



**BERKELEY PUBLIC LIBRARY
BOARD OF LIBRARY TRUSTEES**

REGULAR MEETING
Wednesday 02/02/2022

AGENDA
6:30 PM

This Meeting Will Be
Conducted Exclusively
Through Videoconference and
Teleconference

Commission Members:

Amy Roth, President; Sophie Hahn, Vice President; Diane Davenport, Beverly Greene, John Selawsky

PUBLIC ADVISORY:

This Meeting Will be Conducted Exclusively Through Videoconference and Teleconference

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Board of Library Trustees will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/86042306505>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial [1-669-900-9128](tel:1-669-900-9128) and enter Meeting ID: [860-4230-6505](tel:860-4230-6505). If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair. NOTE: Your phone number will appear on the screen.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email BOLT@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

Please be mindful that the teleconference will be recorded as any Board of Library Trustees meeting is recorded, and all other rules of procedure and decorum will apply for Board of Library Trustees meetings conducted by teleconference or videoconference.

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 [Eve Franklin, Administrative Secretary, \(510\) 981-6102](#). The Board of Library Trustees may take action related to any subject listed on the agenda.

I. PRELIMINARY MATTERS

A. Roll Call

B. Public Comment on Non-agenda Matters

Speakers are allowed 3 minutes each for up to 10 speakers; if more than 10 individuals have filled out and submitted cards to speak, the time for all speakers will be reduced to 2 minutes per person and if more than 20 individuals have submitted speaker's cards, the time per person will be reduced to one minute each, for a maximum of one hour of public comment.

C. Comments from Library Unions

For regular meetings of the BOLT, representatives from the three unions representing Library employees may address BOLT, with a total time limit of 15 minutes. If all three (3) unions have representatives present and wish to speak, each union shall receive 5 minutes to address BOLT. If only two (2) unions have representatives present and wishing to speak, each union shall receive 7.5 minutes to address BOLT, for a total of 15 minutes. If only one (1) union has representatives present and wishing to speak, that union shall receive 15 minutes to address BOLT. The Secretary shall, at the start of the Comment from Library Union item, ask union representatives who wish to speak to identify themselves and which union they represent. The Secretary shall then determine the appropriate allocation of speaking time according to the rules stated herein.

- i. SEIU, LOCAL 1021 (Maintenance and Clerical Units)
- ii. SEIU, LOCAL 1021 (Community Services and PTRLA Units)
- iii. Public Employees Union, LOCAL 1

D. Comments from Board of Library Trustees

II. CONSENT CALENDAR

The Board will consider removal and addition of items to the Consent Calendar prior to voting on the Consent Calendar. All items remaining on the Consent Calendar will be approved in one motion.

A. Minutes of January 19, 2022 Regular Meeting

From: Tess Mayer, Director of Library Services

Recommendation: Adopt the resolution to approve the minutes of the January 19, 2022 Regular Meeting of the Board of Library Trustees.

III. ACTION CALENDAR

A. Circulation Policy Update to Discontinue Use of Unique Management Services (Collection Agency)

From: Jay Dickinson, Circulation Services Manager

Recommendation: Adopt the resolution to update the Library Circulation Policy by discontinuing the use of Unique Management Services collection agency, and to clarify specifics about replacement of billed items with materials purchased by patrons in lieu of payment.

B. 2022 Board of Library Trustees Priority Setting

From: Tess Mayer, Director of Library Services

Recommendation: Review and discuss priority projects for the Board of Library Trustees (BOLT) for 2022. Identify any necessary additions or changes to the list.

C. Authorization for President and Vice-President of the Board of Library Trustees to advance salary study project

From: Tess Mayer, Director of Library Services

Recommendation: Authorize the President and Vice-President of the Board of Library Trustees to advance a salary study for the Executive Director position on behalf of BOLT.

IV. INFORMATION REPORTS

All items for discussion only and no final action.

A. Outdoor Programming Oral Update

B. Central Library Story Room Project Update – Tess Mayer, Director of Library Services

C. Monthly Library Director's Report – Tess Mayer, Director of Library Services

V. ITEMS FOR FUTURE AGENDAS

These items are not scheduled for discussion or action at this meeting. The Board of Library Trustees may schedule these items to the agenda of a future meeting.

A. Discussion of items to be added to future agendas

VI. ADJOURNMENT

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 Tess Mayer, 510-981-6195, tmayer@cityofberkeley.info.

Communications to Berkeley boards, commissions or committees 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 a City board, commission, or committee, 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 secretary of the relevant board, commission, or committee. 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 secretary to the relevant board, commission, or committee for further information.

Any writings or documents provided to a majority of the commission regarding any item on this agenda will be made available for public inspection at the Berkeley Public Library Administration Office located at 2090 Kittredge Street - 3rd Floor Admin Wing, Berkeley, CA 94704.

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 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

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I hereby certify that the agenda for this regular/special meeting of the Berkeley City Commission on Commissions was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way and in front of the Central Public Library at 2090 Kittredge Street as well as on the Berkeley Public Library's website, on January 26

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Tess Mayer, Director of Library Services  
Serving as Secretary to the Board of Library Trustees

**Communications: none**





**MINUTES**  
**Berkeley Public Library - Board of Library Trustees Regular Meeting**  
**Wednesday, January 19, 2022 6:30 PM**

This meeting was conducted exclusively through videoconference and teleconference.

**Board of Library Trustees:**

|                             |                 |
|-----------------------------|-----------------|
| Amy Roth, President         | Diane Davenport |
| Sophie Hahn, Vice President | Beverly Greene  |
|                             | John Selawsky   |

**I. PRELIMINARY MATTERS**

A copy of the agenda packet can be found at <http://www.berkeleypubliclibrary.org/about/board-library-trustees>

1. **Call to order:** 6:36 pm.  
Present: Trustees Davenport, Greene, Hahn, Roth and Selawsky.  
Absent: None  
Also Present: Tess Mayer, Director of Library Services; Amanda Myers, Acting Library Services Manager; Jay Dickinson, Circulation Services Manager; My Chan, Associate Human Resources Analyst; Aimee Reeder; Assoc. Management Analyst; Eve Franklin, Administrative Secretary; Nneka Gallaread, Administrative and Fiscal Services Manager.
2. **Public Comments:** 1 speakers.
3. **Comments from Library Unions:**
  - A. SEIU, LOCAL 1021 (Maintenance and Clerical Units) – 0 speakers
  - B. SEIU, LOCAL 1021 (Community Services and PTRLA Units) – 0 speakers
  - C. Public Employees Union, LOCAL 1 – 0 speakers
4. **Comments from Board of Library Trustees –**
  1. **Trustee Selawsky** – Expressed appreciation for staff during this extended and challenging time.
  2. **Trustee Davenport** - Watched video where BPL supervisors praised individual staff members.

**II. CONSENT CALENDAR**

**A. Approve Minutes of the December 8, 2021 Regular Meeting**

Minor correction noted. Trustee Greene was absent.

**From:** Director of Library Services

**Recommendation:** Adopt a resolution to approve the minutes of the December 8, 2021 Regular Meeting of the Board of Library Trustees as presented .

**Financial Implications:** None

**Contact:** Tess Mayer, Director of Library Services

**Action:** M/S/C Trustee Selawsky / Trustee Davenport to adopt resolution #R22-001 to approve the minutes as amended.

**Vote:** Ayes: Trustees Davenport, Greene, Hahn, Roth and Selawsky. Noes: None. Absent: None. Abstentions: None.

**Action:** M/S/C Trustee Davenport / Trustee Hahn to adopt resolution #R22-003 to approve the remainder of the consent calendar as presented.

**Vote:** Ayes: Trustees Davenport, Greene, Hahn, Roth and Selawsky. Noes: None. Absent: None. Abstentions: None.

**B. Revised 2022 Berkeley Public Library Holiday and Early Closing Schedule**

**From:** Director of Library Services

**Recommendation:** Adopt a Resolution #R22-004 to approve the revised 2022 Berkeley Public Library Holiday & Early Closing Schedule (attachment #2) to modify the date of the Malcolm X Day holiday to Friday, May 20, 2022.

**Financial Implications:** None

**Contact:** Tess Mayer, Director of Library Services

**Vote:** Ayes: Trustees Davenport, Greene, Hahn, Roth and Selawsky. Noes: None. Absent: None. Abstentions: None.

**C. 25th Annual Authors Dinner Event**

**From:** Tess Mayer, Director of Library Services

**Recommendation:** Adopt the resolution #R22-005 approving the arrangements in preparation for the 25th annual Authors Dinner to be held on Saturday, May 21, 2022 at the Central Library.

