

**FUNDING AGREEMENT BETWEEN
THE CITY OF OAKLAND AND CONTRA COSTA COUNTY
FOR THE 2019 HOPWA PROGRAM**

This funding agreement ("Agreement") is dated July 1, 2019, and is between the City of Oakland, a municipal corporation (the "City"), and CONTRA COSTA COUNTY, a political subdivision of the State of California, (the "County" or "Project Sponsor").

Grant Number: CAH18F001

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"), identified as #14.241 in the Catalog of Federal Domestic Assistance, 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 **\$830,290** of the HOPWA Funds on the City's behalf (the "HOPWA Allocation").
- C. The Oakland City Council passed Resolution Number 87729 and 87730 C.M.S. authorizing this agreement with Project Sponsor for the HOPWA Program.
- D. Using the selection process set forth in Schedule A, the County will contract with one or more nonprofit housing developers (each a "Developer") and service providers (each a "Sub-recipient") 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 Sub-recipients' and Developers' performance under the contract(s).

The parties therefore agree as follows:

AGREEMENT

1. PERFORMANCE PERIOD

The term of this Agreement begins July 1, 2019 and ends June 30, 2022.

2. FUNDING AMOUNT

The HOPWA Allocation shall not exceed **\$830,290**.

3. PROJECT SELECTION; BUDGET; DEVELOPERS/SUB-RECIPIENTS

The County shall select projects to be undertaken (“Activities”) pursuant to this Agreement in accordance with the priority-setting and selection process set forth in Schedule A. A list of Developers, Sub-recipients and Activities approved by both the City and the County will be attached to this Agreement as Schedule A-1 once the list is approved by both the City and the County, which Schedule A-1 shall immediately form part of this Agreement. The County shall use the HOPWA Allocation in accordance with the budget set forth in Schedule B. The HOPWA Allocation may only be used for activities (i) identified in Schedule A-1 that are carried out by the corresponding Developers or Sub-recipients identified on Schedule A-1 and (ii) consistent with the activities described in Section 7 – Use of Funds, below. Amounts received from this Agreement may not be used to replace other amounts made available or designated by State or local governments.

4. CONTRACTING

Prior to the execution of any proposed contract in connection with this Agreement, the County shall submit to City a staff report allocating funds and describing the proposed Activities to be funded. The City reserves the right to review and approve the contract, and will provide any comments within 15 days of receipt. Following the execution of any contract by the County in connection with this Agreement, the City reserves the right to monitor the performance of the Sub-recipient and/or Developer under the contract to ensure that the County appropriately administers and monitors said contracts.

5. FUNDING DISTRIBUTION

The County shall distribute the HOPWA Allocation to Sub-recipients and Developers in the County of Contra Costa.

6. PROGRAM REQUIREMENTS

The County is responsible for ensuring that Sub-recipients and Developers 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 County will ensure all Activities are carried out in compliance with the following federal laws and regulations:

- a. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24;
- b. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-

4856), and implementing regulations at 24 CFR Part 35;

- c. Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.); and
- d. the Coastal Barrier Resources Act, 16 U.S.C. 3501
- e. Applicability of OMB Circulars (24 CFR Part 574, Subpart G, 574.605)

7. USE OF FUNDS

Subject to applicable requirements described in HOPWA regulation Title 24 C.F.R. sections 574.310, 574.320, 574.330, and 574.340, HOPWA Allocation is meant to assist all forms of housing designed to assist Low Income Persons with HIV/AIDS, including preventing homelessness, providing emergency housing, shared housing arrangements, apartments, single room occupancy (SRO) dwellings, and community residences. Appropriate supportive services, as required by section 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 as approved by the City identified in Schedule A-1 and that fall under one or more of the following activity categories:

- a. Housing information services including, but not limited to, providing counseling, information and referral to assist an eligible person to locate, acquire, finance and maintain housing. This may include Fair Housing counseling for eligible persons who may encounter discrimination on the basis of race, color, religion, sex, age, national origin, familial status, or handicap;
- 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, except that health services may only be provided to individuals with acquired immunodeficiency syndrome or related diseases and not to family members of these individuals;

- 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 Sub-recipients and Developers with the HOPWA Allocation. The County shall conduct the reasonable and necessary recordkeeping and reporting activities described below 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. The County shall provide quarterly reports to the City. Quarterly reports shall include all required data and narrative updates of HOPWA activities listed in Schedule A-1 to report to HUD regarding HOPWA activities through the Integrated Disbursement and Information System (IDIS) and the Consolidated Annual Performance & Evaluation Report (CAPER). Quarterly reports are due thirty days following the end of each of the first three quarters of the fiscal year, on October 30, January 30, and April 30.
- b. The County shall submit annual reports 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, form HUD-60002, Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Person 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/> and
<http://www.hudhre.info/documents/HOPWACAPERBeneficiaryVerification.doc>

