

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY AND CITY ADMINISTRATOR TO ENTER INTO A PARTIAL SETTLEMENT AND DISPOSITION OF LEAD PAINT SETTLEMENT FUNDS FROM THE SETTLEMENT OF COUNTY OF SANTA CLARA, ET. AL. V. ATLANTIC RICHFIELD CO, ET. AL., SANTA CLARA COUNTY SUPERIOR COURT CASE NO. 1-00-CV-788657, CITY ATTORNEY'S FILE NO. X00625, AS FOLLOWS:**

- (1) 60% OF SETTLEMENT FUNDS, APPROXIMATELY \$14,000,000, TO BE SPENT IN OAKLAND FOR LEAD POISONING PREVENTION PURPOSES (“CITY SERVICES ALLOCATION”);**
- (2) 20% OF CITY SERVICES ALLOCATION, \$4,797,184.58, TO BE DISBURSED UPON EXECUTION OF MEMORANDUM OF UNDERSTANDING TO THE CITY OF OAKLAND TO FUND DEVELOPMENT OF AN EQUITY BASED LEAD PROGRAM;**
- (3) 40% OF PRESENT AND FUTURE SETTLEMENT FUNDS, APPROXIMATELY 9,600,000, TO BE DISTRIBUTED TO THE COUNTY OF ALAMEDA TO ENHANCE AND EXPAND EXISTING SERVICES FOR LEAD POISONING PREVENTION IN ALAMEDA COUNTY;**
- (4) THE REMAINING 40% OF THE CITY SERVICES ALLOCATION TO BE HELD IN TRUST BY COUNTY TREASURER SUBJECT TO AN AGREEMENT BY THE CITY AND THE COUNTY ON DISBURSEMENT;**
- (5) THE CITY ADMINISTRATOR TO ENTER INTO THE ATTACHED MEMORANDUM OF UNDERSTANDING SETTING OUT THESE PRECEDING TERMS .**

**(OFFICE OF THE CITY ATTORNEY – PUBLIC NUISANCE ENFORCEMENT ACTION)**

**WHEREAS,** Ten cities and counties, including the City of Oakland and the County of Alameda, brought this case in 2001 against companies that manufactured, distributed and promoted lead paint; and

**WHEREAS,** The parties resolved the lawsuit via a settlement under which Defendants agreed to pay a total of \$305 million through various installments over the course of seven years; and

**WHEREAS,** In October 2019, the public entities entered into a Memorandum of Understanding to satisfy their obligations under various contingency fee agreements with outside counsel, and to allocate among the prosecuting jurisdictions the balance of the settlement funds; and

**WHEREAS,** Because the City of Oakland and the County of Alameda have overlapping jurisdiction, they received a single allocation of 10% of the balance of the settlement funds, \$23,985,922.92. The settlement funds are held in trust by the County Treasurer subject to the City and the County agreeing on disbursement and programming; and

**WHEREAS,** the City has prepared a Race and Equity Impact Assessment to guide its understanding and goals for use of the City Services Allocation; and

**WHEREAS,** the City and the County agree that 40% of the settlement funds should be allocated to the County at this time to begin providing lead poisoning prevention services to areas outside of the City, such that 40% of that portion of the settlement funds that is presently held in the County treasury may immediately be released to the County for this purpose, together with 40% of future installment payments received from the Defendants; and

**WHEREAS,** the Parties agree to an initial disbursement of 20% of the City Services Allocation to the City to fund certain work to be performed by City pursuant to recommendations in the Race and Equity Impact Assessment; and

**WHEREAS,** the Parties desire to negotiate further the disposition of the balance of 40% of the City Services Allocation that the Parties together designate as funds for use in providing lead poisoning prevention services within the City of Oakland; now, therefore, be it

