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City Attorney's Office

## OAKLAND CITY COUNCIL

RESOLUTION NO. 88453 C.M.S.

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**RESOLUTION APPROVING THREE-YEAR TERM MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OAKLAND AND THE NEW VENTURE FUND (NVF), AS FISCAL AGENT FOR THE OAKLAND FUND FOR PUBLIC INNOVATION, TO FORMALLY CREATE A PARTNERSHIP BETWEEN THE CITY AND NVF WITH THE GOAL OF DEVELOPING PRIVATELY FUNDED PROJECTS AND PROGRAMS THAT ADDRESS OAKLAND'S MOST COMPLEX ISSUES AND PROMOTE EQUITY, ECONOMIC EMPOWERMENT, AND CULTURAL PRESERVATION AND ENRICHMENT IN OAKLAND**

**WHEREAS**, the New Venture Fund ("NVF") is a 501(c)(3) public charity that supports innovative and effective public-interest projects and grant programs by assisting donors and social entrepreneurs to quickly deliver on their charitable missions while managing accounting and maintaining compliance through a fiscal sponsorship; and

**WHEREAS**, the Oakland Fund for Public Innovation (OFPI) is a project of NVF that was established in 2017 with a mission of improving the prosperity, safety and quality of life for all Oaklanders by promoting philanthropy and fostering partnerships between the City of Oakland and the philanthropic community to develop strategic and innovative approaches to addressing the City's most complex problems, and to test bold ideas with the goal of affecting positive change for Oaklanders; and

**WHEREAS**, on October 16, 2020, the Oakland City Council passed Resolution No. 88296 C.M.S., which authorized the City Administrator to enter into a Memorandum of Understanding (MOU) on behalf of the City with OFPI and/or its fiscal agent, NVF, to allow the City and OFPI to continue to work collaboratively on projects to address the City's most critical needs and to raise funds to support those projects for a three-year term, with the option to renew for two additional three-year terms subject to City Council; and

**WHEREAS**, Resolution No. 88296 C.M.S. requires that the proposed MOU between the City and OFPI and/or NVF be brought back to Council for consideration and approval prior to execution; and

**WHEREAS**, staff now seeks Council's approval of the proposed MOU attached hereto as **Exhibit A**; now, therefore, be it

**RESOLVED:** That City Council hereby approves the three-year term memorandum of understanding between the City of Oakland and the New Venture Fund, as fiscal agent for the Oakland Fund for Public Innovation, attached hereto as **Exhibit A**; and be it

**FURTHER RESOLVED:** That prior to execution, the Memorandum of Understanding shall be reviewed and approved as to form and legality by the City Attorney and executed copies of the memorandum of understanding shall be filed with the City Clerk.

3003572v1

IN COUNCIL, OAKLAND, CALIFORNIA,

DEC 15 2020

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, ~~MINNARD~~ *Reid* TAYLOR,  
THAO AND PRESIDENT KAPLAN - 7

NOES - 0  
ABSENT - 1 *Keele*  
ABSTENTION - 0

ATTEST:



ASHA REED  
Acting City Clerk and Clerk of the  
Council of the City of Oakland, California

## EXHIBIT A

### MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OAKLAND AND THE NEW VENTURE FUND

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#### I. PARTIES

This Memorandum of Understanding (“MOU” or “Agreement”) is made by and between the City of Oakland, a municipal corporation, (“City”), One Frank H. Ogawa Plaza, Oakland, California, 94612 and the New Venture Fund, 1201 Connecticut Avenue NW, Suite 300, Washington, DC 20036 (“NVF”).

#### II. RECITALS

The New Venture Fund (“NVF”) is a 501(c)(3) public charity that supports innovative and effective public-interest projects and grant programs by assisting donors and social entrepreneurs to quickly deliver on their charitable missions while managing accounting and maintaining compliance through a fiscal sponsorship.

NVF is governed by a Board of Directors with extensive experience in philanthropy and nonprofit management, which is responsible for the oversight and implementation of the projects and programs, as well as for compliance with all financial, employment, and governmental laws and regulations.

The Oakland Fund for Public Innovation (OFPI) is a project of NVF that was established in 2017 with a mission of improving the prosperity, safety and quality of life for all Oaklanders by promoting philanthropy and fostering partnerships between the City of Oakland and the philanthropic community to develop strategic and innovative approaches to addressing the City’s most complex problems, and to test new ideas with the goal of effecting positive change for Oaklanders.

The City has determined a formal partnership with the NVF would (1) generate new funding resources that the City may not have access to by allowing private donors to support City programs, activities and projects that align with City priorities; (2) allow City staff, in partnership with key stakeholders, to incubate and pilot new programs or initiatives that lack funding from the City budget, and (3) ensure transparency on roles and responsibilities of all parties and alignment with all legal and ethical requirements.

Now, therefore, the parties to this Memorandum of Understanding agree as follows:

#### III. PROVISIONS

##### A. Term

This Agreement shall become effective upon execution by all parties and shall remain in effect for a period of three (3) years, unless sooner terminated as hereinafter provided. If the Agreement is not executed by all parties on the same dates, the Agreement shall become effective on the date the Agreement is *last executed* by a party (“Effective Date”).

