

RESOLUTION NO. 19-132

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute The Grant Agreement With The City Of Oakland In The Amount Of \$50,000 Per Year For FY2019-2020 And FY2020-2021 For A Total Of \$100,000 For The 8 To Go Paratransit Shuttle

WHEREAS, Alameda County Measure B and BB Funds are distributed to Alameda County Cities through Direct Local Distribution for the purposes of providing Paratransit Services to its residents; and

WHEREAS, The City of Emeryville desires to continue providing paratransit services to the residents of the 94608 zip code through the 8 To Go program; and

WHEREAS, The City of Emeryville previously received additional discretionary grant funding from Alameda County Measure B & BB funds to provide the 8 To Go program, but is no longer eligible for these funds; and

WHEREAS, The City of Oakland has agreed to partially fund the 8 To Go program since it services Oakland residents, which will replace the funding formerly received through the discretionary grant; and

WHEREAS, The City of Emeryville will use Direct Local Distribution Funding from the Alameda County Transportation Commission from Measure B and BB to fund the remainder of the program; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville hereby authorizes the City Manager to execute the Grant Agreement for the '8 To Go' Paratransit Shuttle Service with the City of Oakland in the Amount of \$100,000.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, September 17, 2019, by the following vote:

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

ATTEST:


FOR CITY CLERK


MAYOR

APPROVED AS TO FORM:


CITY ATTORNEY

**GRANT AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND THE CITY OF EMERYVILLE**

This Grant Agreement (the "Agreement") dated July 1, 2019 is made and entered into by and between the City of Oakland, a municipal corporation (the "City"), and the City of Emeryville, a municipal corporation ("Grantee").

RECITALS

- A. The City wishes to enter into this Agreement with Grantee to provide paratransit services for qualified Oakland residents that reside in the common 94608 zip code through the City of Emeryville's 8 To Go transportation program.
- B. The City Council, pursuant to Resolution No. 87768 C.M.S. has allocated grant funds to Grantee to fund its community-related programs and activities as specified herein.

Now therefore the parties to this Agreement agree as follows:

1. Grant

Subject to the terms and conditions of this Agreement, the City agrees to provide a grant of funds to Grantee in an amount up to fifty thousand dollars (\$50,000) for July 1, 2019 through June 30, 2020 and fifty thousand dollars (\$50,000) for July 1, 2020 through June 30, 2021, for a total grant amount up to one hundred thousand dollars (\$100,000) (the "Grant").

2. Scope of Work

As a condition of this Grant, Grantee must diligently and in good faith perform the community-related work, services, and activities ("Work") specified in the **Scope of Work** attached to this Agreement as **Schedule A** and incorporated herein by reference.

Grantee shall designate an individual who shall be responsible for communications with the City for the duration of this Agreement. The Project Manager for the City shall be Brad Helfenberger.

3. Agreement Documents and Provisions

Grantee shall perform or arrange for the performance of Work under this Agreement in accordance with conditions of this Agreement including the attached Scope of Work in addition to City of Oakland rules, regulations and policies and applicable federal and state laws.

4. Time of Performance

The Grant term shall begin on July 1, 2019, and shall end on June 30, 2021.

5. Method of Payment

Grantee shall be paid for the performance of the Work set forth in the Scope of Work in accordance with the Program Budget included in the Scope of Work. Payments shall be made in the amounts stated in the Scope of Work and shall be based on actual eligible costs, fees and expenses incurred by Grantee for the Work. Payments shall be due upon completion of the Work or as otherwise specified in the Scope of Work. Grantee shall submit an invoice accompanied by an itemization of expenditures submitted for reimbursement prepared on the City's expense forms. Invoices shall state a description of the Work completed, itemized costs, fees and expense and the amount due.

Each request for payment must include a performance report detailing the clients served under this Agreement, the current status of their cases, and aggregate results to date. If Grantee's performance is not on pace to meet or exceed performance goals under this Agreement, Grantee shall provide an explanation and detail Grantee's plan to increase client service levels for the remainder of the term of this Agreement in order to meet performance goals.

The documents submitted shall be reviewed and approved for payment by the Project Manager. The City shall have sole and absolute discretion to determine the sufficiency of supporting documentation for payment. Determination of satisfactory completion of the Scope of Work will be based on an overall assessment of the progress Grantee has made towards achieving the goals of the Agreement and the performance measures.

