

CITY OF OAKLAND

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OFFICE OF THE CITY CLERK  
OAKLAND

2018 AUG 31 AM 8:43

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Katano Kasaine  
Director of Finance

**SUBJECT:** Public Bank Feasibility Study  
Prepared by Global Investment  
Company

**DATE:** August 20, 2018

City Administrator Approval

Date:

8/30/18

## RECOMMENDATION

**Staff Recommends That The City Council Receive An Informational Report On The Multi-Jurisdictional Public Bank Feasibility Study Prepared by Global Investment Company (GIC).**

## EXECUTIVE SUMMARY

The attached study titled, "Multi-Jurisdictional Public Bank Feasibility Study" (**Attachment A**) was prepared in response to the City Council's request for a feasibility and economic impact analysis of establishing a public bank in the City of Oakland ("City"). This study, which was prepared by Global Investment Company ("GIC"), addresses the requirements for establishing a public bank, assesses the ability of a public bank to provide community benefit lending, and analyzes the capability of a public bank to handle cannabis business deposits. City staff along with other participating local governments including the City of Berkeley, City of Richmond, and County of Alameda (collectively referred to as the "Local Municipalities") provided guidance, feedbacks, and questions to GIC to be considered and analyzed in the final study.

Although the study concludes that a public bank *could* provide solutions to unmet financial needs for communities. It does not provide the key answers proposed by the Request for Proposal (RFP) and does not address the requirements of the Statement of Work (SOW) or provide a roadmap detailing the steps and timeline of setting up a public bank. Additionally, the study leaves the City with more questions than answers as it relates to the establishment of a public bank.

## BACKGROUND / LEGISLATIVE HISTORY

On November 29, 2016, the City Council adopted a resolution directing the City Administrator to prepare an informational report with the cost estimates of commissioning a study analyzing the feasibility and economic impact of establishing a public bank for the City of Oakland, and providing funding options for the feasibility study (**Attachment B**).

Item: 4

Finance and Management Committee  
September 11, 2018

Staff met with representatives of the Friends of the Public Bank of Oakland to solicit their input and discussed next steps regarding a feasibility study. The Treasury Bureau issued a Request for Qualifications (RFQ) on February 3, 2017 seeking qualified individuals or firms to conduct a Feasibility Study of Public Banking for the City of Oakland (**Attachment C**). The RFQ scope of services focuses on a preliminary comparison of the City's current banking model (including the benefits and risks of current banking practices) with other models, particularly public banking across the nation. Staff provided an update to the Finance and Management Committee on February 28, 2017 on the status of the RFQ process.

On April 25, 2017, staff presented the results of the RFQ process and the cost estimates to commission a feasibility study for the creation of a public bank and analysis of funding options. Only two firms submitted responses to the RFQ, Global Investment Company and PFM Financial Advisors, LLC. The firms were evaluated based on the criteria listed in the RFQ. Also, the report recommended City Council consider appropriating such expenditures (\$100,000) as part of the proposed FY2017-19 Proposed Policy Budget instead of FY 2016-17 Midcycle Budget.

On June 13, 2017, staff presented a supplemental report to the April 25, 2017 Finance and Management Committee providing additional details on the proposed scope of work and budget, as well as the feasibility for a regional approach to a public bank. Staff reached out to the following cities:

1. City and County of San Francisco
2. City of Hay ward
3. City of Santa Rosa
4. City of Berkeley
5. City of Emeryville
6. City of Richmond

Based on a more thorough analysis and outreach, staff recommended against moving forward with the feasibility study. Rather, staff recommended that the City continue to monitor the developments of the City and County of San Francisco's Municipal Public Bank Task Force.

On July 18, 2017, staff presented a supplemental report at the June 20, 2017 City Council meeting. Staff was directed to return to City Council with information about the cannabis industry and other neighboring cities' willingness to contribute funds to the feasibility study for a multi-jurisdictional public bank. Staff reached out to the neighboring cities and inquired if they were willing to participate and contribute funding to complete a feasibility study for a multi-jurisdictional public bank. To date, the City has received a total of \$58,200 in donations to pay for the public bank feasibility study (County of Alameda: \$25,000, City of Berkeley: \$25,000, City of Richmond: \$5,000 and Others: \$3,200).

On June 29, 2017, the City Council approved the Fiscal Year 2017-2019 Budget, which included \$75,000 for the public bank feasibility study. On September 19, 2018, City Council adopted Resolution No. 86905 approving the contract with GIC to complete a feasibility study for a public bank.

## **ANALYSIS**

The City, together with the Local Municipalities, requested a feasibility study to assess whether a publicly owned bank could: 1) help finance community projects, 2) reduce risks in existing financial markets, and 3) provide better financial returns on public investments.

At a minimum, the feasibility study shall include major components of a public bank that addresses the general banking requirements, the ability to provide community benefit lending and the ability to handle cannabis business deposits. The study would also include the costs and governance structures as well as provide the benefits and risks to establishing a public bank under each of the three public banking options. **In addition, GIC was to provide a comprehensive summary of why this structure is feasible or not.** If so, provide a timeline for implementation – from approval of concept to market readiness. Based on the Statement of Work (“SOW”) (**Attachment D**), the feasibility study was to specifically:

1. Research the feasibility of public bank options, including:
  - a. Public banking for municipalities, which require full service depository banking and related structures (sweep accounts, lockbox, targeted balance, etc.);
  - b. Unbanked and cannabis industry considerations; and,
  - c. Community reinvestment and lending (small business lending, consumer loans, etc.).
2. Interview stakeholders.
3. Provide a detailed case study.
4. Develop a cost analysis for each option considered.
5. Assess next steps concerning implementation.

The Local Municipalities met regularly with GIC to provide information, data and input throughout the process. Staff assisted GIC with coordinating and providing meeting locations to host various focus groups for stakeholder input. These groups included:

1. Citizen’s Focus Group
2. Cannabis Industry Focus Group
3. Small Business Focus Group
4. Treasurer’s Focus Group
5. Finance and Banking Focus Group

The Multi-Jurisdictional Public Bank Feasibility Study prepared by GIC dated June 15, 2018 attempts to address two stated goals:

- Can a public bank provide solutions to the unmet financial needs of Bay Area households, businesses, and governments?
- Can such an institution provide banking services to the cannabis industry?

The Local Municipalities reviewed the Multi-Jurisdictional Public Bank Feasibility Study. The parties agreed that the study **did not** adequately address the main objective of the study in answering, “Is a public bank feasible?” The study states that public banking **is** feasible, but lacks supporting details. For example, the study does not provide an analysis of the key steps to setting up the public bank and required capitalization. Contradictory information is also

presented throughout the study that is counter to the high-level goals of a public bank. **Taken comprehensively, these considerations indicate that a public bank is not feasible at this time.**

The below table are a compilation of comments/questions from the Local Municipalities which includes quotations from the study that the Local Municipalities found unclear and need further clarification and detail:

LEGAL/REGULATION	
	<ol style="list-style-type: none"> <li data-bbox="544 520 1404 976">1. "Our state legislature could create a public bank charter that eliminates the need for FDIC insurance, and it could also simultaneously address impediments in state law with regard to deposits by municipalities into the public bank as a non-FDIC insured institution."; "Interested municipalities may want to pursue the possibility of using a public bank for all transactions other than those requiring the use of payment systems."; Access to the Automated Clearing House (ACH) is a need of many, if not all, municipalities to support the electronic payments aspects of their banking business. Access to ACH/EPN services is governed by federal regulations . . . the impediment of non-eligibility of a participating entity for ACH access would remain." (Page 12)</li> <li data-bbox="544 1039 1404 1207">2. If municipalities own the public bank, they would be . . . looked to by federal regulators as a source of financial strength, meaning the municipalities have proven their ability to provide financial assistance to the bank in the event of financial need." (Page 15)</li> <li data-bbox="544 1270 1404 1417">3. "The City of Oakland or other entities may wish to alter their charter to further preserve social responsibility requirements for a public bank, but that is still not a guarantee that it will stay the course." (Page 16)</li> <li data-bbox="544 1480 1404 1795">4. "The fact that a municipality has charter status . . . does not protect it from the reach of state law. . . If . . . municipalities were to decide to engage in investments via a public bank that the state deemed too risky, that could be a violation of state law. . . That fact suggests that, in considering capitalization, or investments in cannabis, or cannabis derived instruments, the public bank . . . could be deemed to be too risky for the City to conduct any business with such entities." (Page 18)</li> <li data-bbox="544 1816 1404 1848">5. The report did not identify institutions and steps needed to</li> </ol>

	<p>obtain regulatory approval for the establishment of a public bank. It should identify the challenges and how to resolve such challenges.</p> <p>6. The study did not provide a clear risk analysis on fiscal and legality or quantify the impact of the credit ratings of the participating Local municipalities.</p>
<p>STRUCTURE</p>	
	<ol style="list-style-type: none"> <li>1. The study provided Bank of North Dakota (BND), the only existing American public bank as an example. However, the study doesn't seem to address the difference between the BND (purely a wholesale bank) and the proposed Oakland Public Bank (retail bank/providing loans, etc.) nor does it address the difference in the history and economy between the period when the BND started (1930's) and the current period.</li> <li>2. The study did not address enough the differences between current governmental programs and creating a new institution, a public bank. There was minimal discussion on current government programs which deserved much more analysis. It seems like such an obvious issue, that a new proposed public institution needs to be justified on the premise that no existing institution is able to perform proposed activities. This was lacking.</li> <li>3. The study lays out the issues where this will be heading (Page 6): (1) Supporting local business needs and creating better services for residents; and (2) supporting needs of municipalities. (The study rejects the idea that the Public Bank should bank the cannabis industry, with which we agreed.) The first goal of the Public Bank appears to boil down to loans to students, prospective home owners and small businesses. It takes the study over dozens more pages to get back to these services: It begins to address these services on pages 27-29. The most detail finely appears on pages 37-41. But the feasibility never becomes clear: Is the study recommending the public bank to make loans or to sell asset-backed securities?</li> <li>4. In the PURPOSE section two goals are indicated – one in relation to social responsibility and the other related to the availability and affordability of loans for specific populations. Strategies indicated to meet the goals: do not address the social responsibility goal. (Page 9)</li> <li>5. The SOCIAL MISSION section provides no context explaining</li> </ol>

	<p>why the social mission of the public bank would need to be mandated, nor does it provide any insight as to the factors that may lead the public bank to stray off “course.” (Page 16)</p> <ol style="list-style-type: none"> <li>6. The section does not make a strong argument as to how a public bank (as opposed to a private bank) would better serve or reflect to core values of the Local municipalities and their communities. Later in the document (in the section entitled THE NEED FOR A PUBLIC BANK AS A FINANCIAL ENTERPRISE) social concerns are addressed, but there is no link between it and the SOCIAL MISSION section. (Page 25)</li> <li>7. The referenced to “the federal level of antagonism toward some core values...” is a highly subjective statement that lacks supporting documentation (in the document). It is recommended that the reference be deleted and replaced with references to and examples of the stated and published core values of the Local municipalities with footnotes/hyperlinks to adopted resolutions, ordinances or municipal codes. (Page 16)</li> <li>8. A discussion of whether or not a Public Bank could become a municipal bank is hardly addressed; how many accounts would be needed? what are the costs? what is account analysis? etc.</li> <li>9. The study seems to suggest the bank would not be able to secure FDIC insurance. It is suggested the State might be willing to guarantee deposits. Did GIC speak to anyone at the State to assess the possibility the State would do so? Who? What did they find?</li> <li>10. Explain why private equity investors in the bank would give up control to the public agencies, even though the public agencies haven't put up any equity? Or would they require a matching equity investment from the public agencies?</li> <li>11. What would be the credit rating(s) for the public bank?</li> </ol>
CAPITAL	
	<ol style="list-style-type: none"> <li>1. “For municipalities to invest in the public bank, one source of funds could be a one-time appropriation from the General Fund. Another possibility could be to use investment reserves.” (Page 17)</li> <li>2. “...reasons why a public bank, in particular, needs scale. One is that a larger bank is better able to diversity and mange risks.” The study indicates that it would require a minimum</li> </ol>

	<p>capital of \$30-50 million to start a new public bank. If scale matters, how would the public bank sustain its operations long-term? What is the average capital need for larger banks? (Page 45)</p> <p>3. The study acknowledges it is not a wise idea for the sponsoring governments to provide the equity capital for the bank. The study suggests the bank could be capitalized with larger "impact investor" who are looking for more than purely financial returns. Did GIC speak to potential investors? Who? What did they learn? What would be their minimal expectations of financial returns? Would that be consistent with the concept of a public bank whose mission is made possible because it doesn't need to return a profit to shareholders? (Page 46)</p> <p>4. The section "Capitalization", the study suggests issuing bonds, corporate debt, and private placement. What would be the source of re-payment for such debt? How much would that the costs? Also, it listed some public funds (i.e., employee pension, rainy day fund, affordable housing, revolving loans) that could be invested as capital, how does that fit into the "prudent investor standard" when scale matters as referenced in the study and wouldn't that contradicts the strategy of avoiding a large investment of existing public funds. What is considered large? When it comes to the investment of public funds, California state law holds all governing bodies of local agencies as well as municipalities, public and municipal corporations, and those who are authorized to invest on their behalf, ".....that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, <b>to safeguard the principal and maintain the liquidity needs of the agency.</b>" (Page 46)</p> <p>5. The study says the bank should invest in Treasury securities. It also says it should buy municipal bonds. Explain how doing so will enable the bank to increase lending to people and businesses who have difficulty getting loans from traditional banks. Where does the capital come from for such loans if the bank's funding is used to buy bonds?</p> <p>6. The study is confusing as to how the public funding can be funded. The Fintech Collaboration section does not provide information as to how this can possibly achieve the public banking capitalization it needs. Most of the concepts were introduced but there were not any language on the study that</p>
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	would provide the information as to how this can possibly happen.
OTHER KEY CONCERNS	
	<ol style="list-style-type: none"> <li>1. Possible solutions for the stated needs of a Public Bank aren't fully developed properly.</li> <li>2. The picture/graphic is unrelated to the subject of social responsibility in banking and is wholly inappropriate for a professional presentation paid for with public funds; one that may become part of the public record of all the Local municipalities. It must be removed and replaced with a related and appropriate graphic. (Page 17)</li> </ol>

**Status On Other Government's Effort To Establish A Public Bank:**

Based on staff's research and analysis, below are the status of other governments' efforts to establish a public bank.

*City of Santa Fe:* It should also be noted that the City of Santa Fe, New Mexico recent efforts to establish a public bank provides some insight. After completing a public bank feasibility study in 2016, a Santa Fe Public Task Force was created that published a final report dated April 17, 2018 and presented to the Santa Fe City Council on May 9, 2018. Its conclusions, as summarized in the report, suggest that the City of Santa Fe's financial infrastructure is not large enough to create a city-owned public bank, but that the benefits of public banking are sufficient to encourage the City to support consideration of a statewide public bank. More information and details about the City of Santa Fe's effort to establish a public bank can be found on the Banking on New Mexico, A Public Bank for Santa Fe, an initiative of WeArePeopleHere! website at <http://bankingonnewmexico.org/>.

*City of Los Angeles:* The City of Los Angeles brought forth a report dated February 26, 2018 on the feasibility, requirements, legislative barriers and potential models for establishment of a Municipal Bank of Los Angeles (MBLA). The report suggested that formation of MBLA under existing law and regulation would be a very difficult process, very costly, and would result in an institution that would not likely qualify to receive City business. Also, the inclusion of City funds in the formation of MBLA in the form of collateral, investment, or deposits, presents risk to the City. The City is obligated to ensure that taxpayer funds are carefully managed. However, should the City Council and Mayor wish to further consider the formation of MBLA, they would need to engaged specialized expertise in State and federal regulations to fully explore the details associated with the requirements to fund and operate a bank, including formation process and long-term operations. On June 29, 2018, the Mayor signed an ordinance to place a ballot measure on the November 6<sup>th</sup> election to amend the charter to allow for the creation of a city-run bank.



*City and County of San Francisco:* The City and County of San Francisco formed a Municipal Bank Feasibility Task Force (the "Task Force") to research the viability and advisability of a municipal bank as well as other opportunities to leverage the city's banking and investment practices to promote community goals. The formation of the Task Force was recommended by the Board of Supervisors to identify and pursue opportunities to extend access to credit for small businesses, provide banking services to the cannabis industry and expand capital for affordable housing. Based on the last meeting on June 28, 2018, the Task Force will publish a report and present it to the Board of Supervisor by December 2018. The goal of the report is to provide the Board of Supervisors and the public with a clear and concise analysis of the costs and benefits of a public bank. Also, the report will contain different models with specific costs by service level and formation type, as well as the procedural steps the Board of Supervisor and the public would need to proceed.

*State of California.* Senate Bill 930 (SB 930) was first introduced in January 25, 2018 that would allow financial institutions to offer limited banking services to the state's legal cannabis businesses. Under SB 930, the State of California would allow for the creation of limited-charter licenses for banks and credit unions overseen by the Department of Business Oversight, the state's financial regulator. The special-charter institutions would be allowed to issue special checks that could be used to pay state or local fees and taxes, rent on property associated with cannabis businesses and vendors of the pot businesses, or to buy state or local bonds or warrants. According to a legislative analysis, there are significant obstacles toward successful implementation of SB 930 as outlined below. On August 16, SB 930 was rejected and held in the Assembly committee.

- **Unresolved tax collection issues.** One of the stated reasons for SB 930 is to help these cannabis businesses pay their state and local taxes. However, it is unlikely local tax collectors will participate in this system. For one, under existing law local tax collectors cannot use a limited charter bank. Second, as a more practical matter, local tax collectors would still need to transfer money in their cannabis depository institutions (CDI) accounts to other financial institutions, which may require security and other personnel. Thus, this new system simply shifts the public safety issues associated with cash transactions to another point in the banking process.
- **Insurance.** This bill requires CDIs to obtain private insurance, a requirement that will be difficult to comply with and will add significant costs to participating CDIs. Typically, deposits at traditional banks and credit unions are insured by federal agencies with risk pooled across institutions and backed by the federal government. In contrast, a private entity willing to insure a CDI will likely charge high premiums given the risk associated with cannabis banking.
- **Federal law.** SB 930 does not guarantee that CDIs will be protected from federal law enforcement. As the Assembly Banking and Finance Committee analysis notes, one unfortunate side effect of this bill could be the concentration of cannabis business assets into one or several easily identifiable institutions, making them an easier target of federal law enforcement action.

## **Conclusion:**

The study is not clear and does not provide answers to the main question "Is a public bank feasible?" The study states that public banking *is* feasible, but the study never provided a clear roadmap, structure, or supporting data to support the assertion. Furthermore, the study does not provide an analysis of the key steps to setting up the public bank and required capitalization. In addition, contradictions are embedded throughout the study that appear to counter the goals of the Local Municipalities and further indicates a public bank, owned by the municipalities, is not feasible at this time. **Therefore, staff does not that recommend the City spend additional public funds on the feasibility study at this time.**

Staff further recommends that the City's Finance Department continue to monitor the development of other governments' efforts and evaluate the continued development of their efforts and return to the City Council when there is successful establishment of a public bank. Again, some of the government agencies the City will continue to follow will be:

- *City of Santa Fe.* Establishment of a statewide public bank in which Santa Fe could participate.
- *City of Los Angeles.* The result of the ballot measure in November election amending the charter to allow for the creation of a city-run bank.
- *City and County of San Francisco.* The City and County of San Francisco Task Force final report which will include an analysis of the costs and benefits of a public bank (December 2018).

## **FISCAL IMPACT**

This item is for informational purposes only and does not have a direct fiscal impact or cost. The contract with GIC is in the amount of \$98,900. To date, the City has received a total of \$58,200 in donations to pay for a public bank feasibility study (County of Alameda: \$25,000, City of Berkeley: \$25,000, City of Richmond: \$5,000 and Others: \$3,200) and the City will pay the residual balance of \$40,700.

## **COORDINATION**

This report was prepared by the Treasury Bureau in coordination with the Finance Department.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** There are no economic opportunities associated with this item.

***Environmental:*** There are no environmental opportunities associated with this item.

***Social Equity:*** There are no social equity opportunities associated with this item.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that the City Council receive an informational report on the Public Bank Feasibility Study From Global Investment Company (GIC).

For questions regarding this report, please contact Katano Kasaine, Director of Finance, at (510) 238-2989.