- c. The County shall conduct ongoing assessment of service provided by Sub-recipients and Developers. County may monitor those Sub-recipients and Developers who continue to provide the same or similar services each year and have not had any audit findings in the preceding year every other year, but at least every third year. By May

30th of each year, County shall develop a preliminary monitoring schedule for the next fiscal year. The County shall use a risk assessment tool to determine which Sub-recipients and Developers will be monitored. Existing Sub-recipients and Developers that have the highest number of risk factors, as determined by the County, along with new Sub-recipients and Developers that have never been monitored by the County, will be given the highest priority for monitoring. Sub-recipients and Developers with multiple findings during initial monitoring should be monitored by the County annually throughout the term of the contract. The City and County shall monitor Sub-recipients and Developers as required by HUD.

- d. The County shall retain all project files, financial records, and any other documents related to this Agreement for a period of four (4) years from the date of the final annual report of this Agreement, except in the following cases:
 - a. If any litigation, claim, or audit is started before the expiration of the 4-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
 - b. When the County is notified in writing by the City to extend the retention period.
 - c. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition.
- e. The City shall monitor and evaluate County's performance under this Agreement to determine compliance with this Agreement and HOPWA requirements. The County shall cooperate with the City and any federal auditors authorized by the City and shall provide reasonable right of access to both records and personnel during normal business hours for the purpose of assuring compliance with this Agreement and evaluating performance hereunder. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

9. ADMINISTRATIVE EXPENSES

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. 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. § 574.500 and 2 CFR§ 200.

10. METHOD OF PAYMENT

The County may submit requests for payment to the City no more than once per month and not less than once per quarter. When submitting a request for payment, the County shall use the Request for Payment form. Each Request for Payment form will include a

summary of the funds expended, by budget category and Sub-recipients and Developers, 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 substantiated by documentation reasonably sufficient to support the payment requested by the County including documentation of rate and hours for staff and consultant and invoices for non-personnel costs. 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.

Any income generated by the County from the use of HOPWA Funds governed by this Agreement shall be considered HOPWA program income. All HOPWA program income shall be retained by the County for the term of this Agreement. The use of all HOPWA program income is reserved specifically for HOPWA-eligible Activities listed in Schedule A-1 and is subject to the terms of this Agreement. Any program income held by the County at the time of the Request for Payment will be used to reduce the total amount disbursed to the County.

Funds disbursed to the County may not exceed the amount set forth in the Budget attached as Schedule B or the amount of the HOPWA Allocation as set forth in section 2 herein. The City shall verify and approve requisitions and required supporting data for accuracy and programmatic compliance prior to 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 be responsible for the IDIS system, setting up all projects and activities, and tracking budgets in the HUD system. The City shall draw funds as required for timely reimbursement. The County shall assist the City in IDIS management as needed and as requested by City.

All authorized financial 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 adjusted from time to time. No claims submitted after the sixty-day period shall be recognized as binding upon the City for reimbursement. Any financial obligation and/or debts incurred by the County and not reported to the City within the sixty-day period may become the sole liability of the County, and the City may be relieved of any and all responsibilities unless there is a justifiable cause and valid reason of delayed submission.

11. AUDIT REPORT

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 the County's Housing and Community Development department (HCD) 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 shall be submitted to the City by March 30th of each year during the term of this Agreement. The audit report shall be made in accordance with the provisions of 200 CFR Subpart F. The City will use the audit report to determine whether:

1. The financial statements of the HCD present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles.
2. The HCD has (i) an internal control structure to provide reasonable assurance that the HCD 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 HCD's financial statements.
3. The HCD has complied with laws and regulations for the HOPWA Program that may have a direct and material effect on the HCD's financial statements.

The County shall also submit any internal control monitoring (or audit) conducted for HCD during the term of this Agreement to the City. The County shall require Sub-recipients and Developers 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 Councilmembers, 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 in the performance of its obligations under this Agreement. 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 sole 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 Sub-recipient and Developer 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 Sub-recipient's and Developer's negligent acts or omissions 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 negligent acts or omissions 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 parties as soon as practicable following the determination of the amount due.

