commence or carry on any business specified in this chapter, in the City, without first having procured a license from the City to do so, or without complying with any and all regulations of such business contained in this chapter.”
assessments to the Administrative Hearing Examiner. This is done by submitting a written appeal request, generally applicable within 30 calendar days from the date of a final or provisional invoice.

G. Audit Cases Referred to Finance

Adequate Documentation Not Provided
Cases are referred to the Finance–Revenue Collection Division for follow-up when the auditee fails to:
- Respond to audit letters and telephone calls, or
- Provide the auditor with adequate documentation to perform an audit. (D-3-c#7B)

No cases were referred to Finance during FY2010.

Unpaid Audit Assessments
As of June 30, 2010, the BLT accounts receivable consisted of 19 cases totaling $140,987. The Finance Department charged 7 of the 19 cases, with receivables totaling $42,333, to the owners’ property tax bills.

The Auditor’s Office provides the Finance-Revenue Collections Division with accounts receivable reports identifying the audit cases that have been assessed by the auditors and for which payments have not been received. Finance staffs use various means to collect BLT due, including adding the unpaid audit assessments to the property owners’ tax bill.

H. Projected Business License Tax Revenue

Business License Tax revenue from the BLT Audit Program is typically projected at $125,000 to $150,000 annually per full-time equivalent (FTE) employee assigned. For FY10 plans were to significantly exceed this projection because of the Special Project with Finance.

There was an average of 1.11 FTE assigned to the program during FY10. For every dollar spent on salaries, fringe benefits, and BLT Program administration, the auditors identified and billed approximately $1.01 in BLT penalties and interest. As noted on page one, that one time revenue amount should double over the next five to six years if the audited businesses continue in business at the same level of gross receipts.

Some factors affecting this ratio include staff salary increases, time dedicated to establishing new and unified procedures for the special joint venture project, appeal hearing cases, and the daycare issue.

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6 The Administrative Hearing Examiner is located in the City Manager’s Office.
7 Finance estimated the entire Special Joint Project could generate $400,000 in one-time BLT revenue. The Auditor’s largely completed their portion of the Special Joint Project during FY10 and billed only $98,720.
<table>
<thead>
<tr>
<th>FY10 Total Billed</th>
<th>FY10 Auditor Salaries*</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>$143,631**</td>
<td>$142,751</td>
<td>1.01 : 1</td>
</tr>
</tbody>
</table>

* Auditor Salaries = auditors salaries + supervisory salaries + fringe benefits divided by .80 to account for vacation, sick leave, training, and other administrative time.

** As discussed on page one of this report (Executive Summary), future annual revenue of $27,290 per year, or about $136,000 to $164,000 over the next five or six years, can be anticipated from these billings assuming these businesses continue to pay the higher tax.

I. Collections

BLT audit collections totaled $122,899 during FY10. Of this, $65,079 was collected from prior year billings, including a total of $11,250, collected by the County Assessor’s Office through the owner’s property tax bills.

J. Cumulative Statistical Information

During the last ten years, the City Auditor’s BLT Audit Program has identified 392 businesses and residential rental property owners that owed the City $1,546,264 in tax, penalties, and interest. During this same ten-year period, payments totaling $1,397,531 were received. Since the inception of the program in 1982 unpaid tax, penalties, and interest identified by the City Auditor’s Office BLT Audit Program has totaled $5,248,933.

In addition to the one-time revenue that these BLT audits provided, they most likely result in increased future BLT revenue. Assuming audited businesses continue to pay the higher tax resulting from an audit for the next five to six years, the City should again collect an amount equal to the taxpayer’s original audit assessment. This is because 19% of a typical billing equates to one year of unpaid tax, excluding interest and penalties. With over five million dollars assessed since the BLT Audit program started, this additional revenue could easily be substantial.