**Financial Implications:** None

**Contact:** Tess Mayer, Director of Library Services

**Vote:** Ayes: Trustees Davenport, Greene, Hahn, Roth and Selawsky. Noes: None. Absent: None. Abstentions: None.

**D. License Agreement between Library and the Berkeley Public Library Foundation for use of Space in the Central Library**

**From:** Nneka Gallaread, Administrative and Fiscal Services Manager

**Recommendation:** Adopt the resolution #R22-006 granting a three-year License Agreement with the Berkeley Public Library Foundation for the use of office space in the Central Library for the period from Sunday January 3, 2021 through Thursday, January 4, 2024.

**Financial Implications:** None

**Contact:** Nneka Gallaread, Administrative and Fiscal Services Manager

**Vote:** Ayes: Trustees Davenport, Greene, Hahn, Roth and Selawsky. Noes: None. Absent: None. Abstentions: None.

**III. ACTION CALENDAR**

**A. Public Reports of actions taken pursuant to Government Code Section 54957.1 at the December 8, 2021 Closed Session – oral report**

**From:** Amy Roth, President, Board of Library Trustees

The Trustees conducted an employee evaluation for the Director of Library Services. No further action was taken.

**Financial Implications:** None

**Contact:** Amy Roth, President, Board of Library Trustees

No action.

**IV. INFORMATION CALENDAR**

**A. Capital Projects Update – oral report**

**From:** Tess Mayer, Director of Library Services, Nneka Gallaread, Fiscal & Administrative Services Manager, and Brian Gavin, Senior Building Maintenance Supervisor

**Action:** Received

**B. Bylaws Update**

**From:** Tess Mayer, Director of Library Services

**Action:** Received

Permanent Residency?

How long does the Ad Hoc Subcommittee process take?

Concern about Ad Hoc Subcommittee

**C. Recruitment Update – oral report**

**From:** Tess Mayer, Director of Library Services

**Action:** Received

**D. Monthly Library Director's Report – Tess Mayer, Director of Library Services**

**From:** Tess Mayer, Director of Library Services

**Action:** Received

**V. AGENDA BUILDING**

Next regular meeting will be held February 2, 2022.

Future topics:

- What Insurance coverage does COB have on City buildings
- Development of a Capital Improvement Projects Budget
- Discussion on what to do with documents from DOLS evaluation closed session from 12/8/2021
- Priorities for BOLT

**VI. ADJOURNMENT**

Trustee Hahn motioned, Trustee Selawsky seconded to adjourn the meeting.

Vote: Ayes: Trustees Davenport, Hahn, Roth and Selawsky. Noes: None. Absent: Trustee Greene. Abstentions: None.

Adjourned at 8.44 PM.

This is to certify that the foregoing is a true and correct copy of the minutes of the regular meeting of January 19, 2022 as approved by the Board of Library Trustees

//s// \_\_\_\_\_

Tess Mayer, Director of Library Services, acting as secretary to BOLT

Attachments:

1. Capital Projects Update Presentation
2. Recruitment Update Presentation





# Facilities Projects and Deferred Maintenance

Brian Gavin, Sr. Maintenance Supervisor  
Nneka Gallaread, Fiscal & Administrative Services Manager  
Tess Mayer, Director of Library Services



*January 19, 2022*

**BERKELEY PUBLIC LIBRARY**

**DEDICATED TO SERVING THE PUBLIC**

(FROM FY 2022 BUDGET PRESENTATION)

Major New and Continuing Projects:

| Description                                                      | New/Continuing | Estimated Budget                  |
|------------------------------------------------------------------|----------------|-----------------------------------|
| Central Library Stucco Restoration                               | Continuing     | \$1.75 million (Library Tax Fund) |
| Central Library AC Units Replacement                             | New            | \$850,000 (Library Tax Fund)      |
| Other Aging Physical Plant and Equipment, e.g., roof replacement | New            | \$800,000 (Library Tax Fund)      |





## Stucco Replacement



## Teen Room Water Intrusion

| Site               | System/Equipment      | Description                                                         | Deferred  | FY 2022       | FY 2023       | FY 2024       | FY 2025       | FY 2026       | FY 2027 | Comments                                                                                                                                                                  |
|--------------------|-----------------------|---------------------------------------------------------------------|-----------|---------------|---------------|---------------|---------------|---------------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MB                 | Teen Room             | Teen Room water intrusion                                           |           | \$ 25,000.00  | \$ 100,000.00 |               |               |               |         | Teen Room has a water leak that is approximately six years old. Needs repair now. Causing damage to floor.                                                                |
| MB                 | Stucco                | Stucco replacement                                                  | 10 years  | \$ 468,256.00 | \$ 117,064.00 |               |               |               |         |                                                                                                                                                                           |
| MB                 | Air Conditioning      | McQuay A/C- 6 unit 150 Tons                                         | 2 years   |               | \$ 50,000.00  | \$ 400,000.00 | \$ 50,000.00  | -             | -       | Estimated                                                                                                                                                                 |
| MB                 | Air Conditioning      | Carrier Package A/C- 4 and 2, Units 73 Tons Total                   | 2 years   |               | \$ 20,000.00  | \$ 300,000.00 | \$ 30,000.00  | -             | -       |                                                                                                                                                                           |
| MB                 | Roofing Bancroft      | Modified Bitumen Flat Roof                                          | 0-7 years |               | -             |               | \$ 75,000.00  | \$ 125,000.00 | -       | Leaking                                                                                                                                                                   |
| MB                 | Roofing Kittredge     | Modified Bitumen Flat Roof                                          | 0-7 years |               | -             |               | \$ 112,500.00 | \$ 187,500.00 | -       | Leaking and bubbles                                                                                                                                                       |
| MB                 | Kittredge A/C Ducting | A/C Ducting deteriorating                                           | 0-7 years |               | \$ 20,000.00  | \$ 20,000.00  | \$ 25,625.00  | \$ 109,375.00 |         | Fragile                                                                                                                                                                   |
|                    | Ford Transit Van      | Trade in small transit van for larger transit van                   |           |               |               | \$ 40,000.00  |               |               |         | Need to acquire a larger transit van for hauling furniture, charlie cart, materials and waste disposal                                                                    |
| MB                 | Elevators             | Both patron and service elevators, four in total                    |           |               | \$ 43,750.00  | \$ 43,750.00  | \$ 43,750.00  | \$ 43,750.00  |         | Aging elevators are requiring more maintenance to keep them running safely and reducing time out-of-service                                                               |
| MB                 | Paint                 | Complete repainting of Central Branch                               |           |               | \$ 50,000.00  |               |               |               |         | Paint is mismatched in places and overall looks worn                                                                                                                      |
| CL                 | Reading Room Ceiling  | Water damage to reading room ceiling of Claremont Branch            |           |               | \$ 25,000.00  |               |               |               |         | Water intrusion occurred when the roof failed during a heavy rain storm. Roof has since been repaired                                                                     |
| MB                 | CMR                   | Replacement of stained, dirty and damaged carpet                    |           |               | \$ 20,000.00  |               |               |               |         | Carpet in the community meeting room is overdue for replacement                                                                                                           |
| MB                 | Indoor Lighting       | Upgrade all indoor lighting to safer and more energy efficient LEDs |           |               |               |               |               |               |         | Central Branch currently has a plethora of different light fixtures that require many different light bulbs. Fixtures are old and bulbs and ballasts burn out prematurely |
| Estimated FY Costs |                       |                                                                     |           | \$ 493,256.00 | \$ 445,814.00 | \$ 803,750.00 | \$ 336,875.00 | \$ 465,625.00 | \$ -    |                                                                                                                                                                           |

Thank you!