13. PROMPT PAYMENT

This Agreement is subject to the Prompt Payment Ordinance codified in Chapter 2.06 of the Oakland Municipal Code. Under said Ordinance, the City must disburse grant funds to a Project Sponsor within 20 business days after receipt of an undisputed request for payment. An undisputed request for payment is a request for payment that is not a "disputed invoice" within the meaning of the Prompt Payment Ordinance. Under the ordinance, a "disputed invoice" is an invoice or request for payment that is either (1) improperly executed by Project Sponsor, (2) contains errors, (3) requires additional evidence to determine its validity, and/or (4) contains expenditures or proposed expenditures that are ineligible or that do not otherwise comply with reimbursement or disbursement requirements of the City or another grant funding source. If a request for payment is "disputed," the payment/disbursement shall not be subject to late penalties until the dispute is resolved. In the event a request for payment is disputed, the City shall notify the Project Sponsor and the City's Liaison (as defined in the Prompt Payment Ordinance) in writing within five business days of receiving the disputed request for payment that there is a bona fide dispute, in which case the City shall withhold the disputed amount and may withhold the full amount if the funding source for the grant requires that the disputed expenditures be fully resolved prior to any disbursement of grant funds. If the funding source for the grant requires its review and approval before payments are made to a Project Sponsor, this period shall be suspended for any period of review by said agency. If any amount due by the City to be disbursed to a Project Sponsor pursuant to this Agreement is not timely paid in accordance with the Prompt Payment Ordinance, the Project Sponsor is entitled to interest penalty in the amount of 10% of the improperly withheld amount per year for every month that payment is not made, provided that the Project Sponsor agrees to release the City from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Grant recipients that receive interest penalties for late payment pursuant to the Prompt Payment Ordinance may not seek further interest penalties on the same late payment in law or equity.

The Prompt Payment Ordinance further requires that, unless specific exemptions apply, a Project Sponsor shall pay undisputed invoices of its subcontractors for goods and/or services within 20 business days of submission of invoices unless the Project Sponsor notifies the City's Liaison in writing within five business days that there is a bona fide dispute between the Project Sponsor and claimant, in which case the Project Sponsor may withhold the disputed amount but shall pay the undisputed amount. Disputed payments are subject to investigation by the City's Liaison and, upon the filing of a complaint, the Project Sponsor, if opposing payment, shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If the Project Sponsor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next grant payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to

claimants for valid claims. A Project Sponsor is not allowed to retain monies from subcontractor payments for goods as project retention, and is required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five business days of payment. For the purpose of posting on the City's website, the Project Sponsor is required to file notice with the City of release of retention and payment of mobilization fees, within five business days of such payment or release. In addition, the Project Sponsor is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five business days following receipt of payment from the City. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each.

14. INVESTIGATION AND/OR DISCIPLINE DISCLOSURE

Project Sponsor and any and all Sub-recipients and Developers shall submit information concerning any investigations and/or discipline imposed by any state or federal authorities by completing Schedule V – Affidavit of Non-Disciplinary or Investigatory Action and Schedule Z – Certification of Debarment and Suspension.

15. INSURANCE

Unless a written waiver is obtained from the City's Risk Manager, County must provide the insurance listed in the City of Oakland **Insurance Requirements** attached hereto as **Schedule Q** and incorporated herein by reference.

16. SUSPENSION AND TERMINATION

This Agreement may be terminated by either party if the City and County mutually agree in writing to its termination and upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated.

If, through any cause, the County shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if the County violates any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the County of such termination and specifying the effective date thereof, at least 30 days before the effective date of such termination. In such event, the County shall be entitled to receive reimbursement for any eligible work completed subject to the limitations of this Agreement.

The City's obligations under this Agreement are contingent upon the availability of funds from the funding source for this Agreement. The City may terminate this Agreement on 30 days' written notice to County without further obligation if said funding is withdrawn or otherwise becomes unavailable for continued funding of the Agreement. After termination of this Agreement the City shall pay all amounts due to the County under this Agreement within 30 days of receipt of invoice from County.