All authorized obligations incurred in the performance of the terms of this Agreement must be reported to the City within 60 days following the completion or termination of this Agreement. No claims submitted after the 60-day period will be recognized as binding upon the City for payment. Any obligations and/or debts incurred by Grantee and not reported to the City within the 60-day period become the sole liability of Grantee, and the City shall be relieved of any and all responsibilities.

6. Prompt Payment

The parties agree to comply with the regulations as set forth in the Prompt Payment Ordinance codified in Chapter 2.06 of the Oakland Municipal Code. Under said Ordinance, the City must disburse Grant funds to Grantee 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 Grantee, (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 Grantee 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 Grantee, this period shall be suspended for any period of review by said agency. If any amount due by the City to be disbursed to Grantee pursuant to this Agreement is not timely paid in accordance with the Prompt Payment Ordinance, Grantee 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 Grantee 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, Grantee shall pay undisputed invoices of its subcontractors for goods and/or services within 20 business days of submission of invoices unless Grantee notifies the City’s Liaison in writing within five business days that there is a bona fide dispute between Grantee and claimant, in which case Grantee 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, Grantee, 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 Grantee 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. Grantee 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, Grantee 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; and Grantee 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 address of all subcontractors and the amount paid to each.

7. Evaluation, Monitoring and Reporting

Grantee shall be monitored and evaluated by the City in terms of its effectiveness and timely compliance with the provisions of this Agreement and the effective and efficient achievement

of the Scope of Work. Grantee shall undertake continuous quantitative and qualitative evaluation of the Scope of Work as specified in this Agreement and shall make written reports on the results of such evaluation to the Project Manager as reasonably requested by the Project Manager.

In addition to the financial requirements described elsewhere in this Agreement, Grantee agrees that authorized representatives of the City may perform fiscal monitoring of Grantee's record-keeping and reporting to assure compliance with this Agreement.

8. Proprietary or Confidential Information of the City

Grantee understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Grantee may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Grantee agrees that all information disclosed by the City to Grantee shall be held in confidence and used only in performance of the Agreement, unless Grantee is required to disclose such information in accordance with the California Public Records Act (Gov. Code, § 6250, et seq.), subpoena or other applicable federal or state law or court order. Grantee shall exercise the same standard of care to protect such information as a reasonably prudent Grantee would use to protect its own proprietary data.

9. Records and Audit

Grantee must maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement, and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with this Agreement. Grantee agrees to comply with all audit, inspection, record-keeping and fiscal reporting requirements mandated by the City, and all state and/or federal audit requirements applicable to the funding sources of the Grant. The City shall notify the Grantee of any records it deems in its reasonable judgment to be insufficient. Grantee shall have 15 calendar days from such notice to correct any specified deficiency in the records, or, if more than 15 days shall be reasonably necessary to correct the deficiency, Grantee shall begin to correct the deficiency within 15 days and correct the deficiency as soon as reasonably possible. Grantee must maintain such records for a period of four years following the last fiscal year during which the City paid an invoice to Grantee under this Agreement.

Grantee must make available at Grantee's office for examination at reasonable intervals and during normal business hours to the City's representatives, as well as representatives of agencies providing funding for the Grant, all books, accounts, reports, files, financial records, and other papers or property with respect to all matters covered by this Agreement, as well as the financial condition of Grantee in general, and shall permit these representatives to audit, examine, and make copies, excerpts or transcripts from such records. The City's representatives may make audits of any conditions relating to this Agreement, as well as the

financial condition of Grantee in general, throughout the term of this Agreement and for three years following the expiration of the term of this Agreement.

10. Fraud, Waste and Abuse

Grantee must immediately inform the City of any information or complaints involving criminal fraud, waste, abuse, or other criminal activity in connection with the Work.

11. Assignment and Subcontracting

Except as provided herein, Grantee may not assign, subcontract, or otherwise transfer any rights, duties, obligations or interest in this Grant or Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City, and any attempt to assign, subcontract, or transfer without such prior written consent shall be void. Consent to any single assignment, subcontract, or transfer shall not constitute consent to any further assignment, subcontract or transfer. City acknowledges and consents to Contractor's contract with any appropriate third party transportation company for paratransit services.