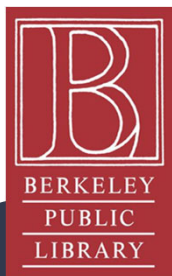


Tess Mayer  
Nneka Gallaread  
Brian Gavin  
[NGallaread@cityofberkeley.info](mailto:NGallaread@cityofberkeley.info)  
[bgavin@cityofberkeley.info](mailto:bgavin@cityofberkeley.info)  
[www.berkeleypubliclibrary.org](http://www.berkeleypubliclibrary.org)



# Staffing Update

*Tess Mayer, Director of Library Services*



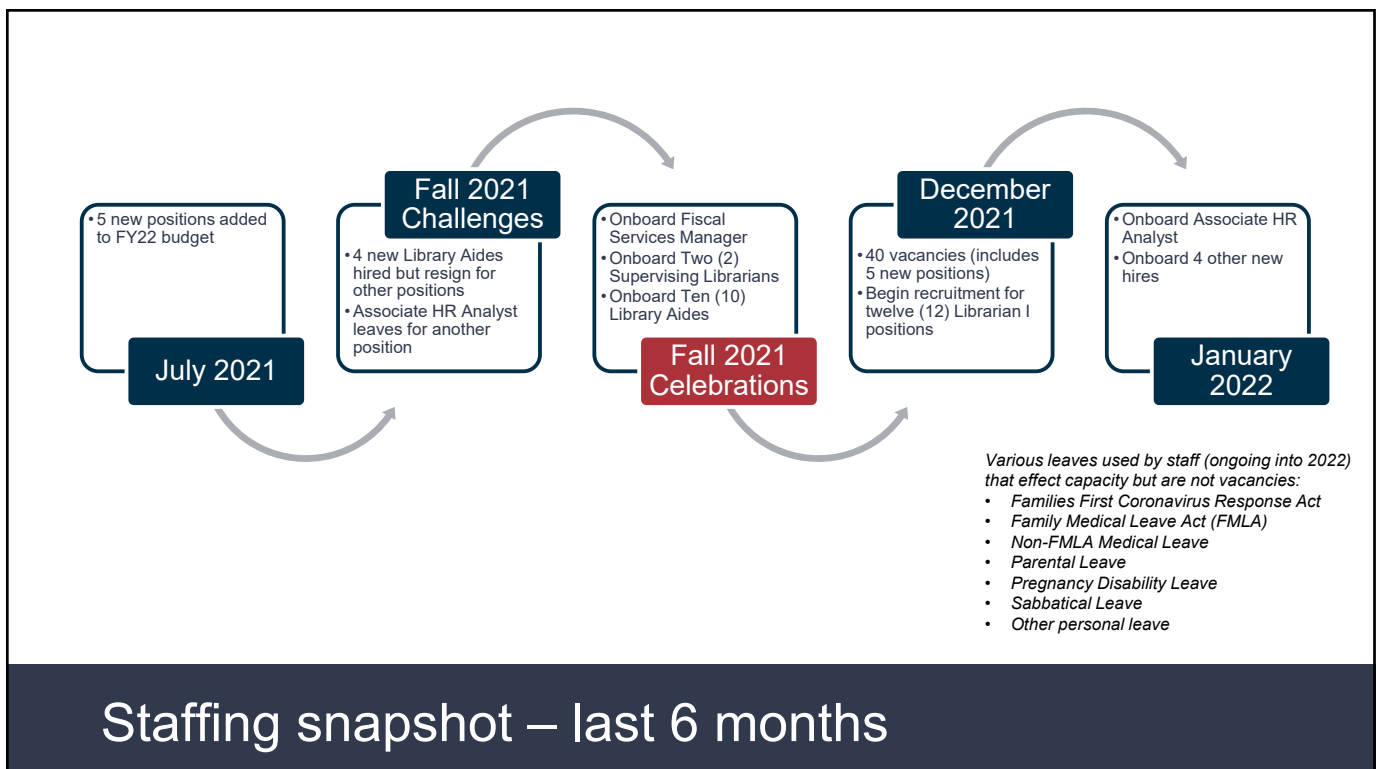
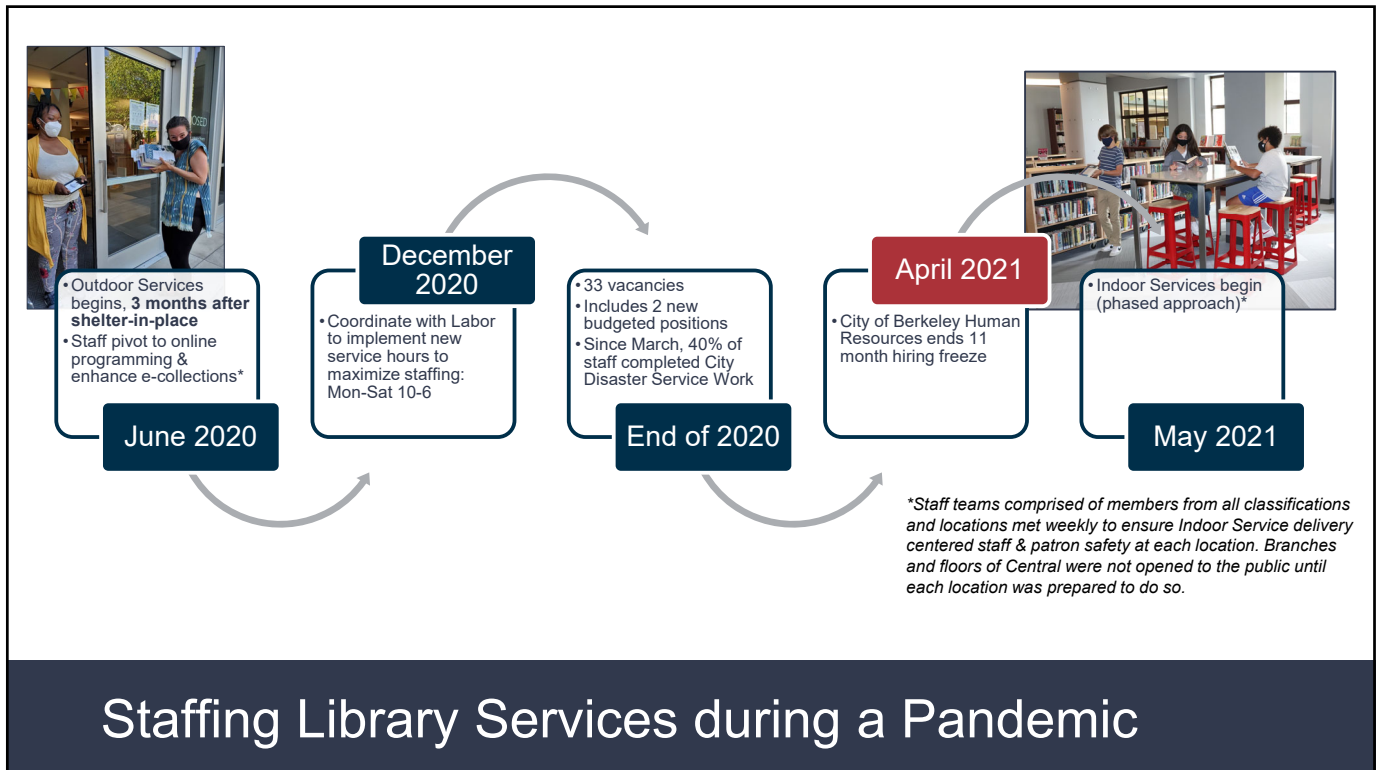
January 19, 2022  
Regular Meeting  
Board of Library Trustees (BOLT)

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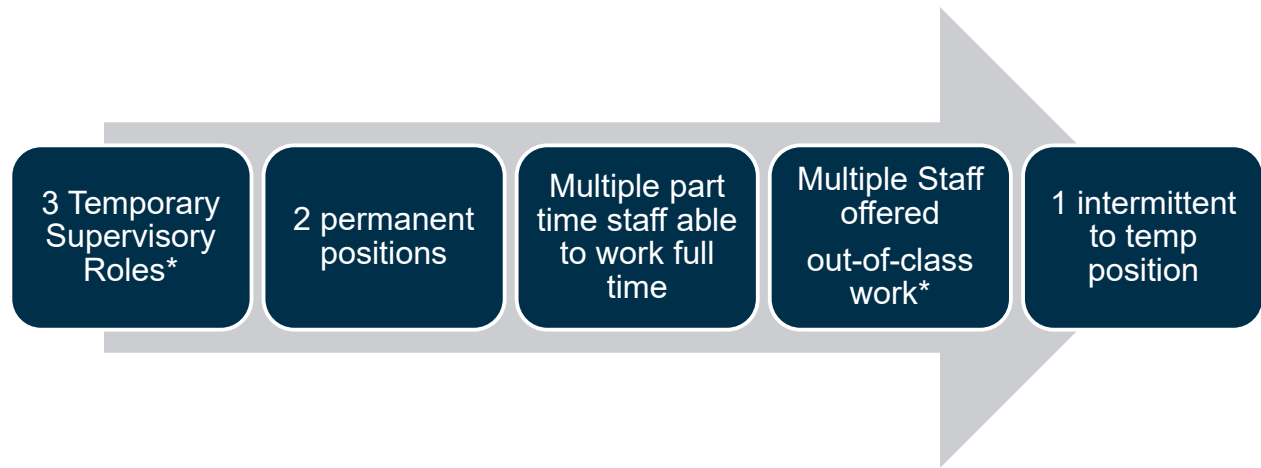


## Early Pandemic Staffing





## Promotional Opportunities during the pandemic



*\*Experience acquired supports exposure to new roles and skill sets. Offers a pathway to permanent positions.*

## 2021 Hiring & Recruitment Snapshot

Recruited for  
**17** positions

**25** people  
received offers

**13** working in  
new positions

**5** more  
accepted offers  
in 2021 & will  
onboard in  
2022

# Comments & Questions



[www.berkeleypubliclibrary.org](http://www.berkeleypubliclibrary.org)





**ACTION CALENDAR**

February 02, 2022

**TO:** Board of Library Trustees  
**FROM:** Jay Dickinson, Circulation Services Manager  
**SUBJECT:** Circulation Policy Update to Discontinue Use of Unique Management Services (Collection Agency)

**RECOMMENDATION**

Adopt the resolution to update the Library Circulation Policy by discontinuing the use of Unique Management Services collection agency, and to clarify specifics about replacement of billed items with materials purchased by patrons in lieu of payment.