17. NON-DISCRIMINATION AND EQUAL EMPLOYMENT PRACTICES

County shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, County agrees as follows:

- a. County and Sub-recipients and Developers, shall not discriminate against any employee or applicant for employment because of actual or perceived age, marital or familial status, religion, gender, gender identity, gender expression, sexual orientation, race, creed, color, genetic information, ancestry national origin, physical or mental disability including Acquired-Immune Deficiency Syndrome (AIDS) or AIDS-Related Complex (ARC), or military status. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. County and Sub-recipients and Developers shall state in all solicitations or advertisements for employees placed by or on behalf of County that all qualified applicants will receive consideration for employment without regard to actual or perceived age, marital or familial status, religion, gender, gender identity, gender expression, sexual orientation, race, creed, color, genetic information, ancestry, national origin, physical or mental disability including Acquired-Immune Deficiency Syndrome (AIDS) or AIDS-Related Complex (ARC), or military status.
- c. County shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Schedule C-1, Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.
- d. If applicable, County will send to each labor union or representative of workers with whom County has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of County's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18. EQUAL BENEFITS ORDINANCE

This Agreement is subject to the Equal Benefits Ordinance codified in Chapter 2.32 of the Oakland Municipal Code and its implementing regulations. The purpose of this ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City Project Sponsors between

employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The ordinance shall only apply to those portions of a Project Sponsor's operations that occur (1) within the City of Oakland; (2) on real property outside the City of Oakland if the property is owned by the City or if the City has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the City; and (3) elsewhere in the United States where work related to a City contract is being performed. The requirements of this chapter shall not apply to subcontracts or Sub-recipients and Developers of any contract with Project Sponsor.

The Equal Benefits Ordinance requires among other things, submission of the Equal Benefits-Declaration of Nondiscrimination attached and incorporated herein as Schedule N-1.

19. LIVING WAGE ORDINANCE

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, then Contractor must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$14.35 with health benefits or \$16.47 without health benefits**. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. **Effective July 1st of each year, contractor shall pay adjusted wage rate.**
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$2.12 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that

accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

- d. Federal Earned Income Credit (EIC) - To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service.
- e. Contractor shall provide to all employees and to the Division of Contracts and Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Division of Contracts and Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Division of Contracts and Compliance.

20. LITIGATION, PENDING DISPUTE, AND OTHER DISCLOSURES

Project Sponsor shall promptly give notice in writing to the City of any litigation pending or threatened against Project Sponsor regarding Project Sponsor's activities conducted pursuant to this Agreement in which the amount claimed is in excess of \$50,000. Project Sponsor shall disclose, and represents that it has disclosed, any and all pending disputes with the City regarding Project Sponsor's activities conducted pursuant to this Agreement

prior to execution of this Agreement on **Schedule K**, incorporated herein by reference. Failure to disclose pending disputes as referenced herein prior to execution of this Agreement shall be a basis for termination of this Agreement.

The County shall provide written notice to the City within five (5) days of all potential conflicts of interest and violations of criminal law involving fraud, bribery, or gratuity violations potentially affecting this Agreement. Failure to make required disclosures can result in termination of the Agreement and suspension or debarment from future federal awards.

21. NOTICE

If either party desires or is required to give notice to the other, such notice shall be given in writing, or via electronic mail and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

HOPWA Formula Grantee

City of Oakland

Human Services Department – Community Housing Services Div.

150 Frank H. Ogawa Plaza, Suite 4340

Oakland, CA 94612

Attn: Lara Tannenbaum

Ltannenbaum@oaklandnet.com

DUNS/ HOPWA CFDA: 137137977/ 14.241

County Project Sponsor

Contra Costa County

Department of Conservation and Development

30 Muir Road

Martinez, CA 94553

Attn: Kristin Sherk

Kristin.sherk@dcd.cccounty.us

DUNS/ HOPWA CFDA: 139441955/ 14.241

Any party to this Agreement may change the name or address of representatives for purpose of paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

22. AMENDMENT

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

23. POLITICAL PROHIBITION

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging

in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

24. RELIGIOUS PROHIBITION

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

25. CONFLICT OF INTEREST

- a. County certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- b. County warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. County shall exercise due diligence to ensure that no such official will receive such an interest.
- c. County further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matter already made by County to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in County or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in (a) any for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income totaled more than \$500, or value of the gift totaled more than \$470 the previous year. County agrees to promptly disclose to the City in writing any information it may receive concerning any such potential conflict of interest. County's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

- d. County shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.
- e. Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation.
- f. In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, County understands and agrees that, if the City reasonably determines that a conflict of interest, as described in this section, exists, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, and/or (3) require reimbursement by County to the City of any amounts disbursed under this Agreement

26. VALIDITY OF CONTRACTS

This Agreement shall not be binding or of any force or effect until it is approved for form and legality by the Office of the City Attorney and signed by the City Administrator or his or her designee.

27. GOVERNING LAW

This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law or expressly governed by federal law.

