

**FUNDING AGREEMENT BETWEEN
THE CITY OF OAKLAND AND CONTRA COSTA COUNTY
FOR THE 2013 HOPWA PROGRAM
GRANT NUMBER: G462110**

This funding agreement ("Agreement") is dated February __, 2014, and is between the City of Oakland, a municipal corporation (the "City"), and the County of Contra Costa, a political subdivision of the State of California, (the "County").

RECITALS

- A. The City has received Housing Opportunities for Persons with Aids Program funds from the United States Department of Housing and Urban Development ("HUD") pursuant to the HOPWA Program (the "HOPWA Funds"). The HOPWA Funds must be used in accordance with 24 C.F.R. Section 574 et seq.
- B. The County is a project sponsor under the HOPWA Program. The City and the County desire that the County receive and administer \$512,074 of the HOPWA Funds on the City's behalf (the "HOPWA Allocation").
- C. The Oakland City Council passed Resolution Number 76471 C.M.S. and Resolution Number 84344 authorizing this agreement with Contra Costa County for the HOPWA Program.
- D. Using the selection process set forth in Exhibit A, the County will contract with one or more nonprofit housing development and service providers (each, a "Provider") to carry out projects that result in housing development, supportive services, and/or homeless prevention activities for persons with HIV/AIDS. The County will also monitor the Providers' performance under the contract(s).

The parties therefore agree as follows:

AGREEMENT

1. PERFORMANCE PERIOD

The term of this Agreement begins July 1, 2013 and ends June 30, 2016.

2. FUNDING AMOUNT

These funds are provided by the U.S. Department of Housing and Urban Development under the Catalog of Federal Domestic Assistance Number (CFDA#) 14.241.

The HOPWA Allocation shall not exceed **\$512,074**. The County may use up to seven percent (7%) of the funds allocated to a particular project (“Project Activity Funds”) for project sponsor administrative expenses.

3. PROJECT SELECTION; BUDGET; PROVIDERS

The County shall select projects undertaken pursuant to this Agreement in accordance with the priority-setting and selection process set forth in Exhibit A. The County shall use the HOPWA Allocation in accordance with the budget set forth in Exhibit B. A list of Providers and projects approved by both the City and the County will be attached to this Agreement as Exhibit C once the list is approved by both the City and the County. The HOPWA Allocation may only be used for projects identified on Exhibit C that are carried out by the corresponding Providers identified on Exhibit C or (ii) consistent with the activities described in Section 7 – Use of Funds, below.

4. CONTRACTING

The County shall administer the HOPWA Allocation to provide housing development, support services, and/or homeless prevention activities for persons with HIV/AIDS. For this purpose, the County shall contract with approved Providers to carry out projects that are (i) identified on Exhibit C, or (ii) consistent with the activities described in Section 7 – Use of Funds, below. Prior to the execution of any contract the County proposes to enter into in connection with this Agreement, the County shall submit to the City a staff report allocating funds and describing the proposed Projects and/or Programs to be funded. Once approved the City may request a copy of any of the contracts for Projects and Programs in advance and the City reserves the right to review and approve the contract. Following the execution of any contract by the County in connection with this Agreement, the City reserves the right to monitor the Provider’s performance of the contract. The City shall ensure that the County and Providers administer and monitor said contracts.

5. FUNDING DISTRIBUTION

The County shall distribute the HOPWA Allocation to Providers in the County of Contra Costa.

6. PROGRAM REQUIREMENTS

The County is responsible for ensuring that Providers comply with all HOPWA Program requirements, as set forth in 24 CFR Part 574, the AIDS Housing Opportunity Act, as amended by the Housing and Community Development Act of 1992, and any other program requirements imposed by HUD. The relevant requirements are hereby

incorporated into this Agreement by reference. The City shall ensure that the County and Providers comply with the HOPWA Program requirements.

7. USE OF FUNDS

Subject to applicable requirements described in 24 C.F.R. §§ 574.310, 574.320, 574.330, and 574.340, the County may use the HOPWA Allocation to assist all forms of housing designed to prevent homelessness, including emergency housing, shared housing arrangements, apartments, single room occupancy (SRO) dwellings, and community residences. Appropriate supportive services, as required by § 574.310(a), must be provided as part of any HOPWA-assisted housing, but the County may use the HOPWA Allocation to provide services independent of any housing activity. The County shall ensure that the HOPWA Allocation is used only for HOPWA-eligible activities that are approved by the City and are identified in Exhibit C or are described as follows:

- a. Housing counseling, information and referral to assist in locating, acquiring, financing and maintaining housing. This may include Fair Housing information.
- b. Resource identification to establish, coordinate and develop housing assistance resources (preliminary research, determining feasibility of specific housing related initiatives).
- c. Acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing and services.
- d. New construction (SROs and community residences only).
- e. Project or tenant-based rental assistance, including assistance with shared housing arrangements.
- f. Short-term rent, mortgage, and utility payments to prevent homelessness.
- g. Supportive services including but not limited to health, mental health assessment, permanent housing placement, drug and alcohol abuse treatment and counseling, day care, personal assistance, nutritional services, intensive care when required, and assistance in gaining access to local State and Federal government benefits and services.
- h. Operating costs for housing, including maintenance, security, operation, insurance, utilities, furnishings, equipment and other incidental costs.
- i. Technical assistance in establishing and operating a community residence, including planning and other predevelopment or pre-construction expenses and

outreach and education regarding HIV/AIDS to persons residing in close proximity.