**FISCAL IMPACT**

Minimal. No accounts have been sent to Unique Management for recovery since the beginning of the Covid-19 pandemic in March, 2020. Before that the Library spent less than \$5,000 annually with Unique.

**BACKGROUND**

**Unique Management Services, Inc.**

Since 2018 the Berkeley Public Library has undertaken to eliminate most late fines (and additional fees) associated with late returned items, including damaged disc and case fees, and Link+ late fees. Left in place were fines on Tools, which are high value items, and various replacement costs for lost and/or damaged items. The Collection Agency fee was also left on the schedule. The Library has long engaged a collection agency (Unique Management) for assistance in the recovery of long overdue and lost items. Patrons referred to Unique have been charged \$10 for the cost of the service as well as Library staff time needed to recover and/or replace items.

Unique Management operates on the Library's behalf by contacting patrons who owed more than \$50 in lost items fees (late fines are not referred to Unique). Historically patrons who failed to return items or satisfy balances had their debt referred to the 3 major credit rating agencies (Experian, TransUnion and Equifax). However, in 2016 the National Consumer Assistance Plan eliminated library debts as reportable to these agencies.

In response to this change, management and supervisory teams discussed eliminating the Library's use of Unique Management. It had long been an unpopular practice with patrons, and since Unique Management service was now limited to merely contacting patrons about lost items (which the Library does as well), it seemed the service might no longer be completely necessary. Changes in Leadership forestalled the discussion, and while it was again considered when late fees were eliminated, it was decided at that time it would be prudent to leave the practice in place. There was some concern that the elimination of late fees would increase the amount of materials returned late, or not returned at all. This did not prove to be the case. Return rates are not appreciably different either statistically or anecdotally to the period before fine elimination.

In June of 2019, Berkeley Public Library purposely let its long-held contract with Unique Management lapse. Since the amount spent with Unique was less than \$5,000 annually, it was possible to simply switch

payment to the company to a Purchase Order, eliminating the need for a long-term agreement, but allowing the Library to continue to use the service.

When the Covid-19 pandemic began in March of 2020, many temporary circulation changes were put in place; Library accounts expiration dates were extended, and circulation periods were extended. The Library buildings and book drops were closed, so efforts were made to make it easier for patrons to keep materials for longer, or at least to eliminate negative consequences where possible. In addition to these measures, the practice of referring patron accounts to Unique Management was suspended, and to this date has not been reinstated. The discontinuation of use of Unique Management services during the pandemic period did not change the rate of return of lost items.

### **Replacement Policy**

The current Circulation Policy allows for patrons to bring replacement copies in lieu of payment. The language in the policy has produced misunderstanding in some cases. The proposed edit will not change the policy but will clarify the language.

### **CURRENT SITUATION AND ITS EFFECTS**

Currently, circulating items that are not reserved by another patron will automatically renew on their due date. This has reduced the number of items that become overdue. Patrons receive courtesy notices 3 days before items are due, late notices 14 days after they are due, and are billed for items 6 weeks after their final passed due date. Accounts with billed items are blocked from use. Were the Library to continue to engage Unique Management, after items are billed patrons would receive one phone call and two letters from them, alerting them to return their materials.

Since the Library already has considerable contact with patrons concerning coming due and overdue items, and since billed items effectively block the use of an account (motivating patrons to return items), the three more contacts from Unique would seem to represent an additional step, but one that is no longer necessary. Since there is no consequence for the debt through credit agencies, the Library is merely paying a second party to contact a patron in addition to Library-generated notices.

On the elimination of (most) late fines, Berkeley Public Library did not experience a noticeable increase in unreturned items. This would suggest that blocking accounts is enough of a measure to motivate patrons. As mentioned, this practice of having a third-party contact library users has long been unpopular, and though library debt is no longer reported to credit agencies, many patrons fear that their credit is somehow negatively affected when contacted by Unique. This creates the potential for negative interactions between patrons and staff and detracts from the Library's mission to be an equitable, accessible, and open service for everyone in the community.

Berkeley Public Library continually reviews its policies, including circulation policies, to improve services. The American Library Association's Code of Ethics, which the Board of Library Trustees affirmed commitment to at the April 19, 2017 Board of Library Trustees meeting, is one of the guiding principles in policy review. The Code of Ethics states "we provide the highest level of service to all library users through appropriate and usefully organized resources; equitable service policies; equitable access; and accurate, unbiased, and courteous responses to all requests." Berkeley Public Library is committed to this standard. The elimination of Berkeley Public Library's engagement of service provided by Unique Management would further us to our goal of open, approachable, and equitable service.

**FUTURE ACTION**

Formally discontinue sending patron accounts to Unique Management on February 3, 2022 (this practice has been in place as part of an emergency response to the Covid-19 pandemic). Update language of policy concerning replacement copies on February 3, 2022.

**Attachments:**

- 1 Resolution
- 2 Existing Policy
- 3 Proposed Policy



## **BOARD OF LIBRARY TRUSTEES**

**RESOLUTION NO: R22- \_\_\_\_**

### **CIRCULATION POLICY UPDATE**

WHEREAS, the Berkeley Public Library has historically charged fines and fees for the late return of adult materials, lost materials, etc.; and

WHEREAS, periodically associated policies are brought before the Board of Library Trustees (BOLT) for review and may be raised, reduced, or discontinued; and

WHEREAS, the Library recognizes the need to include the rules for access to library cards in the BOLT approved Circulation Policy; and

WHEREAS, the American Library Association's Code of Ethics commits to providing "the highest level of service to all library users through appropriate and usefully organized resources; equitable service policies; equitable access; and accurate, unbiased, and courteous responses to all requests."; and

WHEREAS, Berkeley Public Library has been a leader in policies and practices designed to enable equitable access for all residents through such actions as not charging late fees for children's materials; and

WHEREAS, the Library has already removed fees for damaged DVD/CD cases (\$5) and lost audio book discs (\$10) to ensure that fines and fees are applied consistently without perceptions of prejudice; and

WHEREAS, the Library no longer charges late fees for Link+ materials to provide a consistent experience for those check materials out from the Library; and

WHEREAS, the association with a collection agency negatively impacts the Library's relationship with its users; and

WHEREAS, Unique Management has been more recently providing only a redundant contact in the Library's effort to recover lost materials and has not facilitated a greater rate of return on lost items; and

WHEREAS Berkeley Public Library strives to remove barriers to access and improve the patron experience of Library Services.

NOW, THEREFORE, BE IT RESOLVED by the Board of Library Trustees of the City of Berkeley to approve the revised Library Circulation Policy, to take effect February 3, 2022.

ADOPTED by the Board of Library Trustees of the City of Berkeley at a regular meeting held on February 2, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

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Amy Roth, President

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Tess Mayer, Director of Library Services  
Serving as Secretary to the Board of Library Trustee



# **BERKELEY PUBLIC LIBRARY POLICIES**

**SUBJECT: Circulation Policy**

|                    |            |
|--------------------|------------|
| ORIGINAL DATE:     |            |
| BOLT Resolution #: |            |
| REVISED DATE:      | 11/14/2018 |
| BOLT Resolution #: | R18-054    |
| PAGE:              | 1 of 2     |

## **I. POLICY**

### **Library Cards**

Library Cards are free to all California residents and allow patrons to borrow materials from any of the Berkeley Public Library facilities. Full-service library cards provide access to eBooks, online streaming media, online resources, internet access: and more. Applicants must be present to receive a library card or renew an expired card. Library cards expire after 4 years; Easy Access cards expire after 1 year. In order to obtain a full service library card, patrons must provide picture identification and proof of California address.

The following can be used for picture identification:

- **California ID or Driver's License** (Temporary IDs are not acceptable)
- **Government Picture ID** (Out of State ID, Passport, Military ID, Green Card, etc.)
- **Student ID** (High School ID, College ID, etc.)
- **Credible Picture ID** (Bank Card, Transit Card, Costco Card etc.)

