

## **MEMORANDUM OF UNDERSTANDING FOR THE EASTBAY WORKS PARTNERSHIP / EAST BAY REGIONAL PLANNING UNIT**

This Memorandum of Understanding (MOU) is made and entered into this first day of January, 2020 (Effective Date) by and between the four local workforce development areas consisting of: County of Alameda, County of Contra Costa, City of Oakland and City of Richmond, each a "Party" and collectively, "Parties".

### **RECITALS**

WHEREAS, the Governor of California defined the County of Alameda, County of Contra Costa, City of Oakland, and City of Richmond to be four local workforce development areas; and

WHEREAS, the California Workforce Development Board (CWDB) has designated the County of Alameda Workforce Development Board (ACWDB), County of Contra Costa Workforce Development Board (WBDCCC), City of Oakland and City of Richmond, collectively, as the East Bay Regional Planning Unit (EBRPU) for the purpose of implementing regionally funded initiatives, primarily but not limited to subgrants (Subgrants) under the Workforce Innovation and Opportunity Act (WIOA); and

WHEREAS, the four local workforce boards have a strong history of working collectively as the EASTBAY *Works* partnership, which was established to streamline processes, reduce duplication, and manage similar services. The EASTBAY *Works* recognizes the value of having regional activities and regional service standards.

WHEREAS, any of the EBRPU may receive funding and/or grants for regional planning, plan implementation, staff and workforce system training, and expansion of regional initiatives; and

WHEREAS, although the WIOA Subgrants are intended to fund the collective activities of the EBRPU, the CWDB awards the WIOA Subgrants to any of the four local workforce boards, as the lead subgrantee designated by the CWDB (Lead Subgrantee); and

WHEREAS, the four local workforce boards, collectively as the EASTBAY *Works* partnership or EBRPU, desire to coordinate, jointly carry out tasks, and share in the regional funds; and

WHEREAS, this MOU establishes a framework under which the Lead Subgrantee shall contract with the other Parties in a separate services agreement for each WIOA Subgrant in order to allocate current and future WIOA Subgrants and to implement programs on behalf of the EBRPU more efficiently; and

WHEREAS, this MOU also establishes a "Lead Agent" framework for other regionally funded initiatives to implement programs on behalf of the EBRPU more efficiently; and

WHEREAS, coordination between the four local workforce boards is vital to the introduction of regional funding and the leveraging of resources to the greatest effect to improve the workforce system in the East Bay;

NOW THEREFORE, for and in consideration of the mutual covenants, conditions and advantages herein stated, the Parties hereto agree as follows:

**SECTION I**  
**LEAD AGENT / WIOA SUBGRANTEE**

- 1.1 Recitals. The aforementioned Recitals are true and correct and incorporated herein by this reference.
- 1.2 Authority of the Lead Agent / WIOA Subgrantee. The Lead Agent / WIOA Subgrantee shall be any Party who volunteers to proceed as the Lead Agent / WIOA Subgrantee with the approval of the other Parties. The Lead Agent / WIOA Subgrantee shall have the authority to move the grant application and management process forward. The Lead Agent / WIOA Subgrantee is the fiscal agent with responsibilities to: (1) liaison with the funding agency; (2) communicate expectations; and (3) manage reporting and performance requirements.
- 1.3 Opt-Out Provision. Any Party may opt-out of participating in any grant application or WIOA Subgrant by indicating in writing or verbally with written confirmation after the Parties discuss applying for the Subgrant. Notice of a Party's desire to opt-out can be made by electronic mail, or by telephone call with confirming electronic mail, to the representatives identified in Section 4.2.