28. WAIVER

Any waiver by the City of an obligation in this Agreement must be in writing and must be executed by an authorized agent of the City. No waiver should be implied from any delay or failure by the City to take action on any breach or event of default of County or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to County to perform any obligation under this Agreement will not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by County should not be construed to be a consent to any other act or omission or to waive the requirement for the City's written consent to future waivers.

29. OTHER AGREEMENTS

County represents that it has not entered into any agreements that are inconsistent with the terms of this Agreement.

30. SEVERABILITY/PARTIAL INVALIDITY

If any term or provision of this Agreement, or the application of any term or provision

of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

31. COMMENCEMENT, COMPLETION, CLOUSE-OUT

It shall be the responsibility of County to coordinate and schedule the Work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement. Any time extension granted to County to enable County to complete the Work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement. Should County not complete the Work by the scheduled date or by an extended date, the City shall be released from all of its obligations under this Agreement.

Within thirty (30) days of completion of the performance under this Agreement, County shall make a determination of any and all final costs due under this Agreement and shall submit a requisition for such final and complete payment (including without limitations any and all claims relating to or arising from this Agreement) to the City. Failure of County to timely submit a complete and accurate requisition for final payment shall relieve the City of any further obligations under this Agreement, including without limitation any obligation for payment of work performed or payment of claims by County.

32. CONSENTS AND APPROVALS

Any consent or approval required under this Agreement may not be unreasonably withheld, delayed, or conditioned.

33. INCONSISTENCY

If there is any inconsistency between the main agreement and the attachments/exhibits, the text of the main agreement shall prevail.

34. COUNTERPARTS

This Agreement may be signed in multiple counterparts, which, when signed by all parties, will constitute a binding agreement.

35. EXHIBITS

The following exhibits and schedules are attached to this Agreement and are hereby incorporated herein by reference:

- Schedule A: Scope of Work
- Schedule A-1: Approved Developers, Sub-recipients & Activities
- Schedule B: Budget
- Schedule C-1: Compliance with ADA
- Schedule K: Pending Dispute Disclosure Form
- Schedule N: Declaration of Compliance with Living Wage
- Schedule N-1: Equal Benefits, Declaration of Nondiscrimination
- Schedule Q: Insurance Requirements
- Schedule Z: Certification regarding Debarment and Suspension

36. APPROVAL

If the terms of this Agreement are acceptable to County and City, sign and date below.

[SIGNATURES ON FOLLOWING PAGE]

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
Human Services Department

By: _____
Director, Human Services Department Date

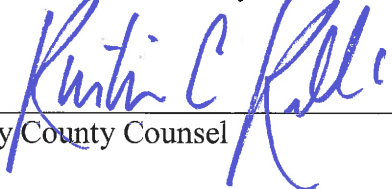
APPROVED AS TO FORM AND LEGALITY

By: _____
City Attorney's Office
Resolution No.: 87729 C.M.S. and 87730 C.M.S.

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

By: _____
Date
John Kopchik, Director
Department of Conservation and Development

APPROVED AS TO FORM
Sharon Anderson, County Counsel

By:  _____
Deputy County Counsel

SCHEDULE A

PRIORITY SETTING AND SELECTION PROCESS

The County, in consultation with the City as laid out below, shall allocate and award the HOPWA allocation received under this contract to Sub-recipients and Developers to carry out HOPWA-eligible activities within the County's jurisdiction, and shall monitor and report on the results. This work shall be carried out consistent with the following requirements:

1. Consolidated Planning Process

The City prepares a Consolidated Plan and an annual Action Plan as a requirement for participation in certain federal housing programs funded through the U.S. Department of Housing and Urban Development, including the HOPWA program. The County will coordinate the development of such information as is required to substantially complete all narratives, tables and other sections related to HOPWA funds and activities, unmet HIV/AIDS housing and supportive service needs, and priorities and strategies within the County, and provide this information to the City in a format to be determined by the City. The City shall present the County with a schedule of needed information well in advance of deadlines, and shall closely coordinate on compiling required information.

The City will include the County's HOPWA priorities and contemplated allocation of resources among eligible funding categories in the Consolidated Plan and/or Annual Plan.

2. Establishment of Priorities

In consultation with the City and other stakeholders in the community, the County will recommend priorities for the HOPWA funds, categories for funding, and a method and schedule for awarding funds within the County.