12. Publicity

Any publicity generated by Grantee for the program funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, shall make reference to the contribution of the City in making the project possible. The words "City of Oakland" shall be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Grantee to assist Grantee in generating publicity for the program funded pursuant to this Agreement. Grantee further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this program.

13. Insurance

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

14. Indemnification

- a. Notwithstanding any other provision of this Agreement, Grantee shall indemnify and hold harmless (and at City's request, defend) the City, and its Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against

any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:

- (i) Breach of Grantee's obligations, representations or warranties under this Agreement;
 - (ii) Act or failure to act in the course of performance by Grantee under this Agreement;
 - (iii) Negligent or willful acts or omissions in the course of performance by Grantee under this Agreement;
 - (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Grantee;
 - (v) Unauthorized use or disclosure by Grantee of confidential information; or
 - (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trade mark, or service mark or other proprietary or intellectual property rights of any third party.
- b. For purposes of the preceding subsections (i) through (vi), the term "Grantee" includes Grantee, its officers, directors, employees, representatives, agents, servants, sub-consultants and subgrantees.
- c. The City shall give Grantee prompt written notice of any such claim of loss or damage and shall cooperate with Grantee, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
- d. Notwithstanding the foregoing, the City shall have the right if Grantee fails or refuses to defend the City with counsel acceptable to the City to engage its own counsel for the purposes of participating in the defense. In addition, the City shall have the right to withhold any payments due Grantee in the amount of anticipated defense costs plus additional reasonable amounts as security for Grantee's obligations under this section. In no event shall Grantee agree to the settlement of any claim described herein without the prior written consent of the City.
- e. Grantee acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any claim or action which potentially falls within this indemnification provision, which obligation shall arise at the time such claim is tendered to Grantee by the City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Grantee's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence, or willful misconduct of an Indemnitee.

- f. All of Grantee's obligations under this section are intended to apply to the fullest extent permitted by law (including without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
- g. The indemnity set forth in this section shall not be limited by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. The City's liability under this Agreement shall be limited to payment of Grantee in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

15. Non-Liability of City

No member, official, officer, director, employee, or agent of the City shall be liable to Grantee for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

16. Right to Offset Claims for Money

All claims for money due or to become due from the City shall be subject to deduction or offset by the City from any monies due Grantee by reason of any claim or counterclaim arising out of this Agreement, any purchase order, or any other transaction with Grantee.

17. Events of Default and Remedies

The occurrence of any of the following shall constitute a material default and breach of this Agreement by Grantee:

- a. Failure to adequately perform the Work set forth in the Scope of Work;
- b. Improper use or reporting of funds provided under this Agreement by Grantee or its employees or agents;
- c. Substantial failure by Grantee to observe and perform any other provision of this Agreement; or
- d. Grantee's (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

The City shall give written notice to Grantee or Grantee's agent of any default by specifying (a) the nature of the event or deficiency giving rise to the default, (b) the action required to cure the deficiency, if an action to cure is possible, and (c) a date, which shall be not less than

30 calendar days from the mailing of the notice, by which such action to cure, if a cure is possible, must be undertaken. Grantee shall not be in default if Grantee cures such default within the specified cure period, or, if such default is not reasonably capable of cure within the specified period, Grantee begins to cure the default within the cure period and thereafter diligently pursues the cure to completion. Following any notice of an event of default, the City may suspend payments under this Agreement pending Grantee's cure of the specified breach. Upon an event of default that has not been cured by Grantee, the City, in its discretion, may take any of the following actions:

- (A) Terminate this Agreement in whole or in part;
- (B) Suspend payments under this Agreement;
- (C) Demand immediate reimbursement of any funds disbursed under this Agreement;
- (D) Bring an action for equitable relief (a) seeking the specific performance by Grantee of the terms and conditions of the Agreement, and/or (b) enjoining, abating, or preventing any violation of said terms and conditions, and/or (c) seeking declaratory relief;
- (E) Bar Grantee from future funding by the City; and/or
- (F) Pursue any other remedy allowed at law or in equity.

Unless otherwise terminated as provided in this Agreement, this Agreement will terminate on June 30, 2021.

18. Termination or Modification for Lack of Appropriation

The City's obligations under this Agreement are contingent upon the availability of funds from the funding source for this Grant. The City may terminate this Agreement on 30 days' written notice to Grantee without further obligation if said funding is withdrawn or otherwise becomes unavailable for continued funding of the Work.