8. MONITORING AND REPORTING

The County shall conduct an ongoing assessment of the housing assistance and supportive services provided by the Providers with the HOPWA Allocation. The County shall conduct the reasonable and necessary recordkeeping and reporting activities described below, which have been established by the City for the purpose of carrying out the City's HOPWA program in an effective and efficient manner. Where appropriate, reports and records shall include client race and ethnic data.

- a. Quarterly reports shall include narrative updates of all HOPWA activities, including: status of housing developments, number of persons served in each housing and support service activity listed in Exhibit C, leverage funds obtained and expended, program barriers and any other pertinent information the County desires to report to HUD regarding HOPWA activities through the Integrated Disbursement and Information System (IDIS) and the Consolidated Annual Performance & Evaluation Report (CAPER). This information shall be uploaded to HUD's IDIS reporting system quarterly. Quarterly reports are due ten days following the end of each of the first three quarters of the fiscal year, i.e., on October 10, January 10, and April 10.
- b. Annual Reports are to be submitted to the City not later than July 31 of each year. Annual reports are to be submitted using HUD's HOPWA Consolidated Annual Progress & Evaluation Report-CAPER – *form HUD-40110-D [Expiration Date: 10/31/2014]*, Section 3 Summary Report (for preparation of HUD form - 60002), and the HOPWA Beneficiary Verification form.

Reporting requirements and the CAPER & Beneficiary Verification forms can be accessed at the following sites:

<https://www.onecpd.info/resource/1011/hopwa-caper-form-hud-40110-d/> ,
http://www.hud.gov/offices/lead/library/lead/Section3_Form.pdf and
<http://www.hudhre.info/documents/HOPWACAPERBeneficiaryVerification.doc>

- c. Providers who continue to provide the same or similar services each year and have not had any audit findings in the preceding year may be monitored every other year, but at least every third year. By February 15, the County shall develop a preliminary monitoring schedule for the next fiscal year. The County will use a risk assessment tool to determine which Providers will be monitored. Existing Providers that have the highest number of risk factors, as determined by the County, along with new Providers that have never been monitored by the County, will be given the highest priority for monitoring. Providers with multiple findings

during initial monitoring should be monitored by the County annually throughout the term of the contract, or until the Provider has been monitored in three consecutive years and has not received any findings.

9. ADMINISTRATIVE EXPENSES

The amounts designated as administrative funds in the Budget are to be used as administrative expenditures related to carrying out the HOPWA program activities, housing, and services described in this Agreement in compliance with 24 C.F.R. § 574.300.

10. METHOD OF PAYMENT

The County may submit requests for payment to the Community Housing Services Division of the City of Oakland's Department of Human Services no more than once per month and not less than once per quarter; provided, however, the County shall submit its request for payment for the fourth quarter no later than August 30. When submitting a request for payment, the County shall use the Request for Payment form, which is attached as Attachment I to this Agreement. Each Request for Payment will include a summary of the funds expended, by budget category and Provider, for the months for which funds are requested.

The County shall retain, for review by the City, documentation to support the funding requested. In order to receive payment, each request must be supported by documentation reasonably sufficient to support the payment requested by the County. The County shall grant access to representatives of the City to any supporting documentation within seven days after receipt of a written request by the City.

Funds disbursed to the County may not exceed the amount set forth in the Budget attached as Exhibit B. The City's Community Housing Services staff shall verify and approve requisitions and required supporting data for accuracy and programmatic compliance prior to submitting them to the City's Grants and Projects Division for payment. Relevant reports and documents are to be submitted as required within the context of this Agreement. The County's failure to comply with these requirements will cause a delay in payment and could result in termination of the Agreement. The City shall process and forward all eligible payment requests to the City's Grants and Projects Division within ten working days of their receipt by the City's Community Housing Services staff. All authorized obligations incurred in the performance of this Agreement must be reported to the City within sixty (60) days of the expiration of the Performance Period under the Agreement, as such period may be amended from time to time. No claims submitted after such sixty day period shall be recognized as binding upon the City for reimbursement. Any obligation and/or debts incurred by the County and not reported to the City within such sixty day period become the sole liability of the County, and the City is relieved of any and all responsibilities.

