

RESOLUTION NO. 18-03

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A Professional Services Agreement With The Safe Transportation Research And Education Center (SafeTREC) In The Amount Of \$81,877.00 To Perform A Pedestrian And Bicycle Safety Evaluation At Selected Emeryville Intersections

WHEREAS, the intersections at Powell Street/Christie Avenue, Christie Avenue and Shellmound Street, the Powell Street off- and on-ramps to I-80, and Powell Street/Frontage Road experience high traffic volumes, which presents challenges for pedestrians and cyclists; and

WHEREAS, in 2005, the City of Emeryville contracted with the Safe Transportation and Education Center (SafeTREC) to conduct a study on pedestrian and cyclist safety at these four intersections; and

WHEREAS, Since the report was published, the City has made a number of changes to the studied intersections, and is interested in re-evaluating pedestrian and cyclist safety at these locations; and

WHEREAS, SafeTREC has provided a proposal to study these intersections again to identify current conditions and propose potential improvements; now, therefore, be it

RESOLVED, that the City Council Authorizes the City Manager to enter into a Professional Services Agreement with SafeTREC in the amount of \$81,877.00, in the form attached hereto as Exhibit A, to conduct the proposed study.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, January 16, 2018, by the following vote:

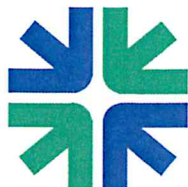
AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Medina and Council Members Donahue, Martinez and Patz
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

ATTEST:


CITY CLERK


MAYOR


CITY ATTORNEY



PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is effective as of this 18th day of December, 2017, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **THE SAFE TRANSPORTATION RESEARCH AND EDUCATION CENTER (SafeTREC)** ("Consultant"), collectively referred to as the "Parties."

WITNESSETH THAT

WHEREAS, the City desires to perform a pedestrian and bicycle safety evaluation at selected Emeryville intersections; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Agreement; and

WHEREAS, the City has determined that the Consultant is qualified by training and experience to render such services; and

WHEREAS, the Consultant desires to provide such services; and,

WHEREAS, the public interest will be served by this Agreement; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 Project Description

A complete Project Description is described in the "PROPOSAL", attached as Exhibit A.

1.2 Services

The services to be completed under this Agreement ("Services") are described in Exhibit A.

1.3 Schedule and Completion Date

The services to be provided by Consultant under this Agreement shall commence on January 1, 2018 and terminate on December 31, 2018.

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		EPW No.	

2. WORK CHANGES

2.1 City Rights to Change

The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a reasonable time, to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.

2.2 Additional Work Changes

Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.

2.3 City Manager Execution

The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section 3.2 below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$45,000 must be approved by resolution of the Emeryville City Council.

3. COMPENSATION AND METHOD OF PAYMENT

3.1 Compensation for Services Performed

City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. The City shall pay the Consultant within forty-five (45) days after approval of the invoice by City staff.

3.2 Total Compensation Amount

The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **EIGHTY ONE**

THOUSAND EIGHT HUNDRED SEVENTY SEVEN DOLLARS AND NO CENTS (\$81,877.00), except as outlined in Section 2.3 above. The compensation for Services performed shall be **as set forth in Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

4. COVENANTS OF CONSULTANT

4.1 Assignment of Agreement

The Consultant covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the City. As to any approved subcontractors, the Consultant shall be solely responsible for reimbursing them and the City shall have no obligation to them.

4.2 Responsibility of Consultant and Indemnification of City

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Consultant or subconsultants as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City, but, to the extent required by law, excluding liability caused by the conduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

4.3 Independent Contractor

The Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the agent or employee of the City. The Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

4.4 Insurance

4.4.1 REQUIREMENTS

The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.

4.4.2 MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

- A. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
- B. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000).
- C. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.

- D. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

_____ (Consultant's Initials)

4.4.3 DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.

4.4.4 OTHER INSURANCE PROVISIONS

The policy is to contain, or be endorsed to contain, the following provisions:

A. General Liability and Automobile Liability Coverage

1. Consultant shall name the City of Emeryville, its officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as additional insured and is not acceptable.

2. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.

4. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
6. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
7. All endorsements to policies shall be executed by an authorized representative of the insurer.

B. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

C. All Coverages

Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.

4.4.5 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.