The audits also likely have a deterrent effect, decreasing the number of businesses that do not obtain a license or underreport tax due.
## Business License Tax, Penalties and Interest
Identified (Billed) By the Auditor’s Office
Ten-Year Comparison

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Unlicensed Businesses</th>
<th>Under-reporting of Gross Receipts</th>
<th>Delinquent Licenses</th>
<th>Total</th>
<th>Number of Hours Spent</th>
<th>% of FTE @ 80% Productive Time*</th>
</tr>
</thead>
<tbody>
<tr>
<td>09/10</td>
<td>32</td>
<td>$98,214</td>
<td>8</td>
<td>$44,911</td>
<td>1 $506</td>
<td>$143,631</td>
</tr>
<tr>
<td>08/09</td>
<td>3</td>
<td>$96,903</td>
<td>19</td>
<td>$15,693</td>
<td>2 $27,911</td>
<td>$140,507</td>
</tr>
<tr>
<td>07/08</td>
<td>1</td>
<td>$4,987</td>
<td>32</td>
<td>$90,673</td>
<td>0 $0</td>
<td>$95,660</td>
</tr>
<tr>
<td>06/07</td>
<td>0</td>
<td>$0</td>
<td>22</td>
<td>$106,919</td>
<td>2 $21,541</td>
<td>$128,460</td>
</tr>
<tr>
<td>05/06</td>
<td>5</td>
<td>$9,584</td>
<td>6</td>
<td>$34,418</td>
<td>0 $0</td>
<td>$44,002</td>
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<tr>
<td>04/05</td>
<td>5</td>
<td>$25,281</td>
<td>7</td>
<td>$130,160</td>
<td>1 $1,421</td>
<td>$156,682</td>
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<tr>
<td>03/04</td>
<td>1</td>
<td>$2,770</td>
<td>15</td>
<td>$121,766</td>
<td>1 $534</td>
<td>$125,070</td>
</tr>
<tr>
<td>02/03</td>
<td>8</td>
<td>$15,162</td>
<td>31</td>
<td>$366,680</td>
<td>8 $13,351</td>
<td>$395,193</td>
</tr>
<tr>
<td>01/02</td>
<td>54</td>
<td>$59,701</td>
<td>8</td>
<td>$15,020</td>
<td>1 $7,653</td>
<td>$82,374</td>
</tr>
<tr>
<td>00/01</td>
<td>115</td>
<td>$233,571</td>
<td>2</td>
<td>$934</td>
<td>0 $0</td>
<td>$234,505</td>
</tr>
<tr>
<td>TOTAL</td>
<td>224</td>
<td>$546,172</td>
<td>143</td>
<td>$927,174</td>
<td>16 $72,917</td>
<td>$1,546,264</td>
</tr>
</tbody>
</table>

*Productive Time is calculated based on 2,080 work hours per year @ 80%. The 80% figure is used so that the cost of the hours spent includes an allowance for sick leave, vacation days, holidays, training, and other administrative uses of time.*
V. CONCLUSION

The BLT Audit Program has been an effective means of generating revenue by identifying unlicensed and underreporting businesses. The audit work may also act as a deterrent to those who might consider underreporting or neglect to obtain a license.

The BLT revenue identified during our audits is generally not a one-time windfall, but becomes a part of the future revenue stream. In FY10, 57% of our BLT billings were comprised of unpaid tax, and the remaining 43% were penalties and interest. The BLT audit historically included unpaid tax for a three-year period. Accordingly, for each $100,000 in tax identified by audit, about $19,000 ($57,000 / 3 years) in tax for each succeeding year can be expected, as long as the audited businesses are generating consistent gross receipts.

VI. SCOPE AND METHODOLOGY

The City Auditor’s Office assesses compliance with the BLT ordinance by auditing entities and individuals engaged in business within Berkeley. One hundred and forty five cases were under audit and/or review during FY10. These cases fall into one of two groups:

1. Joint Venture (Special) Project
2. Performance Audits

Joint Venture (Special) Project - Identification of Unlicensed Businesses
In FY10, Finance staff developed a list of suspected unlicensed businesses and Finance and Audit staff used this list as part of a Special Project. Finance split the list so that half was referred to the Auditor’s Office and the other half to the Finance Revenue Development Unit for follow-up and billing. The Auditor’s Office selected eighty five businesses for the FY10 Special Project. These cases consisted of entities and individuals suspected of being unlicensed. Compliance with the BLT ordinance was determined by requesting business owners to provide information regarding their business operation and to self-report gross receipts. The information provided was used to calculate their unpaid BLT.

Consistent with Finance’s procedures, the Auditor’s Office mass mailed letters to these businesses. Businesses were requested to complete and remit a New Business License Application Form; self-report gross receipts, provide their North American Industry Classification System (NAICS) code\(^8\), and submit an initial payment of $76 ($25 registration fee plus $51.00 minimum license fee), or $102 for rental properties ($25

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\(^8\) If a NAICS code was not provided by the business, the auditor assigned the code based on the available information and calculated business license tax owed.
registration fee plus $77.00 minimum license fee). The information provided by the business was used as the basis for assessing BLT. Initially, special project cases covered the three most recent BLT years (2007-2009). In April 2010, a change in policy endorsed a four year period (2007 – 2010).