Respectfully submitted,



Katano Kasaine  
Director of Finance, Finance Department

Reviewed by:  
David Jones, Treasury Administrator

Prepared by:  
Dawn Hort, Principal Financial Analyst  
Treasury Bureau

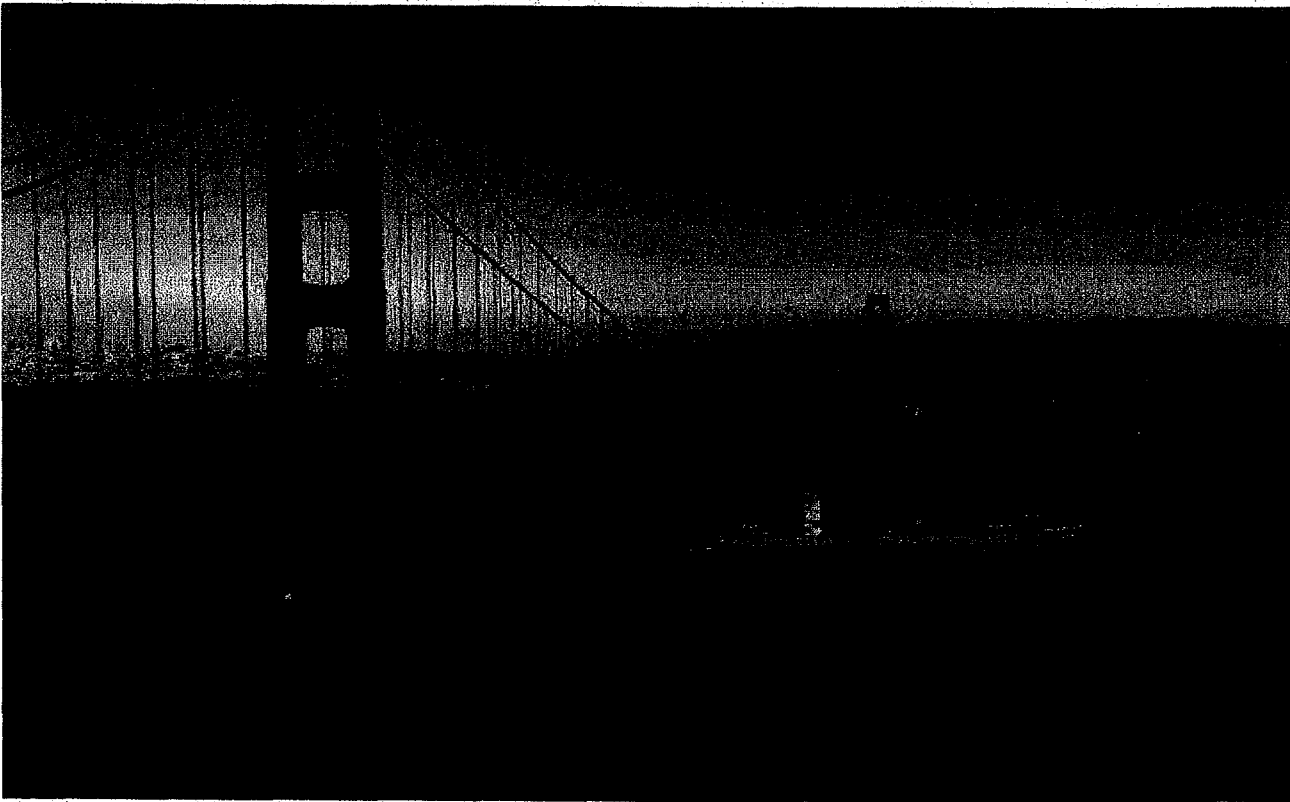
Attachments (1):

- A: Multi-Jurisdictional Public Bank Feasibility Study
- B: November 29, 2016 Finance & Management Committee Resolution
- C: Request for Qualifications (RFQ) – Feasibility Study of Public Banking
- D: Scope of Services (SOW)



2018 AUG 31 AM 8:43

# Multi-Jurisdictional Public Bank Feasibility Study



**The City of Oakland, City of Berkeley, City of Richmond, County of Alameda**

Prepared by: Global Investment Company

June 15, 2018

Confidential to the City of Oakland  
Submitted by: Global Investment Company  
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FINANCE & MANAGEMENT CMTTE  
SEP 11 2018

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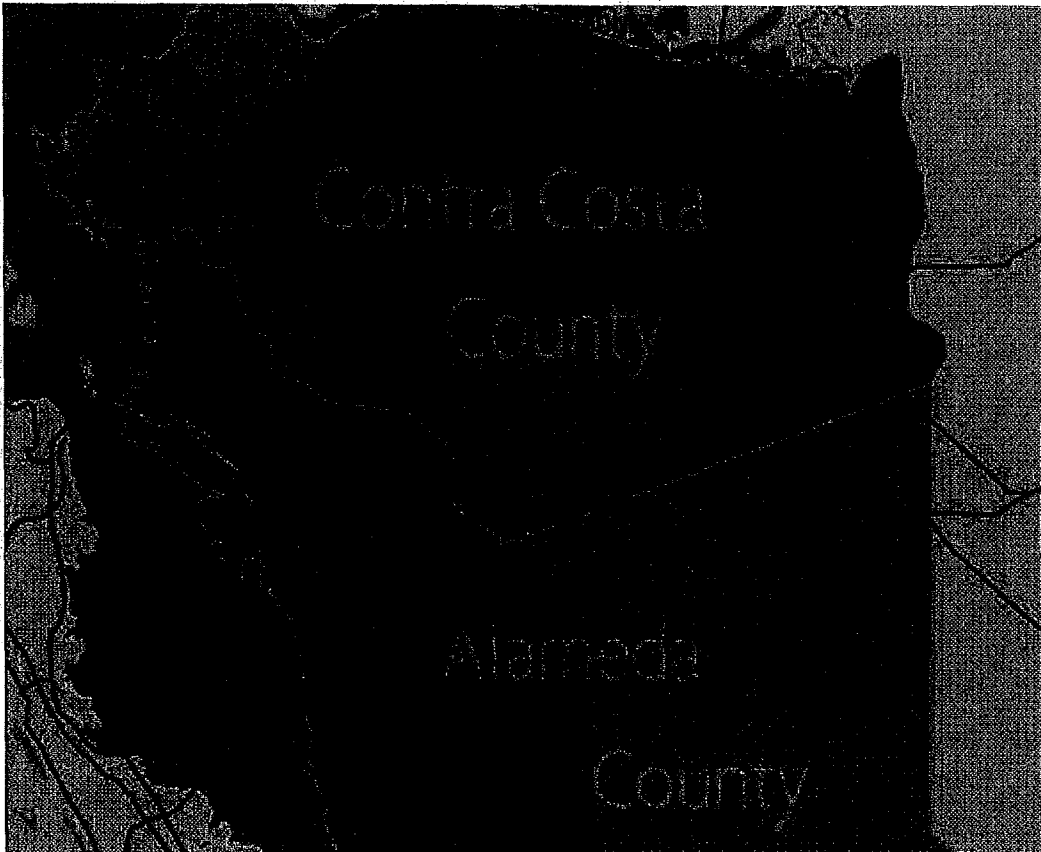
# THE NECESSITY OF PUBLIC BANKS

## INTRODUCTION

The City of Oakland, together with other neighboring jurisdictions, recognizes the **vital importance of financial institutions that serve society's emerging needs.**

The primary reasons for undertaking this feasibility study are to determine whether or not a public bank is feasible and to interview stakeholders. A public bank might offer viable ways to solve some the pressing financial challenges facing Bay Area communities.

## MAP OF JURISDICTIONS



Confidential to the City of Oakland

Submitted by: Global Investment Company

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## HISTORY

For the purposes of this document, the "Participating Governments" to the governments of the City of Oakland, City of Berkeley, City of Richmond, and the County of Alameda that have funded this feasibility study.

On November 26, 2016, demands by Oakland citizens and residents of other East Bay jurisdictions prompted the Oakland City Council to adopt a resolution (Resolution No. 86905) directing the City Administrator to prepare an informational report with cost estimates and funding options on the feasibility and economic impact of a public bank for or including the City of Oakland.

Subsequently, the Berkeley City Council authorized a financial contribution to the City of Oakland for the purpose of supporting Oakland's study. Shortly thereafter, the City of Richmond and the County of Alameda also approved support for the study. A consulting firm, Global Investment Company (GIC), was selected as the consultant to conduct the study.

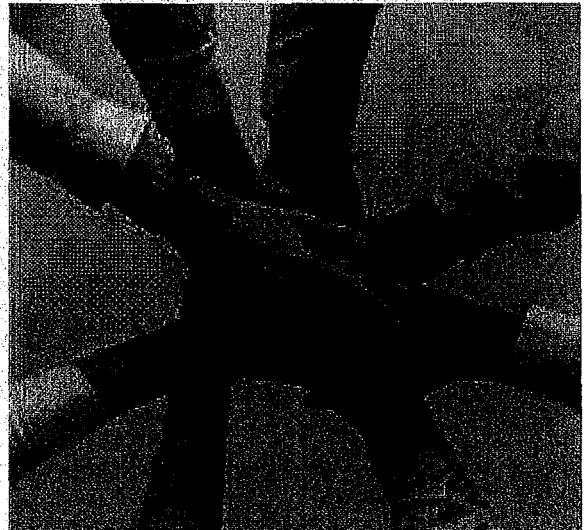
### **A Public Bank structure can support two of local government's stated goals:**

- Can a public bank provide solutions to the unmet financial needs of Bay Area households, businesses and governments?
- Can such an institution provide banking services to the cannabis industry?

## COMMON GOALS FOR A PUBLIC BANK

Common goals for a public bank as articulated by the City of Oakland and other interested municipalities for this study, as well as the Oakland City Council and interested community members are:

- To have an institution that exists specifically for the purposes of keeping local control of assets and investment choices.
- To have an institution that is focused on supporting local business needs and needs of municipalities for financial services that are well-priced.
- To have an institution that frees local residents and municipalities of using mainstream financial service providers as their primary source so as to create better services for residents and municipalities.



## METHODOLOGY

In conducting the study, Global Investment Company sought information from a variety of citizens, public officials and banking experts. This included city, county and state treasurers, citizens, affordable housing developers, banking and finance professionals, cannabis businesses and other small businesses. The greater majority of all of the respondents queried agreed that if a public bank were to be created they would support such an entity. This willingness to support a public bank, however, is not without conditions.

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To determine what sorts of services a public bank should offer and whether, given existing federal and state laws and competitive conditions within the banking industry, we conducted:

- Analyses of financial reports of participating governments to determine whether and how a public bank might offer more solutions to cash and debt management problems.
- An examination of the history and performance of the single public bank in the U.S., Bank of North Dakota, as well as public banks in other countries.
- Research to identify statutory, policy and regulatory constraints—at both the state and federal levels that might impede the successful organization and operation of a public bank.
- Discussions with banking and finance experts to identify important competitive factors and industry trends likely to affect the operation of a public bank.

## EXECUTIVE SUMMARY

### ESTABLISHING A PUBLIC BANK

Formation of a public bank is feasible with few to no regulatory changes.

A public bank could be formed as a nationally chartered entity, subject to the oversight of the Office of the Comptroller of the Currency, or as a California State chartered entity, subject to the oversight of the California State Department of Business Oversight, Department of Financial Institutions Division.

There are several advantages to a California Public Bank Charter. Ownership and control of a public bank may be achieved through a bank holding company. California's Joint Exercise of Powers Act (JEPA) permits two or more public agencies to agree to jointly exercise powers common to each entity. The mission can be mandated legally. However, California law may limit the ability of a public bank to make cannabis-related investments.

Participating members have combined a \$3.3 Billion in cash and investments at any given time. The financial resources exist to establish and maintain a multi-jurisdiction public bank. Furthermore, "integrated partners" might consider making deposits into a regional bank, if it were to exist and offered competitive rates. Participating members want to gain their independence from big banks and investment firms, as mandated by directives. It can take time and is a complex process. Yet, the potential for jurisdictions within the region to pool resources together, in a central bank could be an opportunity for the East Bay and neighboring jurisdictions. A centralized approach creates opportunity to better circulate dollars needed to impact communities key credit access problems a bank could help address. Therefore, each participating member must determine if public will exist to make a public bank happen. In addition, municipalities much consider the cost, time and staff efforts associated with transitioning to a new bank.

Building and financing the bank requires sources of capital, management and a transition plan. The bank must grow to an acceptable scale in order for participating members to want to transition bank services. The city of Oakland, for example, is looking to divest from current banking contracts within the next five to seven years based on recent city council meetings. Debundling services and accounts is a strategy currently being utilized by Berkeley and Oakland in order to

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achieve independence from the big banks. Both of these cities have debundled their armored car and card services. Alameda County will be issuing a RFP for Banking Services in 2019.

In the event participating members decide to move forward with issuing a Request for Proposal (RFP) to create a business plan for implementation of a public bank, it is expected the transition time to a public bank to be 12-18 months. Innovative strategies and programs, such as, Bank Intermediaries (BIN's) could offer a wholesale bank long term lending partners and a source for deposits. A loan loss reserve could assist with risk management when considering lending policies for the BIN's (i.e. Bank Intermediaries Network.) as well as a Secured Letter of Credit Program to assist with financing.

A social mission is necessary to serve small business, the underserved and to further address the underlying issues of cities and counties related to public benefit. In order for the bank to not stray "off" course, the public bank's mission could be built into the bank charter, investment policy and governance policies.

An East Bay Regional Bank's access to low cost money will keep participating governments' borrowing costs to a minimum, reversing recent increases in debt service costs. This lower cost approach to banking will provide a stronger bottom line to the owners because of reduced debt service costs. Even more important, a public bank will be their asset that appreciates with every interest payment they make. The increase of affordable credit will make existing government institutions more effective and responsive. Consolidation of accounts will provide finance directors with a more comprehensive -- and convenient -- way for cash management and accounting.

## LIABILITY

Separate and apart from legal requirements related to investment in a public bank and its lines of business is the question of liability for the City of Oakland and other entities that may wish to participate in the formation of a public bank.

### Holding Company

One structure for shielding localities from liability which we have examined is the use of a JPA for the purpose of forming a public bank, a holding company for that bank, or both.

## PURPOSE

The primary impetus behind the public banking movement is that major private banks sometimes do a poor job of providing needed services or tend to operate in a manner injurious to the public interest. The purpose of a public bank then is to offer an alternative to these banks. The section examines the question: *Can a public bank offer service that is inadequately provided by large banks and in doing so become a viable institution?*

**In general, commercial banks<sup>1</sup> provide households, businesses and government agencies three services:**

- *Deposit services* that offer their customers a safe repository for money in the form of Federally-insured demand and time deposit accounts.

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<sup>1</sup> Wholesale banking refers to banking services between merchant banks and other financial institutions. This type of banking deals with larger clients, such as large corporations and other banks whereas retail banking focuses more on individual or small business. Wikipedia.

- *Payment services* that provide means for customers to transfer money to each other, mainly with checks, credit cards and debit cards.
- *Credit services* that provide loans, leases and other forms of financing.

**In furtherance of the interests of Oakland, Berkeley, Richmond and Alameda County, a public bank might pursue two goals:**

- To provide local governments a “socially responsible” source of deposit, and payment and credit services, thus reducing their dependence on large banks.
- To increase the availability and affordability of student, mortgage and business loans in the Bay Area.

**To achieve these two goals, the public bank should adopt the following strategies:**

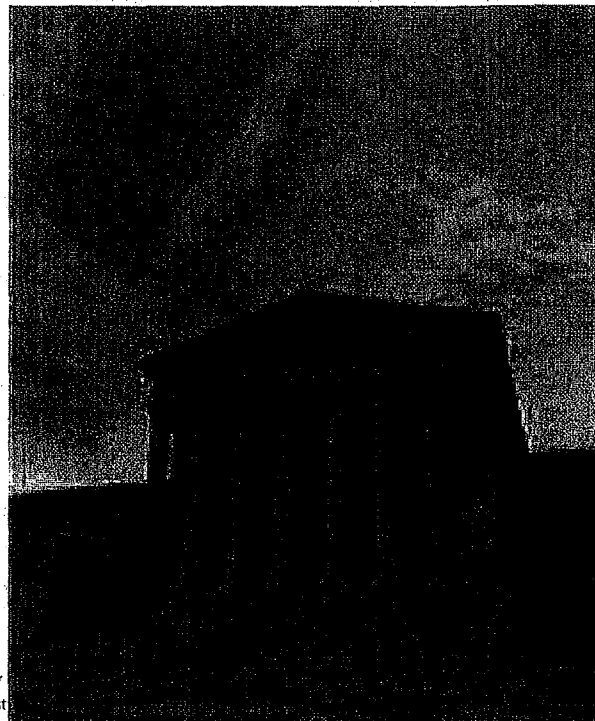
- Purchase and participate in mortgages, small business and student loans originated by community banks and/or CDFIs (Community Development Financial Institutions).
- Use a “deposit sharing” program to allow the public bank to secure significant amounts of deposit funding from participating governments.

## LEGAL AND REGULATORY ISSUES OF ESTABLISHING A PUBLIC BANK

### FORMATION IS FEASIBLE

**Formation of a public bank is feasible with few to no regulatory changes**

A public bank could be formed as a nationally chartered entity, subject to the oversight of the Office of the Comptroller of the Currency, or as a California State chartered entity, subject to the oversight of the California State Department of Business Oversight, Department of Financial Institutions Division. Regardless of whether a charter is state or federal, there will be other ways in which state or federal laws could and will affect the day to day operations and oversight of a public bank. Deposit insurance is one key element. Most state-chartered entities, as well as federally chartered, rely on the Federal Deposit Insurance Corporation (FDIC) for that service. Another element of concern is access to Automated Clearing House (ACH) or EPN services, which would be necessary to serve some of the types of needs, identified by the City of



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Oakland and other interested municipalities, as necessary for handling particular elements of the municipalities' financial needs.

Obtaining a state or national charter as a bank has some common themes. The chartering entity would review the quality of the business plan developed, evaluating its strength based on the reasonableness and achievability of its business objectives, whether those objectives fall within legal lines of business that can be authorized under a given charter, the quality and experience of proposed management, capitalization levels and sources of capital. Over time as regulators engage in oversight, which is typically frequent and extensive, regulators will review how much the newly formed entity has deviated from its business plan, if at all, and why, and whether it is hitting its key financial benchmarks.

Formation of a holding company as step one towards the formation of a public bank may make sense as a way of accelerating the ability to provide at least some services for which municipalities rely on mainstream banks, and as a structure for ownership of the public bank. Types of transactions that a bank holding company can engage in include, but are not limited to financial data processing, money transmittal and government securities underwriting.

The bank holding company could be formed as a municipal corporation in its own right that would then own the public bank. By establishing this type of structure, it is the holding company that would be subject to capitalization requirements established under the Basel Accords that have also been adopted by the FDIC.<sup>2</sup> The holding company would then have to be a member of the Federal Reserve System. Below, we will discuss ownership and internal governance further.

Alternatively, to avoid the time and effort necessary to establish a new bank charter, the City of Oakland and interested municipalities may want to consider purchase of an existing bank that could serve public bank purposes. Other advantages to purchase of an existing bank could include an established data system, trained staff, and other internal infrastructure that is experienced with and prepared to engage in banking activities and necessary reporting. The bank's charter may need to be tailored to meet the public bank's goals, and modifications would then require regulatory approval. It may be possible to acquire a bank with a broad enough charter, however, to not require charter modification but to require only restructuring of the business plan of the bank, which would also require regulatory approval.

## CHARTERING UNDER EXISTING LAW

### **A public bank can be chartered under existing California law.**

California does not have a specific "public bank" designation, but none is required for a state-chartered bank to be formed that could serve some or all of the goals articulated by the City of Oakland and other municipalities for their financial services' needs. **A state-chartered public bank could operate under a Commercial Bank Charter.**

Upon receiving an application for a Commercial Bank Charter, the Commissioner of the California Department of Business Oversight has wide discretion in granting or denying the charter.<sup>3</sup> The Commissioner is responsible for making

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<sup>2</sup> Beitel, Karl *The Municipal Bank: Compliance, Capitalization, Liquidity, and Risk*, (July, 2016), Roosevelt Institute at <http://rooseveltinstitute.org/municipal-bank-regulatory-compliance-capitalization-liquidity-and-risk/>

<sup>3</sup> See Cal. Code Regs. tit. 10, §§ 10.3159, 10.3160; See also, California Department of Business Oversight, *Guide for Groups Interested in Chartering a State Bank in California*, <http://www.dbo.ca.gov/cacharter/guide.asp>. See also Cal. Fin. Code §§99 et seq.

decisions as to whether to approve each application and will not approve an application until he or she has ascertained that:

- the public convenience and advantage will be promoted by the establishment of the proposed bank:
- the proposed bank will have a reasonable promise of successful operation
- the bank is being formed for no other purpose than the legitimate objects contemplated
- the proposed capital structure is adequate
- the proposed officers and directors have sufficient banking experience, ability and standing to afford reasonable promise of successful operation
- the name of the proposed bank does not resemble, so closely as to be likely to cause confusion, the name of any other bank or trust company transacting business in California or which had previously enacted business in California
- the applicant has complied with all of the applicable provisions.<sup>4</sup>

We want to note that a **credit union structure is also possible, though we do not see advantages.** The amount of time required for formation would be similar to a bank, and the same capitalization, collateral quality, deposit insurance and access to payment systems concerns would remain.

One of the challenges to a credit union model is the requirement that there be a common bond amongst members, and a suggested floor of 500 members. Though it is easy to imagine 500 municipalities in California wanting, ultimately, to participate, the time spent in assuring there is a common set of goals may delay formation. The State Department of Business Oversight (DBO) has previously interpreted the 500 members as a minimum.

Again it is not clear that there are advantages to the City of Oakland in formation of a public bank as a credit union. If one of the goals of a public bank is to be structured such that it is not directly supervised by a federal regulator, then a California State chartered credit union structure offers the possibility that our state DBO could approve use of private deposit insurance (there is only one insurer nationally who might be available—American Share Insurance), but there is no guaranty that DBO would find the insurance adequate. In addition, to the extent that some of the City of Oakland's business needs require access to the national electronic payment systems which, in turn, requires FDIC insurance, this requirement eliminates the possible state-chartered credit union advantage of potentially utilizing private instead of NCUA insurance. Credit Unions use the same exact ACH network.

## **ADVANTAGES VS. A COMMERCIAL BANK**

**A California Public Bank Charter could have advantages over use of the existing Commercial Bank Charter.**

It is not legally necessary to have a new California law or regulatory framework for the formation of a bank to serve public banking purposes. However, there could be advantages to having a specific public bank charter authorized at the state level if that charter addresses some of the capitalization and deposit insurance concerns with which a public bank

<sup>4</sup> See Cal. Fin. Code, §1023.

formed under our state's existing commercial bank charter would have to comply. Our state legislature could create a public bank charter that eliminates the need for FDIC insurance, and it could also simultaneously address impediments in state law with regard to deposits by municipalities into the public bank as a non-FDIC insured institution. If the state were to move in this direction, however, the state would, ideally, facilitate access to an alternative deposit insurance structure (perhaps creating a state insurance structure or bringing in a significant new private insurance structure) that could be a viable alternative. The safety and soundness needs for localities and for the state necessitate a strong insurance structure.<sup>5</sup>

An alternative deposit insurance resource does not automatically cure the problem of needing FDIC insurance for access to electronic payment systems, however. We would encourage working with the state to engage our local Federal Reserve System in a discussion regarding whether an alternative insurance system could be used to support access to the system for electronic payments purposes. Alternatively, the City of Oakland and interested municipalities may want to pursue the possibility of using a public bank for all transactions other than those requiring the use of payment systems.<sup>6</sup>

## ACCESS TO ACH

**Access to the Federal Reserve's payment system is essential to a public bank's success.**

Access to the Automated Clearing House (ACH) is a need of many if not all municipalities to support the electronic payments aspects of their banking business. Access to ACH services is governed by federal regulations<sup>7</sup> administered by The National Automated Clearing House Association (NACHA)'s ACH Rules. It appears that a financial institution that is not FDIC insured may be, technically, eligible for use of the system, however, only if it could be deemed eligible for FDIC membership.<sup>8</sup> Even if the State of California develops an alternative, state run deposits insurance entity, the impediment of non-eligibility of a participating entity for ACH access would remain. We are not sure whether private payments systems, such as Paymode-X, currently used by some municipalities as a vendor payment system, could be a viable alternative. We believe engaging our base of local financial technology (fintech) companies to address the payments systems concerns is a critically important next step for fully assessing options for the handling of this element of municipal financial needs.

## USE OF A HOLDING COMPANY

**Ownership and control of a public bank might be achieved through a bank holding company.**

For purposes of ownership structure and to be able to more quickly roll out at least some services that the City of Oakland and other municipalities have prioritized in authorizing this feasibility study,



<sup>5</sup> See CA Gov't Code, Sec: 53600.3

<sup>6</sup> <http://www.gfoa.org/sites/default/files/BankingServicesAGuideForGovernments.pdf>, Exhibit 2.0, pg. 23

<sup>7</sup> See 31 CFR Part 210.

<sup>8</sup> The legality at the federal level of the types of deposits accepted by the public bank, such as cannabis related deposits, would probably affect a finding of whether or not the institution could be deemed eligible for FDIC membership.

Confidential to the City of Oakland

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formation of a bank holding company is a possibility. Downsides are the extent of federal regulation and duplication of oversight. Bank holding companies are federally regulated and are required to register with the Board of Governors of the Federal Reserve System.<sup>9</sup> A holding company would need to have its own business plan, and board of directors, separate and apart from the public bank, and it would need to register with the Securities Exchange Commission. Most banks with a smaller asset size are owned by a holding company. A problem for use of a Bank Holding Company structure, however, is a specific federal prohibition on having either a direct government investor or a corporate investor that is majority owned by a state.<sup>10</sup>

California state law also has its own regulations pertaining to bank holding companies and is written broadly to declare that any person or company (municipalities would probably be included) which directly or indirectly owns, controls or has power over 10% or more of bank stock in California or even indirectly has power or a controlling influence over the entity, is subject to State DBO oversight.<sup>11</sup> If a bank holding company were still deemed to be desirable, then it would be advisable for the City of Oakland to verify with State DBO whether it would be subject to examination as a bank holding company and, if so, what type of oversight and examinations it could expect.