4.4.6 VERIFICATION OF COVERAGE

Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

4.4.7 SUBCONTRACTORS

Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.

4.4.8 CLAIMS-MADE POLICIES

Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.

4.5 Records, Reports and Audits

4.5.1 RECORDS

- A. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

4.5.2 REPORTS AND INFORMATION

Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the City.

4.5.3 AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Consultant will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

4.6 Conflicts of Interest

The Consultant covenants and declares that, other than this Agreement, it has no holdings or interests within the City of Emeryville, nor business holdings or agreements with any official, employee or other representative of the City. For the duration of this Agreement, in the event the Consultant or its principals, agents or employees acquire such a holding, interest or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Consultant will immediately notify the City of such holding, interest or agreement in writing.

4.7 Confidentiality

The Consultant agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

4.8 Discrimination Prohibited

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability.

4.9 Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

4.10 Key Personnel

Jill Cooper is necessary for the successful prosecution of the work due to her unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team. Consultant recognizes that the composition of this team was instrumental in the City's decision to award the work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

4.11 Authority to Contract

The Consultant covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

4.12 Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Consultant ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

4.13 Living Wage

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant shall comply with the requirements of the City's Living Wage Ordinance set forth in Chapter 31 of Title 5 of the Emeryville Municipal Code, unless (i) Consultant is a governmental entity, (ii) this Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City's laws.

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of Consultant who perform at least twenty-five percent (25%) of the work arising from this Agreement, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to Section 5-31.08. Consultant shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Consultant for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

Consultant shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.83 per hour (as of July 1, 2016, subject to increase annually on July 1st to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

4.14 Prevailing Wages

To the extent the services to be provided by Consultant pursuant to this Agreement constitutes "public work" as defined in Labor Code Section 1720, Consultant shall pay and shall ensure that all subconsultants or subcontractors pay all persons providing labor to perform the work under this Agreement applicable prevailing wage rates for the work to be performed as determined in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code sections 1770, 1773, et. seq., and otherwise comply with all provisions of this Section IV.N. A copy of the applicable Wage Determination is on file in the offices of the City.

Consultant is required to comply with the following provisions and to ensure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

4.14.1 HOURS OF LABOR

Eight hours' labor constitutes a legal day's work. Consultant shall forfeit, as penalty, Twenty-Five Dollars (\$25) for each worker employed in the performance of the Agreement by Consultant or by any subconsultant under him for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code and in particular sections 1810 to 1815 thereof, inclusive, except that work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted under compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said section 1815.

4.14.2 LABOR NON-DISCRIMINATION

Consultant shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, gender identity, or age of such persons, except as provided in section 12940 of the Government Code.

4.14.3 PREVAILING WAGES

Consultant shall comply with California Labor Code sections 1770 to 1780, inclusive. In accordance with section 1775, Consultant shall forfeit as a penalty an amount determined by the Labor Commissioner, not to exceed Fifty Dollars (\$50), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subconsultant under him in violation of the provisions of the Labor Code, and in particular, Labor Code sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and can be obtained online at www.dir.ca.gov. It is mandatory for Consultant and any subcontractor to pay not less than the specified rates to laborers and workers employed by them in the execution of this Agreement.

Consultant shall comply with the provisions enacted by AB 854 that require Consultant and any subcontractor be registered with the State Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Consultant shall post job site notices, pursuant to Title 8 California Code of Regulations Section 16451.

Consultant shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of section 1773.8.

4.14.4 PAYROLL RECORDS

Consultant shall be responsible for the compliance with Labor Code section 1776 by his subconsultants.

- A. Each Consultant and subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

- B. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:
 - 1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - 2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - 3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, subconsultant and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.
- C. The certified payroll records shall be on forms provided by the division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- D. Each Consultant shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant shall not be marked or obliterated.

- F. In the event of noncompliance with the requirement of this section, Consultant shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such ten (10) day period, Consultant shall, as a penalty to the State or City, forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) of Labor Code section 1776 for noncompliance with the provisions of said section 1776 may be deducted from any monies due or which may become due to Consultant.

Consultant and each subconsultant shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

4.14.5 APPRENTICES

Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each subconsultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

4.14.6 WORKERS' COMPENSATION

Pursuant to the requirements of section 1860 of the California Labor Code, Consultant will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Agreement, Consultant certifies the following:

"I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

4.14.7 EVENT OF DEFAULT

Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.

