

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF OAKLAND AND THE NEW VENTURE FUND  
FOR THE OPERATION OF CIVIC DESIGN LAB

**I. Objective and Background**

This MOU establishes the understanding between the City of Oakland ["City"] and The New Venture Fund ["NVF"], a 501(c)(3) public charity that incubates new and innovative public-interest projects and grant-making programs ["Agreement"]. Through the Oakland Fund, a project of NVF, NVF will donate these services to the City which it will provide through the Civic Design Lab."

**II. Scope of Services**

NVF agrees to provide the services specified in **Schedule A**, Scope of Services attached to this Agreement.

**III. Roles and Responsibilities**

**a. The City of Oakland**

- i. The City will provide office space required to perform the services under this Agreement.
- ii. The City will provide all necessary information technology support for NVF staff, including, but not limited to, email accounts and access to City network.
- iii. The City will also create and support a webpage or subpage for NVF's Civic Design Lab on the oaklandca.gov website.
- iv. The Project Manager for the City will be the Chief Resilience Officer (Assistant to the City Administrator).

**b. NVF**

- i. NVF will provide all personnel, tools, materials and equipment required to perform the services under this Agreement.
- ii. The Project Manager for NVF will be The Oakland Fund Executive Director.
- iii. In addition to NVF abiding by the requirements of Section IX. [Confidential and Proprietary Information] hereunder, NVF staff must sign and abide by the City of Oakland's Release and Waiver of Liability and Indemnity Agreement and Acknowledgement of Proprietary and Confidentiality Requirements [ATTACHMENT A, hereto].

**IV. Employment Relationship**

No employment relationship between the City and NVF's employees is created by this Agreement. NVF shall be responsible for paying NVF's employees' wages and benefits, including social security, withholding and all other regulations governing such matters.

## **V. Term Length**

The term for this Agreement shall extend through Jan 1, 2024.

## **VI. Ownership of Results**

Any interest of NVF or its agents in the results of the services it provides City as set forth in Schedule A or any subsequent amendment to Schedule A including, but not limited to, specifications, studies, reports, memoranda, computation documents in drawings, plans, sheets, findings, interview transcripts, test results, functional or technical design documents (soft or hard copy), programs, software code, testing or data scripts, Dataload upload sheets, APIs and configuration prepared by NVF or its agents under this MOU shall be assigned to, transmitted to and, thereafter owned by the City. However, with the exception of the results of any interviews it conducts, which shall include, but not be limited to, personally identifiable information, NVF may retain and use copies for reference and as documentation of its experience and capabilities. Nothing in this MOU is intended to affect NVF's rights in its pre-existing intellectual property (including derivative works) or its right to use general know-how learned in the course of providing services to the City for the future benefit of the City or others.

## **VII. Insurance**

NVF shall maintain the insurance listed in Schedule Q PROGRAM INSURANCE REQUIREMENTS. Schedule Q is attached hereto and an incorporated herein by reference.

## **VIII. Equal Opportunity (Non-Discrimination Clause)**

The City of Oakland is committed to equal employment opportunity and to ensuring that all employees have a work environment that is free of conduct that could be considered discriminatory or harassing based on an employee's protected status (i.e., race, color, religion/religious creed, sex/gender, pregnancy, marital status, age, national origin/ancestry, physical and/or mental disability, medical condition, sexual orientation, gender identity, military or veteran status, or status in any other group protected by federal, state or local law.) The City will not allow anyone, including any supervisor, co-worker, vendor, client or customer, to unlawfully harass or discriminate against City employees or applicants for employment. The City will take prompt and effective remedial action upon discovery of such conduct.

## **IX. Miscellaneous Provisions**

### **1. Proprietary or Confidential Information**

- a. Confidentiality Obligations: Confidential Information shall mean all proprietary or confidential information in written, graphic, verbal, or machine-recognizable form that is disclosed or made available by the other Party pursuant to this MOU that is identified as confidential or proprietary at the time of disclosure or is of a nature that should reasonably be considered to be confidential, and all business, technical and other information (including without limitation, all

human resources and payroll data, product, services, financial, marketing, engineering, research and development information, product specifications, technical data, data sheets, software, inventions, processes, training manuals, know-how and any other information or material), disclosed from time to time by the disclosing Party to the receiving Party, directly or indirectly in any manner whatsoever (including without limitation, in writing, orally, electronically, or by inspection); provided, however, that Confidential Information shall not include the Content that is to be published on the website(s) of either Party.

- b. Each Party agrees to keep confidential and not disclose to any third party and to use only for purposes of performing or as otherwise permitted under this MOU, any Confidential Information. The receiving Party shall protect the Confidential Information using measures similar to those it takes to protect its own confidential and proprietary information of a similar nature but not less than reasonable measures. Each Party agrees not to disclose the Confidential Information to any of its representatives except those who are required to have the Confidential Information in connection with this MOU and then only if such representative is either subject to a written confidentiality MOU or otherwise subject to fiduciary obligations of confidentiality that cover the confidential treatment of the Confidential Information.
- c. Exceptions: The obligations of this Section shall not apply if receiving Party can prove by appropriate documentation, where appropriate, that such Confidential Information
  - (i) was known to the receiving Party as shown by the receiving Party's files at the time of disclosure thereof;
  - (ii) was already in the public domain at the time of the disclosure thereof;
  - (iii) entered the public domain through no action of the receiving Party subsequent to the time of the disclosure thereof;
  - (iv) is or was independently developed by the NVF without access to or use of the Confidential Information;
  - (v) was provided to the NVF by a third party who, to the best of the NVF's knowledge, was not bound by any confidentiality obligation related to such Confidential Information; or
  - (vi) is required by law or government order to be disclosed by the receiving Party, provided that the receiving Party shall notify the disclosing Party in writing of such required disclosure as soon as reasonably possible prior to such disclosure, and use its commercially reasonable efforts at its expense to cause such disclosed Confidential Information to be treated by such governmental authority as trade secrets and as confidential.
- d. NVF acknowledges that the City is subject to public disclosure laws and that the City will comply with requests for information ("RFI"), as it is required to do under the federal Freedom of Information Act, California Public Records Act, City of Oakland Sunshine Act or judicial or administrative court order. NVF acknowledges that an RFI may pertain to any and all documentation associated with the City's use of NVF's Services. NVF further acknowledges that