## PROTECTING MUNICIPAL ORGANIZERS WITH A JPA

**A Joint Powers Authority (JPA) should be considered as a way of protecting municipal organizers of the bank from legal risk.**

Separate and apart from legal requirements related to investment in a public bank and its lines of business is the question of liability for the City of Oakland and other entities that may wish to participate in public bank formation. One structure for shielding localities from liability which we have examined is the use of a JPA for formation purposes of a public bank, a holding company for that bank, or both.

California's Joint Exercise of Powers Act (JEPA), at CA Gov't Code, Section 6500.1, et seq. permits two or more public agencies to agree to jointly exercise powers common to each entity. The entities do not need to be located in the same geographic area.<sup>12</sup> The JEPA provides a procedure for creation of an entity separate from the parties to the agreement.<sup>13</sup> It also specifies that the parties to the agreement may help fund the purpose agreed upon by the parties, as follows:<sup>14</sup>

*"The parties to the agreement may provide that (a) contributions from the treasuries may be made for the purpose set forth in the agreement, (b) payments of public funds may be made to defray the cost of such purpose, (c) advances of*

<sup>9</sup> See Bank Holding Company Act of 1956 (12 U.S.C. § 1841(a)(2)(A), and Regulation Y.

<sup>10</sup> *Id.*

<sup>11</sup> See CA Fin. Code, §§1280 et seq.

<sup>12</sup> See CA Gov't code, Sec. 6502.

<sup>13</sup> See CA Gov't code, Sec. 6503.5.

<sup>14</sup> See CA Gov't code, Sec. 6504. All funds would, of course, have to be strictly accounted for and reported on carefully. See CA Gov't code, Sec. 6505.

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*public funds may be made for the purpose set forth in the agreement, such advances to be repaid as provided in said agreement, or (d) personnel, equipment or property of one or more of the parties to the agreement may be used in lieu of other contributions or advances. The funds may be paid to and disbursed by the agency or entity agreed upon, which may include a nonprofit corporation designated by the agreement to administer or execute the agreement for the parties to the agreement."*

**Thus, if the public bank, or a holding company for the institution, or both were structured as non-profits, funds could go directly to that non-profit to help pay for its function.** The above language is broad, without the restrictions on investments delineated in other parts of state law.

We are still investigating whether the JPEA language could be used to fund initial start-up costs of at least a bank holding company. Other regulatory requirements may make that difficult. The language would certainly not trump the more restrictive language regarding investments made by municipalities. The parties to the agreement would be required to designate a public officer or another officer (bonded) to have access to any property of the new entity or to have custody of new entities' resources and assures use of allocated funds in the ways to which parties have agreed.<sup>15</sup> Again, these requirements as written would seem on their face to create some challenges to use of funds for start-up costs for a municipal entity under a JPA. However, the terms of the act do specifically allow for the creation of a separate entity to serve the goals of the municipal parties, and that:

*"...if the agency is one of the parties to the agreement but is a public entity ... authorized, in its own name, to do any or all of the following: to make and enter contracts, or to employ agents and employees, or to acquire, construct, manage, maintain or operate any building, works or improvements, or to acquire, hold or dispose of property or to incur debts, liabilities or obligations, said agency shall have the power to sue and be sued in its own name."<sup>16</sup>*

Under the JPEA, the entity formed by the participating municipalities can, in turn, have the authority to invest monies of the entity that are not needed for day to day operations.<sup>17</sup> If the new entity is a non-profit corporation, its investment rights are delimited to those of the investing agencies.<sup>18</sup> In terms of the power of participating municipalities to govern or provide oversight through the JPA, the JPA is authorized to issue shares of beneficial interest to participating public agencies representing a proportionate interest in any securities that the JPA may own.<sup>19</sup>

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<sup>15</sup> See CA Gov't code, Sec. 6505.5.

<sup>16</sup> See CA Gov't code, Sec. 6508.

<sup>17</sup> See CA Gov't code, Sec. 6509.

<sup>18</sup> See CA Gov't code, Sec. 6505.5.

<sup>19</sup> See CA Gov't code, Sec. 6505.7. Note that there are additional requirements to be adhered to for compliance with this section.

In addition to the JPEA's clearly placing liability on the shoulders of the newly created entity, removing it from the shoulders of participating municipalities, JPAs may also be able to access insurance under one or more programs specific to ensuring such entities.<sup>20</sup>

There are examples of financing bodies in California that have been formed under a JPA, though not full-scale banks. One is the Golden State Finance Authority (GSFA), established in 1993 to support and provide affordable homeownership, which has functioned as an eleven county financial assistance program for homeowners and buyers in California. We have not had the opportunity yet to gather more information about its experience in having used the JPA to carry out its functions. Certainly, its functions are vastly limited compared to the type of operations that a public bank would carry out, and we are continuing our research on whether a JPA structure could make sense in the formation of a public bank by the City of Oakland and other interested municipalities.

**The City of Oakland is a charter city, which gives it advantages over non-charter cities in terms of its legal authority to create laws regarding "municipal affairs" that may conflict with state laws.** What is considered a municipal affair is partly a matter of definition under the California Constitution and partly decided on by way of precedent from litigation. Although California's Constitution does not define "municipal affair," it does list four categories that are deemed to be "municipal affairs." These are:

- regulation of the "city police force
- sub-government in all or part of a city
- conduct of city elections
- the manner in which . . . municipal officers [are] elected

Beyond this list, it is up to the courts to determine what is and is not a municipal affair.<sup>21</sup>

A JPA might shield localities from "Source of Strength" requirements. If a holding company owns the public bank, that holding company will be looked to as a source of financial strength for the bank. If municipalities own the public bank, they would certainly be looked to by federal regulators as a source of financial strength, meaning the municipalities have proven their ability to provide financial assistance to the bank in the event of financial need.<sup>22</sup> The FDIC could be a regulator of the public bank, even if state-chartered. The municipalities need to decide whether they want to form a state chartered bank or federally chartered. For a guide to basics of formation of a state bank, here's California's basic introduction: <http://www.dbo.ca.gov/cacharter/guide.asp>. The municipalities should work with their city attorney/county

<sup>20</sup> See services and programs of the California Joint Powers Insurance Authority at <https://cjpia.org/protection/coverage-programs>. A link to their members' agreement is available at [http://www.gsfahome.org/admin/resolutions/UNSIGNED\\_JPA\\_for\\_new\\_members.pdf](http://www.gsfahome.org/admin/resolutions/UNSIGNED_JPA_for_new_members.pdf)

<sup>21</sup> See Charter Cities, A Quick Summary for The Press and Researchers, at <https://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/Charter-Cities-A-Quick-Summary-for-the-Press-and-R>

<sup>22</sup> See 12 U.S. Code § 1831o-1 - Source of strength

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counsel offices to bring on any additional expertise necessary to complete forms and steps. Some of the challenges include establishing a public bank in a changing banking environment.<sup>23</sup>

## SOCIAL MISSION

### **The public bank's social mission can be mandated legally.**

A key component for the public bank is the maintenance of its purpose or mission.<sup>24</sup> The nature of the mechanisms used to preserve adherence to their stated mission stem in part from the type of institutional structure chosen. For an institution that is directly owned or managed by the City of Oakland and/or other municipalities, whether by way of a governing board or shares, the City could build social responsibility language into chartering documents, as well as into staff training, and any supervisory board or advisory board guidelines. Building in periodic public reports to participating local governments in open session may also help to preserve the mission of the entity, creating some transparency. The City of Oakland or other entities may wish to alter their charter to further preserve social responsibility requirements for a public bank, but that is still not a guarantee that it will stay on course. If the municipalities want to use their charters as an additional tool for trying to imbed a public purpose in the public bank, therefore, they might want to talk to their city attorney's office about adding language to their local charter to address that.

In light of the current climate at the federal level of antagonism towards some core values of the City of Oakland, Alameda, Richmond and Berkeley, which are also held by our state with regard to treatment of immigrants, the cannabis industry and other concerns, choosing a California state-charter and taking steps to limit federal regulation might be wise. Choosing to establish the bank as a Legal Benefit Corporation under California State law would further bake the public mission of the public bank into its formative documents.<sup>25</sup> Entities formed under this section must demonstrate to state regulators their commitment to whichever public benefit activities have been delineated in its incorporation materials.

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<sup>23</sup> See Appendix 16 - The Copernican Revolution in Banking.

<sup>24</sup> Appendix 12: A Social Mission: Divestment

<sup>25</sup> See CA Corp. Code, §§14600-14604.



## **MUNICIPALITIES CAN LEGALLY INVEST**

**Municipalities appear to have legal means to invest in a public bank.**

For municipalities to invest in the public bank, one source of funds could be a one-time appropriation from the General Fund. Municipalities could become stockholders in the public bank, and, if the bank offers common shares, then municipal investments will qualify as Tier I capital, which is particularly important for capital sufficiency regulatory requirements. Share owners would be entitled to any dividends distributed in an amount equivalent to their total shares held. State restrictions on investments are a concern and are enumerated below. It may be possible to create different share structures to encourage investment by local businesses and/or residents as well, without sacrificing the public mission of the entity.

## **LIMITS ON CANNABIS-RELATED INVESTMENTS**

**California law may limit the ability of a public bank to make cannabis-related investments.**

California state law provides that cities and counties may issue debt instruments as securities in which banks, fiduciaries and others can invest legally.<sup>26</sup> If localities or the State of California create a cannabis industry derived financial instrument (from streams of money from that industry), then a possibility to consider for the future is that a public bank could invest in those securities. One advantage to the public bank (and any other investor) in these securities is that such a debt instrument (including any transfer or income from the instrument) cannot be taxed by the state or by any municipality of our state.<sup>27</sup>

<sup>26</sup> (27) See CA Gov't Code, Sec. 53595.45

<sup>27</sup> (28) See CA Gov't Code, Sec. 53595.50

As with all other cannabis-derived funding streams, the problem remains that this is a Schedule I, Controlled Substance under Federal law,<sup>28</sup> and accepting funds from or making investments in an instrument derived from cannabis funds runs the risk of being deemed an investment in an illegal enterprise. Such a finding could trigger account freezing or seizure by federal authorities, despite California's having legalized recreational and medical use of cannabis. However, should the federal environment change, creating and or investing in such instruments could be an option to support capitalization of the public bank. Notably, some banks are beginning to take cannabis dollars despite the risk, though we do not advise that for the proposed public bank.<sup>29</sup>

## LIMITS ON RISKY INVESTMENTS

**State law also limits the extent to which municipalities can make investments considered to be risky.**

The State of California has embedded restrictions on investment by municipalities and public or municipal corporations in the Government Code, having specifically found that the solvency of localities (and/or particular departments in localities) is a matter of state interest.<sup>30</sup> As to matters of state interest, the fact that a municipality has charter status (like Oakland) does not protect it from the reach of state law on that particular matter. Thus, if, for example, the City of Oakland and/or partner municipalities were to decide to engage investments via a public bank that the state deemed to be too risky, that could be a violation of state law. That fact suggests that, in considering capitalization, or investments in cannabis, or cannabis derived instruments, the public bank, even if it is not closely related to the City of Oakland in terms of ownership or governance, could be deemed to be too risky for the City to conduct any business with such entities. We would suggest that the City discuss this concern with the appropriate offices of the State of California.

When it comes to the investment of public funds, California state law holds all governing bodies of local agencies as well as municipalities, public and municipal corporations, and those who are authorized to invest on their behalf, to the "prudent investor standard," as follows:

"...When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law."<sup>31</sup>

<sup>28</sup> (29) See 21 U.S.C. §802(32)(A), and 21 U.S.C. §813.

<sup>29</sup> For a quick summary of the current environment on cannabis acceptance by banks, see More Banks Are Welcoming Marijuana Businesses, Federal Data Shows (Jan. 2018), Forbes at <https://www.forbes.com/sites/tomangeli/2018/01/02/more-banks-welcome-marijuana-businesses-federal-data-shows/#6e9cfc727a64>.

<sup>30</sup> See CA Gov't Code, Secs: 53600 – 53610, and specifically Sec. 53600.6.

<sup>31</sup> See CA Gov't Code, Sec: 53600.3

Specifically, “[when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, the primary objective of a trustee shall be to safeguard the principal of the funds under its control. The secondary objective shall be to meet the liquidity needs of the depositor. The third objective shall be to achieve a return on the funds under its control.]”<sup>32</sup>

State law requires that investments by local agencies shall only be in “legal investments for savings banks in the State” unless, in the case of a county, there is a four-fifths vote by the board of supervisors to invest in something else.<sup>33</sup> Thus, a county could vote for an investment of its surplus in an alternative that is not a legal investment for a savings bank of the state. There is not a similar provision for cities. This raises another issue for discussion with appropriate State of California staff regarding whether or not there is a need to change this language at the state level to create an exemption of some kind for cannabis or other types of investments that are not presently legal investments. There is an additional set of state law requirements for “...all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies.”<sup>34</sup>

To the extent that the City of Oakland, Alameda County, Berkeley, Richmond or other interested localities or municipal agencies may consider pooling their money in deposits or investments, they should be aware of a specific set of California State Law restrictions with regard to investment in commercial paper, delimiting the amount of investment permissible.<sup>35</sup>

## STATE COMMUNITY INVESTMENT STANDARDS

### **A public bank will probably be subject to state community investment standards.**

Any public bank that is formed would have to meet additional restrictions in terms of community investment performance, which suggests that perhaps the City of Oakland and other interested municipalities would have to structure investment in the public bank at the start-up phase in a way that did not trigger this provision, or the City would want to discuss this provision with the State of California as another matter of law to be revamped. Municipalities and public corporations in California are also subject to a general restriction on where they can deposit any money in their custody, including a requirement that the depository entity has received a rating of “satisfactory” or better by its regulator as to its community investment performance in California.<sup>36</sup>

Given the wide variety of revenue streams or funds managed by the City of Oakland and other interested localities, we want to flag that particular types of monies may have restrictions particular to them. For example, the City of Oakland’s Charter sets forth the types of entities and instruments in which retirement funds can be invested by the Police and Fire Retirement Board. Although the charter provides that the list is not intended to be exclusive, the City may want to

<sup>32</sup> See CA Gov’t Code, Sec: 53600.5

<sup>33</sup> See CA Gov’t Code, Sec: 53602

<sup>34</sup> See CA Gov’t Code, Sec. 53601, referencing CA Gov’t Code, Sec. 53635.

<sup>35</sup> See CA Gov’t Code, Section 53635.

<sup>36</sup> See CA Gov’t Code, Section 53635.2.

consider the possibility of adding a provision that specifically permits investment in a public bank and/or that also addresses the issue of investment in cannabis or institutions that bank or otherwise handle cannabis funds.<sup>37</sup>

**FDIC INSURANCE**

**To accept municipal deposits, the public bank will probably need FDIC insurance.**

Another state restriction on investment may need to be addressed prior to or simultaneous to the formation of a public bank if the City of Oakland decides to proceed forward with that effort. Municipalities that have the authority at the local level to invest funds must invest at a nationally or state chartered financial institution, and all deposits made by the municipality at that institution **must be FDIC or National Credit Union Administration insured**, and are restricted to depositing 30% of the agency’s funds.<sup>38</sup> To the extent that a public bank formed would probably not qualify for FDIC insurance if cannabis-related businesses or investments were banked there, localities may want to explore with the state changing the current restriction under state law.

Please note that another California state restriction on municipal investments comes in the form of a requirement that municipal deposits above the FDIC insurance limit be collateralized.<sup>39</sup> How this collateralization takes place, or ways in which the state could support collateralization, should be part of the City of Oakland and other municipalities’ discussions with the state.

State law also contains a provision permitting deposits at a state or federal credit union guaranteed by the California Credit Union Share Guaranty Corporation, or insured per Section 14858 of the Financial Code provided no member or person with decision making authority at the agency also serves in a key role at that credit union.<sup>40</sup>

However, the CCUSGC dissolved some years ago. California Financial Code Section 14858 permits the Commission heading the Department of Business Oversight to decide that alternative forms of insurance are acceptable, at its discretion. This would seem to leave room for non-federal insurance, perhaps developed under the umbrella of the State of California, to cover any proposed public financial institution if structured as a credit union instead of as a bank, perhaps avoiding the need for and restrictions of FDIC insurance. Alternatively, such an insurance fund could perhaps be developed to support a state chartered bank, in lieu of qualifying for FDIC insurance.

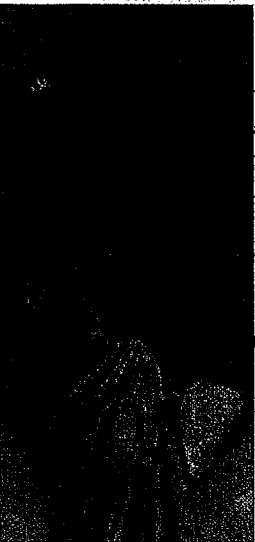
**FDIC CAPITALIZATION REQUIREMENTS**

California - Code of Ordinances, THE CHARTER OF THE CITY OF OAKLAND, ARTICLE XXVI - Added By: Stats. 1951; POLICE  
nt System, at  
[code.com/ca/oakland/codes/code\\_of\\_ordinances?nodeId=THCHOA\\_ARTXXVIADST1951POFIRESY](http://code.com/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA_ARTXXVIADST1951POFIRESY)

Code, Section 53635.8. The code permits insured deposits at a credit union but has some additional deposit insurance verification

Code, Section 53652.

Code, Section 53648.





**To accept municipal deposits, the public bank will probably need FDIC insurance.**

In 2014, the FDIC issued interim capitalization rules based on the outcome of the Basel III Committee Accords.<sup>41</sup> Capitalization adequacy has long been a focus of the Basel Committee meetings, and higher capital standards for banks globally resulted were adopted in December of 2010 under Basel III.<sup>42</sup> More specifically, the FDIC's final rule incorporated into its Prompt Corrective Action requirements "... a revised definition of regulatory capital, a new common equity tier 1 minimum capital requirement, a higher minimum tier 1 capital requirement, and, for FDIC-supervised institutions subject to the advanced approaches risk-based capital rules, a supplementary leverage ratio that incorporates a broader set of exposures in the denominator."<sup>43</sup>

The final rule also, for FDIC-supervised entities, adopted requirements regarding capital distributions by FDIC-supervised entities, certain bonus payments, and revised how risk-weighted assets are to be calculated.<sup>44</sup> Though so-called non-advanced approaches banks<sup>45</sup> are exempt from some of the Basel III requirements, they are not exempt from all.<sup>46</sup> For example, there are minimum capital requirements for all FDIC-insured entities and capital adequacy requirements, with specific methodologies required for calculation of compliance,<sup>47</sup> as well as a minimum liquidity standard from Basel III (the Net Stable Funding Ratio) which took effect January 1, 2018, and a liquidity coverage ratio (LCR) which has been phasing in since 2015, with its final stage to take effect on January 1, 2019. In determining possible impacts on a new public bank, we will examine the effects of these rules.

Even if an insurance alternative to the FDIC is created, any public bank formed by the City of Oakland and/or partner municipalities is likely to still be subject to FDIC rules related to capital quality and adequacy adopted pursuant to Basel III that apply to "Community Banks," which is defined to mean banks with consolidated assets of less than \$10 billion that are not deemed systemically important. Two types of capital ratio requirements are applicable to all banks, including

<sup>41</sup> Basel III is the latest of international accords by a committee of Central Banks and Banking Supervisors of 28 jurisdictions (originally named the Committee of Banking Regulations and Supervisory Practices, established in 1974 to stabilize currency and markets through improving bank supervision).

<sup>42</sup> See Basel III: International framework for liquidity risk measurement, standards and monitoring at <https://www.bis.org/publ/bcbs188.htm>

<sup>43</sup> See *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule*, 55340 Fed. Reg. 78 (Sept. 10, 2013), FDIC, at [https://www.fdic.gov/news/board/2013/2013-07-09\\_notice\\_dis\\_a\\_res.pdf](https://www.fdic.gov/news/board/2013/2013-07-09_notice_dis_a_res.pdf)

<sup>44</sup> *Id.*

<sup>45</sup> Non-advanced approaches banking organizations have less than \$250 billion in consolidated assets or less than \$10 billion in consolidated on-balance sheet foreign exposures.

<sup>46</sup> For highlights of key Basel III requirements, see *U.S. regulatory capital Basel III final rules, Key takeaways and highlights for U.S. banks*, (July, 2013), Deloitte, at <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/risk/us-aers-basel-III-final-rule-highlights-v8-final-112714.pdf>

<sup>47</sup> See 12 CFR, Sec. 324.1 et seq.

community banks: a risk-based capital ratio and a leverage ratio. Some key takeaways for community banks under Basel III rules are:

*"On top of the tougher new minimum capital ratios, community banks must maintain a common equity capital conservation buffer of greater than 2.5% of risk-weighted assets (RWAs) to avoid restrictions on dividends, redemptions and executive bonus payments. "Compared with existing capital rules, U.S. Basel III will require community banks to deduct much more mortgage servicing assets (MSAs) and deferred tax assets (DTAs) from their common equity capital, shrinking their capital base. "Community banks can opt out of including accumulated other comprehensive income (AOCI) in their common equity capital. In other words, they can elect to keep the existing AOCI filter. "U.S. Basel III retains the existing capital treatment of residential mortgages and certain other types of exposures."<sup>48</sup>*

**Please note that a bill currently pending in Congress with bipartisan support would relax some of the above rules for community banks was updated on April 19, 2018.<sup>49</sup>**

In addition to the above, the Basel Committee finally released, in December of 2017, a set of capital standards for banks that grew out of Basel III. Issues addressed in this recent release include:

- a revised standardised approach for credit risk, which will improve the robustness and risk sensitivity of the existing approach
- revisions to the internal ratings-based approach for credit risk, where the use of the most advanced internally modeled approaches for low-default portfolios will be limited
- revisions to the credit valuation adjustment (CVA) framework, including the removal of the internally modeled approach and the introduction of a revised standardised approach
- a revised standardised approach for operational risk, which will replace the existing standardised approaches and the advanced measurement approaches
- revisions to the measurement of the leverage ratio and a leverage ratio buffer for global systemically important banks (G-SIBs), which will take the form of a Tier 1 capital buffer set at 50% of a G-SIB's risk-weighted capital buffer
- an aggregate output floor, which will ensure that banks' risk-weighted assets (RWAs) generated by internal models are no lower than 72.5% of RWAs as calculated by the Basel III framework's standardised approaches. Banks will also be required to disclose their RWAs based on these standardised approaches.<sup>50</sup>

<sup>48</sup> See *Final Basel III Capital Rule—Less Impact on Community Banks* (2013), St. Louis Federal Reserve Board, at <https://www.stlouisfed.org/Publications/Central-Banker/Summer-2013/Final-Basel-III-Capital-Rule-Less-Impact-on-Community-Banks>. See also *U.S. Basel III: Guide for Community Banks* (2013), Davis Polk & Wardwell, LLP, at <https://prod.davispolk.com/files/Davis-Polk-Basel-3-Guide-for-Community-Banks.pdf>.