5. TERMINATION

- A. The City shall have the right to terminate this Agreement for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.
- E. The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

6. NO PERSONAL LIABILITY

No member, official or employee of the City shall be personally liable to the Consultant or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Consultant or successor or on any obligation under the terms of this Agreement.

7. ENTIRE AGREEMENT

This Agreement constitutes the complete agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

8. SUCCESSORS AND ASSIGNS

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

10. SEVERABILITY

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect to the extent possible.

11. BUSINESS LICENSE

Prior to commencement of the services to be provided hereunder, Consultant shall apply to the City of Emeryville Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

12. NOTICES

12.1 Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work shall be exchanged between **Nancy Humphrey** for the City and **Jill Cooper** for the Consultant.

12.2 Official Notices

All other notices, writings or correspondence as required by this Agreement shall be directed to the City and the Consultant, respectively, as follows:

CITY

Nancy Humphrey

1333 Park Avenue

Emeryville, California 94608

Phone No.: (510) 596-3728

E-Mail: nhumphrey@emeryville.org

CONSULTANT

Jill Cooper

2614 Dwight Way

Berkeley, CA 94720

Phone No.: (510) 643-4259

E-Mail: cooperj@berkeley.edu

13. WAIVER OF AGREEMENT

The City's failure to enforce any provision of this Agreement or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

IN WITNESS WHEREOF the City and the Consultant have executed this Agreement, which shall become effective as of the date the City Manager executes this Agreement on behalf of the City.

Approved As To Form:

Michael A. Guina, City Attorney

CITY OF EMERYVILLE

Dated:

_____, 2017

Carolyn Lehr, City Manager

CONSULTANT

Dated:

_____, 2017

BY: _____

ITS: _____

Pedestrian and Bicycle Safety Evaluation for the City of Emeryville at Selected Intersections

November 2017
SafeTREC

Contacts

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Introduction

In 2005, the City of Emeryville contracted Safe Transportation Research and Education Center (SafeTREC) to conduct a study on pedestrian and bicycle safety at four key intersections in Emeryville (Powell St. & Frontage Rd., Powell St. & I-880, Shellmound St. & Christie Ave., and Powell St. & Christie Ave.). The study included; quantitative and qualitative data collection, intersection analyses, and street design and policy recommendations. Since the report was published, the City of Emeryville has made a number of changes to the studied intersections, and the agency is interested in re-evaluating pedestrian and bicycle safety at the four study intersections. The main objectives of the proposed evaluation are;

1. Re-evaluate pedestrian and bicycle collision risk factors at four (4) intersections,
2. Evaluate pedestrian and bicycle safety measures installed in four (4) intersections,
3. Propose recommendations to address pedestrian and bicycle safety issues at four (4) intersections.

Data collected will be compared to findings in *Pedestrian and Bicycle Safety Evaluation for the City of Emeryville at Four Intersections* (2005), a report conducted by the City of Emeryville and SafeTREC to analyze safety issues at study locations.

Recommendations will be based on data collected on risk factors, existing safety measures, as well as coordinated with planned improvements that other agencies are considering, including safety improvements on I-580 on and off ramps.

The four study intersections are located on Powell St. and Christie Ave., two multimodal arteries in Emeryville. In collecting data and developing recommendations, the needs of pedestrians, cyclists, transit users and drivers, will be taken into consideration. There are also a number of stakeholder needs that must be taken into consideration when making changes to these intersections, including the Emeryville transit service, the Emery-Go-Round, Caltrans, AC Transit, and businesses located in Powell Street Plaza Shopping Center and the Emeryville Public Market.

Below, we outline the methodology used in the initial report and propose new methodology for the proposed evaluation. Data collected using the new methodology will be comparable to the data collected in the initial study, and will be used to collect more comprehensive data on pedestrian and bicycle safety.

Estimated Cost and Timeline

SafeTREC expects to complete the evaluation in 9 months (1/15/18-10/15/18) with an estimated cost of approximated \$81,877.

Methodology

Methodology used in Initial Study

In the initial report *Pedestrian and Bicycle Safety Evaluation for the City of Emeryville at Four Intersections* (2005), six methods were used to collect quantitative and qualitative data on vehicle, pedestrian and bicycle safety issues. These methods, the types of data that were collected and the methods' limitations are outlined below.