it is obligated to assist and cooperate with the City by producing all non-confidential or trade secret documentation that (i) NVF keeps in the ordinary course of its business, (ii) is responsive to the RFI, and (iii) was not already provided to the City, all so that the City may comply with its statutory obligations. The City agrees to give NVF as timely written notice as possible of the RFI such that NVF may oppose the RFI or exercise such other rights at law as NVF believes it has. However, NVF must produce all RFI responsive documents described above to the City and the City will comply with the RFI unless, within the time frame established by the statute, judicial or court order under which the RFI is made, NVF procures a Temporary Restraining Order or similar injunctive relief from a court or other tribunal of competent jurisdiction ordering the City not to comply with the RFI pending final determination of NVF's protest of the RFI. NVF further agrees to accept the City's tender of defense and to defend and indemnify the City in any litigation brought against the City by a third party making an RFI with respect to the City not complying with an RFI if and to the extent the reason for the non-compliance was the City's reliance on NVF's protest to the RFI or assertion that the documentation is NVF's trade secret information or is otherwise exempt from disclosure. Such indemnity will cover attorneys' fees for defense counsel, damages, fines, judgments, or administrative penalties, which may arise from any such actions.

## **2. Termination**

Either party may terminate this MOU upon thirty [30] days notice to the other party.

## **3. Bankruptcy**

***Bankruptcy.*** Either party may immediately terminate this MOU if (i) the other party files a petition for bankruptcy or has filed against it an involuntary petition for bankruptcy which is not dismissed within 60 days of its filing, (ii) a court has appointed a receiver, trustee, liquidator or custodian of it or of all or a substantial part of the other party's property, (iii) the other party becomes unable, or admits in writing its inability, to pay its debts generally as they mature, or (iv) the other party makes a general assignment for the benefit of its or any of its creditors.

## **4. Assignment**

NVF shall not assign or otherwise transfer any rights, duties, obligations or interest in this MOU or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City, which shall not be unreasonably withheld, conditioned, or delayed 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. In the event that NVF assigns this MOU in compliance with this provision, this MOU and all of its provisions shall inure to the benefit of and become binding upon the parties and the successors and permitted assigns of the respective parties.

## **5. Publicity**

Any publicity generated by NVF for the project funded pursuant to this MOU shall require City's prior approval, during the term of this MOU and for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will

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 NVF to assist NVF in generating publicity for the project funded pursuant to this MOU. NVF further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

#### **6. Access**

Access to the City's premises by NVF shall be subject to the reasonable security and operational requirements of the City. To the extent that NVF's obligations under this MOU or any amendment thereof, require the performance of Services or Work by NVF on the City's property or property under the City's control, NVF agrees:

- a. to accept full responsibility for performing all Services or work in a safe manner so as not to jeopardize the safety of the City's personnel, property, or members of the general public; and
- b. to comply with and enforce all of the City's regulations, policies, and procedures including, without limitation, those with respect to security, access, safety and fire protection, the City's policy against sexual harassment, and all applicable state and municipal safety regulations, building codes or ordinances provided that the City delivers such policies to NVF in writing and in advance of any purported enforcement of the policies.

#### **7. Entire Understanding of the Parties**

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

#### **8. Modification**

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

**9. Notices**

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 of Oakland

Alexandria McBride  
Chief Resilience Officer  
Office of the City Administrator  
One Frank Ogawa Plaza 11<sup>th</sup> Floor  
Oakland, CA 94612

New Venture Fund

Lee Bodner, President  
1201 Connecticut Ave NW #300,  
Washington, DC 20036

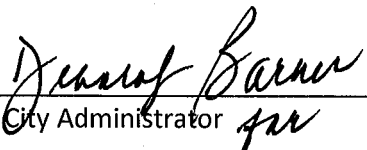
Any party to this MOU may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

**10. No Third Party Beneficiary**

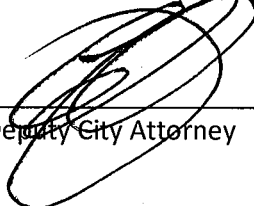
This MOU shall not be construed to be an MOU for the benefit of any third Party or parties, and no third party or parties shall have any claim or right of action under this MOU

IN WITNESS WHEREOF, the parties hereto have executed this agreement on 7/19, 2019.


**City of Oakland,**  
a municipal corporation

By:   
City Administrator *JB*

Approved as to form and legality:

By:   
Deputy City Attorney

**New Venture Fund**

By:   
Kathleen Flynn (Jul 24, 2019)

Name: Kathleen Flynn

Title: Compliance Officer

## **Schedule A – SCOPE OF SERVICES**

Under the guidance of The City of Oakland's Chief Resilience Officer and as outlined in Administrative Instruction 182, the Civic Design Lab engages community stakeholders and City staff on specific design projects and processes. Projects are selected, updated and maintained through the process outlined in Administrative Instruction 182. CDL services include, but are not limited to, report generation, content review, public surveys, individual interviews, process mapping, community workshops, policy design, policy workshops and training.