<sup>49</sup> See *Economic Growth, Regulatory Relief and Consumer Protection Act* (2017) available at [https://www.banking.senate.gov/public/\\_cache/files/96d07158-bf57-42e-9bfe-888db5dad6ab/7EC24EE731A96E317839101D6AE8FF34.sil17981.pdf](https://www.banking.senate.gov/public/_cache/files/96d07158-bf57-42e-9bfe-888db5dad6ab/7EC24EE731A96E317839101D6AE8FF34.sil17981.pdf). For a summary of bill requirements, see *Bipartisan Senate Bill Would Provide Welcome Relief to Regional and Community Banks* (Nov, 2017), Davis Polk & Wardwell, LLP, at <https://www.usbase3.com/single-post/2017/11/20/Bipartisan-Senate-Bill-Would-Provide-Welcome-Relief-to-Regional-and-Community-Banks>.

<sup>50</sup> *Governors and Heads of Supervision finalise Basel III reforms* (December 2017), Bank for International Settlements at <https://www.bis.org/press/p171207.htm>.

**These revised standards will take effect January 1, 2022, with phase-in provisions.**

Should the City of Oakland decide to seek private deposit insurance instead of FDIC insurance, or if the State of California were to provide deposit insurance, it is uncertain what the capitalization standards would be of such an insurer. However, it seems likely that any non-FDIC insurer would still look to FDIC requirements as a set of best practice requirements and may not deviate from them.

## THE RISK OF CANNABIS

**Current federal law makes banking the cannabis industry a highly risky choice for depositories.**

The SOW for this study includes an examination of banking cannabis related funds and offers commentary to the report on the topic issued by California's State Treasurer in November of 2017.<sup>51</sup> The report identifies that a key stumbling block to the banking of cannabis-related funds is that cannabis is still deemed a Schedule I controlled substance under federal law. As we have discussed earlier, banks accepting cannabis derived funds are subject to the possibility of criminal action against them by the federal government under the Bank Secrecy Act and US Patriot Act, which could result in the freezing and/or seizure of bank funds and, potentially, the closure of the financial institution.<sup>52</sup> Under the prior federal administration, the Justice Department's 2013 "Cole Memorandum" narrowed the enforcement priorities of the department vis-a-vis cannabis, but it did not change its status as an illegal controlled substance under federal law. Since the time when the Treasurer's report was issued, the new federal administration and the Justice Department specifically have built on its already demonstrated hostility towards the cannabis industry by withdrawing the Cole Memo.<sup>53</sup> Though this act flies in the face of the significant legalization momentum that the cannabis industry has across many states, including California, this is, in fact, the current reality. Thus, as much as there is a demonstrated will at the local and state level in California to bank industry funds, such activity by a financial institution exposes it to significant risk of enforcement activity by the federal government.

The Treasurer's study also correctly identifies that, as a result, accessing FDIC insurance for needed deposit insurance, or membership in the Federal Reserve Board for access to its electronic payments system (Automated Clearing House- ACH) is probably impossible if a new public bank is engaged in banking cannabis money in some fashion.<sup>54</sup>

Even if a public bank were chartered by the State of California, and were able to obtain private deposit insurance or to partner with the state in some fashion to acquire state-funded deposit insurance, banking cannabis funds would still subject a new public bank to the possibility of criminal enforcement activity by federal authorities.

<sup>51</sup> (52) BANKING ACCESS STRATEGIES FOR CANNABIS-RELATED BUSINESSES A Report From the State Treasurer's Cannabis Banking Working Group (Nov. 2017), California State Treasurer at <http://www.treasurer.ca.gov/cbwg/resources/reports/110717-cannabis-report.pdf>

<sup>52</sup> *Id.* at 7.

<sup>53</sup> *Exclusive: U.S. Justice Department blindsided banking agency on pot policy flip - sources* (Jan. 11, 2018), Reuters at <http://mobile.reuters.com/article/amp/idUSKBN1EZ2Y8>.

<sup>54</sup> *Id.* at 8.

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That current reality does not mean that the City of Oakland should assume that banking cannabis money would always remain highly risky. It is unclear whether the current federal administration will retain its control of Congress after 2018 elections, and seems unlikely that it would retain control in the next Presidential election cycle. Thus, thinking of a public bank as a possible venue for banking cannabis money when federal policy changes would seem a prudent course of action.

In the meantime, with significant public safety concerns created by the lack of access to banking services for the cannabis industry, the California State Treasurer's Office suggested non-banking strategies that localities could take for making tax and fee collection from this industry safer.<sup>55</sup> The report then goes on to encourage support of the industry's accessing banking services through supporting bank compliance with the now-withdrawn Cole Memo. Even when the Cole Memo was in force, it was never a law, but only a set of internal enforcement priorities for the federal Department of Justice, and thus it was always uncertain, at best, for entities to rely on the Cole Memo as a "safe harbor" for banking cannabis funds. Now, even that internal guidance has been retracted.

While the remainder of the Treasurer's memo discussed the possibility of the state of California forming a public bank, either just to bank cannabis funds or to also fund infrastructure and other needs, the memo reiterated that it would be unlikely that an institution to bank cannabis could successfully obtain a banking charter, much less access to deposit insurance of the ACH system.

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<sup>55</sup> *Id.* at 11-15. (See *FinCen.*)

# THE NEED FOR A PUBLIC BANK AS A FINANCIAL ENTERPRISE



## THE NEED FOR A PUBLIC BANK AS A FINANCIAL ENTERPRISE

The nation's only public bank, the Bank of North Dakota, was organized in 1919, well before most of the nation's current apparatus for supporting and regulating depository institutions was in place or well-established. In 1919, the Federal Reserve was only six years old and operated in far different fashion from today's Fed. The FDIC did not exist.<sup>5657</sup>

Nevertheless, our research makes clear that a public bank can be organized under current state and federal law. In short, a depository institution owned by one or more public entities and providing loans and other banking services that further the purposes of these entities is legally feasible.

However, **the real impetus behind the public banking movement is that major private banks do a poor job of providing needed services, or tend to operate in a manner injurious to the public interest. The purpose of a public bank then is to offer an alternative to these banks.** The section examines the question: *Can a public bank offer services that are inadequately provided by large banks and in doing so become a viable institution?*

Our research and interviews with businesses, local residents and local government officials suggest that commercial banks generally do an acceptable job of providing these services.<sup>5859</sup> There are, however, exceptions to this rule. Specifically—

- Certain business, student and mortgage borrowers find bank loans either difficult to obtain or unaffordable.
- Local and state laws often force municipal government to employ deposit and services from large banks whose lending and business practices may be out of alignment with the values of their municipal customers.
- Current municipal finance practices appear to result in higher fees and interest costs than a more efficient and innovative public finance market would produce.
- The cannabis industry is generally unable to obtain conventional banking services because marijuana remains illegal under federal law.

<sup>56</sup> Appendix 8: Relevant Market and Participating Members Information. Ron Surrat. 2018

<sup>57</sup> Appendix 1: Private and Public Banking

<sup>58</sup> Student Loan Hero, December 2016

<sup>59</sup> Mercury News, February 2018

The following table shows what we found:

	HOUSEHOLDS	BUSINESSES	GOVERNMENTS
DEPOSIT	No complaints about demand or drive deposit account offerings. Depositors have a wide range of choices.	Businesses have wide variety of deposit options from large number of competing banks in the Bay Area.	Governments typically have a large number of deposit accounts. Fees may be higher than desirable but represent a small percentage of assets and budgets. However, questionable banking and business practices of large banks has spurred movement for municipalities to sever ties with these institutions.
PAYMENT	Banks offer a wide range of checking, debit and credit card products. Credit card competition among banks is particularly robust.	Businesses of all sizes have a wide range of payment options, especially from larger banks.	Large banks provide a wide range of services, including debit and credit cards, sweep accounts and overnight services upon which local governments depend. Again, many Bay Area cities are under pressure to sever relationships with large banks.
CREDIT	Although credit is available, evidence suggests that student and homeowner concerns about high debt service costs.	Small businesses, especially those owned by people of color, complain about the unavailability of financing. Many have turned to emerging fintech lenders.	Municipal bond market dominated by large players. Room exists for new entrants and new technology to lower fees and interest rates.

These findings suggest that a public financial institution can play a role in:

- Making student, mortgage and business loans more affordable and available.
- Providing governments an alternative—and socially responsible—source of deposit and payment services.<sup>60</sup>
- However, the cash handling needs of cannabis businesses cannot appropriately be handled by a public bank, given the risk involved. Instead, a non-bank structure might be feasible, though we still not recommend that neither, localities or a public bank have any ownership interest in or affiliation with this alternative structure given the legal risks.

<sup>60</sup> The Atlantic, 2014

# KEY CREDIT ACCESS PROBLEMS A PUBLIC BANK COULD HELP ADDRESS

## STUDENT LOAN REPAYMENT

Student loans are a repayment headache for many borrowers:

- According to Goldman Sachs, the value of outstanding student loans has reached \$1.3 trillion. Graduates in the Bay Area have student debt balances of between \$15,000 and \$24,000.<sup>61</sup>
- Some borrowers have much larger amounts of accumulated debt. During our interviews, we learned about an Oakland resident who owes \$137,000 in student debt on which he pays \$583 every month—in interest alone. On a salary of \$42,000, another resident pays \$700 monthly on \$80,000 in student loans.
- Beyond monthly debt service burdens that borrowers face, mounting student loan debt poses broader problems to the Bay Area economy. According to one analysis,<sup>62</sup> high student debt stifles spending, slows the housing market, and reduces business formation.
- The emergence of marketplace lender such as SoFi and Credible allows borrowers with solid credit scores and relatively high earnings to refinance their loans—often at substantial monthly savings.
- However, for other borrowers—those with less stellar credit scores and lower earnings, refinancing at market rates is simply not an option.



**SUMMARY: Most borrowers can obtain student loans. For lower-income residents, especially, the problem is not availability; it's the relative lack of affordability**

<sup>61</sup> San Francisco Federal Reserve Bank

<sup>62</sup> Student Loan Hero, December 2016

## MORTGAGE LOANS

Available mortgage loans often fail to meet borrower needs:

- The median price of housing in the Bay Areas is now around \$750,000.<sup>63</sup> While median income is also up—to about \$97,000—the income required to buy the typical house may be as high as \$180,000.
- For middle-income homebuyers, insufficient income is not the only problem. Inadequate savings is an equally large barrier to homeownership.
- Here's one reason. The current ceiling for 3 percent FHA loans is about \$680,000—about \$70,000 less than the area's median house price. This means that families buying the typical home may need to come up with the difference in the form of a larger down-payment—perhaps \$100,000 or more.
- Of course, the cost of homes in the outer reaches of the Bay Area—places like Antioch—is often under current FHA ceiling. The good news is that this allows lower-income families to buy homes under the FHA's 3 percent down program. The bad news is that the median home price in Antioch—about \$432,000—still requires an annual income of almost \$77,000. This is less than 80% of the Bay Area median, but more than 30 percent above the median for the area.

In the U.S., most mortgages have a maximum term of 30 years. Yet, there appears to be no reasonable explanation for this limit.

- The underlying collateral has an economic life far longer than 30 years.
- The median age of first-time homebuyers in the U.S. is about 32.<sup>64</sup> These borrowers can expect to live to be older than 62.
- Total interest payments on a 50-year mortgage would be substantially higher than those on a 30-year loan—if the loans were outstanding for their full term. However, the typical mortgage is paid off in less than 10 years. (Borrowers tend to refinance or move.)
- At one time, both Japan and Switzerland offered mortgages with terms as long as 100 years. Before the financial crisis of 2008, several California banks had begun experimenting with 50-year mortgages. Now might be a good time to re-introduce this idea through a public bank.
- As the following table shows, a \$400,000, 4% mortgage with a 50-year term will have 20% lower debt service costs than a 30-year loan.

<sup>63</sup> Mercury News, February 2018

<sup>64</sup> The Atlantic, 2014



	CONVENTIONAL	EXTENDED TERM
<b>MORTGAGE AMOUNT</b>	\$400,000	\$400,000
<b>INTEREST</b>	4.00%	4.00%
<b>TERM</b>	30	50
<b>MONTHLY DEBT SERVICE</b>	\$1,910	\$1,543
<b>MONTHLY SAVINGS</b>	\$367	

Note: Interest is tax deductible to borrowers.

**SUMMARY:** Given the benefits that an extended term mortgage provides borrowers, it makes sense for a public bank to make such loans available through intermediaries.

### SMALL BUSINESS LOANS

Small businesses often have difficulties obtaining loans.

- Alameda and Contra Costa Counties are home to about 230,000 small firms, almost half owned by members of minority groups.
- While it is unclear how many of these firms may have applied for loans, what is certain is that a significant percentage of their loan requests to banks will have been declined. The following table shows the small business loan approval rate by type of lender:

BIG BANKS	SMALL BANKS	INSTITUTIONS	ALTERNATIVE LENDERS	CREDIT UNIONS
25.0%	49.0%	64.0%	57.0%	40.0%

Source: Biz2Credit Small Business Lending Index, March 2019

Almost all research on small business lending shows that these fairly high loan denial rates have **three principal causes:** the borrower has poor or no credit history, the firm has insufficient cash flow to repay the requested loan, and the borrower has inadequate collateral to provide the lender a secondary source of repayment.

All three problems increase credit risk—the likelihood that a borrower will be unable or unwilling to repay a loan according to its terms.

Most states and localities operate programs to mitigate credit risk by operating programs that either make or guarantee small business loans. Two of the largest in California are—

- The California Capital Access Program (CalCAP): CalCAP is a small business insurance loan portfolio that works as follows. Whenever a bank makes a loan, the bank and borrower make a specified contribution to a loan loss reserve account in the bank's name. Typically, the borrower and the bank contribute from 3% to 7% of the loan amount; the state then matches the borrower/bank contribution with an additional 3% to 7%. Amounts in the bank's account are available to finance any losses incurred in its portfolio of enrolled loans. For example, where the lender and borrower each make a 1.5% loan-loss contribution, the loan-loss account balance for a \$10 million portfolio of enrolled loans could be 6% or \$600,000 (3%, in total, from the bank and borrower, 3% from the state). Amounts in the bank's account can typically be used to finance any combination of losses equaling \$600,000. While CalCAP works as designed it lacks scale. According to its most recent report, only fifteen lenders use its portfolio insurances program.
- Small Business Loan Guarantee Program (SBLG): The SBLG Program is California's version of the SBA Loan Guarantee Program. SBLG guarantees are provided through a network of non-profit "financial development companies" that issue guarantees of up to 80 percent of loans made by commercial banks. The program's virtues are its simplicity and flexibility. Documentation requirements are limited and guarantees can generally be structured to meet a lender's specific needs.
- However, SBLG has two major disadvantages. Like CalCAP it lacks scale. The federal government backs SBA's guarantees. By contrast, SBLG is backed only by a dedicated reserve fund. (State law prohibits the pledging of the state's credit on behalf of private interests.) This means that SBLG can grow only as fast as its reserve fund. An equally important limitation is that SBLG guarantees cannot be sold. Many SBA lenders generate a significant share of their small business loan earnings by selling the guaranteed portion of their SBA loans to investors. SBLG Program guarantees are not similarly saleable, making them somewhat less attractive to lenders.

Again, small business loan denials occur because lenders fear loans won't be repaid according to their terms—because they're perceived to be risky. Both CalCAP and SBLG are designed to mitigate this risk. Unfortunately, their dependence on public subsidies prevents them from achieving the scale needed to have an appreciable impact on the availability of small business finance.

What might a public bank do? In addition to guarantees and insurance, lenders can protect themselves against credit risk by selling all or parts of their small business loans. This is a strategy that the Bank of North Dakota has used successfully and one that we believe can be successfully employed by a public bank to increase the availability of small business loans.<sup>6566</sup>

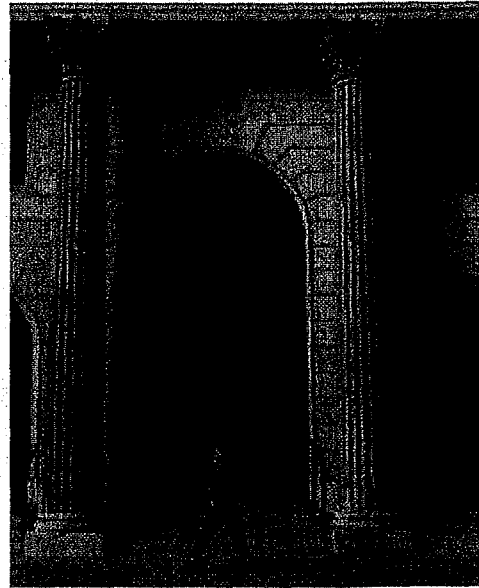
<sup>65</sup> Under the Federally-funded State Small Business Credit Initiative, the California State Treasurer's Office operates a loan participation program and a collateral support program. Both are designed to reduce lender risk—the first by reducing a bank's risk exposure, the second increasing the amount of security the lender has for its loans.

**SUMMARY: Students and homebuyers can generally obtain loans; the problem is that debt service payments are often onerous. Small businesses, by contrast, have difficulty securing bank credit at any cost.**

## MUNICIPAL GOVERNMENT FUNDING

Cities are facing pressures that make it necessary to consider new ways of financing affordable housing, infrastructure, renewable energy and other long-term investments.

- Recently, the credit rating agency, Moody's Investors' Services, announced its intention to downgrade cities that lack adequate plans for dealing with the long-term problems stemming from climate change. This means that Bay Area cities will have to increase their borrowing for infrastructure repair and improvement.
- However, at the same time, recent tax law changes—such as reducing the corporate tax rate—threaten to make tax-exempt municipal bonds less attractive to corporate investors.
- Moreover, according to a recent credit rating agency report, Oakland's debt burden is relatively high. As a result, additional bond issuance could result in a downgrade of the city's credit rating.<sup>6768</sup>



**SUMMARY: Among the possibilities that the city might consider is that debt incurred by the public bank—for capital projects that the city would otherwise finance—would not be considered municipal debt and thus avoid triggering a possible downgrade.**

The Public Bank would be able to package smaller loans into pools of loans that back asset back securities. This would allow the bank to increase the return on its loan portfolio and achieve a higher degree of liquidity.

## CURRENT LENDING PROGRAMS

Oakland and its neighbor governments, as well as the state of California and the federal government, have long recognized many of the credit market gaps that exist, and established lending programs to address them. Different varieties of affordable housing lending and small business lending are mainstays of government lending programs, and have been for decades, even if significant gaps remain in both those areas.

<sup>66</sup> Appendix 8: Relevant Market and Participating Member Information. Ron Surratt.

<sup>67</sup> The Smart Path: Solving for Zero Assets with Blockchain Technology, 4/29/18. Brett Bartlett, Berkeley City Council

<sup>68</sup> <https://bnd.nd.gov/credit-rating>. BND has maintained a quality credit rating despite its community exposed loan portfolio.

Confidential to the City of Oakland

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The City of Oakland, for example, once offered a "Shared Appreciation Mortgage" in cooperation with local banks, as well as an Access Improvement Program and an Emergency Home Repair program, all of which were used to supply borrowing needs for affordable and low-income housing. The city currently offers loans to larger developers, and proceeds from the recent bond KK is available for land acquisition in Oakland itself.<sup>69</sup> Similar programs are on offer from virtually all the municipal governments in the study region, though budget shortfalls have curtailed many of the programs. Here are some sample loan programs:

- Homebuyer Programs:
  - First Time Homebuyers Mortgage Assistance
  - Shared Appreciation Mortgage
  - CalHome Program
  - Public Safety Employees - Teachers Downpayment Assistance
- Home Repair/Rehab Programs:
  - Access Improvement Homeowner (Owner-occupied)
  - Access Improvement Rental Property Owner
  - Emergency Home Repair
  - Home Maintenance & Improvement Loan
  - Lead Control / Paint Programs
  - Minor Home Repair Program
  - Neighborhood Housing
  - Rehabilitation Program
- Development:
  - Affordable Housing New Construction & Substantial
  - Rehabilitation Loan Program
  - Predevelopment Loan Program
- Linked Banking:
  - Linked Banking Ordinance:

"Pursuant to Ordinance No. 11067 M.S. the City has established a Linked Banking Service Program. This reference applies to depositories for both the City of Oakland and the Port of Oakland banking needs. Depositories are defined within the Ordinance as "all banking services utilized by the City including the Port of Oakland operating fund, with the exception of investments made through investment banks and broker/dealers." Depositories providing services to the City and the Port of Oakland must provide to the City, annually, the information enumerated under Section 3 of the Ordinance."

Credit Unions and local banks must also meet the ordinance in order to do banking business with some participating members.

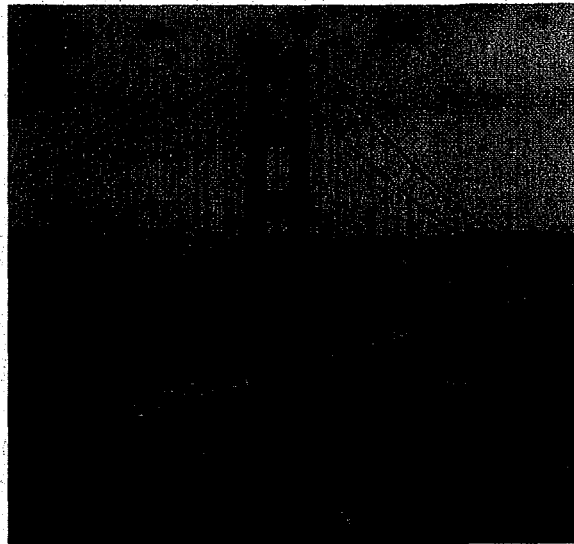
**SUMMARY:** Notably absent are any loan programs for small business, students and infrastructure.

<sup>69</sup> See the Oakland Housing and Community Development web pages for more.

## LACK OF CREDIT AND THE COMMUNITY REINVESTMENT ACT

In order to more fully understand the lack of credit available in the East Bay, a contrast needs to be made; something that can help focus this issue more clearly. There's is no better way to do this than to take a cursory look at Bank of North Dakota's (BND) loan programs. As one would expect, loan programs are central to BND, the nation's only public bank. A review of the BND website shows loan programs of all different types for homeowners, students, municipalities and businesses. In fact, BND has thirteen business lending programs, all listed here:

- Accelerated Growth Loan
- Bank Participation Loan
- Bank Stock
- Beginning Entrepreneur Loan
- Business Development Loan
- Export Enhancement
- Flex PACE for Affordable Housing
- Flex PACE
- Match Program
- PACE Program
- SBA Guaranteed Loan Purchase
- USDA Government Loan Purchase
- Venture Capital Fund



In 2016, a series of 40 meetings were held with business and finance leaders across the state, resulting in new ways to address "financing gaps in economic development". The press release announcing the result of those meetings, a portion of which is captured in Appendix 6.