**SECTION II**  
**GRANT / WIOA SUBGRANT FUNDS**

- 2.1 Funding Information. Information pertaining to the grant / WIOA Subgrants shall be shared among the Parties as set forth in each Service Agreement created pursuant to Section 2.2.
  - 2.1.1 Compliance with Grant / WIOA Subgrant. The Lead Agent / WIOA Subgrantee shall be responsible for compliance with all terms and conditions of the applicable grant / WIOA Subgrant, and any amendments thereto, including but not limited to, any and all applicable reporting, accounting, and financial disclosure requirements. The Parties shall manage and expend the grant/ WIOA Subgrant funds in accordance with the terms and conditions of the grant / WIOA Subgrant, any and all applicable federal and state laws, their applicable county or city policies, this MOU, and the applicable Service Agreement.
- 2.2 Service Agreement. In order to share the funds as the EBRPU, the Parties are hereby authorized to enter into Service Agreements for each grant / WIOA Subgrant. The Parties will develop and approve a template Service Agreement; changes must be approved by the Parties' legal counsels in accordance with each Party's authorized approval process.
  - 2.2.1 The following sections 2.2.2 and 2.2.3 are optional and only apply to the Party whose corresponding public agency chooses to adopt and implement them. The provisions will not apply in the absence of specific approval communicated to the Party by the Party's Board of Supervisors or City Council, and do not impose on any Party or its corresponding agency any obligation to depart from the Party's customary processes and requirements in connection with accepting funds and entering into contract and/or amendments.
  - 2.2.2 Increases to Service Agreement; Additional Funds. Pursuant to the delegation of authority approved by each Party's Board of Supervisors or City Council in connection with the approval of this MOU, in the event that additional funds are

allocated by the funder or CWDB for a grant / WIOA Subgrant, the Parties may increase the Total Grant Allotment set forth in the related Service Agreement in an amount not to exceed \$200,000 without first obtaining approval from each Party's respective Board of Supervisors or City Council. Any increase to an existing Total Grant Allotment in excess of \$200,000 requires the approval of each Party's Board of Supervisors or City Council.

2.2.3 Extensions of Time. Pursuant to the delegation of authority approved by each Party's Board of Supervisors or City Council in connection with the approval of this MOU, in the event that an extension of time is needed to complete the initiative and approved by the funder or CWDB for a grant / WIOA Subgrant, the Parties may extend the time as set forth in the related Service Agreement by a period of time not to exceed six (6) months without first obtaining approval from each Party's respective Board of Supervisors or City Council. Any increase to the term of a Service Agreement in excess of six (6) months requires the approval of each Party's Board of Supervisors or City Council.

2.3 Pass-Through; No Independent Liability. The purpose of this MOU and the related Service Agreements is to provide a mechanism by which the Lead Agent / WIOA Subgrantee can share the funds received from the grantor or CWDB with the other Party. There shall be no obligation under this MOU to make payment of funds if such funds are not received through the grant or WIOA Subgrant.

### **SECTION III** **EFFECTIVE DATE AND TERM**

3.1 Term. The Term of this MOU will commence on the Effective Date, set forth in the introductory paragraph above, and automatically renew each fiscal year, unless terminated earlier by the Parties as provided in Section 4.4.

### **SECTION IV** **GENERAL PROVISIONS**

4.1 Indemnification. Each Party agrees to defend, indemnify and hold harmless the other Party and its officers, officials, board of supervisors, councilmembers, employees or agents from and against any damages including, but not limited to, reasonable attorneys' fees, expert and consultant fees, and other costs and fees of litigation, to the extent arising out of the alleged gross negligence, intentional or willful misconduct of the Party, its representatives, officers, officials, board of supervisors, city councils, employees or agents in the performance of this MOU.

It is the intent of the Parties that where negligence or responsibility for injury or damages is determined to have been shared, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that Party's negligence. In the event a claim or suit is filed, and liability is based on the active conduct of two or more of the Parties, then such Parties shall cooperate and contribute to the defense and indemnity of the claim or suit on an equal basis until such time as comparative negligence is established and damages apportioned. At that time, the responsible Parties shall reimburse the other Party of its costs in accordance with its proportionate share of liability.

The Parties shall promptly notify each other in writing to the representative identified in Section 4.2 of any claims or demand which arise and for which indemnification is sought. The terms of this Section shall survive the termination of this MOU.

The Parties each hereby certify that they have adequate insurance, self-insured retentions or other self-insurance programs sufficient to meet any obligation arising under this Section 4.1.

- 4.2 Notices. Any notices, bills, invoices, or reports relating to this MOU and any request, demand, statement or other communication required or permitted hereunder shall be in writing to the addresses set forth below and shall be deemed to have been received on (a) the day of delivery, if delivered by hand during regular business hours or by confirmed facsimile during regular business hours; or (b) on the third business day following deposit in the United States mail postage prepaid.