19. Litigation and Pending Disputes

Grantee shall promptly give notice in writing to the City of any litigation pending or threatened against Grantee in which the amount claimed is in excess of \$50,000. Grantee shall disclose, and represents that it has disclosed, any and all pending disputes with the City prior to execution of this Agreement on **Schedule K**, incorporated herein by reference. Failure to disclose pending disputes prior to execution of this Agreement shall be a basis for termination of this Agreement.

20. Conflict of Interest

- a. Grantee 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. Grantee 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. Grantee shall exercise due diligence to ensure that no such official will receive such an interest.
- c. Grantee further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matter already made by Grantee 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 Grantee 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. Grantee agrees to promptly disclose to the City in writing any information it may receive concerning any such potential conflict of interest. Grantee'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. Grantee 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, Grantee understands and agrees that, if the City reasonably determines that Grantee has failed to make a good faith

effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, and/or (3) require reimbursement by Grantee to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Grantee is responsible for the conflict of interest situation.

21. Non-Discrimination/Equal Employment Practices

Grantee 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, Grantee agrees as follows:

- a. Grantee and Grantee's subgrantees, if any, 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), 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. Grantee and Grantee's subgrantees shall state in all solicitations or advertisements for employees placed by or on behalf of Grantee 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), AIDS-Related Complex (ARC), or military status.
- c. Grantee shall make its goods, services, and facilities accessible to people with disabilities as required by law 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.**

22. Local/Small Local Enterprise Participation [Not Applicable]

~~The City has established requirements for participation by local and small local enterprises, including local nonprofit organizations and small local nonprofit organizations, in publicly-supported projects. Unless otherwise indicated, the City acknowledges that Grantee complies with this requirement.~~

23. Living Wage Requirements

Grantee will be considered a City Financial Assistance Recipient ("CFAR") and must comply with the Oakland Living Wage Ordinance if it receives \$100,000 or more in financial assistance from the City during a 12-month period. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of CFARs (OMC 2.28, Ord. 1250 § 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, that Grantee 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 **\$13.75 with health benefits** and **\$15.78 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, Grantee shall pay adjusted wage rates.
- 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 \$2.03 per hour. Grantee 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) – Grantee shall inform employees that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
- e. Grantee shall provide to all employees and to the Office of Contract 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. Grantee 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 – Grantee shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Grantee shall provide a copy of said list to the Office of Contract 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. Grantee shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Grantee shall require subgrantees that provide services under or related to this Agreement to comply with the above Living Wage provisions. Grantee shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

24. Equal Benefits Ordinance

The requirements of the Equal Benefits Ordinance are waived for this Agreement pursuant to Oakland Municipal Code 2.32.060.B.

25. 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.

26. Religious Prohibition

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

27. Business Tax Certificate or Exemption

28. Abandonment of Grant

The City may abandon or indefinitely postpone the Grant at any time. Should the Grant be abandoned, the City shall pay Grantee for all services performed thereto in accordance with the terms of this Agreement.

29. Relationship of Parties

The relationship of the City and Grantee is solely that of a grantor and grantee of funds, and should not be construed as a joint venture, equity venture, partnership, or any other relationship. The City does not undertake or assume any responsibility or duty to Grantee (except as provided for herein) or to any third party with respect to the Work performed under this Agreement. Except as the City may specify in writing, Grantee has no authority to act as an agent of the City or to bind the City to any obligation.

30. Warranties

Grantee represents and warrants: (1) that it has access to professional advice and support to the extent necessary to enable Grantee to fully comply with the terms of this Agreement and otherwise carry out the Work; (2) that it is duly organized, validly existing and in good standing under the laws of the State of California; (3) that it has the full power and authority to undertake the Work; (4) that there are no pending or threatened actions or proceedings before any court or administrative agency which may substantially affect the financial condition or operation of the Grantee, other than those already disclosed to the City; and (5) that the persons executing and delivering this Agreement are authorized to execute and deliver such document on behalf of Grantee.

31. Unavoidable Delay in Performance

The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting this Agreement which is caused by: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten calendar days from the commencement of the cause. Times of performance under this Agreement may also be extended for any cause for any period of time by the mutual written agreement of the City and Grantee.

32. 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.

33. 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.