In preparing these recommendations the County will use, but is not limited to, information from the following sources and planning documents:

- The most recent HOPWA or HIV/AIDS housing needs assessment;
- The most recent Oakland Transitional Grant Area (TGA) 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' Ryan White Program.
- The Continuum of Care Plan, 10-year Plan or other plans adopted by the Board of Supervisors to address homelessness and housing crises in the County, and any updates or addenda to this Plan.
- Other relevant documents or needs assessments related to housing needs, homelessness, HIV/AIDS prevalence and related matters.

The County's recommendations will take into consideration the priorities of the community as expressed in any comprehensive HIV/AIDS housing needs assessment, and shall endeavor to incorporate recommendations from relevant homeless or housing plans, changes in the HIV/AIDS epidemic that may change the demand for HIV/AIDS housing and related services, and priorities established by complementary funding streams which HOPWA funds may be used to leverage.

3. Consultation with Local HIV/AIDS Advisory Bodies:

The County shall, either in the creation of a comprehensive needs assessment as referenced above, or through other means of consultation, consult with the following agencies: the County department with responsibility for HIV/AIDS care, the HIV/AIDS Planning Council, which sets priorities for Ryan White funding; with the cities and/or entitlement jurisdictions that participate in county-level housing planning; public and private organizations involved in the provision of housing and services to persons living with HIV/AIDS; and other local interest groups.

4. Public Meetings

The County will strive to encourage persons with HIV/AIDS, their families and advocates to express their views and ideas of what they perceive as community development and housing needs in the County through the above mentioned priority-setting processes.

The County will include a discussion of HOPWA in its meetings for its Annual Action Plan. Meeting participants will be provided with information about the HOPWA program, amount of HOPWA funds available, eligible activities, and the application process.

In addition, the County shall cause an annual meeting to be held for coordination of HIV/AIDS programs. County shall ensure that the annual meeting is widely publicized and open to the public. The annual 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.

County shall provide meeting participants with information about the HOPWA program, funds available for both housing and community development activities and for planning and administrative activities. County shall make information available to citizens, public agencies, and other interested parties, including the specific amount of assistance the County expects to receive and the range of eligible activities that may be undertaken. County shall publish this information 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 City 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.

5. Recommendations for Funding Categories and Allocations

Based on HOPWA priorities established through the consultative process 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 the City for its review and comment. City approval will depend on the County's proposal being: (a) consistent with the City's established community priorities, and (b) eligible for receipt of HOPWA funds in accordance with HOPWA regulations and guidance.

6. Competitive Application Process

HOPWA funds will be allocated to eligible activities consistent with the established funding priorities through one or more competitive application processes seeking program Sub-recipients and Developers to work directly with people living with HIV/AIDS. The City may participate in this process as an observer and may provide technical assistance. The County will host public meetings to discuss the use of HOPWA funds in the County's jurisdiction and to provide technical assistance to potential applicants in developing eligible projects. City may request additional technical assistance from HUD upon request.

The County is responsible for overall implementation of the competitive application. County will send the Notices of Funding Availability (NOFAs) to all interested parties. The County will convene a review panel consisting of County staff and representatives from a selected number of cities or other parties with knowledge of the community who have declared that they do not have a conflict of interest with respect to the outcomes of the funding recommendations. The funding recommendations from the County 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.

In addition to the conflict of interest requirements in 2 CFR 200.318, no person who is an employee, agent, consultant, officer, or elected or appointed official of the City or County who exercises or has exercised any functions or responsibilities with respect to activities funded by this Agreement, or who participates in a decision making process or gains inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has close family or significant business ties, during his or her tenure. Any subcontracts awarded pursuant to this section and funded by this Agreement shall include a requirement that the subcontractor shall not use such funds as compensation for any of its employees, consultants or other agents who were engaged by City or County and were subject to the restrictions in paragraph during the year prior to their engagement by subcontractor.

7. Funds Awarded and Distributed

Following completion of the competitive application process described above, the County shall submit to the City a description of the priority-setting, selection process and a list of selected Sub-recipients and Developers. No later than thirty days after execution of this Agreement, County shall submit HOPWA County Staff Report for approval by City.

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 thirty (30) days after receipt of the staff report and budget allocation report, the projects will be deemed accepted.

Following approval by the City, the County will submit the recommended projects and program Sub-recipients and Developers to the County Board of Supervisors for its review and consideration. If approved by the County Board of Supervisors, the County will immediately submit a final Schedule A-1 to the City.

The County, Sub-recipients, Developers, and their agents may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property, which work is to be funded from this Agreement, or commit or expend any funding for such work to be funded from this Agreement, until the City has completed its environmental review process. The City will disallow any project that takes choice-limiting actions before completion of the environmental review.