1. Collision Data

SWITRS data provided by the California Highway Patrol was used to reconstruct vehicle, pedestrian and bicycle collision data from 1998 to 2002 at each of the four intersections studied. The data is developed through police reported collisions. SWITRS data is useful in that it has been collected and publicly provided for 10 years and over the state of California, meaning collisions can be tracked and compared over time and by location.

Limitations: because the dataset only includes collisions that have been reported to the police, near misses, minor collisions and collisions involving pedestrians and bicyclists are often under-represented.¹

2. Vehicle Volumes

The City of Emeryville provided vehicle counts from 2002 and 2004 at three of the four intersections (Powell & I-80 was not included). Data was provided on vehicle approach and departure directions. 2002 data is provided as aggregate counts over the given time periods (9am-1pm and 5-9pm), and 2004 data is provided per one hour peak periods (12-1 pm and 5-6 pm).

Limitations: pedestrian and bicycle traffic were not included in the count data. The initial traffic study compensated for this by including pedestrian and bicycle traffic counts in field observations. The vehicle volume data also did not provide information on the types of vehicle traffic (single occupancy vehicles, trucks, buses, etc.). Additionally, the volumes were done before Shellmound was converted to a one-way street, and therefore did not reflect traffic patterns of the time when the study was done for two of the four intersections.

3. Pedestrian and Bicyclist Surveys

A sample of 150 pedestrians and bicyclists at each intersection completed paper surveys that were focused on their perceptions of safety at the intersection and in Emeryville at three time periods; a weekday from 12-1pm and 5-6 pm and a weekend from 12-1pm.

¹ Leilani Schwarcz, "Severe Traffic Injuries in San Francisco" (San Francisco Department of Public Health, September 2015), http://sf.streetsblog.org/wp-content/uploads/sites/3/2015/09/SevereInjuriesSF_2014_15_PSAC.pdf.

Limitations: Sampling pedestrians and bicyclists at intersections during peak hour is a relatively biased sample technique, because those who do not feel comfortable walking and bicycling in Emeryville during high traffic times will be significantly under-represented.

4. Community Forums

Two community meetings were held in two of the condo developments in Emeryville, Watergate and Pacific Park Plaza condominiums. The meetings were facilitated by SafeTREC staff and approximately 40 community members attended each meeting. During the meetings, communities members used post-it notes and aerial photographs of each intersection to note areas of concern and suggestions for improvement and were asked to identify the intersections they believed to be most dangerous.

Limitations: the forums were held as their own events and at locations that may have not been accessible to all Emeryville community members (including residents, employees and patrons). Attendance and data provided may have not been representative of the whole community.

5. Field Observations

A number of different measures were observed during safety observations, including; road user behavior, pedestrian and bicycle volumes and near misses between pedestrians, bicycles and vehicles. Field observations were conducted at 12-1 pm for pedestrians and 12-1 pm and 5-6 pm for cyclists.

Limitations: the observations were conducted with the observer in the field, meaning that observations times were relatively limited. With current technology, observations may be able to be conducted over a longer time period.

6. Field Inspections

Field inspections were conducted at all four intersections to determine adherence to ADA requirements and street design best practices. Crossing distance and single timing were also observed.

Limitations: measurements were done in field by hand, with current technology it is possible to also do measurements using Google Earth functions, ensuring accuracy and safety of observers.

Proposed Methodology for Follow-Up Study

In order to measure the effects of pedestrian and bicyclist safety and mobility measures that have been installed at the four study intersections since the initial study was conducted in 2005,

we propose to replicate the data collects to the highest degree possible while integrating new forms of data collection based in today's technology and best practices.

1. Collision Data

We propose to use SWITRS vehicle, pedestrian and bicycle collision data from 1998-2002, 2005-2009, 2010-2014 at each of the four intersections to track changes in collisions over time. We will compare collision data at the intersections to collisions in the entire Emeryville jurisdiction and to other intersections in the region with similar mode shares.

SafeTREC will also use crowdsourcing methods to collect qualitative data on near misses, minor collisions and collisions involving pedestrians and bicyclists during the community outreach events to complement SWITRS data. SafeTREC has used crowdsourcing methods to collect similar data with communities in the past, and although the accuracy and reliability of the data are uncertain, the data can be useful qualitative measures of safety when paired with SWITRS data.