34. Notice

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

City

City of Oakland
Human Services Department
Aging and Adult Services Division
150 Frank H. Ogawa Plaza, Suite 4353
Oakland, CA 94612-2033
Attn: Hakeim McGee, Senior Services Supervisor

Grantee

City of Emeryville
4727 San Pablo Avenue
Emeryville, CA 94608-3035
Attn: Brad Helfenberger, Youth & Adult Services Manager

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

35. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to this Grant and contains all of the representations, covenants and agreements between the parties with respect to the Grant. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

36. Amendments and Modifications

Any amendment to or modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

37. 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 Grantee or to pursue any

remedy allowed under this Agreement or applicable law. Any extension of time granted to Grantee 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 Grantee 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.

38. Other Agreements

Grantee represents that it has not entered into any agreements that are inconsistent with the terms of this Agreement. Grantee may not enter into any agreements that are inconsistent with the terms of this Agreement without an express written waiver by the City.

39. 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.

40. Commencement, Completion and Close-out

It shall be the responsibility of Grantee 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 Grantee to enable Grantee to complete the Work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement. Should Grantee 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, Grantee 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 Grantee 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 Grantee.

41. Consents and Approvals

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

42. Inconsistency

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

43. Counterparts

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

44. Exhibits

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

Schedule A:	Scope of Work and Budget
Schedule C-1:	Compliance with ADA
Schedule K:	Pending Dispute Disclosure Form
Schedule Q:	Insurance Requirements

45. Approval

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

[SIGNATURES ON NEXT PAGE]

“CITY”

CITY OF OAKLAND, a municipal corporation

By: _____
City Administrator (Date)

Approved for forwarding:

By: _____
Department Head (Date)

87768 C.M.S.
Resolution Number

Approved as to form and legality:

By: _____
City Attorney Office (Date)

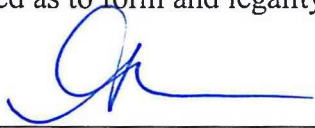
“GRANTEE”

CITY OF EMERYVILLE, a California municipal corporation

By: _____
City Manager (Date)

By: _____
Agency Director (Date)

Approved as to form and legality:

By:  6-27-19
City Attorney Office (Date)

SCHEDULE A

CONDITIONS OF REIMBURSEMENT

(To be completed by the prime & City of Oakland project manager)

The services to be performed by Consultant shall consist of services requested by the Project Manager or a designated representative, including (but not limited to) the following. Please attach a detailed scope of services to this Schedule.

TASK

COMPLETION DATE

1. Please see attached detailed Conditions of Reimbursement (Outline of Services to be Performed)

June 30, 2020

2.

3.

4.

5.

Contractor:

(Please Print)

(Signature)

(Date)

City Representative:

(Please Print)

(Signature)

(Date)

SCHEDULE A

CONDITIONS OF REIMBURSEMENT

(To be completed by the prime & City of Oakland project manager)

The services to be performed by Consultant shall consist of services requested by the Project Manager or a designated representative, including (but not limited to) the following. Please attach a detailed scope of services to this Schedule.

TASK	COMPLETION DATE
1. Please see attached detailed Conditions of Reimbursement (Outline of Services to be Performed)	June 30, 2020

2.	
----	--

3.	
----	--

4.	
----	--

5.	
----	--

Contractor:

(Please Print)

(Signature)

(Date)

City Representative:

(Please Print)

(Signature)

(Date)

SCHEDULE A – Scope of Work

City of Oakland and City of Emeryville 8 To Go Project Co-Sponsorship Agreement FY 2019-2020 and FY 2020-2021

A. BACKGROUND

The City of Emeryville is currently offering the 8 To Go transportation program. 8 To Go is an ADA accessible door-to-door paratransit service for qualifying residents of the 94608 zip code.

The program was initially funded by a grant from the Alameda County Transportation Commission as a pilot program. The grant funding will sunset FY 2018-19 and the City of Emeryville will not be able to pay for the entire cost of the program moving forward.

Since the 94608 zip code is shared by Oakland and Emeryville and serves numerous Oakland residents, the City of Oakland wants to partner with the City of Emeryville to co-sponsor funding to continue the program.

The City of Emeryville currently contracts with the Emeryville Transportation Management Association (ETMA/Emery Go Round) for driver, maintenance and fuel service. Emeryville city staff provides scheduling and dispatch.