11. AUDIT REPORT

The audited Schedule of Expenditures of Federal Awards (SEFA) report will identify and report separately expenditures to each funding year. Therefore, expenditures of HOPWA 2013 will be reported as a separate total from the expenditures total of HOPWA 2012 and reported as a separate total from expenditures total HOPWA 2011 and so forth and so on for all pertinent HOPWA years of reported expenditures.

In addition to the reporting requirements listed in Section 8 – Monitoring and Reporting, the County shall commission an independent auditing firm to prepare and file with the City an annual audit report for each year during the term of this Agreement. The County's failure to submit the audit report may result in the termination of this Agreement.

The audit report is to be submitted to the City by January 15 of each year during the term of this Agreement. The audit report should state that an audit was made in accordance with the provisions of the Federal Office of Management and Budget Circular A-128. The City will use the audit report to determine whether:

1. The financial statements of the County present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles.
2. The County has (i) an internal control structure to provide reasonable assurance that the County is managing Federal awards in compliance with applicable laws and regulations, and (ii) controls that ensure compliance with laws and regulations that could have a material impact on the County's financial statements.
3. The County has complied with laws and regulations for the HOPWA Program that may have a direct and material effect on the County's financial statements.

The County shall also submit any administrative department audit conducted during the term of this Agreement. The County shall require Providers with which the County contracts in connection with this Agreement to meet the same audit requirements set forth in this Section 11.

12. INDEMNITY

The County shall indemnify and hold the City, its members, officials, directors, employees, and agents harmless from any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) that the City may incur as a result of (i) the improper use of HOPWA Allocation by the County, (ii) the County's failure to perform its obligation to monitor the use of HOPWA Allocation under this Agreement, or (iii) any demand by HUD to the City for

reimbursement of any HOPWA Allocation to the extent such demand is based on the negligent acts or omissions or willful misconduct of the County. The duty of the County to indemnify includes the duty to defend the City in any court action, administrative action, or other proceeding brought by any third party, including HUD, to the extent such action or proceeding arises as a result of the County's negligence or willful misconduct in the performance of its obligations under this Agreement. The County's duty to indemnify shall survive the term of this Agreement.

The County shall require each Provider to indemnify and defend the City to the same extent and in the same manner as described in the first paragraph of this Section 12 from the consequences of the Provider's act or omission involving negligence or willful misconduct in the performance of its obligations under contracts entered into in connection with this Agreement.

The City shall indemnify and defend the County to the same extent and in the same manner as described in the first paragraph of this Section 12 from the consequences of the City's act or omission involving negligence or willful misconduct in the performance of its obligations under this Agreement.

The party with the obligation to indemnify pursuant to this Section 12 shall pay the indemnified party(ies) as soon as practicable following the determination of the amount due.

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13. AMENDMENT

This Agreement may only be amended through a writing executed by both the City and the County.

The City and the County are signing this Agreement as of the date set forth in the introductory paragraph.

CITY OF OAKLAND
A Municipal Corporation

By: _____
City Administrator Date

ADMINISTERING AGENCY APPROVAL FOR FOWARDING
Department of Human Services

By: _____
Director, Department of Human Services Date

APPROVED AS TO FORM AND LEGALITY

By: _____
City Attorney's Office Date

COUNTY OF CONTRA COSTA
A Political Subdivision of the State of California

By: _____
Director, Department of Conservation and Development Date

APPROVED AS TO FORM
Sharon L. Anderson, County Counsel

By: _____

Deputy County Counsel

Date

EXHIBIT A

PRIORITY SETTING AND SELECTION PROCESS

The process for allocating and awarding HOPWA Allocation in Contra Costa County is as follows:

1. Consultation with Local HIV/AIDS Advisory Bodies

The City shall review its HOPWA priorities and its contemplated allocation of resources among eligible funding categories to ensure consistency with the following planning documents:

- Contra Costa Consortium Consolidated Plan (the “Consolidated Plan”), required for participation in federal housing programs funded through the U.S. Department of Housing and Urban Development (HUD); and
- The Oakland EMA HIV/AIDS Health Services Comprehensive Plan (the “Comprehensive Plan”), required for participation in programs funded through the U.S. Department of Health and Human Services.

The County will prepare the Consolidated Plan with the Consortium Members, including the cities of Antioch, Concord, Pittsburg, and Walnut Creek.

In preparing both plans, the County will consult with all Contra Costa entitlement jurisdictions and cities within the Urban County; the HIV/AIDS Consortium and Planning Council; public and private organizations involved in the provision of housing and services to persons with HIV/AIDS; and local interest groups. The County’s departments of Conservation and Development (DCD) and the Health Services (HSD) will coordinate the development of HIV/AIDS priorities and strategies in order to ensure consistency in the Consolidated Plan and the Comprehensive Plan. The Consolidated Plan includes the use of HOPWA funds.