**RESOLVED:** That the City Attorney is authorized and directed to enter into a partial settlement of the allocation of the lead paint settlement funds as follows: (1) 60% of the settlement proceeds will be used for lead poisoning prevention services in Oakland (“City Services Allocation”) and 40% will be used outside of Oakland; (2) the City will receive 20% of the City Services Allocation now, \$4,797,184.58, to fund development of an Equity Based Lead Program; (3) the remaining 40% of the City Services Allocation will continue to be held in trust by the County Treasurer subject to the City and the County agreeing on disbursement and programming of the balance; (4) the County will receive 40% of the County Services Allocation now to continue its lead abatement work outside of Oakland; (5) the City Administrator will enter into the attached Memorandum of Understanding setting out these terms; and be it

**FURTHER RESOLVED:** That the City Administrator is authorized and directed to take whatever steps may be necessary to effect said settlement; and be it

**FURTHER RESOLVED:** That the City Attorney is further authorized and directed to take whatever steps may be necessary to effect said settlement.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND  
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

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

**MEMORANDUM OF UNDERSTANDING**

**PARTIAL DISPOSITION OF SETTLEMENT FUNDS – PEOPLE V. CONAGRA**

This Memorandum of Understanding (“MOU”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (“Effective Date”) by and between the County of Alameda, a political subdivision of the State of California (“County”), and the City of Oakland, a municipal corporation (“City”) (collectively “the Parties”).

**WHEREAS**, County’s County Counsel and City’s City Attorney in conjunction with county counsel and city attorneys from eight other California cities and counties (“Public Counsel”) brought an action in the name of the People of the State of California styled as *County of Santa Clara, et al., v. Atl. Richfield Co., et al.*, Case No. 1-00-CV-788657 (Cal. Super. Ct.) (the “Lawsuit”), asserting a public nuisance claim against The Sherwin-Williams Company (“Sherwin Williams”), ConAgra Grocery Products Company (“ConAgra”), and NL Industries, Inc. (“NL”) (collectively, “Defendants”) related to the hazards associated with the presence of lead paint in the ten jurisdictions (“Prosecuting Jurisdictions”);

**WHEREAS**, Public Counsel reached an agreement with Defendants to resolve the Lawsuit via a settlement (“Settlement Agreement”) under which Defendants will pay a total of \$305 million (“Settlement Consideration”) through various installments over the course of seven years;

**WHEREAS**, in October 2019, Public Counsel entered into a Memorandum of Understanding (“the Allocation MOU”) to satisfy their obligations under various contingency fee agreements with outside counsel, and to allocate among the Prosecuting Jurisdictions the balance of the Settlement Consideration;

**WHEREAS**, the Allocation MOU set forth a formula by which funds would be allocated among the Prosecuting Jurisdictions using relative percentages of pre-1951 and pre-1978 housing stock (“the Allocation Formula”);

**WHEREAS**, among the Prosecuting Jurisdictions, only the City and the County had overlapping jurisdiction such that the Allocation Formula did not provide a basis for division of funds between them;

**WHEREAS**, the Allocation Formula instead provided a single allocation of 10% of the balance of the Settlement Consideration, estimated at \$23,985,922.92, be allocated jointly to the Parties (“the Alameda County Allocation”);

**WHEREAS**, in the interest of expediting the disbursement of the Settlement Consideration to all of the Prosecuting Jurisdictions, to satisfy obligations to outside counsel, and not knowing whether in light of the jurisdictional overlap the Parties desired to divide or jointly program the use of the Alameda County Allocation, the Parties agreed that the Alameda County Allocation would be distributed to the County to be held in a trust account in the County treasury until the Parties came to a joint agreement on its ultimate disposition;

**WHEREAS**, the County acting through its Healthy Homes Department (“the Department”) provides comprehensive lead poisoning prevention services throughout Alameda County, including within the boundaries of the City;

**WHEREAS**, City acknowledges the need for lead poisoning prevention services in those areas of Alameda County outside of the City, and that such services are best rendered by the Department;