The following can be used for proof of California address:

- **California ID or Driver's License** (Temporary IDs are not acceptable)
- **Imprinted Bank Check** (Personal Check or Payroll Check Made Payable to Patron)
- **A Piece of Mail** (Postmarked within the past 30 days)
- **Voter Registration Card**
- **Utility Bill** (Printed or Electronic)
- **Automobile Registration**

### **Tool Library**

Only residents or property owners of the city of Berkeley over the age of 18 are eligible to borrow tools from the Tool Lending Library. No more than 10 tools may be borrowed at any one time. To establish residence patrons must present a current lease/rental agreement (with patron's name listed as tenant), or current tax bill (in patron's name) identifying ownership of property in Berkeley, or utility bill (in patron's name) dated within the last 30 days. More details are available on the Library's Tool Lending Library website.

### **Easy Access Card**

An Easy Access Library card is available to patrons who have picture ID and cannot provide address verification. Patrons with this type of card may use library Internet computers, in-house laptops, and have full access to all online databases and services. Easy Access cards also allow for the checkout of up to three physical items. Up to three holds may be placed on Easy Access accounts. Easy Access Cards expire after 1 year.

### **Cards for Minors**

The signature of the parent or legal guardian is required on applications for children 13 years or younger. The applicant, parent, or legal guardian must provide picture identification and address verification. Teens ages 14-17 may use the same process. However, a teen aged 14-17 with both picture ID and address verification may independently obtain a library card without the need for a parent's signature.

Patrons are allowed a maximum of 75 items overall with up to 4 Lucky Day items, with the exception of an Easy Access Card which is limited to 3 total items.

| Materials        | Overdue Fines                             | Loan Period in Days      | Renewals              |
|------------------|-------------------------------------------|--------------------------|-----------------------|
| Book             | none                                      | 21                       | 2 automatic renewals* |
| Book on CD/MP3   | none                                      | 21                       | 2 automatic renewals* |
| Cornerstones Kit | \$1.00 (per day)                          | 7                        | non-renewable         |
| DVD/Blu-Ray      | none                                      | 21                       | 2 automatic renewals* |
| Laptop           | \$1.00 (per hour)                         | 2 hours                  | non-renewable         |
| Link+            | none                                      | 7 or 21                  | 1 automatic renewal*  |
| Lucky Day        | none                                      | 21                       | non-renewable         |
| Magazine         | none                                      | 21                       | 2 automatic renewals* |
| Music CD/Vinyl   | none                                      | 21                       | 2 automatic renewals* |
| Tool             | \$1.00-\$10.00<br>(per day, see schedule) | 3 or 7<br>(per schedule) | 1 renewal             |

\*Materials that have not been reserved by another patron will automatically renew up to 2 times.

Library accounts are blocked when fees exceed \$10.00 or when there are three overdue items on the account.

### Holds

Patrons with full-access cards may place up to 25 holds. Up to three holds may be placed on Easy Access accounts.

### Replacement Fees

The Library charges a replacement fee for items that are not returned within six weeks of checkout or renewal, or that are damaged. The patron is charged the price of the item. Accounts with billed items are blocked from further borrowing. If items are not returned within 8 weeks after the due date, and \$50.00 or more is owed, accounts are referred to a collection agency. If so, the account will be charged a \$10.00 Collection Agency Fee.

A new copy of a lost item can be accepted in lieu of payment as long as the item offered is the same edition or newer, is in the same format (hardcover, paperback, etc.) as the item checked out, and is in "New" condition. Link+ materials have a flat replacement fee of \$115.00. Dependent on the discretion of the original lending institution, this fee may be reduced on a case by case basis.

### Tool Lending

Tools have a loan period of 3 or 7 days. Late fees vary by tool type as indicated in the tool fee schedule. The majority are \$1.00 per day.

|                     |                                  |       |
|---------------------|----------------------------------|-------|
| <b>Reviewed by:</b> | _____                            | _____ |
|                     | Director of Library Services     | Date  |
| <b>Approved by:</b> | _____                            | _____ |
|                     | Chair, Board of Library Trustees | Date  |



# BERKELEY PUBLIC LIBRARY POLICIES

**SUBJECT: Circulation Policy**

|                    |            |
|--------------------|------------|
| ORIGINAL DATE:     |            |
| BOLT Resolution #: |            |
| REVISED DATE:      | 11/14/2018 |
| BOLT Resolution #: | R18-054    |
| PAGE:              | 1 of 3     |

## I. POLICY

### Library Cards

*Library Cards are free to all California residents and allow patrons to borrow materials from any of the Berkeley Public Library facilities. Full-service library cards provide access to eBooks, online streaming media, online resources, internet access: and more. Applicants must be present to receive a library card or renew an expired card. Library cards expire after 4 years; Easy Access cards expire after 1 year. In order to obtain a full service library card, patrons must provide picture identification and proof of California address.*

The following can be used for picture identification:

- **California ID or Driver's License** (Temporary IDs are not acceptable)
- **Government Picture ID** (Out of State ID, Passport, Military ID, Green Card, etc.)
- **Student ID** (High School ID, College ID, etc.)
- **Credible Picture ID** (Bank Card, Transit Card, Costco Card etc.)

The following can be used for proof of California address:

- **California ID or Driver's License** (Temporary IDs are not acceptable)
- **Imprinted Bank Check** (Personal Check or Payroll Check Made Payable to Patron)
- **A Piece of Mail** (Postmarked within the past 30 days)
- **Voter Registration Card**
- **Utility Bill** (Printed or Electronic)
- **Automobile Registration**

### Tool Library

Only residents or property owners of the city of Berkeley over the age of 18 are eligible to borrow tools from the Tool Lending Library. No more than 10 tools may be borrowed at any one time. To establish residence patrons must present a current lease/rental agreement (with patron's name listed as tenant), or current tax bill (in patron's name) identifying ownership of property in Berkeley, or utility bill (in patron's name) dated within the last 30 days. More details are available on the Library's Tool Lending Library website.

### Easy Access Card

An Easy Access Library card is available to patrons who have picture ID and cannot provide address verification. Patrons with this type of card may use library Internet computers, in-house laptops, and have full access to all online databases and services. Easy Access cards also allow for the checkout of up to three physical items. Up to three holds may be placed on Easy Access accounts. Easy Access Cards expire after 1 year.

### Cards for Minors

The signature of the parent or legal guardian is required on applications for children 13 years or younger. The applicant, parent, or legal guardian must provide picture identification and address verification. Teens ages 14-17 may use the same process. However, a teen aged 14-17 with both picture ID and address verification may independently obtain a library card without the need for a parent's signature.

Patrons are allowed a maximum of 75 items overall with up to 4 Lucky Day items, with the exception of an Easy Access Card which is limited to 3 total items.

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~~A new copy of a lost item can be accepted in lieu of payment as long as the item offered is the same title and is in the same format (paper, DVD, audiobook, cd) as the item checked out. If the item checked out was a hardcover edition, the Library will accept a paperback edition if the hardcover is no longer being published. The item must be in "new" condition and cannot have any ownership stamps from other libraries.~~

~~A new copy of a lost item can be accepted in lieu of payment as long as the item offered is the same edition or newer, is in the same format (hardcover, paperback, etc.) as the item checked out, and is in "New" condition.~~ Link+ materials have a flat replacement fee of \$115.00. Dependent on the discretion of the original lending institution, this fee may be reduced on a case by case basis.

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Tools have a loan period of 3 or 7 days. Late fees vary by tool type as indicated in the tool fee schedule. The majority are \$1.00 per day.

Reviewed by:

\_\_\_\_\_  
Director of Library Services

\_\_\_\_\_  
Date

**Approved by:** \_\_\_\_\_

Chair, Board of Library Trustees

\_\_\_\_\_ Date

DRAFT





**ACTION CALENDAR**

February 2, 2022

To: Board of Library Trustees

From: Tess Mayer, Director of Library Services

Subject: 2022 Board of Library Trustees Priority Setting

**RECOMMENDATION**

Review and discuss priority projects for the Board of Library Trustees (BOLT) for 2022. Identify any necessary additions or changes to the list.

**FISCAL IMPACTS OF RECOMMENDATION**

Contracting a facilitator for a Board retreat would represent an expense to the Library.

**BACKGROUND**

Board of Library Trustees President Amy Roth, and Vice President, Sophie Hahn, generated a list of potential priorities for the Board in 2022.