2. Vehicle Volumes

We propose to use vehicle, pedestrian and bicycle counts collected by the City of Emeryville in 2002, 2004, 2008, 2009, 2010, 2015 during weekday and weekend am and pm hours, when possible. Volume data that the City of Emeryville currently provides will allow us to measure pedestrian, bicycle and vehicle traffic over time at all four intersections, addressing many of the limitations in the initial study.

3. Pedestrian and Bicyclist Surveys

We propose to distribute surveys with similar questions to those asked in the initial study. In order to address limitations of the initial study, we will distribute paper surveys and links to online surveys in common community locations, such as the Emeryville Farmers Market or Trader Joe's, in residential and business mailboxes, during the community outreach events, as well as at each of the four study intersections. Online surveys will be provided through a source like *Google Forms*, and can be available in English and Spanish.

4. Community Forums

Due to the success of the community forum in the initial study, we propose to hold two similar community meetings in two of the condo developments in Emeryville, Watergate and Pacific Park Plaza condominiums or other community locations that the City of Emeryville thinks are appropriate. Similar community engagement methods will be used. Paper and web-based maps will be available for participants to comment on.

5. Key Stakeholder Interviews

We propose to conduct interviews with key stakeholders from the following agencies and community groups in order to develop a comprehensive understanding of the diverse

needs that must be considered when making changes to these intersections. Stakeholder interviews will be conducted in-person or by phone.

- Caltrans
- AC Transit
- Selected Businesses
- Community Residents
- Bike East Bay
- Emery-Go-Round
- Emeryville Police Department
- Emeryville City Council
- Emeryville Department of Public Works

6. Field Observations

We propose to conduct field observations at each site in person as well as by video recordings, observing similar measures as in the initial study; road user behavior, pedestrian and bicycle volumes and near misses between pedestrians, bicycles and vehicles (see Appendix A). We plan to conduct in-person field observations during peak weekday and weekend hours at each of the study intersections, and record 48 hours of video footage during a weekday and weekend at each of the intersections.

7. Field Inspections

In addition to doing in-person field inspections to determine adherence to ADA requirements and street design best practices as was done in the initial study (see Appendix B), we will also collect street measurements using Google Earth to cross reference measurements done by hand (See Appendix C for an example of measurements collected using Google Earth). We will collect information regarding crossing distance and signal timing using video recordings collected in the field observations section.

8. Case Studies of Safety Improvements in Other Cities

We will develop short case studies of safety improvements adopted by cities that have comparable needs those of Emeryville. These case studies will be used to inform recommendations.

Appendix A - Field Observation Criteria

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Pedestrian Form																	
Pedestrian Behavior Form																	
Location:					Corner:		Observer:		Weather:								
Date:					Time Start:		End:										
X walk Leg	Ped Observation				Begin Crossing			Finish Crossing			Out of crosswalk	Ped Action (A, B, W)*	Vehicle ? if yes, movement	Vehicle violation ? *****	P-V Conflict (?) if yes, Type	Notes	
	Number	h, g=pmu p)	Sex (M/F)	Age (A-D)*	Pres d PED button	W	RH/DW	RH/DW	W	RH/DW							RH/DW
	1																
	2																
	3																
	4																
	5																
	6																
	7																
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*A=0-9, B=10-17, C=18-64, D=65+//, **Run, Abort, Walk

*** (1) Ped changed gait or stride to avoid perceived/real threat, (2) Vehicle stops or swerves to avoid a pedestrian

**** Vehicle nearly encroaching on PED during which maneuver Left, Right, Through/Straight

***** Vehicle violation: vehicle violates ped ROW, and/or breaks traffic law (e.g. runs red light)

NOTE: Please make a footnote if a PED stops on a median island or if they are running but you are unsure if there is a safety concern.