**WHEREAS**, the Parties agree that 40% of the Alameda County Allocation should be allocated to the Department at this time to begin providing lead poisoning prevention services to areas outside of the City, such that 40% of that portion of the Alameda County Allocation that is presently held in the County treasury may immediately be released to the Department for this purpose, together with 40% of future installment payments received from the Defendants;

**WHEREAS**, City has prepared a Race and Equity Impact Assessment (“REIA”) to guide its understanding and goals for use of the Alameda County Allocation within the City; and

**WHEREAS**, City and County agree to an initial disbursement of 20% of the Alameda County Allocation to the City to fund certain work to be performed by City pursuant to recommendations in the REIA;

**WHEREAS**, the Parties desire to negotiate further the disposition of the balance of 40% of the Alameda County Allocation that the Parties together designate as funds for use in providing lead poisoning prevention services within the City;

**NOW THEREFORE**, for acknowledged mutual consideration, the Parties agree as follows:

1. **Recitals:** The Parties agree that the above recitals are true and correct, and provide a factual basis for the terms of this MOU.
2. **Allocation of Funds:** The Parties agree to an initial division of the Alameda County Allocation of 60% of the funds for use in providing lead poisoning prevention services within the City (“the City Services Allocation”) and 40% of the funds for use in providing lead poisoning prevention services within Alameda County but outside of the City (“the County Services Allocation”).
3. **County Services Allocation:** As of the Effective Date, the County Treasurer is authorized to release to the Department 40% of the Alameda County Allocation received to date from the Defendants, and presently being held in trust pursuant to Section 8 of the Allocation MOU. The County Treasurer shall similarly release to the Department 40% of future installment payments of the Alameda County Allocation received from the Defendants. The Department shall use the County Services Allocation for purposes consistent with the limitations of the Settlement Agreement and Section 10 of the Allocation MOU, and specifically for lead poisoning prevention services outside of the City. The Department shall not be obligated to expend the County Services Allocation to fund services within the City.
4. **The City Services Allocation:** The City Services Allocation shall be disposed as follows:
  - a. The County Treasurer is authorized to disburse to the City pursuant to payment instructions supplied by the City a portion of funds presently being held in trust pursuant to Section 8 of the Allocation MOU equal to 20% of the Alameda County Allocation, which for avoidance of doubt shall be \$4,797,184.58 (“the City Disbursement”). The City shall use the City Disbursement for purposes consistent with the limitations of the Settlement Agreement and Section 10 of the Allocation MOU, and specifically to fund work described in the Equity Lead Abatement Program Development Framework attached hereto as Exhibit A (“the Equity Framework”).

- b. The County Treasurer shall continue to hold in trust the balance of the City Services Allocation less the amount of the City Disbursement (“the City Services Balance”) consistent with the obligations of Section 8 of the Allocation MOU, including both funds already received from Defendants and future installments. The City Services Balance is equal to 40% of the Alameda County Allocation. The Parties shall negotiate in good faith the disposition of the City Services Balance. To facilitate said negotiation, the Parties shall follow the Equity Framework. The final disposition of the City Services Balance shall be agreed upon in writing approved by the Parties, and ratified by City’s City Council and County’s Board of Supervisors.
5. **Releases:** City releases County from whatever claims or rights it has or may have to the County Services Allocation, or to the Department’s expenditure of the County Services Allocation on services within the City. County releases City from whatever claims or rights it has or may have to the City Disbursement, or to City’s expenditure of the City Disbursement on services outside of the City. This release does not extend to the City Services Balance for which the Parties shall negotiate in good faith the disposition of those funds in accordance with Section 4(b) above.
6. **No Third-Party Beneficiaries:** This MOU does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties.
7. **Notices:** Any notices required by this MOU shall be sent by certified U.S. Mail or overnight courier to:
  - a. County: Healthy Homes Department, 2000 Embarcadero, Suite 300  
Oakland CA 94606 ATTN: Larry Brooks
  - b. City: City Administrator, City Hall, 1 Frank Ogawa Plaza, Oakland CA 94612 ATTN: Ed Reiskin
8. **Amendments:** It is mutually understood and agreed that no alterations or variations of the terms of this MOU shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the Parties. This MOU may be executed in counterpart.
9. **Choice of Law:** This MOU shall be governed by the laws of the State of California.
10. **Waiver:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this MOU shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
11. **Severability:** If a court of competent jurisdiction holds any provision of this MOU to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this MOU would be defeated by the loss of the illegal, unenforceable, or invalid provision.
12. **Signatory.** By signing this MOU, signatory warrants and represents that he/she executed this MOU in his/her authorized capacity and that by his/her signature on this Agreement the entity upon behalf of which he/she acted executed this MOU.