Any HOPWA eligible Program Delivery costs associated with any of the Developer of Sub-recipient contracts shall be built into the budget line item for Developer or Sub-recipient per 24 CFR 574.3.

8. Contract Renewals

In order to encourage continuity and cost-effectiveness in the provision of services, the County shall consider two-year contracts for housing operations, housing counseling and supportive service projects and/or programs. Projects and/or programs will be evaluated after the first year of performance. Second-year implementation will be contingent upon funds availability and a satisfactory performance evaluation. The County will provide the City with information regarding the second-year funding recommendations.

Combined Grants Schedules



Business Name Contra Costa County Phone 925-674-7887 Email kristin.sherk@dcd.cccounty.us
 Address 30 Muir Road City Martinez State CA Zip 94553 Federal ID # 94-6000509
 City of Oakland Business License Number _____ Completed by: Kristin Sherk Phone if different _____

Schedule C-1 – (Declaration of Compliance with the Americans with Disabilities Act)

I declare under penalty of perjury that my company will comply with the City Of Oakland American with Disabilities Act obligations.

Schedule K – (Pending Dispute Disclosure)

1. Are you or your firm involved in a pending dispute or claim Against the City of Oakland or its Agency? **(Please check one)** Yes No
2. If “Yes”, please list existing and pending lawsuit(s) and claim(s) with the title, contract date, brief description of the issues, officials or staff persons involved in the matter and the City department/division administering the contract. Contract Title and Number: _____
 Date: _____ Official(s), Staff person(s) involved: _____
 Administering Department/Division: _____ Issues: _____

3. **(check)** Additional Disputes listed on Attachment

Schedule N - (Living Wage – Declaration of Compliance) Grants accumulating over \$100K, Grants under \$100K mark N/A

Employment Questionnaire: Please respond to the following questions:

	Responses
(1) How many permanent employees are employed with your company? (If less than 5, stop here)	3 HOPWA empl.
(2) How many of your permanent employees are paid above the Living Wage rate?	
(3) How many of your permanent employees are paid below the Living Wage rate?	
(4) Number of compensated days off per employee? (Refer to item “a” above)	
(5) Number of trainees in your company?	
(6) Number of employees under 21 years of age, employed by a nonprofit corporation for after school or summer employment for a period not longer than 90 days.	

Schedule N-1 – (Equal Benefits – Declaration of Nondiscrimination) Grants accumulating over \$25K, Grants under \$25K mark N/A

Section A. Grantee Information

Not applicable. County is public agency, not a firm.

- (1) Are you an EBO certified firm (Please check one) Yes No (if yes, please attached certificate and skip Schedule N-1)
 (2) Approximate Number of Employees in the U.S. _____ (3) Are any of your employees covered by a collective bargaining agreement or union trust fund? (Please check one) Yes No (4) Union name(s) _____

Section B. Compliance

- (1) Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees? (Please check one) Yes No
 (2) Does your company provide or offer access to any benefits to employees with domestic partners? (Please check one) Yes No

Section C. Benefits PLEASE CHECK EACH BENEFIT THAT APPLIES

Benefits	Offered to Employees only	Offered to Employees and their spouses	Offered to Employees and their Domestic Partners	Not Offered at all	Documentation attached
Health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dental	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retirement (Pension, 401K, etc)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Family Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parental Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Relocation & Travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Company Discount, Facilities & Events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Credit Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Child Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(1) CFAR is a City Financial Recipient. (2) Domestic Partner is defined as a same sex couples or opposite sex couples registered as such with a state or local government domestic partnership registry

Schedule P – (Nuclear Free Zone - Ordinance 11474 C.M.S.)

Not applicable.

I declare under penalty of perjury that I have read Ordinance 11478 C.M.S. titled “An Ordinance Declaring the City of Oakland a Nuclear Free Zone and Regulating Nuclear Weapons Work and City Contracts with and Investment in Nuclear Weapons Makers”, as provided on the City’s website, see “footnote” below I certify that my firm conforms with the conditions as defined in Ordinance 11478 C.M.S.

I declare that my company is **NOT** in compliance with Ordinance 11478 C.M.S., but my proposal/bid should be considered because: _____

Schedule V – (Affidavit of Non-Disciplinary or Investigatory Action)

Not applicable.