## UNBANKED AND UNDERBANKED

*"The United States is among the richest countries in all of history. But if you're not a corporate or political elite, you'd never know it. In the world working people inhabit, our infrastructure is collapsing, our schools are laying off teachers, our drinking water is barely potable, our cities are facing bankruptcy, and our public and private pension funds are nearing collapse. We – consumers, students, and homeowners – are loaded with crushing debt, but our real wages haven't risen since the 1970s. How can we be so rich and still have such poor services, so much debt and such stagnant incomes? The answer: runaway inequality – the ever-increasing gap in income and wealth between the super-rich and the rest of us."*

*-- Les Leopold, President, TheLabor Institute*

Oxfam, a nonprofit focused on alleviating poverty, recently released its World Inequality Report 2018. Central is the increasing disparity between the top 1 percent of income earners who claimed four-fifths of the wealth created in 2017,

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and everyone else. "Last year saw the biggest increase in billionaires in history, one more every two days. This huge increase could have ended global extreme poverty seven times over. 82% of all wealth created in the last year went to the top 1%, and nothing went to the bottom 50%," the report says. Moreover, "Income inequality is worsening across the globe, which has a corrosive impact on social institutions, the standard of living for the poor and near-poor, and is linked to political unrest. The dangers of inequality aren't a new rallying point, yet despite a lip service lawmakers and the rich pay to it, the wealthy continue to pull away from the poor and middle class."

"In the last year, there has been a new billionaire created every two days, and of the wealth that got created, the top 1 percent got 82 percent of it, and the poorest half got nothing," said Paul O'Brien, vice president for policy and advocacy at Oxfam America, "That means 3.7 billion people got nothing of that new wealth."

Wealth is increasingly concentrated with a small number of people.

Compounding wealth inequality is the very large percentage of people in California who are either underbanked (those with an underused bank account) or unbanked. The 2015 FDIC National Survey of Unbanked and Underbanked Households showed that, in California, over 25% of households are either unbanked or underbanked:

According to the 2015 Bank Status by State report, there are 14,484,000 Californian households. 6.2% of these households are unbanked, 19.1% are underbanked, 68.2% are fully banked and 6.5% are unknown.

In May 2017, the Federal Reserve issued a report that found that "about 25% of American adults can't cover all of their monthly bills, and 44% say they don't have enough savings to cover an unexpected expense of \$400. Nearly a quarter said they had paid an unexpected medical expense over the last year, and more than 40% of those — representing about 24 million Americans — said they were still paying debt related to those expenses." [1]

There are more Pay Day loan and Lending services in the US than there are McDonalds. California has over 577 locations. One of the highest saturated locations is the East Bay area.

What do many people do in order to pay unexpected bills? According to the state Department of Business Oversight, in 2009, Californians took out \$214 million in installment loans of between \$2,500 and \$5,000, what is now the most common size of loan without a rate cap. In 2016 the volume was \$1.6 billion. The LA Times states that "loans with triple-digit rates accounted for more than half, or \$879 million -- a nearly 40-fold increase since 2009.

**SUMMARY: With 82% of the new wealth generated in 2017 being directed to the top 1%, with over 25% of California households being under or unbanked, with 44% of all American adults unable to meet an unexpected expense of \$400, and with the California legislature unwilling to stem the high cost of the high end of payday**

lending (loans of \$2,500 or more), all while people are still recovering from the halving of their wealth because of the Great Recession, inequality is proving to be an intractable fixture of the economic landscape.<sup>70</sup>

## WEALTH INEQUALITY

*What does this mean for city or county with a public bank?*

There are many systemic approaches that remedy income and wealth inequality. These include a living wage, free higher education, divestment and re-investing locally, and single payer healthcare. A public bank can be added to the list of these systematic approaches because it helps to level the playing field - it addresses some of the inequalities (most notably, lack of access to capital) inherent in our capitalist system. So, the bottom line is that the promise of a democratically governed public bank is to use the public's credit to remedy wealth inequality.

By placing government deposits into a public bank and releasing capital (in the form of loan programs) that fund new initiatives like East Bay Community Energy, overlooked renewable energy projects, capital starved worker-owned cooperatives, small businesses, affordable housing, student loans, and infrastructure, a public bank ends the cycle of wealth extraction. The Bank of North Dakota, the nation's only public bank, has over \$6,300 per capita in loans outstanding. All things being equal, that would be the equivalent of \$2.6 billion injected into the Oakland economy as low-cost credit, with the generated profits staying local. Even just a fraction of this credit would go a long way to alleviate income and wealth inequality in Oakland and the neighboring jurisdictions.

# THE PUBLIC BANKING SOLUTION: LENDING

## LENDING

Buying and participating in solid loans is the way to go.

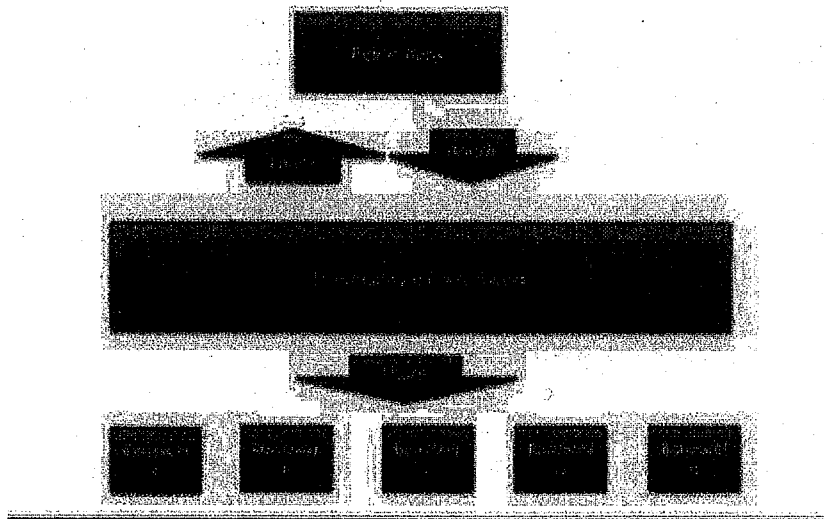
Though banks claim that they provide loans to "every creditworthy borrower," there are important exceptions—mainly borrowers whose loans banks cannot remain on their books for regulatory or interest rate risk reasons. Examples include:

- **Solid small business loans where the borrower lacks adequate collateral:** Many of today's growing small firms are "asset-light"; their principal assets are people and software—neither of which can collateralize a loan. Such firms may have trouble securing credit even with solid credit histories and adequate cash flows, because they cannot offer the bank a secondary source of repayment—collateral in the form of real estate, equipment, inventory or a personal residence.
- **Mortgage loans that exceed 30 years:** Banks are often reluctant to make and retain long-term loans that they must fund with short-term deposits. Though large banks can make and securitize these loans, smaller banks have insufficient volume to do so.

<sup>70</sup> Appendix 23: The Winner Takes (almost all)

- **Loans exceeding the lenders' legal lending limit:** All banks have limits on the amount they can lend to a borrower. For example, national banks supervised by the Office of the Comptroller of the Currency, have a limit of 15% of the bank's capital and surplus. So a bank with \$10 million in capital would be limited to loans no larger than \$1.5 million. If a customer needs a loan that exceeds this limit, the bank must decline the request or find another lender to participate in the loan.
- **Loans that pose concentration risk:** Small banks tend to make the most of their loans in one geographic area and/or specialize in making one or two types of loan. While specialization gives the bank a competitive advantage in competing for some customers, it exposes the institution to significant loss should downturns in its favored communities or industries occur.

Community banks, local banks and/or CDFI's ability to make loans that its customers need—and have the demonstrated ability to repay—imposes a cost on both the bank and the borrower. The borrower can't finance the expansion of a business or home purchase; the bank risks losing both a customer and an earning asset.



The public bank can use a four-part strategy for its loan purchase program:

- Establish underwriting criteria for loans that it will purchase or in which it will participate. For example, small business borrowers might be required to have an “acceptable” credit score; and three years of successful operating history.
- Create a network of community banks and/or CDFI's to sell loans and loan participations. Participating governments can create an incentive for banks to join the network by offering to make low-cost deposits in participating institutions.
- Aggregate purchased loans into a homogeneous but geographically diverse pool. (Homogeneity would be achieved by ensuring all loans have similar credit scores and cash flow histories.)



- Give participating institutions bonds or notes collateralized by the pool of loans as payment for their loans.

## EXAMPLES

The public bank's proposed loan purchase/participation program would provide participating banks several benefits:

- It would allow them to honor more of their customers' loan requests.
- It would increase the likelihood of retaining a valued customer relationship.
- It would provide an attractive earning asset (the collateralized bond) in exchange for a loan that it might otherwise have to decline.

**Here are two examples of how actual transactions might work:**

- Five years ago, Franco resigned his job at Google and started a company processing digital payments. The company has done well. After a rocky couple of years, it now has solid cash flow and is growing—so much so that Franco needs a \$200,000 loan to expand the business. Unfortunately, Franco's company has almost no collateral—no buildings and very little valuable equipment. Franco himself, like so many in the Bay Area, has been unable to buy a house, so he can't pledge a personal residence as collateral. It's not his credit history. He has a FICO score of 770. He simply can't afford the cost. If it weren't for the lack of collateral the bank wouldn't hesitate to make the loan. To solve the problem, the public bank agrees to purchase the entire loan from Franco's bank. The public bank pools Franco's loan with 100 similar loans from other banks and gives Franco's bank back a bond collateralized by the pool of loans. (e.g. asset backed securities.)
- Melanie is a recent college graduate and middle school teacher who's struggling under her burden of \$40,000 in student loans—high for California and for her personally. The monthly payments on her 10-year, 6% loan are almost \$450 a month. She's got a good credit score and hasn't missed a payment in three years. Nevertheless, she'd like to lower the monthly payment to something more manageable. Based on the public bank's purchase commitment, her bank agrees to make a 15-year, 5% loan. Because the loan is for a longer term, meaning the principal will be outstanding for an extended period, the loan structure includes a 5% loan-loss reserve payment. However, even with the loan-loss reserve, the refinancing will lower her monthly payment to \$332 from \$450, a reduction of 25 percent. Again, in exchange for the loan, the bank takes back bonds collateralized by a pool of similar student loans.

## GOVERNMENT LENDING

A public bank may be able to meet local governments' short-term borrowing needs.

In addition to financing small business, housing and student loans, the public bank may also be able to play a limited role in financing the short and long-term needs of participating governments:

- If permissible under California law, deposit funding from one local government could be used to finance the purchase of short-term notes from another, saving the borrowing local governments interest and fee costs. Say for example, Oakland has made a deposit of \$10 million in the bank secured by \$11 million in Treasuries. The public bank might sell the treasuries and purchase \$11 million in short-term notes issued by Berkeley.
- As explained later, we believe that the public bank should have more capital than required under current banking regulations. Its excess liquidity could be invested in long-term bonds of participating localities, once again reducing their fees and interest costs. Assume, for example, that the public bank has \$10 million in its reserve account at the Federal Reserve but needs only \$5 million under current regulations. It might use the \$5 million in excess liquidity to purchase \$5 million in bonds from one of the participating governments.<sup>71</sup>

## BENEFITS

Collectively, the budget for the governments of The City of Oakland, City of Berkeley, City of Richmond, and the County of Alameda total over **\$3.3 billion in cash and investments and almost \$9 billion in total liabilities, with a percentage of these budgets spent on servicing the combined \$5 billion in long term liabilities.** A public bank with a lending capacity could be formed, and use of this credit to refinance existing bond obligations could be worth millions of dollars annually to this county and these cities in reduced debt service. Furthermore, the debt service payments would provide a positive cash flow to the public bank from the outset, allowing it to bypass the startup losses that are usually part of a bank's early history, thereby reducing overall risk. And, finally, because these participating governments will each own a share of the public bank, the interest payments they make will add to the value of their share. In essence, the interest they pay would be turned into an asset by being credited to their own fund balance. Clearly, being your own credit holder is strategically advantageous, with both near and long term benefits.

Other quantifiable benefits from these participating governments owning a public bank include opportunities to<sup>72</sup>:

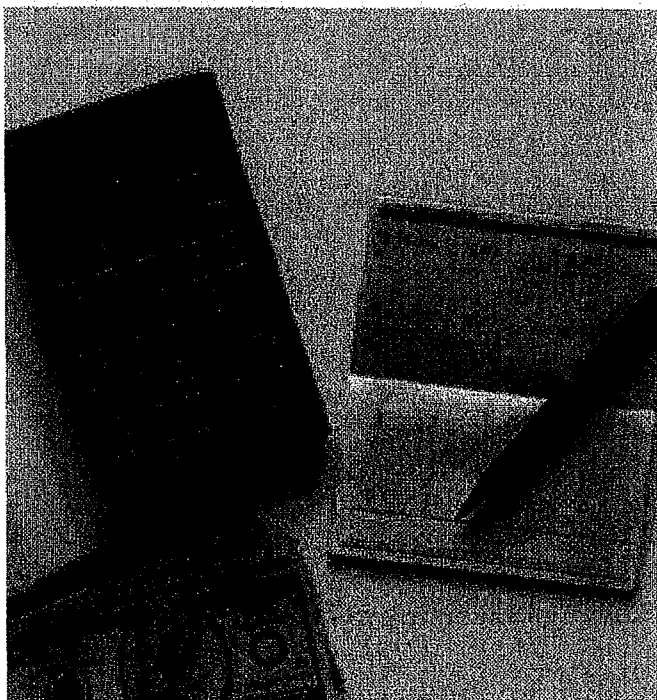
- Determine if the profits from public bank operations are held as retained earnings by the public bank or returned to the participating governments.
- Access affordable lines of credit during times of disaster recovery.
- Access bank letters of credit at reasonable rates not available through other banks, thereby helping the participating governments to engage in infrastructure and other projects.
- Access low-cost funds from the regional Federal Home Loan Banks through the public bank.
- Increase the availability of local commercial credit by creating an after-market for local business lending, buying participation in loans made by existing financial institutions.

<sup>71</sup> Appendix 7: Benefits  
<sup>72</sup>

**One of the main benefits of a public bank is the hard dollar cost savings from reducing debt service costs.** After all, issuing your own debt is an essential role of a public bank. Moreover, even though a public bank has multiple value propositions, debt service reduction is the most distinct and quantifiable. But this benefit, of course, cannot be overplayed. The obvious risk is abuse of fiduciary duty by running up too much debt, but constraints can be put in place to prevent this from happening. These can include setting a limit to the percentage of the loan portfolio allocated for any one participating government and working with regulators to ensure that this limit is set in accordance with accepted banking standards that prevent too much concentration of the loan portfolio in any one sector.

## **COST**

The challenge, of course, is how best to obtain these benefits without the investment of too much capital or the burden of excessive operating costs. Building this capacity so that profitability is realized sooner rather than later and so that capitalization is reasonable, but will be a challenge and can be better understood with pro formas (which are outside the scope of this study) that model alternative revenue and expense scenarios and with sources of capital clearly identified with written (and conditional) commitments.



Because the public bank would have a relatively small number of municipal customers, it could be effectively run by a fairly small staff, with technology applications and platforms outsourced. Important functions like check processing and account record keeping can be accomplished using bank and financial industry vendors, allowing the operation to be run with a minimum of staffing overhead, real estate expense, and other operating costs. On the credit side, the idea would be to rely on other institutions like Community Development Corporations (CDCs), nonprofit check cashing organizations, and revolving loan funds to make credit available to the public. The public bank would provide funds to capitalize or expand these programs and, because it would be a bank where the owners, depositors, and loan recipients were largely one and the same, the ability to manage profitability will be fairly straightforward.

Each county and city that participates in the bank will benefit from the investment made possible by extending low-cost lines of credit to CDCs, land trusts, and similar community organizations. These organizations are very low credit risks, but are generally unable to find short-term credit, except at high rates. As one example, lack of access to quick capital prevents CDCs from participating in short sales and

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tax sales and frequently forces them to sit on the sidelines as bargains are snapped up by others. Long-term financing for large projects is commonly provided by multiple banks acting as partners and who determine the terms. The public bank will have the capacity to become one of the partners for large housing construction projects and will be able to have a determinate role in setting terms.

In conclusion, the public bank's access to low cost money will keep participating governments' borrowing costs to a minimum, reversing recent increases in debt service costs. This lower cost approach to banking will provide a stronger bottom line to the owners because of reduced debt service costs. Even more important, a public bank will be their asset that appreciates with every interest payment they make. The increase of affordable credit will make existing government institutions more effective and responsive. Consolidation of accounts will provide finance directors with a more comprehensive -- and convenient -- way for cash management and accounting.

Because the initial customer base is, by and large, the same participating governments that own the bank, the risk of bank revenues not materializing is minimal, as is the risk of unwieldy operating costs. Because access to lower cost of money will be used to reverse the increasing debt service costs, positive cash flow is even more certain. Because affordable credit provides increased affordable housing opportunities, the value provided by the public bank will be an important way to address this shortage and will positively impact government employees, veterans, and other population segments needing affordable housing in the communities in which they work. And, finally, because banking is fundamental to our economy and, as such, is a business model that has been proven both in the private and public sector, with the limitations of banks in both sectors well understood, the risk of starting and successfully operating this kind of a public bank appears to be something that can be well-managed with clear policy direction and proper oversight provided by the governing board and with experienced and effective bank operating management.

**For these reasons and more, the idea of a public bank for the Oakland area is eminently feasible.**

## THE PUBLIC BANKING SOLUTION: DEPOSITS

### DEPOSITS: GOVERNMENTS, AGENCIES AND OTHERS

#### Collateralized and Safe Investments

- Participating members, agencies, other governments and others could make deposits into the bank to sustain revenue. Short term investments maturing in 9-12 months provide adequate liquidity necessary for participating members.
- For example, the County of Alameda could deposit \$100 million from existing funds earmarked for deposits into local banks. In addition, the City of Oakland from existing funds earmarked to impact community or to reduce liabilities could make deposits and earn 2% interest.

#### CD'S - Community Focused

Buy CD's offered by the Public Bank. An example from Alameda County Treasurer, Henry Levy, is to match a purchase of a CD with what the depositor wants to achieve. In other words, a "community purpose linked-CD." The public bank

deposits funds into these banks and other intermediaries who are taking out financing for low-income construction or affordable housing.

### **Criteria**

Criteria must be established as a part of bank investment policies. Criteria for community-linked CD's should include the CRA (Community Reinvestment Act) rating, CRA enforcement and other important information related to the predetermined criteria embedded in the public bank governance policy, such as, a respectable CRA Rating.

### **Tax Deposits**

The public bank could accept tax deposits on behalf of other jurisdictions for a reasonable fee. The deposit process could include data collection as a part of the service.

### **Fintech**

Fintech companies provide some innovative solutions for managing data. For example, NCS (National Compliance Services), a Fintech company, assist with the data platform for some California counties. The platform aggregates data from multiple sources including track and trace, point of sale, taxation and socioeconomic data.<sup>73 74</sup>

**The California Cannabis Authority (CCA) created a Joint Powers Authority between counties with cannabis regulation or taxing authority.**

## **DEPOSITS: SAFETY**

Safe, sound and quality investments offered by the public bank could inspire participation by others.

## **GENERAL CREDIT QUALITY**

It is important for participating members to maintain a quality credit rating. Short-term debt shall be rated at least "A-1" by Standard & Poor's Corporation, "P-1" by Moody's Investor Service, Inc. or "F-1" by Fitch. Long-term debt shall be rated at least "A" by Standard & Poor's Corporation, Moody's Investors Service, Inc., or Fitch.

The minimum credit requirement for each security is further defined within the Permitted Investments section of the investment policy for the city of Oakland. Neighboring jurisdictions abide by similar criteria.

<sup>73</sup> Appendix: 29- Fintech Collaboration and Outreach

<sup>74</sup> Appendix 15: CCA

If securities which are purchased for the Fund are downgraded below the credit quality required by the Fund, the Treasurer, in consultation with the Treasury Manager, will determine whether to retain or to sell the security. Evaluation of divestiture of securities will be determined on a case-by-case basis.

*"Permitted Investments: U. S. Treasury Securities , Federal Agencies and Instrumentalities, Banker's Acceptances, Commercial Paper, Asset -Backed Commercial Paper, Local Agency Pooled Investment & Deposit, Commercial Paper Limits, Medium Term Notes, Negotiable Certificates of Deposit, Repurchase Agreements, Reverse Repurchase Agreements/ Secured Obligations and Agreements, Certificates of Deposit, Money Market Mutual Funds, State Investment Pool (Local Agency Investment Fund), Local City/Agency Bond, State of California Bonds, Other Local Agency Bonds"<sup>75</sup> Private Placements are also an option.<sup>76</sup>"*

The public bank investment in treasury securities is one way to meet the quality investment criteria and, possibly the State of California, Department of Business Oversight requirements for insurance and/or collateral. In May, GIC met with Commissioner Jan Lynn Owen and the Department of Financial Institutions. As a result, of our interview, it was determined that treasury securities might be possibly be considered as an option for meeting collateral and insurance. More legal research would need to be completed to determine if it's feasible. It appears that without an application submission for a bank charter, by the participating members, there's not much need to explore such a concept on behalf of the DBO.

### **"RISK-FREE" INVESTING: U.S. TREASURY BONDS**

The U.S. Treasury issues lots of different kinds of debt securities. Savings bonds, which can be purchased for small amounts and come in certificate form (making for nice bar mitzvah and birthday gifts), are just one of many kinds of investment options.

When investment people speak of Treasuries, they usually are not talking about savings bonds. Rather, they're talking about larger-denomination bonds known formerly as Treasury bills, Treasury notes, and Treasury bonds that are issued only in electronic (sometimes called book-entry) form.

**All U.S. Treasury debt securities, whether a \$50 savings bond or a \$1,000 Treasury note, share four things in common:**

- Every bond, an IOU of sorts from Uncle Sam, is backed by the "full faith and credit" of the United States government and, therefore, is considered by most investors to be the safest bet around.
- Because it is assumed that any principal you invest is absolutely safe, Treasury bonds, of whatever kind, tend to pay relatively modest rates of interest — lower than other comparable bonds, such as corporate bonds, that may put your principal at some risk.
- Although the United States government is very unlikely to go bankrupt anytime soon, Treasury bonds are nonetheless still subject to other risks inherent in the bond market. Prices on Treasury bonds, especially those with long-term

<sup>75</sup> Treasury Division, Financial Services Agency Adopted by the City Council and Oakland Redevelopment Agency On June 15, 2004

<sup>76</sup> Local%20Agency%20Investment%20Guideline.pdf1.pdf

maturities, can swoop up and down like hungry hawks in response to such things as prevailing interest rates and investor confidence in the economy.

- All interest on U.S. government bonds is off-limits to state and local tax authorities (just as the interest on most municipal bonds is off-limits to the Internal Revenue Service). But you do pay federal tax.

### Differences Between Treasury Bills, Notes, and Bonds

The financial media often mentions three different terms relating to government bonds: Treasury bills, Treasury notes, and Treasury bonds. These securities are similar in that each is issued by the United States to fund its debt, and each is also backed by the full faith and credit of the U.S. government.