2. Public Meetings

The County will strive to encourage very low- and low-income persons, members of minority groups, members of non-English speaking groups, and other residents to express their views and ideas of what they perceive as community development and housing needs in Contra Costa County through an annual public meeting. The widely-publicized public meeting will be held to advise residents and nonprofit organizations of program requirements and processes to be followed in developing and approving applications for federal grant programs, including HOPWA. Meeting participants will be provided with information about the amount of program funds to be available for both housing and community development

activities and for planning and administrative activities. Citizens, public agencies, and other interested parties will have information available to them, including the specific amount of assistance the County expects to receive and the range of eligible activities that may be undertaken. This information will be published in the non-legal section of one or more newspapers of general circulation at least thirty (30) days prior to the date applications for funding are due.

The County may conduct additional public meetings at various stages of the funding process. Meetings will be scheduled at times and locations that permit broad participation by very low and low-income persons. When needed or upon request, translators will be made available for non-English speaking attendees and the hearing-impaired.

3. Recommendations for Funding Categories and Allocations

Based on the priorities in the Consolidated Plan and input received from the planning process and consultations described above, the County will develop recommendations concerning the amount of HOPWA funds to be allocated to each eligible funding category. The County will present these recommendations to Contra Costa entitlement jurisdictions (the County and cities of Antioch, Concord, Pittsburg, Richmond, and Walnut Creek) for their review and comment. Following this process, the County will submit the proposed allocations to the City for review. City approval will depend on the County's proposal being (i) consistent with the City's established community priorities, and (ii) eligible for receipt of HOPWA funds in accordance with HOPWA regulations.

4. Competitive Application Process

HOPWA funds will be allocated to eligible activities consistent with the County's established funding priorities through a competitive application process implemented by the County. The City may participate in this process as an observer and may provide technical assistance. DCD and HSD will jointly host public meetings to discuss the use of HOPWA funds in Contra Costa and to provide technical assistance to potential applicants in developing eligible projects. Additional technical assistance will be available upon request.

DCD is responsible for overall implementation of the competitive application process and will develop and issue a Notice of Funding Availability (NOFA) for housing development projects. The NOFA will be sent to all interested parties. Housing development applications will be processed through DCD and reviewed by a panel consisting of County staff, and staff from the cities of Antioch, Concord, Pittsburg, Richmond, and Walnut Creek. The panel will develop funding recommendations to be submitted to the Contra Costa County Board of Supervisors for its approval. These recommendations will be based on the following established criteria: consistency with established priorities; eligibility under federal regulations; alleviation of identified needs; target population; project feasibility and cost-effectiveness; experience; outreach and affirmative marketing program; and project readiness.

HSD will develop and release a Request for Proposals (RFP) to provide supportive services to persons with HIV/AIDs. The RFP will be sent to all interested parties. HCD will process housing counseling and supportive service project applications. The applications will be reviewed by a panel consisting of representatives of DCD and HSD, and AIDS program providers from other Bay Area jurisdictions.

5. Funds Awarded and Distributed

Following completion of the competitive application process described above, the County will provide the City of Oakland with a description of the HOPWA projects the County proposes be funded with the HOPWA Allocation. The description will include the Provider, the proposed activity, the proposed budget, an expected timeline, and a draft Exhibit C to be incorporated into the HOPWA funding agreement between the City and the County. The City will review the proposed projects to confirm eligibility under federal regulations and contracting requirements (24 CFR Part 574). If the proposed projects comply with federal HOPWA regulations, the City will approve the projects and so inform the County. If the City finds that the proposed projects are inconsistent with federal HOPWA regulations, the City will so inform the County and provide a rationale for its finding(s). Unless rejected by the City in writing within fifteen (15) days after receipt of the list of projects, the projects will be deemed accepted.

Following approval by the City, the County will submit the recommended projects to the Contra Costa County Board of Supervisors for its review and approval. Once approved by the Contra Costa County Board of Supervisors, the County will submit a final Exhibit C to the City.

6. Contract Renewals

In order to encourage continuity and cost-effectiveness in the provision of services, the County will consider two-year contracts for housing counseling and supportive service projects. Programs will be evaluated after the first year of performance. The second year implementation will be contingent upon fund availability and a satisfactory performance evaluation to be conducted by HSD. The County will provide the City with information regarding the second-year funding recommendations to be made to the Board of Supervisors with supporting performance evaluation and funding results.

EXHIBIT B

2013 HOPWA PROGRAM BUDGET

Project Sponsor Admin Funds (7% max)	\$ 33,500
Project Activity Funds	<u>478,574</u>
Total Contra Costa County 2013 HOPWA Allocation	\$512,074

DRAFT EXHIBIT C
2013 HOPWA PROVIDERS AND PROJECTS

To be determined