Appendix B - Field Inspection Criteria

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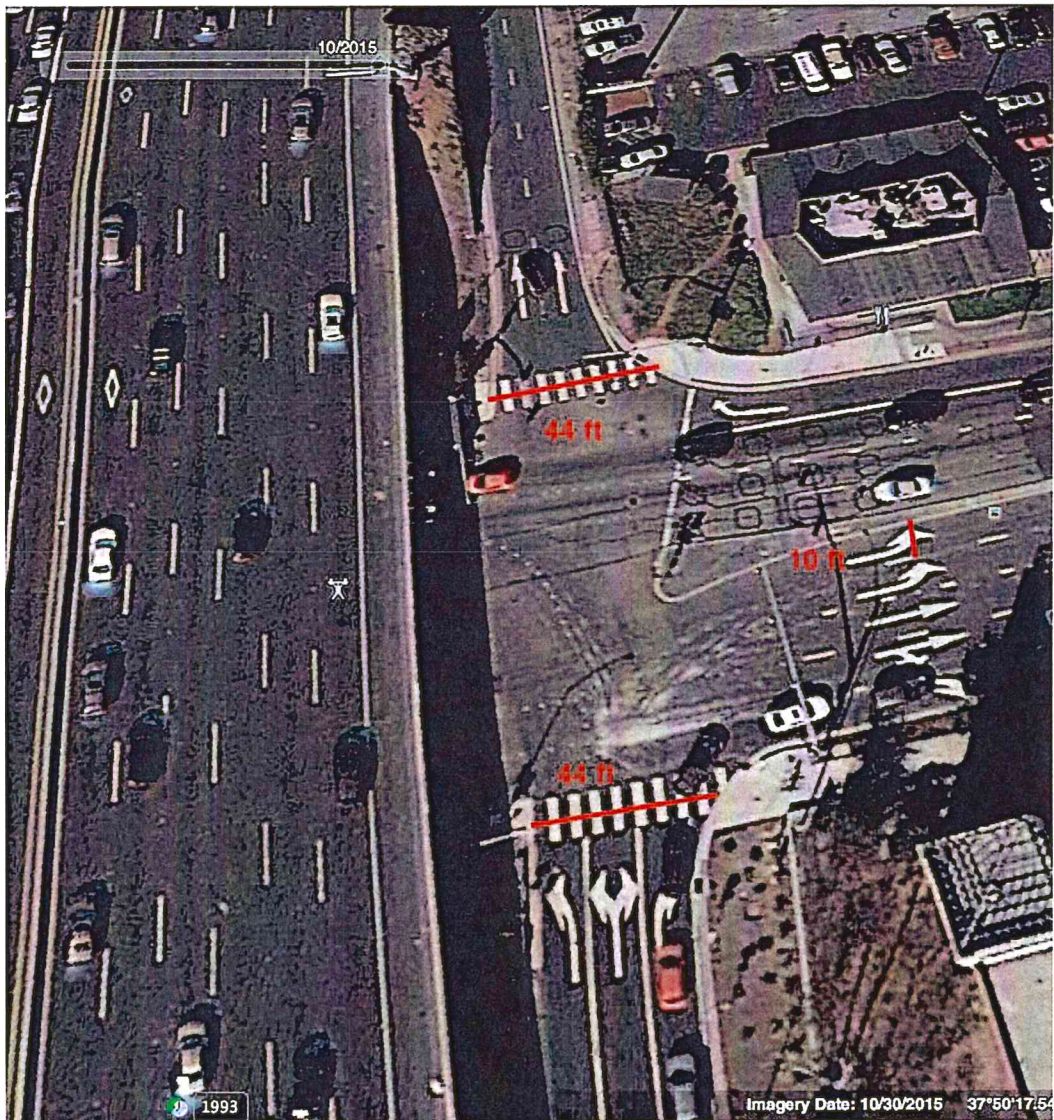
Accessibility Survey Checklist						
Intersection: POWELL & FRONTAGE						
Crossing/Connector:		Date:		North:	South:	East:
1	Confirm striping, xwalk & advance limit lines (clear(C) or faded (F))	E	F		C	N
		W	F			S
	Number of Lanes					
	Lane Configuration (Left Turn) (count of lanes)	E				N
		W				S
						1
	Lane Config (Through) (count of lanes)	E	2		1	N
		W	1			S
	Lane Config (Right Turn) (count of lanes)					N
						2
2	One-Way (y/n)					
	Traffic Signals (and restrictions), Signalized (y/n)					
	Left-turn Phase (y/n)					
	No Right Turn on Red Restriction (y/n)					
	No U-Turn (y/n)					
	Pedestrian signal head (y/n)	E	N			N
		W	Y	Y		S
3	Pedestrian signal head, countdown (y/n)					
4	Ped signal timing (4ft/sec), 2.5 ft/sec covers 95% of peds (N/A)	E				N
		W				S
5	Street crossing design should ensure that the boundary between the sidewalk and the street is detectable. Pedestrian crossing information should be available to all users. (tactile strips, etc.) (y/n)	E	Y			N
		W	Y			S
6	Level of ped traffic outside crosswalk or against signal (N/A)	E				N
		W				S
7	Parking locations & Approx locations from intersection, meters & towaways (distance, ft)	E				N
		W				S
8	Street light exist/adequate (y/n)	E				N
		W				S
9	Possible sight (LOS) obstructions (y/n)	E	Y			N
		W				S
10	ADA compliant curb ramps, w>=3ft, crossslopes 2%, level landing (y/n)	E	Y	Y		N
		W	Y	Y		S
11	Is foot of a curb ramp contained within the crosswalk markings (y/n)?	E				N
		W				S