Two key differences exist between the three types of U.S. Treasuries:

- their maturity dates
- the way that they pay interest.

The variance in maturities of the three types of Treasury securities helps differentiate them. Treasury bills (or “T-bills”) are short-term bonds that mature within one year or less from their time of issuance. T-bills are sold with maturities of four, 13, 26, and 52 weeks, which are more commonly referred to as the one-, three-, six-, and 12-month T-bills, respectively. The one-, three-, and six-month bills are auctioned once a week, while the 52-week bills are auctioned every four weeks. Since the maturities on Treasury bills are so short, they typically offer lower yields than those available on Treasury notes or bonds.

Treasury note issues have maturities of one, three, five, seven, and 10 years, while Treasury bonds (also called “long bonds”) offer maturities of 20 and 30 years. **In this case, the only difference between notes and bonds is the length until maturity.**

The 10-year is the most widely followed of all maturities; it is used as both the benchmark for the Treasury market and the basis for banks’ calculation of mortgage rates. Typically, the more distant the maturity date of the issue, the higher the risk of payback to investors, and so the higher the compensating yield.

### INVESTING: U.S. TREASURIES

In contrast, both Treasury notes and bonds pay a traditional “coupon,” or interest payment, every six months. When these securities are auctioned, they may sell at a price that translates to a yield to maturity higher, or lower, than that of the coupon. Investors can purchase bonds directly from the U.S. treasury, through its TreasuryDirect website. The Treasury’s site explains how the interest rate and price of a bond are determined at auction.

#### Price Fluctuation

Once T-notes and T-bonds are issued, their prices fluctuate, so their yields remain linked to market prices.

For example, say the government issues a 30-year bond with a yield of 10 percent when interest rates are high. In the next 15 years, prevailing rates fall significantly, and new long bonds are being issued at 5 percent.

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Investors will no longer be able to buy the older T-bond and still receive a yield of 10 percent; instead, its yield to maturity will fall, and its price will rise. In general, the longer time until the bond matures the greater price fluctuation it will experience. In contrast, T-bills experience very little in the way of price fluctuation since they mature in such a short amount of time.

**U.S. Treasuries continues to be a prudent, safe and sound vehicle for investors.**

One option to move funds from treasuries to stakeholders is to establish a Secure Letter of Credit Program to back the loans issued to BIN's. (i.e. a group of intermediaries.) who distributes those funds based on the public bank's criteria into the community and integrated partners. This strategy is common in the utilities space and public works. For example, the State Water Resource Board sets aside a percentage and builds up an order fund to guarantee more loans. They created a loan loss reserve. Grants might also be created to also move funds after the sale of treasuries from the bank portfolio.

# BUILDING AND FINANCING THE BANK

Beyond the need to serve large municipal customers, there are other reasons why a public bank, in particular, needs scale. One is that a larger bank is better able to diversify and manage risks.

**First, what criteria are needed to assess a bank's ability to diversify risk?**

Small bank loan portfolios are often concentrated in one geographic area or include a large percentage of one type of loan. For example, a community bank's portfolio might contain large numbers of commercial real estate loans to firms in Contra Costa County. The lack of diversification exposes the bank, to an unhealthy degree, to any downturn in the Contra Costa economy or in the commercial real estate industry. By contrast, a larger bank is more likely to have loans to different industries and borrowers all over the Bay Area. Downturns in one county or industry are much less likely to affect its financial health.

**Second, big banks and small banks manage credit risk in entirely different ways.**

As we pointed out earlier, small banks tend to be low-volume lenders and manage risk on a loan-by-loan basis. That is, they want to make sure that for each loan (a) the borrower has enough income to make required payments and (b) if something goes wrong, the collateral posted by the borrower will allow the lender to recover the outstanding principal.



Big banks, by contrast, tend to be high volume lenders and manage risk on a portfolio basis. Say, the bank knows that in a portfolio of 1,000 loans, the default rate will be 5%. It doesn't have to know which of the 1,000 will default. All it has to do is price its loans so that loss of any 50 of them will be completely covered by the income from the remaining 950.

**This difference gives larger banks two important advantages:**

- Because the performance of a large portfolio of geographically diverse loans tends to be more predictable than the performance of individual loans, large banks can more easily sell their loans for profit or liquidity reasons.
- The unit costs of servicing a large portfolio of loans is much lower than those of servicing a smaller portfolio. This means that, all other things being equal, larger banks are likely to have higher earnings on their portfolios.

Size also matters on the liability side of a bank's balance sheet. A large bank is much more likely to have the infrastructure and systems needed to provide deposit and payment services to larger customers such as municipal governments.

**The final reason that scale is important is a simple one. Big banks simply can make a bigger difference in their communities than small ones.** A bank with \$3 billion in loan assets has ten times the impact of one with only \$400 million in loans on its books.

According to some banking experts, the minimum amount of capital required to launch a new bank is \$30 and \$50 million.<sup>77</sup> Even though it will be chartered as a commercial bank, the public bank's unusual purpose and strategies may create the perception that it is somewhat riskier than other "de novo" banks and thus requires a larger than normal capital cushion.

## SOURCES OF CAPITAL

Discussing the creation of a bank will always move to the source of the capital with which it is to be founded. The quantity and form of capital required to open the Public Bank will depend crucially on the purpose behind the bank. The purpose will suggest the size, and that will set a certain requirement for capital. Furthermore, some purposes will allow capital to come in the forms of performing loans or other assets, or even goodwill, while other purposes will require the capital to be real cash. **The capital can come in the form of permanent investments that might pay a dividend, or in the form of loans.** The capital requirements will become clear through the bank design, but it is worth considering the potential assets that could be applied to the purpose.

Though its border is fairly subjective, there are around two dozen cities within the study region, along with a comparable number of school districts, and at least two county governments. Collectively, they control well over \$6.5 billion dollars in cash at any one time, along with notes, CDs, and other investments. This does not count funds held in trust or pension funds, only the cash and equivalents on hand, typically held in bank accounts and bond funds.

<sup>77</sup> Dinsmore & Shohl, LLP December 2017

In addition to these, there are public and non-profit agencies working in the area that might have an interest in seeing a public lending institution with which to ally. For example, the California Housing Finance Fund might be an organization to approach for capital in the form of a swap of performing loans for bank stock, since it is reasonable to think they might value the presence of another low-cost source of housing loans in the Oakland area. There are philanthropic organizations, too, that might be persuaded to contribute in a similar fashion

In addition to the capital, it is important to consider the liabilities that will compose the bank's balance sheet: the deposits from which loans will be made. The sections that follow will consider a few of the different potential sources of deposits, but it is possible to imagine a structure that can accommodate short-term investments from other sources, for example from one of the many cash-rich corporations in the area who might have an interest in ameliorating some of the affordable housing crunch they have participated in creating

We believe that any strategy for raising the required equity should include:<sup>78</sup>

- **Avoid seeking a large investment of existing public funds.** To most people in the Bay Area, a public bank represents a useful—but not urgent—use of public funds. Competing against more urgent demands would undermine the bank's limited support.
- **Aim at large investors with an appetite and capacity for risk.** The public bank is an untested idea. The impact investment market has now reached \$300 billion and comprises large institutional investors looking to achieve social—rather than purely financial—returns. An investment in the nation's first urban public bank may have significant appeal.

## CAPITALIZATION

### Stock and Debt Equity

- Any revolving loan fund that can be replaced with credit. Specifically, existing loan programs that are funded with revolving loan funds.
- Existing pools of money that have been set aside for affordable housing and other programs that could use credit instead of hard dollars.
- Rainy day funds that could be replaced with an Emergency Loan program for cities and counties.
- Issue a state bond.
- Duplicate the Green Bay Packers ownership model, where constrained capital stock is issued to the public.
- Crowd-fund the bank with donors identified as "Founders" of the Public Bank of Charter City.
- Public Bank of Charter City issues corporate debt.
- Issue a Private Placement
- Public employee pension funds for long-term investing.

## MANAGEMENT OF THE BANK

**The public bank could be managed either by its own team or under management contract.**

<sup>78</sup> Appendix 1—Private and Public Banking

The public bank could be managed either by its own team or under management contract—the expertise of the management team and FinTech companies strategies developed will operate both the commercial public bank. The “debundling process”, will take at least a year for staff to be positioned to transition bank services and accounts.

## DEBUNDLING

Public banking is a movement throughout the nation in response to the need for responsive and responsible banking to the community.

The City of Berkeley and the City of Oakland have already begun to “debundle” services. For example, Oakland has separate contract for armored car and card services from JP Morgan Chase. Due to the complexity of their banking structure, staff concerns primarily include keeping the core credit card and depository services within the same bank. Investments, on the other hand, are one believed to be easier to transition by some staff.

Debundling banking services is similar to debundling large procurement contracts issued by municipalities. These large contracts are broken up into smaller contracts, so the small business can better compete for services. It’s a way to support small business growth.

The other benefits of “debundling” s include:

- Creating local jobs
- Reaching divestment goals
- Placing money into local credit unions and small banks
- Establishing new banking criteria with a social mission
- Cost savings could supplement affordable housing and a programs

## TRANSITION

The City of Berkeley developed its own transition plan for banking services. For reference find it attached in Appendix10. Because a public bank, as envisioned for the participating governments in the East Bay, will be circumspect in its deployment of banking services, technology will be less important than one might expect. However, when possible, technology will be rolled out to support key banking functions. We initially envision them as follows:

- Phase 1 - Obtain Bank Charter, Master Account Number, Organize and Establish.
- Phase 2 - Credit Services, Credit Facility Services, Trustee and Paying Agent Services.
- Phase 3 - Commercial Bank Services, Checking and Commercial Card Services (Office of the City Clerk).
- Phase 4 - Purchase Card Services, Fleet Fuel Services, Commercial Card Services (Office of the Comptroller),  
- Merchant Card Processing Services, Payment Card Industry Compliance Validation Services.

See Transition Phases Flowchart:

Confidential to the City of Oakland  
Submitted by: Global Investment Company  
(510) 835-8300 // 300 Frank H. Ogawa Plaza, Suite 254 Oakland, CA 94612  
[www.globalinvestmentcompanies.com](http://www.globalinvestmentcompanies.com)

### East Bay Regional Public Bank Transition Chart

PHASE 1	PHASE 2	PHASE 3	PHASE 4
<ul style="list-style-type: none"> <li>• Online Commercial and Retail Bank Center from Downtown City Business District</li> <li>• Online Market Access Platform from Federal Reserve of San Francisco</li> <li>• Single Sign-On and Shared Access Bank</li> </ul>	<ul style="list-style-type: none"> <li>• Credit Services</li> <li>• Credit Facility Services</li> <li>• Notice and Paying Agent Services</li> </ul>	<ul style="list-style-type: none"> <li>• Loan Servicing and Servicing</li> <li>• Pricing &amp; Administration Credit Card Services Office of the City Clerk</li> </ul>	<ul style="list-style-type: none"> <li>• Financial and Card Services</li> <li>• Fleet Fuel Services</li> <li>• Commercial Card Services Office of the Controller</li> <li>• Industrial and Business Services</li> <li>• Payment Card Information and Cyber Security Initiatives</li> </ul>

**EAST BAY REGIONAL PUBLIC BANK  
PHASED SERVICES ROLLOUT**

Many, if not most, of these functions will likely require little customization and can be automated with cloud-based software services or can be contracted out to technology vendors.<sup>79, 80</sup>

#### CENTRALIZED LOAN SERVICING

The public bank could act as a banker's bank in other ways for community lenders, perhaps by providing centralized loan servicing, or data stores to inform underwriting decisions. It could also become a valuable source of short-term liquidity for community lenders, allowing them to extend themselves a little farther than they might without such a resource.

Affordable housing is an important community development priority in the Bay Area, and it is also one worth discussing in relation to a public bank. The Federal Home Loan Bank is an important resource to small banks, as a source of liquidity and collateral. Established to promote home ownership in the 1930s, the FHLB uses mortgages as its currency, so to speak. There would be a substantial benefit to the public bank becoming part of the FHLB network, giving it access to

<sup>79</sup> The Smart Path: Solving for Zero Assets with Blockchain Technology, 4/29/18. Brett Bartlett, Berkeley City Council.

<sup>80</sup> <https://getfuturebank.com/wp-content/uploads/2018/01/whitepaper.pdf>

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emergency liquidity, inexpensive collateral, and more, but the price of admission is to be involved in some fashion, in the home mortgage market.

## FINANCIAL INFORMATION

### Public Bank Capital and Sustainability Scenario:

An initial \$50 million in deposits - invested in treasuries with an average return of 2.54% producing a gross profit on earnings (less .44% paid to depositors) - leaving 2% for the bank. Revenues after \$1 million annual operating budget are estimated to be \$51 million in the first year and \$53 million in the second year.

## CONCLUSION

In conclusion, a multi-jurisdictional public bank for the East Bay region is feasible. A holding company is one structure for limiting localities from liability which have examined is the use of the JPA for the purpose of forming a public bank a holding company for that bank or both.

A public bank could provide solutions to key unmet financial needs for communities exposed to the public bank with the exception of providing banking services to the cannabis industry under current federal law exposing public bank deposits exposes participating members to unwanted risk.

Participating members have common goals for a public bank, such as, the creation of:

- an institution that exists specifically for the purposes of keeping control of assets and investment choices local and an institution that is focused on supporting local business needs and the needs of municipalities for competitively priced financial services.
- an institution that frees residence and municipalities who reside within the region, of using mainstream financial service providers as their primary source so as to create better services for the community.

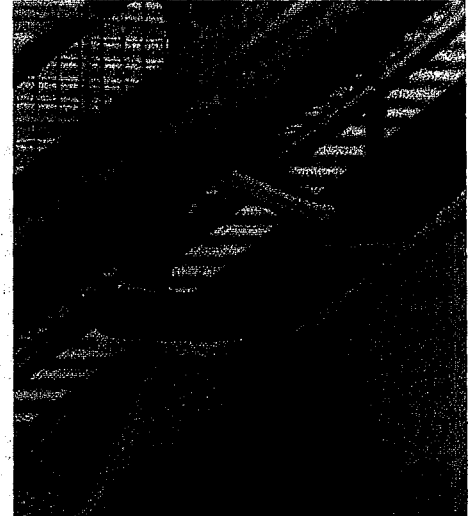
More extensive planning is needed for participating members. A detailed roadmap to establish and implement a regional bank is a vital step. Initiating a RFP issued by the MJPB Working Group or one of the Working Group participating members, for Multi-Jurisdictional Public Banking Services Business Plan for the region is recommend as a next step to establish a public bank.

It is estimated the cost to acquire a small community bank is \$25-30 million plus \$1 million for operations

Transitioning banking services from current banks to a new bank could take up to 18 months after the business plan; implementation plan and debundling of services plan have begun.

## NEXT STEPS

- Members are considerate of stakeholder's input to a public bank in the Bay Area. Establish Multi-Jurisdictional Working Group (MJWG). The MJWG should formally decide on any next steps after discussions with the State Department of Business Oversight.
- Approve the issuance of an RFP to establish a business plan for guidance in implementing the East Bay Regional Public Bank.<sup>81 82 83 84</sup>
- Establish a business plan to evaluate the state charter strength based on the reasonableness and achievability of the banks' business objectives, lines of business, public benefit activities, proposed management, adequate checkpoints for oversight by state regulators and intermediaries<sup>85</sup>. If the decision to move forward includes acquisition as a part of the business plan, identify a \$20-30 million community bank to acquire, capitalization levels, member participation and sources of capital.
- The participating members may want to consider the possibility of adding a provision that specifically permits investment in a public bank.
- Revisit divestment city and county directives set by each participating member for guidance.
- Revisit interested organizations and other stakeholders ready to partner with participating members on establishing a bank.
- Authorize GIC to coordinate the inaugural Public Municipal Bank Summit in partnership, under the guidance of the MJWG, with interested stakeholders and other jurisdictions. A fintech company, SafetyNet has offered to partially fund the event.



<sup>81</sup> Office of the Treasurer & Tax Collector, City and County of San Francisco Request for Qualifications for Office of the Treasurer & Tax Collector Municipal Bank Feasibility Quantitative Analysis, March 19, 2018.

<sup>82</sup> See City of Los Angeles Banking Services Request for Proposal. County File 17-0330 – Office of Finance – Report Back On Divestment and Banking Services Request For Proposal

<sup>83</sup> Banking and EBPP Services. Solicitation No.: RFP 16/17-23. Alameda County Water Department

<sup>84</sup> Banking Services Request for Proposal. City of Berkeley. May 29, 2012.

<sup>85</sup> Appendix 12 : A Social Mission: Divestment

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# CREDITS

## APPENDICES

Appendix 1 Private and Public Banking

Appendix 2 -Outreach Summaries

Appendix 3 -SOW Task Checklist for Oakland Feasibility Study

Appendix 4 –Lending and Guiding Principles

Appendix 5 - Governance Considerations: PBI.org, and [https://friendsofpublicbankofoakland.org/wp-content/uploads/2018/04/FOPB\\_public\\_bank\\_of\\_oakland\\_governance\\_proposal\\_040918.pdf](https://friendsofpublicbankofoakland.org/wp-content/uploads/2018/04/FOPB_public_bank_of_oakland_governance_proposal_040918.pdf)

Appendix 6 -Summary of Cities and States Creating Socially Responsible Banking, Investment and Financial Services Policies

Appendix 7 - Benefits

Appendix 8 - Relevant Market and Participant Information

Appendix 9 - Association of Bay Area Governments Population Tables

Appendix 10 - City of Berkeley, “Resource Requirements to Implement a Change in Financial Institution.” Attachment 3

Appendix 11 - Stakeholder’s Feedback and Letters of Interest (<https://friendsofpublicbankofoakland.org/supporting-organizations/>)

Appendix 12 – A Social Mission - Divestment

Appendix 13 - Summary: German public banks help address climate change (Wolfram Morales, September 2017)

Appendix 14 - Relevant Cannabis Legislation

Appendix 15 – CCA- California Cannabis Authority

Appendix 16 - The Copernican Revolution in Banking. <https://s3.amazonaws.com/qed-uploads/The+Copernican+Revolution+in+Banking+-+Publication+Version.pdf>

Appendix 17 - Bruce Cahan, UrbanLogix. Adjunct Professor, Stanford University. GoodBank™ (IO), an independent teaching bank for high-transparency, impacts-aware commercial bankers. Credit scoring alternatives for sustainable banking.

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Appendix 18 - David Polk & Wardwell Legal Memo, Bank Regulatory Considerations Related to Establishing a Public Bank in the State of California. November 18, 2017.

Appendix 19 - Virtue & Najjar Legal Memo, Establishment and Operation of a Chartered Public Bank by the City of Santa Fe, New Mexico, October 13, 2017.

Appendix 20- SB885, State Bank of New Jersey Act

Appendix 21- HB5431, Bank of Michigan Act

Appendix 22 - Refund America Project - Roosevelt Institute - Municipal Banking: An Overview Financing Socially Just and Sustainable Forms of Urban Development. Karl Beitel. April 2016.

Appendix 23 - The Winner Takes Almost All.

Appendix 24 – Report of the Commission to Study the Feasibility of Establishing a Bank Owned by the Commonwealth, August 2011.

Appendix 25 – California Alliance Public Banking Charter (Proposed)

Appendix 26 – Participating Members Municipal Funding

Appendix 27 – CRC Small Business Study, Displacement, Discrimination and Determination: Results from a Statewide Survey in California. CALIFORNIA REINVESTMENT COALITION Small Business Owners Struggle to Access Affordable Credit

Appendix 28 – Disaster Recovery

Appendix 29 – Fintech Collaboration and Outreach

## **ACKNOWLEDGMENTS**

Adam Crabtree, CEO, Nationwide Compliance Services

Associated of Bay Area Governments (ABAG)

Barbara and John Farner

Bruce Cahan, UrbanLogix, Stanford University

City of Berkeley

City of Hayward

City of Oakland



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City of Richmond

CommonmicsUSA

Community Bank of the Bay

Community Reinvestment Commission (CRC)

County of Alameda

Ellen Brown, Public Banking Institute

Federal Reserve of San Francisco

Former Mayor, City of Oakland, Elihu M. Harris, JD

Friends of the Public Bank of Oakland

FutureBank

Harborside Wellness Center

Laurie Harris, Working Solutions

LendUp!

Los Angeles City Council Staff, Andrew Westhall

Los Angeles Councilmember, Herb Wesson

NorCal FDC

Prelim

Tom Sgorous

Ron Surratt

SafetyNet

State of California, Deputy Treasurer, Tim Schaefer

State of California Department of Business Oversight

State of California Department of Financial Institutions Division

Uphold

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**Benedict J. Lubbon**, Managing Director, Jude Benedict and Associates

**Michael G. James**

**Paul Pryde, Jr.**

**Norma Thigpen**

**Dante Torsetti**

## DISCLOSURES

Information in this Study does not involve the rendering of personalized investment advice but is limited to the dissemination of general information on products and services. A professional adviser should be consulted before implementing any of the strategies presented. Content should not be construed as an offer to buy or sell, or a solicitation of any offer to buy or sell the securities mentioned herein.

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All investment strategies have the potential for profit or loss. Different types of investments involve varying degrees of risk, and there can be no assurance that any specific investment or strategy will be suitable or profitable for a client's investment portfolio. Information provided is general in nature and does not constitute personalized investment advice. A professional adviser should be consulted before implementing any of the options presented. Any tax and estate planning information provided is general in nature and should not be construed as legal or tax advice. Always consult an attorney or tax professional regarding your specific legal or tax situation.