**CURRENT SITUATION AND ITS EFFECT**

The list of potential projects includes:

1. Finish the bylaws: a draft of the bylaws has been completed and will be submitted for legal review and eventual comment on the part of the public and the Trustees.
2. Create a master schedule for the year: ensure that the Board provides feedback and identifies topics for potential review and discussion during 2022 Board meetings.
3. Review of Executive Director salary: as agenda item for the February 2, 2022 BOLT meeting
4. Strategic plan for Berkeley Public Library: Library staff will be drafting an RFP to contract with a consultant to support upcoming strategic planning work.
5. Strategic plan for BOLT: identify opportunities for the Board to explore its longer-term goals and opportunities for Board development. Explore the possibility of scheduling a Board retreat to support this work.
6. Improve evaluation procedures for Executive Director for next time: identify ways to better align evaluation tool with strategic plan or other formally adopted organizational priorities. Explore whether core competency model may be incorporated as well.

The Board will review these projects and identify any necessary additions or changes to the list.

**CONTACT PERSON**

Tess Mayer, Director of Library Services, Administration, 510-981-6195





**ACTION CALENDAR**

February 2, 2022

To: Board of Library Trustees

From: Tess Mayer, Director of Library Services

Subject: Authorization for President and Vice-President of the Board of Library Trustees to advance salary study project

**RECOMMENDATION**

Authorize the President and Vice-President of the Board of Library Trustees (BOLT) to advance a salary study for the Executive Director position on behalf of BOLT.

**FISCAL IMPACTS OF RECOMMENDATION**

The cost of a salary study would be \$1,000-1500, based on an estimate from City of Berkeley staff that coordinated the 2021 study of City Department Directors conducted by the City of Berkeley. The Director of Library Services is authorized to approve this expenditure.

**BACKGROUND**

The Library Director's salary, in addition to numerous other factors, is assessed against the salaries of comparable City of Berkeley department directors. The City of Berkeley recently conducted a salary study for department heads and senior staff at the City of Berkeley; the Library Director classification was not included in this study due to the Library's independent governance structure. To ensure that the Library Director's salary is aligned with the current department heads' pay scale, it is necessary to conduct a similar salary study for this position.

**CURRENT SITUATION AND ITS EFFECT**

In conjunction with BOLT's recent Library Director review, and in line with recent salary studies that have been done for department heads and other senior staff at the City of Berkeley, the BOLT President, Trustee Roth, and Vice-President, Trustee Hahn, propose to coordinate a salary study for the Library Director position and are seeking authorization from the Board of Library Trustees to move forward. The study would be used by BOLT in its deliberations following from the recent review process of the Director in December 2021.

**CONTACT PERSON**

Tess Mayer, Director of Library Services, Administration, 510-981-6195







**INFORMATION REPORTS**

February 2, 2022

To: Board of Library Trustees

From: Tess Mayer, Director of Library Services

Subject: Central Library Story Room Project Update

**INTRODUCTION**

The Library is preparing to contract with Anderson Brulé Architects (ABA) in the redesign of the Level 4 Children's Story Room. After staff shared their thoughts with respect to opportunities, needs, and challenges with the existing space, and provided feedback about prospective vendors, this firm was determined to be the best fit for the Library's needs.

**FISCAL IMPACT**

The Berkeley Public Library Foundation has committed up to \$145,000 for the Story Room project. The Foundation will be paying for services associated with the Story Room redesign.

**BACKGROUND**

The Library concluded the first phase of the Central Library Improvement Project last winter. The overall Central Improvements plan has included potential refreshes to floors 3, 4, and 5 after the first two floors were completed.

In June 2021, the Berkeley Public Library Foundation Director, Kathy Huff, met with Central Children's Services staff to share ideas and images from other libraries and children's spaces to explore shared visions. Staff expressed an interest in support with organizing and cleaning various aspects of the space. The goal was to better discern what storage space would be needed and provided for in the final design. The team agreed that the current and future use of the media room, which is adjacent to the Story Room, would be included in design considerations. Staff considered possibilities around additional storage space, signage, and art. The Foundation provided options for professional organizers, and staff selected DMA Organizing and Moves. In preparation for the start of the project, staff began working with this vendor to sort, organize, and remove items no longer used by staff, such as damaged or otherwise unusable programming supplies. This work, paid for by the Foundation, continues. Children's Librarian Emma Coleman served as the primary contact and staff liaison for the project during this phase.

The Foundation began vetting architects and received two proposals from the Sibbett Group, which focuses on children's museum spaces, and Anderson Brulé Architects (ABA), a recognized expert in library design. A third vendor was eliminated from consideration as not being well-aligned with the vision of the children's team. The staff felt it important to have an architect with library experience, so the team focused on ABA's proposals. Amy Crawford, architect for ABA, did an informal site visit.

Library and Foundation staff participated in multiple conversations with ABA to learn more about their approach and ideas.

CURRENT SITUATION AND ITS EFFECTS

ABA was asked to submit a formal proposal that would allow for a Story Room refresh, as well as allow for the flexibility to address other interests that the staff identify in relation to the Story Room project. For example, staff noted that the public restrooms could be updated to better meet the needs of children and caregivers, and that it would make sense for this to be done in line with the design schema of the Story Room and media room.

FURTHER ACTION

There is no action needed from the Board.

CONTACT PERSON

Tess Mayer, Director of Library Services, (510) 981-6195



**INFORMATION REPORTS**

February 2, 2022

To: Board of Library Trustees  
From: Tess Mayer, Director of Library Services  
Subject: Director's Report

**Ownership and Insurance Status of Library Buildings**

Library staff has taken the opportunity to gain clarity on insurance and ownership concerns at the Library, particularly helpful because staff is coordinating to address and rectify so much deferred maintenance.

Fiscal & Administrative Services Manager Nneka Gallaread confirmed that the following properties are owned by the City of Berkeley and therefore are part of the Alliant BCJPIA Insurance coverage. This means the buildings have insurance coverage associated with their replacement value.

Library staff are further investigating the question of whether Alliant BCJPIA Insurance coverage applies toward either known or emerging concerns with the library buildings.

With respect to what occurred with the stucco on the exterior of Central, there was a lawsuit involving the City of Berkeley and Arntz Builders, the general contractor associated with the remodel of the Central Library that continued for many years (please see Attachment 1). The Central Remodel was completed in 2002 and the construction lawsuit was pending for 13 years before it was settled. The faulty stucco detached in March of 2018, after the settlement had taken place. The report indicates that "the City had substantial claims against Arntz for defective work, delay and liquidated damages. The face value of the City's claims likely exceeded \$3.5 million."

**Omicron Surge and Staff Impacts**

The Library is experiencing the impacts of the omicron surge and associated staffing concerns. At the time of this writing, there have been six positive cases, with one instance also impacting four other staff who were close contacts of the person with the infection.

As of the week of 1/24, there have been no additional new cases of positive infections reported, and no further operational impacts brought on by increased staff absences related to Covid-19.

The City of Berkeley guidance around the length of employee isolation when testing positive for Covid-19 or quarantine when exposed to a close contact with a positive infection will change to mirror the [guidance](#) issued by Cal OSHA. This includes a significant change related to employees who have been vaccinated and boosted and have been exposed to someone with Covid-19: they do not need to be excluded from work if asymptomatic but must have a negative test 3-5 days after close contact.

Library staff along with all City of Berkeley employees continue to comply with masking, testing, and other safety requirements, including the current [health order requiring indoor masking](#).

**Recruitment**

The Berkeley Public Library initiated a recruitment for the Librarian I classification on December 21, 2021. The application period, which originally concluded on January 10, was extended through January 24 to ensure a robust pool of applicants. The application period closed with 179 applicants, which will now be

screened for minimum qualifications. Eligibility interviews will be scheduled for the week of February 28, with selection and placement interviews to take place in early March.

CONTACT PERSON

Tess Mayer, Director of Library Services, Library, 510-981-6195


Attachments:

1. Information Report to the Mayor and City Council dated 2015-03-10 "Settlement of Litigation Settlement of Litigation Concerning the Main Library"



Office of the City Manager

INFORMATION CALENDAR  
March 10, 2015

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Zach Cowan, City Attorney  
Subject: Settlement of Litigation Concerning the Main Library

INTRODUCTION

All settlements that are not announced at the conclusion of a closed session are provided to the Council and the public via an information report.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to the Council's authorization on November 17, 2014, the City has entered into the attached Settlement Agreement and Mutual Release of All Claims with Arntz Builders.

BACKGROUND

This case concerns the restoration and expansion of the Main Library. After completion of the project, the general contractor (Arntz Builders) and various subcontractors commenced litigation in 2002, seeking payment of \$3,863,000 in contract balances (last payment and retention funds held by a bank) and over \$7 million in claims (reduced over the years to approximately \$5,549,000). Due to the passage of time, Arntz also has claims for prejudgment interest and "penalty interest" in potentially larger amounts.

The City had substantial claims against Arntz for defective work, delay and liquidated damages. The face value of the City's claims likely exceeded \$3.5 million.