B. Purpose

The purpose of this Agreement is to formally create a partnership between the City of Oakland and the New Venture Fund, as the fiscal sponsor for the Oakland Fund for Public Innovation, with the goal of developing and quickly implementing privately funded projects and programs that address Oakland's most complex issues and promote equity, economic empowerment, and cultural preservation and enrichment in Oakland. By way of this Agreement, the City and NVF also seek to effect positive social change in Oakland's most vulnerable communities and those most impacted by racial disparities, and, generally, to improve the lives of all Oaklanders.

C. Rights Roles and Responsibilities of Each Party

1. City of Oakland

- a. Identify City-related issues that could benefit from private funding support and work with NVF to develop projects and programs to address said issues.
- b. Ensure all projects and programs developed as a result of the partnership created by this Agreement serve to further the City's goal of effecting positive social change in Oakland's most vulnerable communities and those most impacted by racial disparities.
- c. When necessary, obtain City Council approval of projects and programs developed as a result of the partnership created by this Agreement and City Council acceptance of any monetary or non-monetary donations to support projects and programs developed under this Agreement.
- d. Assign a City of Oakland staff lead for all projects and programs developed as a result of the partnership created by this Agreement.
- e. When requested and with the support of OFPI, provide reports to the Oakland City Council regarding City of Oakland projects and programs developed as a result of the partnership created by this Agreement.
- f. Provide administrative and technical support, data (in compliance with confidentiality and privacy laws) and guidance to NVF for the purpose of implementing the projects and programs developed as a result of the partnership created by this Agreement.

2. New Venture Fund

- a. Receive fund donations and manage the Oakland Fund.
- b. Operate the OFPI Advisory Board which will identify specific projects and programs to be supported by the Oakland Fund, set project and program priorities and monitor project and program progress. In collaboration with the Executive Director of OPFI and subject to final approval from the OFPI Board Chair, Oakland's City Administrator or his/her designee shall be permitted to serve as a non-voting, honorary member of the Advisory Board.

- c. Work with the City to develop and draft project and program proposals that align with the City's goals.
- d. Maintain publicly accessible website containing comprehensive reports on fundraising efforts and all City of Oakland projects and programs that receive funding support from the Oakland Fund.
- e. Work with City Staff to develop public reports on City of Oakland projects and programs that receive funding support from the Oakland Fund, including supporting City Staff to develop Oakland City Council reports up to twice a year.
- f. Provide administrative and accounting support for the implementation of projects and programs developed as a result of the partnership created by this Agreement.
- g. Make fund awards, including grants, for projects and programs developed as a result of the partnership created by this Agreement.
- h. Ensure all donations to the Oakland Fund are made in compliance with the Political Reform Act, including but not limited to ensuring that all behested payments are timely reported on California Fair Political Practices Commission Form 803 and said form is filed with the City of Oakland Office of the City Clerk.
- i. Ensure that all agreements for projects and programs developed as a result of the partnership created by this Agreement include provision requiring compliance with the City of Oakland Campaign Reform Act, when applicable.
- j. Ensure that all agreements for projects and programs arising from this Agreement include provisions requiring compliance with all applicable federal, state and local conflict of interest laws.

### 3. Miscellaneous

- a. Absent City Council approval, employees of OFPI/New Venture Fund shall not be identified or described, orally or in writing, as a representative of the City of Oakland and shall not be permitted to speak or act on behalf of the City of Oakland.
- b. Absent City Council approval, employees of OFPI/New Venture Fund shall not manage, supervise or be permitted to give orders or directives, to City of Oakland employees.
- c. City Council approval shall be required for use of City funds or resources (e.g. office space, computer equipment) for personnel funded by OFPI/New Venture Fund.

### D. Independent Contractor

#### 1. Rights and Responsibilities

It is expressly agreed that in the performance of this Agreement, employees of NVF are not and shall not be considered employees of the City. NVF has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting NVF in its performance of

services hereunder. NVF shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for its own acts and those of its subordinates and employees. NVF will determine the method, details and means of performing the services under this Agreement.

## 2. Qualifications

NVF represents that it has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of the City. NVF warrants that it, and its employees and sub-consultants are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to their performance under this Agreement. All services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. NVF has complete and sole discretion over the way its work under this Agreement is performed.

## E. Non-Exclusive Relationship

The relationship between the parties to this Agreement is non-exclusive. The parties shall, in their sole discretion, be entitled to enter into agreements with the same or similar objectives, roles and responsibilities with other individuals and entities.

## F. Proprietary or Confidential Information

NVF understands and agrees that, in the performance of this Agreement or in contemplation thereof, it 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. NVF agrees that all information disclosed by the City hereunder shall be held in confidence and used only in performance of the Agreement. NVF shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

The City understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, City may have access to private or confidential information which may be owned or controlled by NVF and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to NVF. City agrees that all information disclosed by NVF shall be held in confidence and used only in performance of the Agreement. City shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

## G. Assignment

NVF shall not assign or otherwise transfer any rights, duties, obligations or interest in this 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 or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

#### H. Publicity

Any publicity generated by NVF for City of Oakland projects and programs arising from this Agreement, during the term of this Agreement and for one year thereafter, shall require prior approval by the City. NVF further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to or in furtherance of this Agreement.