The Auditor’s special project cases were billed without verification of taxpayer information, but selected cases may be audited later. Generally Accepted Government Auditing Standard 7.55 requires verification. Taxpayer self-reported information was used without validation or reliability testing to ensure that taxpayers obtained and paid for their licenses promptly. Validation of taxpayer information would be part of any future under-reporting audits for these taxpayers.

**Performance Audits - Accuracy of Reported Gross Receipts**
Auditee compliance with the BLT ordinance in this group was determined by obtaining sufficient and appropriate documentation to calculate the correct amount of tax due. Examples of such evidence include income tax returns, sales tax returns, rental agreements, rent-rolls and financial statements. Based on information provided and/or compiled, entities and individuals were billed for unpaid BLT, plus penalties and interest, in accordance with Berkeley Municipal Code (BMC) Section 9.04.

Sixty audit cases in this group were carried over from prior year(s). The audit period for these cases was the three most recent BLT years at the time the audits were initiated. An additional BLT year(s) may have been incorporated into the review every March 1 (due date for business license) if the audit case had not been completed by this date.

**Government Audit Standards**
We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS) except as noted above. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.
<table>
<thead>
<tr>
<th>Recommended dates</th>
<th>Upcoming Workshops and Action Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 29</td>
<td>Refuse/ Capital Improvement Plan</td>
</tr>
<tr>
<td>April 26</td>
<td>Crime Report/ Fire and Police Departments Diversity Recruitment Plans</td>
</tr>
<tr>
<td>April 26</td>
<td>Community Agency Public Hearing</td>
</tr>
<tr>
<td>May 3</td>
<td>Proposed FY 12, FY 13 Biennial Budget</td>
</tr>
<tr>
<td>May 3</td>
<td>Adopt funding allocations and Annual Action Plan for CDBG and ESG</td>
</tr>
<tr>
<td>May 17</td>
<td>Adeline Corridor/ Betty Deacon</td>
</tr>
<tr>
<td>May 17</td>
<td>Public Hearing #1: Budget and Fees</td>
</tr>
<tr>
<td>May 31</td>
<td>Affordable Housing Impact Fee</td>
</tr>
<tr>
<td>June 7</td>
<td>Public Hearing #2: Budget and Fees</td>
</tr>
<tr>
<td>June 14</td>
<td>Council budget recommendations due to City Manager</td>
</tr>
<tr>
<td>June 28</td>
<td>Adopt FY 2012-2013 Biennial Budget and Tax Rates</td>
</tr>
</tbody>
</table>
### Working Calendar for Scheduling Land Use Matters Before the City Council

#### Appeal Submitted (1)

<table>
<thead>
<tr>
<th>Address</th>
<th>Council</th>
<th>Estimated Time - Management</th>
<th>Meeting</th>
<th>Appeal Submitted</th>
<th>Appeal Determination</th>
<th>Appeal Ends</th>
</tr>
</thead>
</table>

#### Remanded to ZAB or LPC

<table>
<thead>
<tr>
<th>Address</th>
<th>Council</th>
<th>Estimated Time - Management</th>
<th>Meeting</th>
<th>Appeal Submitted</th>
<th>Appeal Determination</th>
<th>Appeal Ends</th>
</tr>
</thead>
</table>

#### Public Hearings Scheduled (2)

<table>
<thead>
<tr>
<th>Address</th>
<th>Council</th>
<th>Estimated Time - Management</th>
<th>Meeting</th>
<th>Appeal Submitted</th>
<th>Appeal Determination</th>
<th>Appeal Ends</th>
</tr>
</thead>
</table>

#### NOD - Notices of Decision

<table>
<thead>
<tr>
<th>Address</th>
<th>Council</th>
<th>Estimated Time - Management</th>
<th>Meeting</th>
<th>Appeal Submitted</th>
<th>Appeal Determination</th>
<th>Appeal Ends</th>
</tr>
</thead>
</table>

#### Note

This in no way infers that a hearing will in fact be set. The appeals are listed under placeholders for potential public hearings and simply “placeholders” for the management of Council meetings. If the Council directs that a hearing be scheduled, this is no way that a hearing will in fact be set. The appeals are listed under placeholders for potential public hearings and simply “placeholders” for the management of Council meetings.