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Submitted by: Global Investment Company  
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[www.globalinvestmentcompanies.com](http://www.globalinvestmentcompanies.com)

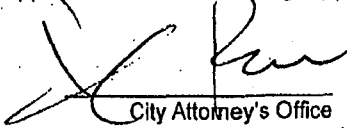
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FINANCE & MANAGEMENT CMTTE  
SEP 11 2018

# ATTACHMENT B

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Revised Finance & Management Committee 11/15/2016

Approved as to Form and Legality



City Attorney's Office

## OAKLAND CITY COUNCIL

**RESOLUTION NO. 86483 C.M.S.**

INTRODUCED BY COUNCILMEMBERS REBECCA KAPLAN, DAN KALB, AND ABEL  
GUILLEN

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**RESOLUTION DIRECTING THE CITY ADMINISTRATOR TO PREPARE AN INFORMATIONAL REPORT WITH THE COST ESTIMATES OF COMMISSIONING A STUDY ANALYZING THE FEASIBILITY AND ECONOMIC IMPACT OF ESTABLISHING A PUBLIC BANK FOR OR INCLUDING THE CITY OF OAKLAND, AND PROVIDING FUNDING OPTIONS FOR THE FEASIBILITY STUDY, INCLUDING THE OPTION OF ALLOCATING TO THE STUDY ANY REMAINDER OF THE MONEY THAT WAS BUDGETED FOR THE GOLDMAN SACHS DEBARMENT PROCEEDINGS.**

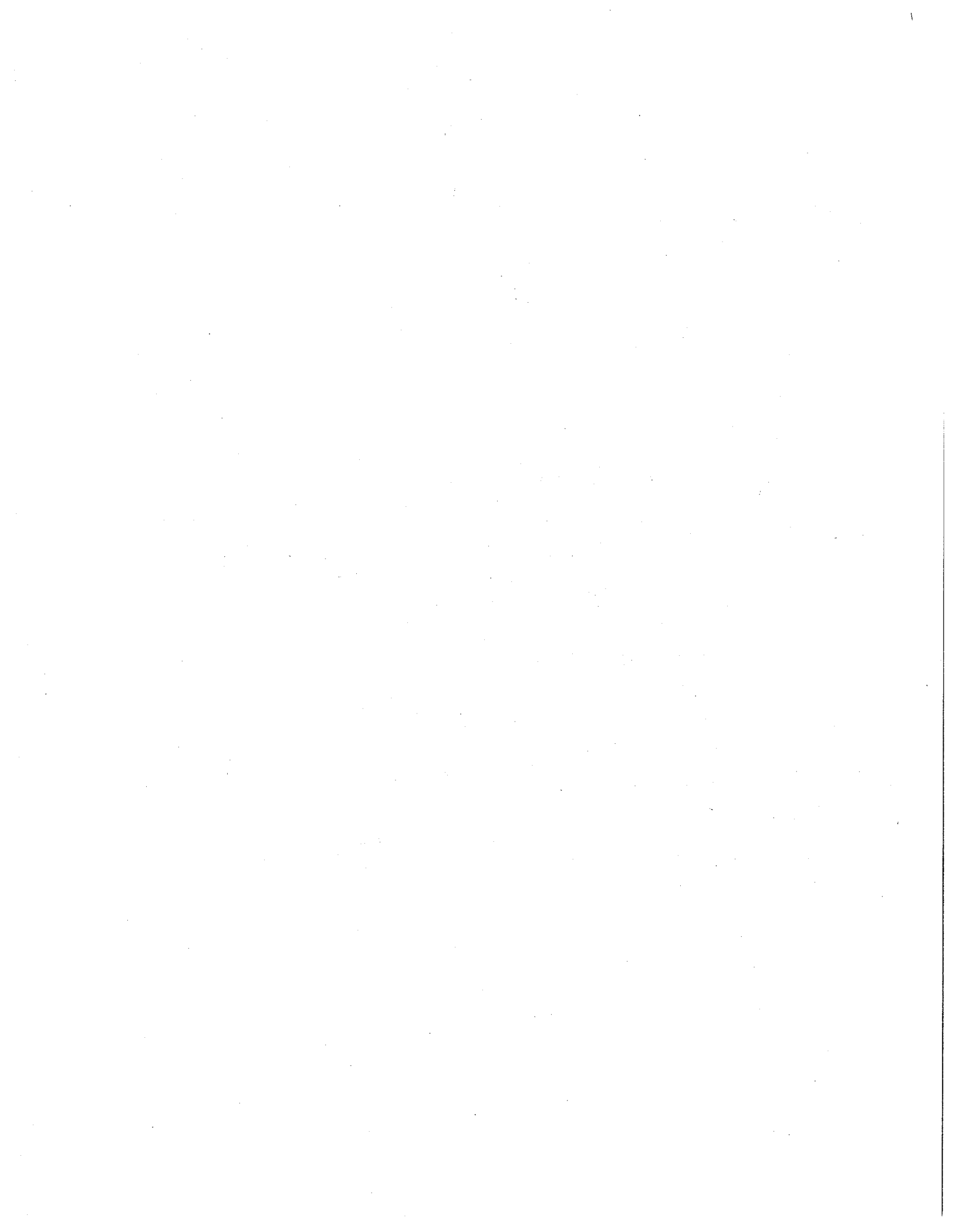
**WHEREAS**, there is a desire for local funding solutions that reinvest public funds in the local community; and

**WHEREAS**, public banking operates in the public interest, through institutions owned by the people through their representative governments; and

**WHEREAS**, public banks are able to return revenue to the community and can provide low-cost financing in support of City policies; and

**WHEREAS**, a public bank can have investment priorities that focus on the creation of jobs in Oakland that spur local economic growth by providing affordable credit to small and medium-sized businesses that have been historically ignored by the larger, more established banks; and

**WHEREAS**, a public bank can have investment priorities that center on providing loans for low and moderate income housing to help relieve the current housing crisis facing Oakland; and



**WHEREAS**, a public bank can have investment priorities that provide loans for energy conservation, installation of solar panels and measures for conserving water in Oakland; and

**WHEREAS**, Wall Street banks seek short-term profits for their private shareholders by investing in stocks, derivatives, credit default swaps and other speculative financial instruments; and

**WHEREAS**, Some Wall Street banks have broken criminal statutes and violated civil and regulatory rules with impunity; and

**WHEREAS**, on September 8, 2016, Wells Fargo bank was fined \$185 million for fraudulently opening up accounts without customers' consent, which then damaged customers' credit scores and caused customers to be charged illegal banking fees; and

**WHEREAS**, on May 20, 2015, Citigroup Inc. and JP Morgan Chase & Co. agreed to plead guilty to felony charges for conspiring to manipulate the price of U.S. dollars and euros exchanged in the foreign currency exchange spot market; and

**WHEREAS**, on May 20, 2015, Citigroup Inc. agreed to pay a criminal fine of \$945 million and JP Morgan Chase & Co. agreed to pay a criminal fine of \$550, for illegally manipulating the foreign exchange market; and

**WHEREAS**, on May 20, 2015, the Federal Reserve announced that it was imposing a separate set of fines on Citigroup, Inc. and JP Morgan Chase & Co. of \$342 million for their illegal practices in the foreign exchange markets; and

**WHEREAS**, on March 9<sup>th</sup>, 2016, the Wall Street Journal reported that Wall Street banks had paid in total more than \$100 billion in fines and penalties for mortgage-related fraud, and

**WHEREAS**, said Wall Street banks' criminal conduct and wrongful behavior should not be rewarded with future business dealings with Oakland; and

**WHEREAS**, the state of North Dakota created a state publicly-owned bank (the Bank of North Dakota) in 1919 for the benefit of the people of North Dakota; and

**WHEREAS**, the state of North Dakota, during the recent "Great Recession," escaped the credit crisis and maintained budget surpluses with zero public debt and had the lowest foreclosure rates and unemployment rates in the nation, the lowest credit card defaults, and no bank failures, due in large part to the Bank of North Dakota's willingness to provide loans to keep the state economy functioning while credit had been frozen elsewhere; and

**WHEREAS**, the Bank of North Dakota's total assets have increased seven-fold over the last two decades; and the Bank of North Dakota has returned \$385 million to the General Fund of North Dakota over the last 20 years; and

**WHEREAS**, Community Banks in North Dakota, in large part due to their partnership with the Bank of North Dakota, averaged about \$12,000 in lending per capita compared to an average of \$3,000 for Community Banks in per capita lending nationwide; and



**WHEREAS**, the City of Philadelphia, by unanimous City Council Resolution, authorized the Council's Committee on Commerce and Economic Development to hold hearings regarding public banking; and

**WHEREAS**, a comprehensive feasibility study completed for the City of Santa Fe cost \$50,000 and found that that a public bank is feasible and has the potential to provide enhanced fiscal management, improved net interest rate margins, and a more robust local lending climate; and

**WHEREAS**, a Resolution will soon come before the Santa Fe City Council to appoint a Public Bank for Santa Fe Task Force that will convene and develop a product that will define the process, resources, information and timelines to be met in order to be prepared to submit an application for a New Mexico Bank Charter for a Public Bank for Santa Fe; and

**WHEREAS**, other cities such as Manchester, New Hampshire, and Reading, Pennsylvania have taken steps to examine public banking; and

**WHEREAS**, on October 20<sup>th</sup>, the Oakland Cannabis Regulatory Commission approved a Resolution recommending that the City Council establish a public bank for Oakland; and

**WHEREAS**, the City of Oakland is tasked with holding and protecting the fundamental interest of the public as well as the financial wellbeing of the City; now, therefore be it

**RESOLVED:** That the Oakland City Council directs the City Administrator, or his/her designee, to prepare an informational report with the cost estimates of commissioning experts in public banking to conduct a study analyzing the feasibility and economic impact of establishing a public bank for the City of Oakland, including the legality and feasibility of providing banking services to the cannabis industry; and be it

**FURTHER RESOLVED:** That this informational report shall include funding options for the feasibility study, including the option of allocating to the study the remainder of the money that was budgeted for the Goldman Sachs Debarment Proceedings, and shall consider whether feasibility could be enhanced by partnering with other jurisdictions, such as via a Joint Powers Authority; and be it

**FURTHER RESOLVED:** That, in preparation from this informational report, the City Administrator, or his/her designee, shall, from community stakeholders who have interest or expertise in banking issues, solicit input and information regarding: studying feasibility; other government entities that could partner with Oakland in studying feasibility and/or establishing a public bank; potential contractors to conduct a feasibility study; and possible private funding sources for a feasibility study; and be it





**FURTHER RESOLVED:** That the City Administrator shall return to the Finance Committee with this informational report within ninety (90) days of adoption of this Resolution.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

**NOV 29 2016**

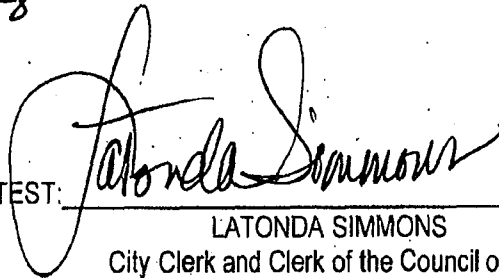
AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND  
PRESIDENT GIBSON MCELHANEY - 8

NOES - 0

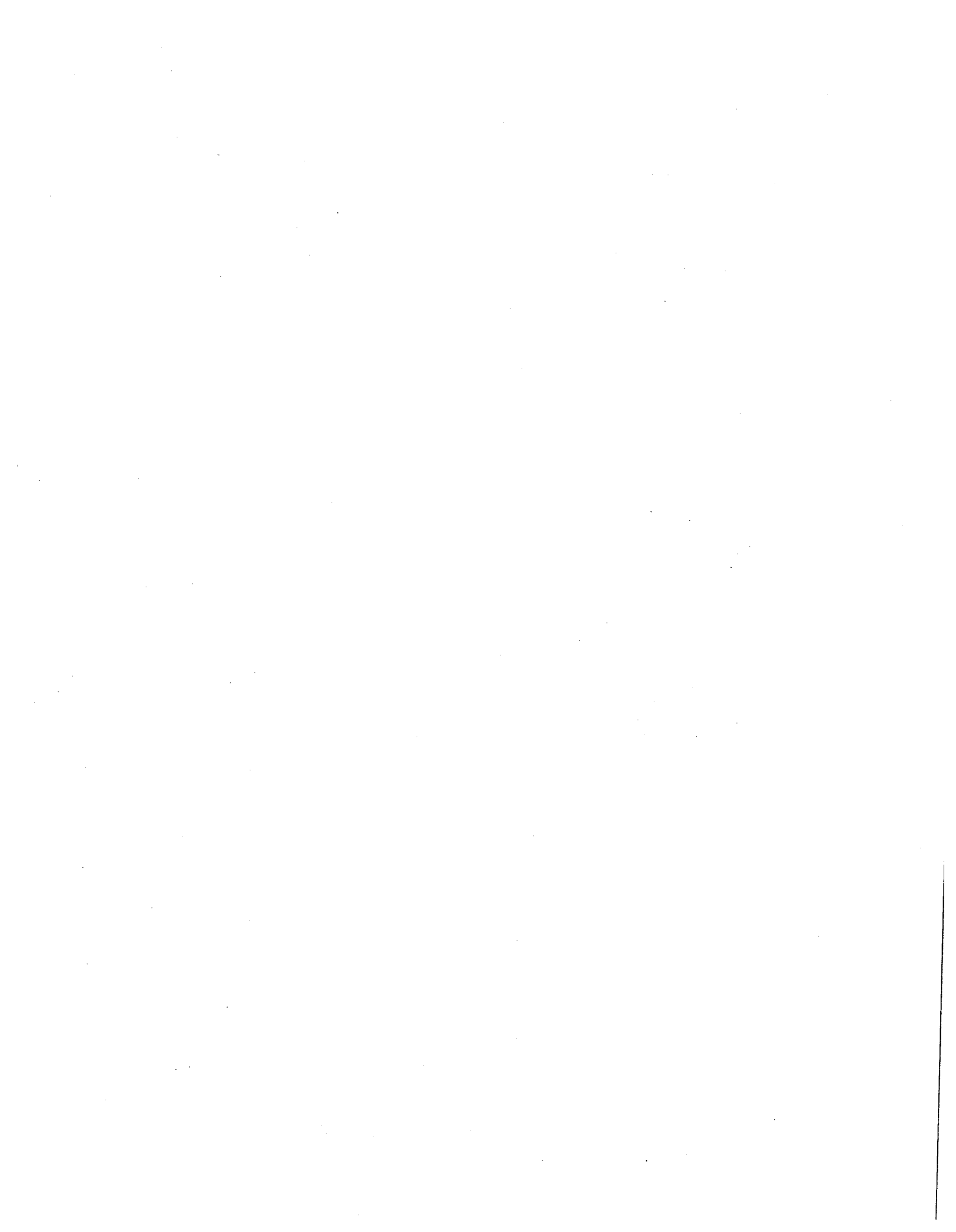
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ABSTENTION 0

ATTEST:



LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California



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OFFICE OF THE CITY CLERK  
OAKLAND

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**CITY OF OAKLAND  
TREASURY BUREAU  
150 FRANK H. OGAWA PLAZA, SUITE 5330  
OAKLAND, CA 94612**

**REQUEST FOR QUALIFICATION**

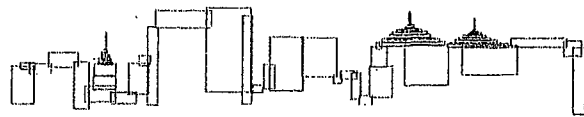
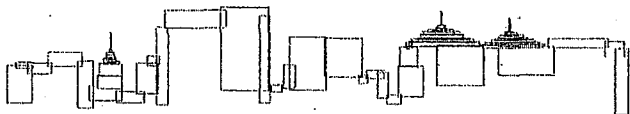
**(RFQ)**

For

**FEASIBILITY STUDY OF PUBLIC BANKING**

Due Date: February 24, 2017

**FEBRUARY 3, 2017**



*Oakland Rising Together!*



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**C. City Schedules and Policies..... 52**

**The Combined Contract Schedules will be collected from the successful proposer before a final decision is made and up to full contract execution. It may be viewed at:**

**<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> or at 250 Frank H. Ogawa Plaza Suite 3341, Oakland, CA Contracts and Compliance Division. Also request a copy by email from [isupplier@oaklandnet.com](mailto:isupplier@oaklandnet.com)**

## I. INTRODUCTION

This Request for Qualifications (RFQ) is being issued by the City of Oakland, Finance Department (the "City").

**Deadline for Questions:** 2:00 PM, February 17, 2017 by email to the Katano Kasaine, Treasurer, [kkasaine@oaklandnet.com](mailto:kkasaine@oaklandnet.com)

**Due Date and Time:** Friday, February 24, 2017 at 4:00 PM (PST)

### Deliver To:

1. Hard Copies:

Office of the City Administrator, Contracts and Compliance Division  
250 Frank Ogawa Plaza, Suite 3341, Oakland, CA 94612  
Phone: (510) 238-3190

2. Electronic Copies:

Katano Kasaine, Treasurer: [KKasaine@oaklandnet.com](mailto:KKasaine@oaklandnet.com)  
Dawn Hort, Principal Financial Analyst: [dhort@oaklandnet.com](mailto:dhort@oaklandnet.com)

**Proposals Must Be Received and Time Stamped by Contracts and Compliance Staff No Later Than - 4:00 P.M (PST).**

The Contractor shall be required to comply with all applicable City programs and policies outlined in Attachment C. Details are presented in the project documents and will be discussed at the pre-proposal meeting. Discussions will include, but may not be limited to: ♦ Equal Benefits for Registered Domestic Partners ♦ Campaign Contribution ♦ Post-project Contractor Evaluation ♦ Prompt Payment ♦ Arizona Boycott ♦ 50% L/SLBE (waived per availability analysis) ♦ Dispute Disclosure and ♦ Living Wage ♦ Minimum Wage

Contractors who wish to participate in the RFQ process are required to register in iSupplier in order to receive addenda, updates, announcements and notifications of contracting opportunities. We recommend updating your firm's primary email address regularly and periodically confirming that the "Products and Services" section fully represents the scope of products and services provided. If you have any questions, please email [isupplier@oaklandnet.com](mailto:isupplier@oaklandnet.com).

For further information and detailed iSupplier registration instructions, please visit the following link <http://www2.oaklandnet.com/oakcal/groups/contracting/documents/webcontent/dowd021639.pdf>.

Free copies of the RFQ documents and Addenda are available in iSupplier. Hard copies will NOT be available for purchase from the City. Please consult the City website for the Plan Holder list.

1. iSupplier Registration/Login:  
<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/index.htm>.  
New registrants can email [isupplier@oaklandnet.com](mailto:isupplier@oaklandnet.com) for registration instructions.  
Allow 3 working days for approval to access bid documents through iSupplier
2. iSupplier Plan Holders List:  
<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/Construction/index.htm>

**Contact Information:** The following City staffs are available to answer questions regarding this RFQ.

1. Project Manager: Katano Kasaine, Treasurer at [kkasaine@oaklandnet.com](mailto:kkasaine@oaklandnet.com)
2. Contract Admin: Paula Peav at [ppeav@oaklandnet.com](mailto:ppeav@oaklandnet.com) or (510) 238-3190
3. Contract Compliance Officer: Vivian Inman at [@oaklandnet.com](mailto:@oaklandnet.com) or (510) 238-6261

In order to avoid confusion or inconsistent responses, contact with City staff or representatives not listed above is prohibited.

The following request for information is in regards to the City of Oakland exploring the idea of creating a local public bank. This document is in no way a commitment or legally binding resolution, draft, or memo regarding the establishment of a public bank.

## II. SCOPE OF SERVICES (Feasibility Study of Public Banking for City of Oakland)

### A. STATEMENT OF NEED

Recognizing the vital importance of financial institutions within society, The City of Oakland, California is looking to further research the legality and feasibility of establishing a publicly owned bank to help finance community projects, reduce risk to public funds in existing financial markets, and provide better financial returns on public investments.

The City is requesting that a preliminary comparison on the City's current financial model, specifically on the benefits and risks of current banking and financing practices in Oakland, and contrasted with other models including public banks in other areas of the United States. Any analysis should take into account the financial and population demographics of the City of Oakland. It should also include measurable factors of city

banking which include, but is not limited to, debt servicing costs, profits returned to the City, municipal and other tax revenue, and other key areas of economic concern.

If this preliminary analysis demonstrates a well-founded need for further studies into a public bank, additional actions can be considered.

## **B. BACKGROUND**

The City of Oakland is tasked with holding and protecting the fundamental interests of the public at large; this includes the financial wellbeing of the City. To this end, the City will explore alternative methods and practices, to ensure the stability and lasting success of the City. It is in this spirit that the RFQ is being issued. The response to the RFQ must cover, in depth, the following questions:

- 1.) Is a Public Bank in Oakland feasible? What factors make it feasible or not?
  - a. If so, how could it be executed? What broad steps would be involved?
  - b. If so, what issues would need to be addressed?
- 2.) What are the impacts of the legality and feasibility of providing banking services to the cannabis industry?

## **C. QUALIFICATIONS**

Designated people interested in responding to this RFQ must hold the following listed qualifications to be considered viable resources. The person/entity must:

- 1.) Hold a professional understanding of the concept and purpose of a public bank, this includes the formal practices of public banking which include but are not limited to; lending capacities, capitalization, governance and accountability, annual returns, and financial modeling of public enterprises.
- 2.) Hold experience in, or demonstrate professional ability to, analyze financial documents, connect and explain complex financial systems, and proficiency in the City's documents such as;
  - The Annual Comprehensive Financial Report
  - The Annual Budget
  - Component Unit of the Government Financial Report
- 3.) Possess and demonstrate knowledge in current public banking models such as the Vermont Partnership Bank, Public Bank of North Dakota, or any other attempted public banks that reflect characteristics of Oakland either nationally or internationally, this includes knowing the models of governance of public banks, operational costs, and the economic impact it had their designated region.
- 4.) Have direct experience in conducting economic impact analysis, both micro and macro, in identifying economic models and tools that have public banks at the

center of financial operations, and describe economic limitations or gains from these models and tools.

- 5.) Experience working with local and state governments where public banking proposals have been made.
- 6.) Have existing networks via private contractors or governments that demonstrate credibility in the field of public banking.
- 7.) Hold a professional level of experience in the banking industry or research into, be it private or public.
- 8.) Demonstrate professional knowledge in securing bank charters, municipal laws, state and federal banking laws, understanding how the formal process of securing a public bank begins and ends.
- 9.) Understanding of the cannabis industry and the legality and feasibility of providing banking services through a Public Bank for the cannabis industry and other unbanked industries.

### III. THE PROPOSAL

#### A. GENERAL INFORMATION

1. The successful proposer selected for this service shall obtain or provide proof of having a current City of Oakland Business tax Certificate.
2. The City Council reserves the right to reject any and all bids.
3. Local and Small Local Business Enterprise Program (L/SLBE) - NOT APPLICABLE FOR THIS PROJECT

- a) *Requirement* – For Professional Services, **50% Local and Small Local Business Enterprise Program (L/SLBE)**: there is a 50% minimum participation requirement for all professional services contracts over \$50,000. Consultant status as an Oakland certified local or small local firm and subcontractor/subconsultant status as an Oakland certified local or small local firm are taken into account in the calculation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant(s). A business must be certified by the City of Oakland in order to earn credit toward meeting the fifty percent requirement. The City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime consultant with the City. The SLBE requirements still applies



for non-certified LBEs and non-local business enterprises.

- b) Good Faith Effort - In light of the fifty percent requirement, good faith effort documentation is not necessary.
- c) Preference Points – Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum fifty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to eighty percent participation of the total contract dollars spent with local Oakland certified firms.
- d) A firm may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
- e) In those instances where Very Small Local Business Enterprise (VSLBE) participation is evident, the level of participation will be double-counted towards meeting the requirement.
- f) Additional Preference Points for Request for Proposals (RFP) and Request for Qualifications (RFQ) may be earned for having an Oakland resident workforce. **Prime consultants seeking additional preference points for having an Oakland resident workforce must submit a completed Schedule E-2 titled the “Oakland Workforce Verification Form” no more than 4 days after the proposal due date. A copy of Schedule E-2 is found on <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.**
- g) Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “evaluation” process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.
- h) The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Schedule F, Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a *copy* of the final progress payment

application.

- i) Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant is able to develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to the Office of the City Administrator, Contracts and Compliance Unit, prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- j) Contractor shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its subcontractors and suppliers, by completing Schedule D, Ownership, Ethnicity, and Gender Questionnaire, and Schedule E, Project Consultant Team, attached and incorporated herein and made a part of this Agreement.
- k) All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- l) In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland’s business community. The City Administrator will track the City’s MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- m) In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland’s business community.