I certify that the following entities: Equal Employment Opportunity Commission (EEOC), Department of Fair Employment & Housing (DFEH) or the Office of Federal Contract Compliance Programs (OFCCP) has not taken disciplinary or investigatory action against the Firm. If such action has been taken, attached hereto is a detailed explanation of the reason for such action, the party instituting such action and the status or outcome of such action. **Initial:** _____

Oakland’s Minimum Wage Law – (Resolution 85423 C.M.S. - Oakland Municipal Code Section 5.92, et seq.) I certify that I have read Oakland’s minimum wage law and I am in full compliance with all its provisions. **Initial:** _____

Affirmative Action - I certify that I/we shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, sexual orientation, national origin, age, disability, Acquired Immune Deficiency Syndrome (AIDS) AIDS related complex, or any other arbitrary basis and shall insure compliance with all provisions of Executive Order No. 11246 (as amended by Executive Order No. 11375). I certify that I/we shall not discriminate against any employee or applicant for employment because they are disabled veteran of the Vietnam era and shall insure compliance with all provisions of 41CFR60-250.4 where applicable. **Initial:** _____

By signing and submitting this combined schedules form the prospective primary participant’s authorized representative hereby obligates the proposer(s) to the stated conditions referenced in this document. I declare under penalty of perjury that the foregoing is true and correct.

Name of Individual: _____ **Title:** _____

Signature: _____ **Date:** _____

PLEASE NOTE: Detailed descriptions of all policies represented in this combined form may be found at Contracts and Compliance website “Policies and Legislation” address <https://www.oaklandca.gov/documents/contracting-policies-and-legislation> For an electronic copy of this combined form and copies of standalone contract Schedules R, E, O, Q, Exit Affidavit and Schedule G please go to this web address <https://www.oaklandca.gov/documents/contracts-and-compliance-forms-and-schedules>

Schedule Q

INSURANCE REQUIREMENTS

(Revised 01/13/17)

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. **Commercial General Liability insurance** shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)

Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.

- iii. **Worker's Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

- iv. **Professional Liability/ Errors and Omissions insurance, if determined to be required by HRM/RBD**, appropriate to the contractor's profession with limits not less than \$ _____ each claim and \$ _____ aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:
- a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
 - c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.
- v. **Contractor's Pollution Liability Insurance:** If the Contractor is engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire or water restoration or fuel storage dispensing, then for small jobs (projects less than \$500,000), the Contractor must maintain Contractor's Pollution Liability Insurance of at least \$500,000 for each occurrence and in the aggregate. If the Contractor is engaged in environmental sampling or underground testing, then Contractor must also maintain Errors and Omissions (Professional Liability) of \$500,000 per occurrence and in the aggregate.
- vi. **Sexual/Abuse insurance.** If Contractor will have contact with persons under the age of 18 years, or Contractor is the provider of services to persons with Alzheimer's or Dementia, Contractor shall maintain sexual/abuse/molestation insurance with a limit of not less than \$1,000,000 each occurrence. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. **Insured Status (Additional Insured):** Contractor shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insured's under the Commercial General Liability policy. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions

used). If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and

- ii. Coverage afforded on behalf of the City, Councilmembers, directors, officers, agents, employees and volunteers shall be primary insurance. Any other insurance available to the City Councilmembers, directors, officers, agents, employees and volunteers under any other policies shall be excess insurance (over the insurance required by this Agreement); and
- iii. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity; and
- iv. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the contractor, its employees, agents and subcontractors; and
- v. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- vi. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested

or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insured's under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors, employees and volunteers for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

j. Higher Limits of Insurance

If the contractor maintains higher limits than the minimums shown above, The City shall be entitled to coverage for the higher limits maintained by the contractor.



Schedule Z

Certification of Debarment and Suspension

Under the requirements of OMB Circular A-133 Supplement, part 3, Section 1, the City is required to obtain certifications that contractors and sub-grantees receiving awards exceeding \$100,000 have not been suspended or debarred from participating in federally funded procurement activities.

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals:
 - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency.
 - b) Have not within a 3 year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or local) transaction under a public transaction or contract.
 - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal State or local) with commission of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

By signing and submitting this form the prospective primary participant's authorized representative hereby obligates the proposer(s) to the above stated conditions.

_____		_____	
Company Name		Signature of Authorized Representative	
_____		_____	
Address		Type or Print Name	
_____	_____	_____	_____
Area Code	Phone	Date	Type or Print Title

Instructions for Certification A

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the department/agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
6. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary" covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549: 49CFR Part 76. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
7. The prospective primary participant further agrees by submitting this proposal that it will included the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, to all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals.
9. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.