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12	Do Street furniture, plantings, and other fixed items protrude into travel routes? (y/n) (Bad for	E			N		
		W			S		
13	Sidewalks passable for wheelchairs? w>=3ft, 5ft (60 in) turning/passing (mobility)	E	Y	Y	N	Y	Y
		W			S		
14	Sidewalk obstructions, plantings furniture, etc. inhibit ped and wheelchair mobility? 3ft-5ft (y/n)	E			N		
		W			S		
15	Curb return radius <20 ft? encourage high speed and long crossing (y/n)	E			N		
		W			S		
16	Driveway entrances within 100 ft of intersection (y/n)	E			N		
		W			S		
17	Posted speed limits nearby? Where?						
18	Are Pedestrian facilities on and along sidewalks accessible? Signal actuating buttons, drinking fountains, telephones, kiosks, and other pedestrian elements should meet accessibility criteria for approach and maneuvering space, reach range, and controls and operation. (y/n/NA)	E			N		
		W			S		
19	Bus stop locations (shelters, other struct. If within 100 feet =yes, otherwise no)	E			N	Y	
		W			S		
20	Existing median (size) ? (in feet)						
21	Is median suitable for a refuge? (y/n)						
22	Possible 4ft median insert w/10ft lanes (lane reduction) (y/n)?						
22	Potential for curb bulbs (towaways, bus stops, utilities, drains, poles)	E			N		
		W			S		
23	Adjacent land uses (up to 2 blocks away) Residential, Commercial, Industrial, School, Government (R, C, I, S, G) comma delimited	E			N		
		W			S		

Appendix C - Intersection Images and Measurements via Google Earth

Powell & I-80



**Budget: Evaluation of Pedestrian and Bicycle Safety
Measures for the City of Emeryville at Four Intersections**

	Monthly Rate	# months	Unit	%	Year 1	TOTAL BUDGET
Academic Personnel						
Jill Cooper Principal Investigator	\$10,757	9	cal. yr.	5.0%	\$4,841	\$4,841
Graduate Student Researcher, Academic	\$4,207	4.5	acad. Mo.	35.0%	\$6,626	\$6,626
Graduate Student Researcher, Summer	\$4,207	3	summer mo.	100.0%	\$12,621	\$12,621
TOTAL ACADEMIC PERSONNEL					\$24,088	\$24,088
Staff Personnel						
Finance Analyst	\$9,098	9	cal. yr.	5.0%	\$4,094	\$4,094
2 Student Assistant	\$2,784	9	cal. yr.	30.0%	\$15,034	\$15,034
TOTAL STAFF PERSONNEL					\$19,128	\$19,128
TOTAL ACADEMIC AND STAFF PERSONNEL					\$43,216	\$43,216
Employee Benefits						
	<u>Employee Benefit Rate</u>					
Jill Cooper		40.00%			\$1,936	\$1,936
Finance Analyst		48.00%			\$1,965	\$1,965
GSR Tuition Remission - \$9316/semester					\$9,316	\$9,316
TOTAL EMPLOYEE BENEFITS					\$13,217	\$13,217
TOTAL PERSONNEL & BENEFITS					\$56,433	\$56,433
Travel						
In State Travel					\$100	\$100
TOTAL TRAVEL					\$100	\$100
Other Direct Costs						
Office Supplies					\$100	\$100
Printer Lease					\$311	\$311
Communications					\$414	\$414
Office Space					\$5,228	\$5,228
Computer/Software					\$1,500	\$1,500
Intersection Cameras					\$2,500	\$2,500
Research Materials					\$900	\$900
General, Automobile and Employment Liability (GAEL)					\$497	\$497
TOTAL OTHER DIRECT COSTS					\$11,450	\$11,450
TOTAL DIRECT COSTS					\$67,983	\$67,983
					MTDC	
					\$53,439	
Indirect Costs						
26% of Modified Total Direct Costs					\$13,894	\$13,894
TOTAL AMOUNT REQUESTED					\$81,877	\$81,877