#### I. Insurance

NVF shall, for the duration of this Agreement, maintain insurance sufficient to protect itself against any claims arising from its performance of this Agreement and to enable NVF to fully discharge all indemnification obligations it owes to the City as set forth herein. Upon request, NVF agrees to provide City with written proof of such insurance and to cooperate with City to ensure such insurance provides sufficient coverage.

#### J. Indemnification

1. Notwithstanding any other provision of this Agreement, NVF shall indemnify and hold harmless the City, its agencies, departments, councilmembers, officers, and employees (hereinafter collectively "Indemnitees" or individually "Indemnitee") from, and if requested, shall defend them against, any and all loss, claims, lawsuits, 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 directly or indirectly from NVF's performance of this Agreement, including, but not limited to, any:
  - a. Material Breach of NVF's, representations or warranties under this Agreement;
  - b. Negligence or willful acts or omissions in the course of performance by NVF under this Agreement;
  - c. Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any grossly negligent act, error or omission of NVF;
  - d. Unauthorized use or disclosure by NVF of Confidential Information as provided in subsection F, Proprietary of Confidential Information, above; and
  - e. Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

2. For purposes of the preceding Subsections (a) through (e), all references to "NVF" shall include NVF, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.
3. The City shall promptly provide written notice of any such claim of loss or damage to NVF and shall cooperate with NVF, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
4. Notwithstanding the foregoing, if NVF fails or refuses to defend City with legal counsel acceptable to the City, the City shall have the right to retain its own counsel for the purposes of participating in the defense. In no event shall NVF agree to the settlement of any claim described herein without the prior written consent of City, such consent not to be unreasonably withheld.
5. NVF acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to NVF 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, NVF shall not be liable under this Agreement for any action or claim arising from the sole negligence or willful acts or omissions of an Indemnitee.
6. The obligations of NVF under this subsection 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.
7. The indemnity set forth in this subsection shall not be limited by the City's insurance requirements or by any other provision of this Agreement.

K. Conflict of Interest

The following protections against conflict of interest shall be upheld:

1. No officer or employee of the City or its designees or agents, no member of a City board or commission, 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.
2. NVF shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by NVF.
3. NVF 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. NVF shall exercise due diligence to ensure that no such official will receive such an interest.

4. NVF further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by NVF 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 NVF 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 any (a) 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 or value of the gift totaled more than \$500 the previous year. NVF agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. NVF certifies that they have read and are aware of 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.).
5. NVF represents and warrants, to the best of its present knowledge, that in addition to the State statutes, regulations, local ordinances, municipal code and Charter provisions referenced in this subsection, NVF has read and is aware of the City of Oakland Government Ethics Act (Oakland Municipal Code Chapter 2.25), including, without limitation, the provisions prohibiting Conflicts of Interest and Personal Gain set forth at OMC 2.25.040, and those prohibiting (a) the influencing of contracts with former employers and (b) nepotism, as set forth in OMC 2.25.070. NVF agrees and acknowledges that it shall adhere to the City of Oakland Government Ethics Act, to the extent it is deemed a Public Servant thereunder.
6. No Waiver: Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

L. Non-Discrimination/Equal Employment Practices

NVF 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, NVF agrees as follows:

1. NVF shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. 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.

2. NVF shall state in all solicitations or advertisements for employees who will be performing work related to this Agreement that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
3. NVF agrees to make its goods, services, and facilities accessible to people with disabilities.
4. If applicable, NVF will send to each labor union or representative of workers related to this Agreement with whom NVF has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of NVF's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

M. Governing Law

This Agreement shall be governed by the laws of the State of California.

N. Notice

If either party desires or is 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:

<b>City of Oakland:</b>  Ed Reiskin, City Administrator City Administrator Office One Frank Ogawa Plaza, 11 <sup>th</sup> Floor Oakland, CA 94612 Fax:	<b>New Venture Fund:</b>  Lee Bodner, President 1201 Connecticut Ave NW #300, Washington, DC 20036 Fax: 202.833.5540
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Any party to this Agreement may change the name or contact information of its representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

O. Entire Agreement of the Parties

This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. 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 parties, 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.

P. Termination on Notice

Either party to this Agreement may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days' written notice to the non-terminating party. Unless otherwise terminated as provided in this Agreement, this Agreement will terminate three years after the Effective Date.

Q. Modification

This Agreement shall not be modified, except by written instrument signed by all parties hereto.

CITY OF OAKLAND,  
a California municipal corporation

NEW VENTURE FUND

\_\_\_\_\_  
City Administrator's Office (Date)

\_\_\_\_\_  
Signature (Date)

\_\_\_\_\_  
Department Head (Date)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Approved for form and legality:  
  
\_\_\_\_\_  
City Attorney's Office (Date)

Authority:  
Resolution No. \_\_\_\_\_