During the litigation, in 2012, the City received by court order \$1,410,682 of the retention funds, leaving a balance in the retention which, as of the pertinent date in the settlement agreement, has grown to \$855,975. This retention is currently held in an escrow account at WestAmerica Bank.

The City prevailed at the trial court level twice, but the Court of Appeal reversed each judgment. The parties then mediated the case in 2014, and ultimately arrived at a settlement in which Arntz released all claims against the City and the City released its claims against Arntz in return for a payment to Arntz of \$1,250,000.

ENVIRONMENTAL SUSTAINABILITY

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

FISCAL IMPACTS

While the settlement agreement calls for the City to pay Arntz \$1,250,000, that amount is reduced by the \$855,975 retention balance. Thus, of the \$1,410,682 from retention that was released to the City in 2012, the City is returning \$394,025 and keeping \$1,016,657. The City is also retaining the last progress payment.

CONTACT PERSON

Zach Cowan, City Attorney, 981-6998

Attachment:

1: Settlement Agreement



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made and entered into by and between Arntz Builders, a California General Partnership ("Arntz"), and the City of Berkeley ("City") (together, referred to herein as the "Settling Parties," or individually as a "Settling Party").

### RECITALS

A. On or about April 2, 1999, Arntz and the City entered into a written agreement, Contract #F-8422-99 (the "Prime Contract"), pursuant to which Arntz agreed to perform as the prime contractor and undertake the work specified for the renovation, restoration, and expansion of the Berkeley Central Library (the "Library"), located at 2090 Kittredge Street, Berkeley, California (the "Project.") Final completion of the Project was achieved in approximately September 2002.

B. Arntz entered into subcontract agreements with various subcontractors in order to perform the Project work, including Rollie French, Inc. ("RFI"); F. W. Spencer & Son, Inc. ("FWS"); DuraArt Stone, Inc. ("DAS"); Helix Electric, Inc. ("HEI"); and ThyssenKrupp, Inc. ("TK") (collectively, the "Subcontractors").

C. Disputes arose between the Settling Parties. On or about May 7, 2003, Arntz filed a complaint in the Alameda County Superior Court, Action No. RG03-095304, against the City and other defendants (the "Arntz Action"). Arntz later filed an amended complaint, followed by a second amended complaint in the Arntz Action. The City filed one or more answers in which it generally denied Arntz's allegations, and asserted various affirmative defenses. Without limitation, as part of its set-off and offset affirmative defenses, the City asserted that its liability to Arntz, if any, should be reduced for various reasons, including, without limitation, due to construction defects that the City alleged were caused by Arntz and its subcontractors.

D. In response to the City's general denial and affirmative defenses, including, without limitation, the City's set-off and offset defenses, Arntz filed a cross-complaint against Subcontractors in the Arntz Action in which it sought to be indemnified, defended, and held harmless by the Subcontractors and/or their insurance carriers (the "Arntz Cross-Complaint").

E. Certain of the Subcontractors also filed actions in Alameda County Superior Court in connection with the Project. The first of these actions was filed by RFI, and were later consolidated with the Arntz action, No. 2002-043461 (the "Subcontractor Lawsuits");

| <u>Party</u>           | <u>Action No.</u> | <u>Date Filed</u> | <u>Defendants</u>                                                                                               |
|------------------------|-------------------|-------------------|-----------------------------------------------------------------------------------------------------------------|
| Rollie French, Inc.    | 2002-04346        | 3/11/02           | Arntz; City; The American Insurance Company ("AIC"); Travelers Casualty and Surety Company of America ("TCSCA") |
| Helix Electric, Inc.   | 2002-061480       | 8/14/02           | Arntz; City; AIC                                                                                                |
| ThyssenKrupp, Inc.     | 2002-071479       | 11/1/02           | Arntz; AIC; TCSCA                                                                                               |
| FW Spencer & Son, Inc. | RG03-082302       | 2/7/03            | Arntz; AIC                                                                                                      |

F. The Subcontractor Lawsuits each alleged that plaintiff therein had not been paid in full, and that Arntz, AIC, TSCS, and/or the City were liable for the unpaid sums. RFI, HEI, and FWS each alleged in its respective action that it had suffered additional costs of performance due, without limitation, to delays and disruption to the Project.

G. By order of the court, the Arntz Action and the Subcontractor Lawsuits were consolidated under Action No. 2002-043461, and then were de- and re-consolidated. Presently, the Arntz and Subcontractor Lawsuits are consolidated.

H. The Settling Parties participated in three mediation sessions through JAMS, with Gerald Kurland, Esq., presiding, in an effort to reach a global resolution of the Arntz Action and/or the Consolidated Action. At the conclusion of the last mediation session on November 3, 2014, the Settling Parties reached agreement upon proposed settlement terms attached hereto as Exhibit A, and incorporated herein by reference. In the event of any conflict between the handwritten settlement agreement and this Agreement, the terms of this Agreement shall prevail.

I. The Settling Parties desire and intend to settle the Arntz Action, and as between them, to settle all matters arising from or in any way relating to the Prime Contract; the Project; the Arntz Action; the Subcontractor Lawsuits; any cross-complaints now existing or which at any time have existed in the Arntz Action or the Subcontractor Lawsuits; the action filed by WestAmerica Bank against the City of Berkeley and others, in the Superior Court of the County of Marin, Action No. CV083670 (the "WestAmerica Action"); and all matters now existing or which may exist in the future relating to any of the foregoing.



## **AGREEMENT**

NOW, THEREFORE, the Parties agree as follows:

### **1. EFFECTIVE DATE**

This Settlement Agreement shall have an Effective Date which shall be the later of the date on which Arntz and the City execute this Settlement Agreement.

### **2. PAYMENTS AND OBLIGATIONS**

2.1 The City shall pay to Arntz the sum of one million two hundred fifty thousand dollars (\$1,250,000.00) (the "Settlement Sum"). The Settlement Sum shall be comprised of two elements: (1) the value of the securities held in escrow by WestAmerica Bank as of the close of normal trading hours in United States securities markets on November 30, 2014, which shall be deemed to have the agreed value of \$855,975 (the "Escrow Amount"), and (2) a draft, check, or wire transfer from the City, payable to Arntz, in the amount of \$394,025 ("Cash Payment"). No later than five business days after the Effective Date, the City shall send written notification to WestAmerica certifying that Arntz's work on the construction contract is final and complete, and that by settlement agreement Arntz has complied with all requirements and procedures applicable to the construction contract necessary to secure the release of the securities. The City shall direct WestAmerica to release to Arntz all securities and interest on deposit less escrow fees and charges of the Escrow Account; and instruct WestAmerica that the escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges. The Cash Payment shall be payable to Arntz Builders, and delivered to Leonidou & Rosin Professional Corporation, 777 Cuesta Dr., Mountain View, California 94070, within ten business days after the Effective Date. Time is of the essence for all payment terms in this Settlement Agreement. Arntz and the City shall cooperate as necessary to achieve the prompt release of the securities, and execute all documents required for that purpose.

2.2 Any part of the Cash Payment not made within thirty (30) days of the Effective Date shall bear interest at ten percent (10%) per annum until paid in full.

2.3 Except for the obligations imposed by this Settlement Agreement, the mutual releases in this Settlement Agreement shall take effect upon the City's compliance with Paragraphs 2.1 and 2.2, above. Arntz's defense and indemnity obligations under Paragraph 2.6 herein shall take effect upon delivery of the Cash Payment in good and valid funds, as called for under this Settlement Agreement.

2.4 Arntz shall file a dismissal with prejudice of the Arntz Action within ten (10) days of the date that the Cash Payment is delivered to Arntz as called for under this Settlement Agreement. Payments by the City are conditioned upon confirmation that the Helix Electric stop notice, which is the only valid and enforceable stop notice still pending and that is the subject of a still-pending lawsuit against the City, has been released or bonded around in

compliance with the mechanic's lien law. The City acknowledges that it has received written confirmation from Arntz that Helix has released its stop notice, and that the City, through its attorneys, has received a satisfactory stop notice release executed by Helix.

2.5 This Settlement Agreement is not conditioned upon Arntz settling with any subcontractor, or any other person or entity, including any insurer.

2.6 Arntz shall defend and indemnify the City, its City Council, officers, employees, and agents against any liability, loss, damage, expense and costs of every nature from and against any existing and future subcontractor claims including but not limited to suppliers, sub-consultants and vendors arising out the Project or related to the Consolidated Action. The City will provide its reasonable cooperation to Arntz in this defense.

2.7 The City shall reasonably cooperate with Arntz, if asked, with any claim Arntz may have against any insurance carrier, in connection with the Project.

2.8 Arntz will have the sole right to pursue third parties, including, without limitation, subcontractors and insurance carriers, in connection with claims and issues.