**County of Alameda**

Alameda County Workforce Development Board  
14100 Amador Street, 6<sup>th</sup> Floor  
Hayward, California 94544  
Attn: Executive Director ACWDB  
Fax #: (510) 259-3845

**County of Contra Costa**

Workforce Development Board of Contra Costa County  
4071 Port Chicago Highway, Suite 250  
Concord, California 94520  
Attn: Executive Director WDBCC  
Fax #: (925) 228-0238

**City of Oakland**

City of Oakland Economic & Workforce Development Department  
250 Frank Ogawa Plaza, Suite 3315  
Oakland, California 94612  
Attn: Executive Director WDB  
Fax #: (510) 238-3691

**City of Richmond**

City of Richmond Workforce Development Board  
330 25<sup>th</sup> Street  
Richmond, California 94801  
Attn: Executive Director WDB  
Fax #: (510) 307-8072

- 4.3 Alternative Dispute Resolution. The Parties agree that before any Party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the Parties shall first submit the dispute to mediation through a mutually acceptable professional mediator to be held at a mutually agreed upon location. Each Party shall bear its own expenses and costs associated with the mediation. The cost of the mediator shall be shared equally by the Parties.

- 4.4 Termination. Any Party may terminate its participation in this MOU for any reason by giving thirty (30) days' advance written notice to the designated representative of the other Parties as identified in Section 4.2. The Parties may terminate this MOU upon mutual agreement, which is effective immediately upon a written mutual agreement to terminate.
- 4.5 Legal Authority. Nothing in this MOU binds the Parties to perform any action that is beyond its legal authority.
- 4.6 Conflict of Interest. No member, elected or appointed official or employee of the Parties, shall have any personal interest, direct or indirect, in this MOU nor shall any such member, elected or appointed official or employee participate in any decision relating to this MOU which affects his or her personal interest or interests of any corporation, partnership or association in which he or she is directly or indirectly interested.
- 4.7 Interpretation, Governing Law, and Venue. This MOU and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This MOU shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this MOU. All Parties have been represented by counsel in the negotiation and preparation hereof. Any legal action related to the performance or interpretation of this MOU shall be filed only in the Superior Court of the State of California located in either the County of Alameda or the County of Contra Costa, depending upon which Party is the Lead Agent / WIOA Subgrantee. The Parties waive any provision of law providing for a change of venue to another location.
- 4.8 No Third-Party Beneficiaries. This MOU is made and entered into for the sole protection and benefit of the Parties hereto and shall not create any rights in any third parties. No other person or entity shall have any right of action based upon the provisions of this MOU.
- 4.9 Section Headings. The Section headings herein are for the convenience of the Parties only and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this MOU.
- 4.10 Compliance with Laws and Regulations. By executing this MOU, the Parties agree to comply with all applicable federal, state and local laws, regulations, and ordinances.
- 4.11 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this MOU by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this MOU thereafter.
- 4.12 Severability. Each paragraph and provision of this MOU is severable from each provision, and in the event any provision in this MOU is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 4.13 Authority to Exercise. The persons executing this MOU or exhibits attached hereto on behalf of the Parties to this MOU hereby warrant and represent that they have the

authority to execute this MOU and warrant and represent that they have the authority to bind the respective Parties to this MOU to the performance of its obligations hereunder.

- 4.14 Amendments. Except as otherwise provided for herein, this MOU may be amended in writing from time-to-time by the Parties acting through their respective Board of Supervisors or City Council, or their designees, as needed.
- 4.15 Exhibits; Precedence. All documents referenced as exhibits in this MOU are hereby incorporated in this MOU. In the event of any material discrepancy between the express provisions of this MOU and the provisions of the grant / WIOA Subgrants or the Service Agreement, the order of precedence shall be as follows: (1) grant / WIOA Subgrant funding agreement and any amendments thereto, (2) the Service Agreement, and (3) this MOU.
- 4.16 Independent Contractor. Each Party to this MOU shall have no power to incur any debt, obligation, or liability on behalf of another Party to this MOU or otherwise act as an agent of another Party.
- 4.17 Equal Employment and Non-Discrimination. All Parties agree to comply with all applicable federal, state and local anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, agent of the Parties, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, gender, gender identity, gender expression, age (over 40), medical condition (including HIV and AIDS), genetic information, physical disability, mental disability, or military and veteran status. Each Party shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of the Parties' employees and agents, and recipients of services are free from such discrimination and harassment.
- All Parties represent that they are in compliance with and agree to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and the regulations and guidelines issued pursuant thereto.
- 4.18 Cooperation; Further Act. The Parties shall cooperate fully with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this MOU.
- 4.19 Entire Agreement. This MOU, including all exhibits and attachments hereto, is intended by the Parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof oral or written, in connection therewith.
- 4.20 Counterparts. This MOU may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. This MOU shall be deemed executed when it has been signed by all Parties.