Budget Justification

Personnel

- Jill Cooper, Principal Investigator (total effort = 0.45 calendar months) will provide the overall guidance and direction for the technical and analytical efforts of the research.
- Finance Analyst (total effort = 0.45 calendar months) will oversee financial aspects of project activities, will monitor project-specific personnel, and ensuring compliance with UC and sponsor policies and procedures.
- Graduate Student Researcher (effort = 1.575 academic months and 3 summer months) will assist with research projects under the guidance of the project's Principal Investigator. The graduate student researcher will conduct background research, develop and implement data collection and analysis protocols, and write the final report.
- Undergraduate Student Assistant (effort = 2.7 calendar months each) will assist with literature review and research under the supervision of the Principal Investigator.

Fringe Benefits.

The University of California, Berkeley Composite Fringe Benefit Rates (CFBR) have been reviewed and federally approved by the Department of Health and Human Services (DHHS) for use by all fund sources for FY18. Rates beyond June 30, 2018 are estimates and are provided for planning purposes only. Future CFBR rates are subject to review and approval by DHHS on an annual or bi-annual basis. Fringe benefits are assessed as a percentage of the respective employee's salary. The benefit rates are as follows:

UCB Composite Benefit Rates (effective 7/1/2017)				
	Approved	Projections for Planning Purposes ----->		
CBR Rate Group	FY18	FY19	FY20	FY21
Academic	40.0%	40.0%	40.0%	40.0%
Staff	48.0%	48.0%	48.0%	48.0%
Limited	16.0%	16.0%	16.0%	16.0%
Students (Graduate and Undergraduate)	0.0%	0.0%	0.0%	0.0%

- The University of California provides tuition remission of tuition, fees, and graduate student health insurance to all graduate students who are employed on-campus at least 25% time during the academic year. The projected rate for in-state remission is \$9,316 per semester.

Travel

In-State Travel: Costs are included to attend meetings with city and community stakeholders, and conduct field work.

Materials and Supplies

Office Supplies – Used for standard office supplies to directly support grant-related activities, grant monitoring and reporting.

Computer/Software – Used for tracking grant activities and producing required reports. Costs may include monitor, printer, software, accessories, and software licenses.

Intersection Cameras – Used for photographing drivers, pedestrians and bicyclists at or approaching/leaving intersections to observe safety behavior.

Research Materials – Includes maps, posters, fact sheets, and reports.

Other Direct Costs

Printer Lease – Includes the costs for leasing printer/copier for use in printing and the duplication of grant materials.

Communications - Costs of telephone, cell phone, mail/messenger (excluding overnight priority mail), and similar communication services.

GAEL – The GAEL assessment rate is 1.15% of the payroll expense and applies to all funds except federal and federal flow-through funds.

Rent

Office Space: Office space rental costs are included as an Other Direct Cost because the University's indirect cost rate agreement excludes rental costs of off-campus facilities. The University has made arrangements for SafeTREC to rent spaces at

the American Baptist Seminary of the West (2614 Dwight Way, Berkeley, CA) and the research will be conducted at that location. Indirect cost is not collected on the Office Space rental cost.

Indirect (F&A) Costs

Indirect Costs are charged on the federal rate of 26% of modified total direct costs (MTDC) for off-campus departments.

Modified total direct costs consists of all salaries and wages, fringe benefits, materials, supplies, services (contractors), travel and subrecipients up to the first \$25,000 of each subrecipient (regardless of the period covered by the subrecipient). Modified total direct costs shall exclude equipment, capital expenditures, charges for patient care, student tuition remission, rental costs of off-site facilities, scholarships, and fellowships as well as the portion of each subrecipient in excess of \$25,000.