B. SERVICES

City of Emeryville agrees to:

- Provide and maintain ADA compliant wheelchair accessible vehicle for the service. The current service vehicle has a maximum capacity of five (5) passengers and can accommodate wheelchair passengers of a maximum combined weight of 650 pounds.
- Provide scheduling and dispatch services for the service vehicle. This will be based at the City of Emeryville Senior Center.
- Enroll and maintain database of qualified residents of the 94608 zip code who are either age 70+ or 18+ and certified to use East Bay Paratransit.
- Determine and administer service parameters:
 - Each ride will cost \$1.00 to the rider. Riders will be limited to six (6) one-way rides per week. Ride passes are available for purchase at the Emeryville Senior Center. Emeryville will retain the \$1.00 ride fees.
 - Service will be provided Monday - Friday from 9:00 am - 12:30 pm and 1:30 pm - 5:00 pm. Service will not operate on City of Emeryville holidays.
 - The destination boundaries are 28th Street in the south (with an exception for the Oakland VA Clinic), Dwight Way (Berkeley) in the north, and Telegraph

Avenue (with an exception for Oakland Kaiser) in the east. No residents living outside the 94608 zip code will be served.

- Provide outreach and marketing materials for the service.
- Manage third-party transportation service contract and maintain that:
 - Contractor will provide ADA accessible door-to-door paratransit services to qualified riders as outlined.
 - Contractor will provide qualified driver with Class B CDL with passenger endorsement and ensure ongoing customer sensitivity, behind-the-wheel and other trainings as required.
 - Contractor conducts all required vehicle maintenance.
 - A copy of the transportation service contract will be provided to the City of Oakland upon request.

C. PAYMENT

City of Emeryville agrees to:

- Submit invoice(s) by January 31st for services provided during the period of July 1st through December 30th with supporting documentation, financial reports and ridership data.
- Submit invoice(s) by July 31st for services provided January 1st through June 30th with supporting documentation, financial reports and ridership data.
- Submit invoices and attachments by fax to (510) 238-7724; electronically to HMCGEE@oaklandca.gov; or by mail deliverer/courier to City of Oakland Paratransit, 150 Frank H. Ogawa Plaza, Ste. #4353, Oakland CA 94612-2092.

City of Oakland agrees to:

- Commit Fifty Thousand Dollars (\$50,000) per fiscal year as outlined below to co-sponsor 8 To Go services provided by third-party transportation service provider. City of Emeryville staff cost will not be considered an allowable expense for purposes of this agreement.

Deliverable	Period	Maximum Payment Amount
Coordinate 8 To Go transportation service for 12 months	FY 2019-2020	\$50,000
Coordinate 8 To Go transportation service for 12 months	FY 2020-2021	\$50,000
Total		\$100,000

SCHEDULE A – Scope of Work

City of Oakland and City of Emeryville 8 To Go Project Co-Sponsorship Agreement FY 2019-2020 and FY 2020-2021

- Accept, review, verify and pay submitted invoices in a prompt and timely manner within 20-days of receipt.

Reimbursement will be made for only those passengers and services specifically pre-authorized by the City. Strict monitoring and verification will be continuously conducted by the City. Contractor agrees to cooperate with the City, its representatives, and any federal, state or local law enforcement officials if an investigation is conducted into the propriety of the billing for and the provision of services under this Agreement.

The City is entitled to repayment by Contractor for services that may be subsequently determined to have been fraudulently or illegally obtained or provided under this contract by Contractor, Contractor's employees, subcontractors and/or representatives. In such event, the City may immediately terminate Contractor's contract, withhold further reimbursement(s) and seek prosecution at the federal, state or local level as appropriate.

SCHEDULE A – Scope of Work

City of Oakland and City of Emeryville 8 To Go Project Co-Sponsorship Agreement FY 2019-2020 and FY 2020-2021

Combined Grants Schedules



Business Name _____ Phone _____ Email _____
Address _____ City _____ State _____ Zip _____ Federal ID # _____
City of Oakland Business License Number _____ Completed by: _____ 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)	
(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

- (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 checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vision	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parental Leave	<input checked="" type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Company Discount, Facilities & Events	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Credit Union	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Child Care	<input checked="" 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.)

- ☐ 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)

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:
- The retroactive date must be shown and must be before the date of the contract or the beginning of work.
 - Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
 - 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:

- 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.