DRAFT

**COUNTY OF ALAMEDA**

**CITY OF OAKLAND**

By: \_\_\_\_\_

Signature

By: \_\_\_\_\_

Signature

Name: \_\_\_\_\_

(Printed)

Name: \_\_\_\_\_

(Printed)

Title: President of the Board of Supervisors

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

DONNA R. ZIEGLER

County Counsel

By: \_\_\_\_\_

Deputy

Approved as to Form:

BARBARA PARKER

City Attorney

By: \_\_\_\_\_

Assistant City Attorney

## EXHIBIT A

Oakland/Alameda Lead Settlement Discussion

### Equity Lead Abatement Program Development Framework

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In accordance with the proposal providing for 60% of the settlement funding allocated to provide services within the City of Oakland.

20% of the settlement funds shall be disbursed to the City of Oakland in the amount of \$4.7 million to fund in part development of an Equity Based Lead Program to be developed in accordance with the process described below.

40% allocated to Oakland shall continue to be held in trust by the County Treasurer subject to the City and the County agreeing on disbursement and programming of the City Services Balance. The Parties agree to engage first in development of the Equity Based Lead Program prior to final agreement on disbursement of the City Services Balance.

The program development shall encompass the following key tasks.

Development of a Scope of Work for program development.

Selection of an expert consultant to advise program design.

Development of a program that would include at minimum the following components to be agreed upon by the City and County:

1. **Targeted Services for at-risk areas and vulnerable populations using indicators that demonstrate high levels of burden across multiple issues** (increased likelihood of exposure to lead hazards, susceptibility to the impacts of those hazards, and limited capacity to take protective action).
2. **Early prioritization and models of comprehensive proactive inspections and lead abatement activities best suited in these areas.** For example, a simple prioritization might target priority areas for early abatement efforts that have **high burdens on at least one indicator in each category** (exposure, sensitivity, adaptive capacity).
3. **Tenant protections** that will avoid, or at least, mitigate the unintended consequence of displacing tenants.
4. **Low-Income Landlord/Homeowner Assistance element** to enable timely rehabilitation and repair; and prevent loss of ownership and equity for “legacy” property owners in Oakland.
5. **Ground truthing** program design options with community most impacted by unsafe housing conditions.
6. **Mobilization of targeted workforce development** – build out the Lead Abatement Workforce Training Program, which would “provide oversight of the training and development of a skilled workforce to provide lead abatement services, as proposed by the Oakland Workforce Development Board (OWDB).



**EXHIBIT A**

Oakland/Alameda Lead Settlement Discussion

**Equity Lead Abatement Program Development Framework**

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7. **Designing and implementing** an advocacy plan to raise additional resources to build program out to address remaining lead risk in communities most impacted by racial disparities.
8. **A program implementation workplan.**
9. **Recommend other considerations for implementation.**

**City and County negotiate extent to which the City Services Balance shall be used to fund the Equity Based Lead Program, the extension into Oakland of enhanced Healthy Homes services provided elsewhere in the County, or other lead poisoning prevention services.**