### 3. RELEASES

3.1 Mutual Release Between Arntz and the City as the Settling Parties. In consideration for the City's payment of the Settlement Sum, and for other valuable consideration, receipt of which is hereby acknowledged, and except as to rights, remedies, and obligations created by this Settlement Agreement, each Settling Party, on its own behalf and on behalf of its respective and/or related agencies, divisions, parents, affiliates, subsidiaries, corporate or civic officers and directors, partners, employees, agents, city council, predecessors, successors, assigns, sureties, and insurers, hereby generally release and discharges the other Settling Party and its respective agencies, divisions, parents, affiliates, subsidiaries, corporate or civic officers and directors, employees, agents, attorneys, city council, predecessors, successors, assigns, sureties, insurers, from, and relinquish, extinguish and waives any and all claims, (including without limitation any claims that the City could have alleged under the California or Federal False Claims Acts), disputes, demands, liabilities, controversies, legal actions, lawsuits, causes of action, damages, costs, expenses, and attorney fees of any kind or nature whatsoever, whether legal or equitable, in tort or in contract, actual or contingent, asserted or unasserted, that either Settling Party ever had or now has, for, or arising out of, the Project, Project claims, the Arntz Action, the Subcontractor Lawsuits, and the WestAmerica Action, whether actual or alleged, asserted, or which could have been asserted, and whether suspected or unsuspected.

3.2 Nothing in this Settlement Agreement operates as a release by Arntz of its claims against any of its subcontractors, or any insurance carrier that issued a policy of insurance in connection with the Project.

3.3 If requested by Arntz in writing, the City agrees that it will promptly furnish a full release as to Arntz's surety, The American Insurance Company.

3.4 The City represents that it has not, and does not intend to, assert any affirmative claims (including claims for indemnification) against persons or entity that is not a party to this Agreement, as the result of the Project, or any lawsuits arising therefrom. Arntz represents that it has no other actions pending against the City arising from the Project.

#### 4. RELEASE OF UNKNOWN CLAIMS

4.1 It is expressly agreed and understood by the Settling Parties that the releases contained herein include any and all claims, demands, actions, causes of action, rights, remedies, debts, liabilities, obligations and defenses of every kind, nature and description whatsoever, whether now known or unknown, arising out of or relating to the Project, including the Project claims (and defenses asserted by the City), delays, damages for delays, including, without limitation, liquidated damages, that either Settling Party individually or in its representative capacity now has, owns, or holds, or has at any time heretofore had, owned, or held against the other Settling Party, or which the City has or may have had at any time, or may in the future claim it has, against any Arntz subcontractor or supplier, and each Settling Party's respective past, present and future agencies, divisions, parents, affiliates, subsidiaries, corporate or civic officers and directors, employees, agents, city council, predecessors, successors, assigns, and insurers. The Settling Parties, and each of them, acknowledge that they have had explained to them by their attorneys, and that they are familiar with, Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties, and each of them, expressly waive and relinquish all rights and benefits which they have, had or may have under Section 1542 of the Civil Code and any and all similar laws of any other jurisdiction arising out of or relating to the Project. The only exceptions to this release are the exceptions and obligations imposed by this Settlement Agreement.

#### 5. MISCELLANEOUS TERMS

5.1 **No Admission of Liability.** This Settlement Agreement represents the settlement of disputed claims and does not represent any admission of liability on the part of any Settling Party hereto, each of which expressly denies such liability.

5.2 **Attorney Fees and Costs.** The Parties agree that they will each bear responsibility for their own attorney fees, expert and consultant fees, and other litigation costs, except as otherwise provided herein.

**5.3 Enforcement.** Should either Settling Party hereto incur costs, fees, or expenses in connection with any action for breach of this Settlement Agreement, including, but not limited to, an application to enforce the provisions of this Settlement Agreement under the provisions of California Code of Civil Procedure section 664.6, the prevailing Settling Party in any said action shall be entitled to recovery of all reasonable costs, expenses, and attorney's fees incurred therein.

**5.4 Advice of Counsel.** The Settling Parties have carefully read this Settlement Agreement and know and understand the contents, and have signed it freely and voluntarily, after consultation with legal counsel.

**5.5 Counterparts.** The Settling Parties agree that this Settlement Agreement may be signed in counterparts and that it may be fully executed when signed by the Settling Parties whether the signatures of the Settling Parties appear on the original or on one or more copies of this Settlement Agreement. Facsimile or scanned signatures shall be deemed to be equivalent to, and enforceable as, an original signature.

**5.6 No Third Party Beneficiaries.** This Settlement Agreement is made solely for the benefit of the Settling Parties, their related entities, and their respective successors and assigns, and no other person or entity may have or acquire any right, claims, defense, or affirmative defense by virtue of this Settlement Agreement, including, without limitation, any Arntz subcontractor or any insurer of any tier.

**5.7 Authority to sign Settlement Agreement.** The individuals signing this Settlement Agreement and the Settling Parties on whose behalf such individuals are signing hereby represent and warrant that they are empowered and authorized to sign on behalf of and bind the Settling Parties for which they have signed.

**5.8 Integrated Agreement.** This Settlement Agreement contains the entire agreement between the Settling Parties with regard to the matters set forth in it and shall be binding upon the Settling Parties hereto, as well as upon all of their respective representatives, predecessors, successors, assigns, agents, partners, joint venture partners, parent companies, subsidiary companies, officers, directors, employees, shareholders, counsel, and experts. This Settlement Agreement supersedes the Settling Parties prior written and oral communications, and may be amended only by a written agreement executed by the Settling Parties at the time of the modification.

**5.9 Ownership of Claims and Matters Released.** The Settling Parties providing the releases and dismissals set forth herein represent and warrant that they are owners of all rights and claims being dismissed, discharged, and released herein and that there are no portions of those rights that have been transferred or assigned to any other person or entity.

**5.10 Non-waiver.** No breach of any provision hereof shall be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

**5.11 Interpretation.** This Settlement Agreement shall not be construed against either of the Settling Parties or their representatives who have drafted it or any portion of it. The captions of the sections of this Settlement Agreement are for reference only and are not to be construed in any way as part of this Settlement Agreement.

**5.12 Reformation.** In the event that any portion of this Settlement Agreement shall be found void or voidable by a court of competent jurisdiction, such portion shall be stricken and the Settlement Agreement shall be reformed to approximate, as closely as the law permits, the intent of the stricken portion or portions.

**5.13 Applicable Law.** The Parties agree that this Settlement Agreement has been entered into in the State of California and shall be governed by, and construed and enforced in accordance with the laws of the State of California.

**5.14 Continuing Jurisdiction.** The Alameda County Superior Court shall retain jurisdiction to enforce this settlement. The Settlement Agreement shall be specifically enforceable under the provisions of California Code of Civil Procedure §664.6.

SO AGREED:

DATED: 1/20/15

ARNTZ BUILDERS,  
A California General Partnership

BY: Thomas E. Arntz  
TEACO, INC., GENERAL PARTNER

Print Name: Tom Arntz

Print Title: PRESIDENT

DATED: \_\_\_\_\_

CITY OF BERKELEY

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

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SO AGREED:

DATED: \_\_\_\_\_

ARNTZ BUILDERS,  
A California General Partnership

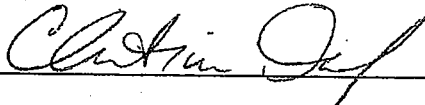
BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

DATED: 1/21/15

CITY OF BERKELEY

BY: 

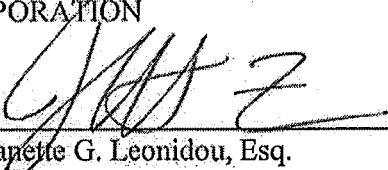
Print Name: Christine Daniel

Print Title: City Manager

APPROVED AS TO FORM:

DATED: 1.20.15

LEONIDOU & ROSIN PROFESSIONAL  
CORPORATION

BY:   
Janette G. Leonidou, Esq.  
Attorneys for Arntz Builders, a California General  
Partnership

DATED: \_\_\_\_\_

MEYERS NAVE RIBACK SILVER & WILSON

BY: \_\_\_\_\_  
Eric J. Firstman, Esq.  
Attorneys for City of Berkeley

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APPROVED AS TO FORM:

DATED: \_\_\_\_\_

LEONIDOU & ROSIN PROFESSIONAL  
CORPORATION

BY: \_\_\_\_\_

Janette G. Leonidou, Esq.  
Attorneys for Arntz Builders, a California General  
Partnership

DATED: 1-23-15

MEYERS NAVE RIBACK SILVER & WILSON

BY: Eric Firstman

Eric J. Firstman, Esq.  
Attorneys for City of Berkeley

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