4. The City's Living Wage Ordinance

This RFQ is subject to the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service Contractors (contractors) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as Declaration of Compliance – Living Wage Form; and made part of this RFQ, and, unless specific exemptions apply or a waiver is granted, the contractor must provide the following to its employees who perform services under or related to this RFQ:

- a. Minimum compensation – Said employees shall be paid an initial **hourly wage rate of \$12.93 with health benefits or \$14.86 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 1<sup>st</sup> of each year, contractor 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 **\$1.93 per hour**. Contractor 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) - To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. For more information, web sites include but are not limited to: (1)

<http://www.irs.gov> and

<http://www.irs.gov/individuals/article/0,,id=96466,00.html>

- e. Contractor shall provide to all employees and to Contracts and 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. Contractor 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 RFQ.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of the City Administrator, Contracts and Compliance Unit, 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. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this RFQ to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to Contracts and Compliance.

5. Minimum Wage Ordinance

Oakland employers are subject to Oakland's Minimum Wage Law, whereby Oakland employees must be paid the current Minimum Wage rate. Employers must notify employees of the annually adjusted rates by each December 15<sup>th</sup> and prominently display notices at the job site. The law requires paid sick leave for employees and payment of service charges collected for their services.

For further information, please go to the following website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451>

6. Equal Benefits Ordinance

This RFQ is subject to the Equal Benefits Ordinance of Chapter 2.32 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health,

safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City Contractors (contractors) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a Contractor's operations that occur (1) within the City; (2) on real property outside the City if the property is owned by the City or if the City has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the City; and (3) elsewhere in the United States where work related to a City contract is being performed. The requirements of this chapter shall not apply to subcontracts or sub-contractors.

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as **Schedule N-1, Equal Benefits-Declaration of Nondiscrimination form**. For more information, see [http://library.municode.com/HTML/16308/level2/TIT2ADPE\\_CH2.32EQ\\_BEOR.html#TOPTITLE](http://library.municode.com/HTML/16308/level2/TIT2ADPE_CH2.32EQ_BEOR.html#TOPTITLE)

7. Prompt Payment Ordinance OMC Section 2.06.070 Prompt Payment Terms Required in Notices Inviting Bids, Requests for Proposals/Qualifications and Purchase Contracts

This RFQ is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply, Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor

or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison upon the filing of a compliant. Contractor or its subcontractors 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 Contractor or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress 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.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractors are required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) 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.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with a contractor or subcontractor that delivers goods and/or services pursuant to or in connection with a City of Oakland purchase contract.

Prompt Payment invoice and claim forms are available at the following City of Oakland website: <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> or at Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email [vinman@oaklandnet.com](mailto:vinman@oaklandnet.com).

8. Non-Discrimination/Equal Employment Practices

Contractor 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 RFQ, Contractor agrees as follows:

- a. Contractor and Contractor's sub-contractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, 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.
- b. Contractor and Contractor's Sub-contractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Declaration of Compliance with the Americans with Disabilities Act, attached hereto and incorporated herein.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. Contractor shall submit information concerning the ownership and workforce composition of Contractor's firm as well as its sub Contractors and suppliers, by completing the Ownership, Ethnicity and Gender Questionnaire.
- f. The Project Contractor Team attached and incorporated herein and made a part of this Agreement, Exit Report and Affidavit, attached and

incorporated herein and made a part of this Agreement.

- g. All affirmative action efforts of Contractors are subject to tracking by the City. This information or data shall be used for statistical purposes only. All Contractors are required to provide data regarding the make-up of their sub Contractors and agents who will perform City contracts, including the race and gender of each employee and/or Contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- h. The City will immediately report evidence or instances of apparent discrimination in City or Agency contracts to the appropriate State and Federal agencies, and will take action against Contractors who are found to be engaging in discriminatory acts or practices by an appropriate State or Federal agency or court of law, up to and including termination or debarment.
- i. In the recruitment of sub Contractors, the City of Oakland requires all Contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- j. In the use of such recruitment, hiring and retention of employees or sub Contractors, the City of Oakland requires all Contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

9. Arizona and Arizona-Based Businesses

Contractor agrees that in accordance with Resolution No. 82727 C.M.S., neither it nor any of its subsidiaries, affiliates or agents that will provide services under this agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this agreement with the City of Oakland or until Arizona rescinds SB 1070.

Contractor acknowledges its duty to notify Contracts and Compliance Division, Office of the City Administrator if it's Business Entity or any of its subsidiaries affiliates or agents subsequently relocates its headquarters



to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

10. Pending Dispute Disclosure Policy:

Contractors are required to disclose pending disputes with the City of Oakland when they are involved in submitting bids, proposals or applications for a City contract or transaction involving professional services. This includes contract amendments. Contractor agrees to disclose, and has disclosed, any and all pending disputes to the City prior to execution of this agreement. The City will provide a form for such disclosure upon Contractor's request. Failure to disclose pending disputes prior to execution of this amendment shall be a basis for termination of this agreement.

11. City of Oakland Campaign Contribution Limits

This RFQ is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits Contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations. If this Agreement requires Council approval, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form.

12. Nuclear Free Zone Disclosure

Contractor represents, pursuant to the combined form Nuclear Free Zone Disclosure Form that Contractor is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete the combined form, attached hereto.

13. Sample Professional Service Agreement

This RFQ is subject to the attached Sample Professional Service Agreement.

14. Insurance Requirements

The Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of the 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 grounds for rescission of the contract award.

The Contractor shall name the City of Oakland, its Council members, directors, officers, agents, employees and volunteers as additional insured in its Comprehensive Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form and/or CA 20 48 - Designated Insured Form (for business auto insurance).

Please Note: A statement of additional insured endorsement on the ACORD insurance certificate is insufficient and will be rejected as proof of the additional insured requirement.

Unless a written waiver is obtained from the City's Risk Manager, Contractors must provide the insurance as found at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (Schedule Q). A copy of the requirements are attached and incorporated herein by reference. Liability insurance shall be provided in accordance with the requirements specified.

When providing the insurance, include the Project Name and Project Number on the ACORD form in the section marked Description of Operations/Locations.

When providing the insurance, the "Certificate Holder" should be listed as: City of Oakland, Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612.

15. City Contractor Performance Evaluation

At the end of the project, the Project Manager will evaluate the Contractor's Performance in accordance with the City Contractor Performance Evaluation program.

16. Violation Of Federal, State, City/Agency Laws, Programs Or Policies:

The City or Agency may, in their sole discretion, consider violations of any programs and policies described or referenced in this Request for Proposal, a material breach and may take enforcement action provided under the law, programs or policies, and/or terminate the contract, debar contractors from further contracts with City and Agency and/or take any other action or invoke any other remedy available under law or equity.

17. Contractor's Qualifications

Contractor represents that Contractor 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. Contractor's services will be performed in accordance with the generally accepted principles and practices applicable to Contractor's trade or profession. The Contractor warrants that the Contractor, and the Contractor's employees and sub-contractors 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 Contractor's performance of the Services. All Services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Contractor will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Contractor is able to fulfill the requirements of this Agreement. 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. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete the Independent Contractor Questionnaire, Part A, attached hereto.

18. The following City staff are available to answer questions:

RFQ and Project related issues:

**Project Manager:** Katano Kasaine at [kkasaine@oaklandnet.com](mailto:kkasaine@oaklandnet.com)

**Contract Analyst:** Paula Peav, (510) 238-3190

**Compliance Officer:** Vivian Inman, (510) 238-6261

In order to avoid confusion or inconsistent responses, contact with City staff or represented not listed above is prohibited. If inquiries regarding this RFQ are by email, subject line must include the words "Feasibility Study of Public Banking RFQ".

19. All responses to the RFQ become the property of the City.
20. The RFQ does not commit the City to award a contract or to pay any cost incurred in the preparation of the proposal.
21. The City reserves the sole right to evaluate each proposal and to accept or reject any or all proposals received as a result of the RFQ process.
22. The City reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of the RFQ and/or RFQ process, to obtain further information from any and all Contractor teams and to waive any defects as to form or content of the RFQ or any responses by any contractor teams

23. The City may require a service provider to participate in negotiations and submit technical information or other revisions to the service provider's qualifications as may result from negotiations.
24. Once a final award is made, all RFQ responses, except financial and proprietary information, become a matter of public record and shall be regarded by the City as public records. The City shall not in any way be liable or responsible for the disclosure of any such records or portions thereof if the disclosure is made pursuant to a request under the Public Records Act or the City of Oakland Sunshine Ordinance.
25. The Fair Political Practices Act and/or California Government Code Section 1090, among other statutes and regulations may prohibit the City from contracting with a service provider if the service provider or an employee, officer or director of the service providers' firm, or any immediate family of the preceding, or any sub Contractor or contractor of the service provider, is serving as a public official, elected official, employee, board or commission member of the City who will award or influence the awarding of the contract or otherwise participate in the making of the contract. The making of a contract includes actions that are preliminary or preparatory to the selection of a Contractor such as, but not limited to, involvement in the reasoning, planning and/or drafting of solicitations for bids and RFQs, feasibility studies, master plans or preliminary discussions or negotiations.

**B. SUBMITTAL REQUIREMENTS**

1. Submit six (6) copies of proposal (5 bound and 1 unbound copy). **The proposals are due at the Department of Contracts and Compliance, Office of the City Administrator, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612 time stamped by no later than 4:00 P.M. February 24, 2017.**

All proposals submitted via US Mail or common carrier must be delivered in a sealed package with the project name, submittal date, time and location of the proposals on the outside of the package or the documents.

2. In addition to hard copies, submit a copy by email to Katano Kasaine, Treasurer, at [KKasaine@oaklandnet.com](mailto:KKasaine@oaklandnet.com) and Dawn Hort, Principal Financial Analyst, [dhort@oaklandnet.com](mailto:dhort@oaklandnet.com). Proposals must be received no later than 4:00 p.m. on Friday, February 24, 2017.
3. Complete, but concise proposals, are recommended for ease of review by the City. Proposals should provide a straightforward, concise description of the firm's capabilities to satisfy the requirements of the RFP. Marketing and sales type information should be excluded.

**C. REQUIRED PROPOSAL ELEMENTS AND FORMAT**

1. Transmittal Letter

- a. Addressed to Katano Kasaine, Treasurer, Treasury Bureau, 150 Frank Ogawa Plaza, Suite 5330, Oakland, California, 94612. (Please do not submit proposals to this address).
- b. Signed by an officer authorized by your firm to obligate your firm to perform the commitments contained in the proposal.
- c. The transmittal letter shall provide an executive summary of the proposal. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the response.

2. Information Requested

- a. Please provide a broad overview of your firm, including its background and history in providing the services requested herein, including copy of resume as it relates to all sections.
- b. Discussed in details how your firm would meet numbers 1-7 of the "Qualifications" section.
- c. Please provide one (1) to two (2) copies of previous work in economic, geographic, and demographic conditions including supply and demand analysis regarding public banking.
- d. Please provide your understanding of the legality and feasibility for providing services through a Public Bank for the cannabis industry or any other unbanked sector.
- e. Provide any previous business plans regarding public banking including establishing a detailed business plan that will sustain a bank's business operations, minimize risks, and achieve the stated goals.
- f. What do you see as some of the challenges, and how would your firm assist in addressing these challenges?
- g. Sub-Consultants (if used): list addresses, telephone numbers and areas of expertise of each. Briefly describe the project responsibility of each team member. Identify which contractors are MBE, WBE, Local Business Enterprises (LBE) and Small Local Business Enterprise (SLBE). Additionally, for LBEs/SLBEs, submit a copy of current business license and date established in Oakland.

5. References

- a. Letters of reference which can support numbers 1-4 of the “Qualifications” section.

6. Fee Proposal

Please provide a comprehensive cost/fee proposal for the feasibility and economic impact of a public bank including the legality and feasibility of providing services to the cannabis industry. While fees and compensation are an important factor in the evaluation of responses, the City is not required to select the lowest cost bidder. We reserve the right to select the bid that demonstrates the “best value” overall, including proposed alternatives that meets the objectives at hand.

Please disclose any professional or personal financial interest, which could be a possible conflict of interest in representing the City. The City also requires the firm to further disclose arrangements to derive additional compensation from various investment and reinvestment products, if applicable. The City may reject a Proposal from any firm that, in the City’s opinion, would be in a conflict of interest if the firm is awarded a contract.

7. Body of Response

- a. **Text** – In consideration of the audience reading your response, please use a minimum 11-pt font.
- b. **Length** – Your response to the RFQ should be limited to 15 pages in length. Given the page constraints, we **STRONGLY** encourage a minimum of boilerplate marketing material. While you are allowed to include appendices, there are **NO** guarantees that the appendices will be taken into consideration during the evaluation of your response.
- c. **Content** – Please be sure your response is clearly organized such that the reader can easily identify which question/section you are answering. Showing the question at the beginning of each response is highly encouraged.

8. Submittals are validated using the following RFQ Checklist.

- a. Schedules (Required with submission)
1. **Schedule E - Project Consultant Team**
  2. **Schedule O - Campaign Contribution Limits**

9. Other schedules must be submitted prior to full contract execution and are available at

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>

10. Addenda - Proposal and Acknowledgment of all Addenda – if issued, please provide signed addenda and submit with proposal.
11. Proprietary Information: All responses to the RFQ become the property of the City. To withhold financial and proprietary information, please label each page as "confidential" or "proprietary".
12. Public Records Act or Sunshine Ordinance: Although a document may be labeled "confidential" or "proprietary", information is still subject to disclosure under the Public Records Act or Sunshine Ordinance, and is, at the City's discretion, based on the potential impact of the public's interests whether or not to disclose "confidential" or "proprietary" information.

#### **D. REJECTION OF PROPOSAL ELEMENTS**

The City reserves the right to reject any or all proposals, whether or not minimum qualifications are met, and to modify, postpone, or cancel this RFQ without liability, obligation, or commitment to any party, firm, or organization. The City reserves the right to request and obtain additional information from any candidate submitting a proposal. A proposal may be rejected for any of the following reasons:

- Proposal received after designated time and date.
- Proposal not in compliance with the City of Oakland Local/Small Local Business Enterprise Program. – **Not Applicable for this Project**
- Proposal not containing the required elements, exhibits, nor organized in the required format.
- Proposal considered not fully responsive to this RFQ.

#### **E. EVALUATION OF PROPOSALS – SUBJECT TO CHANGE**

The City of Oakland will conduct a fair and impartial evaluation of the proposals received in response to this RFQ. It is the City's intent to select a firm with the best overall qualifications. The factors to be used by the City in evaluating the proposals will include, but are not limited to, the following:

- 1) RFQ Understanding
  - Approach
  - Clarity
  - Analysis/Creativity of proposal

- Ability to provide services requested
- 2) General Experience and Qualifications of Firm/Assigned Personnel
  - Experience
  - Assigned Personnel
  - Any other resources assigned to the City
- 3) Fee Proposal
- 4) References
- 5) Other Factors
  - Presentation, completeness, organization, and responsiveness of proposal.

**F. INTERVIEWS OF SHORT-LISTED FIRMS – SUBJECT TO CHANGE**

Interviews of short-listed qualified candidates may be held if a selection is not made from the evaluation phase.

- 1) It is anticipated that approximately three teams will be invited to interview. The selected teams will be notified in writing.
- 2) The interviews will consist of the team's presentation and a question-and-answer period. The teams should be prepared to discuss at the interview their specific experience providing services similar to those described in the RFQ. Interviews will be held at a City of Oakland office (exact location to be determined).
- 3) Overall Rating Criteria: The following criteria will be used in evaluating and rating the short-listed firms:
  - a) Presentation:
    - Relevant Experience
    - Qualifications
    - Organization
    - Approach
    - Reference
    - Other Factors
  - b) Request for Proposal Submittal
  - c) Interview / Questions

Only those contractors meeting the relevant experience and who have submitted a qualified proposal will be invited for interviews.



- 4) The City anticipates the tentative schedule of events to be as follows:
- Distribution of RFQ February 3, 2017
  - Deadline to submit Questions 2:00pm, February 17, 2017
  - Submission of RFQ 4:00pm, February 24, 2017

**G. CONTRACT NEGOTIATIONS AND AWARD- SUBJECT TO CHANGE**

1. The completion of this evaluation process will result in the contractor being numerically ranked. The contractor ranked first will be invited to participate in contract negotiations. Should the City and the first ranked contractor not be able to reach an agreement as to the contract terms within a reasonable timeframe, the City may terminate the negotiations and begin negotiations with the contractor that is next in line.
2. The contract amount (including reimbursements) shall be a not to exceed amount, to be established based upon a mutually agreeable Scope of Services and fee schedule.
3. The City will withhold the final 10% of contract amount pending successful completion of work.
4. Upon successful completion of the negotiations, the City Administrator will award the contract to the selected contractor.
5. A sample City standard professional services agreement is included in the RFQ as referenced as Attachment A “Sample Agreement”. The selected contractor will be required to enter into a contract that contains similar terms and conditions as in the standard agreement. Please note that the City Attorney’s Office is typically not inclined to make any modifications to the standard agreement terms and provisions.
6. Upon award the City will issue a Notice to proceed.
7. The selected contractor and its other members will be required to maintain auditable records, documents, and papers for inspection by authorized local, state and federal representatives. Therefore, the contractor and its other members may be required to undergo an evaluation to demonstrate that the contractor uses recognized accounting and financial procedures.

**END OF RFQ**

ATTACHMENT A

**SAMPLE**  
**PROFESSIONAL OR SPECIALIZED SERVICE AGREEMENT**  
**BETWEEN THE CITY OF OAKLAND**  
**AND**  
**Name of Contractor**

Whereas, the City Council has authorized the City Administrator to enter into contracts for professional or specialized services if the mandates of Oakland City Charter Section 902(e) have been met.

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

This Agreement is made and entered into as of Month, date, year between the City of Oakland, a municipal corporation, ("City"), One Frank H. Ogawa Plaza, Oakland, California 94612, and Name of Contractor ("Contractor")

2. Scope of Services

Contractor agrees to perform the services specified in **Schedule A**, Scope of Services attached to this Agreement and incorporated herein by reference. Contractor shall designate an individual who shall be responsible for communications with the City for the duration of this Agreement. **Schedule A** includes the manner of payment. The Project Manager for the City shall be Project Manager.

3. Time of Performance

Contractor's services shall begin on Month, Date, Year and shall be completed Month, Date, Year.

4. Compensation and Method of Payment

Contractor will be paid for performance of the scope of services an amount that will be based upon actual costs but that will be "Capped" so as not to exceed \$Amount, based upon the scope of services in **Schedule A** and the budget by deliverable task and billing rates in **Schedule B**. The maximum that will be charged for the entire scope of work will not exceed the Capped amount, even if the Contractor's actual costs exceed the Capped amount. Invoices shall state a description of the **deliverable** completed and the amount due. Payment will be due upon completion and acceptance of the deliverables as specified in the Scope of Services.

In the aggregate, progress payments will not exceed ninety percent (90%) of the total amount of the contract, with the balance to be paid upon satisfactory completion of the

contract. Progress, or other payments, will be based on at least equivalent services rendered, and will not be made in advance of services rendered.

In computing the amount of any progress payment (this includes any partial payment of the contract price during the progress of the work, even though the work is broken down into clearly identifiable stages, or separate tasks), the City will determine the amount that the contractor has earned during the period for which payment is being made, on the basis of the contract terms. The City will retain out of such earnings an amount at least equal to ten percent (10%), pending satisfactory completion of the entire contract.

5. Independent Contractor

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Contractor shall be, and is, an independent contractor, and is not an employee of the City. Contractor 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 Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's subordinates and employees. Contractor will determine the method, details and means of performing the services described in **Schedule A**.

b. Contractor's Qualifications

Contractor represents that Contractor 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. The Contractor warrants that the Contractor, and the Contractor's 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 Contractor's performance of the Services. All Services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Contractor will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect City's program. This means Contractor is able to fulfill the requirements of this Agreement. 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. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete **Schedule M, Independent Contractor Questionnaire**, attached hereto.

c. Payment of Income Taxes

Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Contractor for services under this Agreement. On request, Contractor will provide the City with proof of timely payment. Contractor agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Contractor's failure to comply with this provision.

d. Non-Exclusive Relationship

Contractor may perform services for, and contract with, as many additional clients, persons or companies as Contractor, in his or her sole discretion, sees fit.

e. Tools, Materials and Equipment

Contractor will supply all tools, materials and equipment required to perform the services under this Agreement.

f. Cooperation of the City

The City agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement.

g. Extra Work

Contractor will do no extra work under this Agreement without first receiving prior written authorization from the City.

6. Proprietary or Confidential Information of the City

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

7. Ownership of Results

Any interest of Contractor or its Subcontractors, in specifications, studies, reports, memoranda, computation documents prepared by Contractor or its Subcontractors in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

8. Copyright

Contractor shall execute appropriate documents to assign to the City the copyright to works created pursuant to this Agreement.

9. Audit

Contractor shall 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.

Contractor shall (a) permit the City to have access to those records for the purpose of making an audit, examination or review of financial and performance data pertaining to this Agreement; and (b) maintain such records for a period of four years following the last fiscal year during which the City paid an invoice to Contractor under this Agreement.

In addition to the above, Contractor agrees to comply with all audit, inspection, recordkeeping and fiscal reporting requirements incorporated by reference.

10. Agents/Brokers

Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

11. Assignment

Contractor 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.

12. Publicity

Any publicity generated by Contractor for the project funded pursuant to this Agreement, during the term of this Agreement or 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 Contractor to assist Contractor in generating publicity for the project funded pursuant to this Agreement. Contractor further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

13. Title of Property

Title to all property, real and personal, acquired by the Contractor from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. Contractor acknowledges it is responsible for the protection, maintenance and preservation of all such property held in custody for the City during the term of the Agreement. The Contractor shall, upon expiration or termination of this Agreement, deliver to the City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with “Notice” section of this Agreement.

Contractor shall provide to the City Auditor all property-related audit and other reports required under this Agreement. In the case of lost or stolen items or equipment, the Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the “Notice” section of this Agreement.

Prior to the disposition or sale of any real or personal property acquired with City funds, Contractor shall obtain approval by the City Council and City Administrator in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120. Surplus supplies and equipment – Disposal or Destruction.

14. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Contractor must provide the insurance listed in **Schedule Q, Insurance Requirements**. **Schedule Q** is attached at the end of this sample agreement and incorporated herein by reference.

15. Indemnification

- a. Notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective 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 Contractor's obligations, representations or warranties under this Agreement;
  - (ii) Act or failure to act in the course of performance by Contractor under this Agreement;
  - (iii) Negligent or willful acts or omissions in the course of performance by Contractor 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 Contractor;
  - (v) Unauthorized use or disclosure by Contractor of Confidential Information as provided in Section 6 Proprietary of Confidential Information of the City above; and
  - (vi) 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.
- b. For purposes of the preceding Subsections (i) through (vi), the term "Contractor" includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.

- c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
- d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section 15. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of City.
- e. Contractor 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 Contractor by 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, Contractor'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 Contractor's obligations under this Section 15 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 15 shall not be limited by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Contractor 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.

16. Right to Offset Claims for Money

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

17. Prompt Payment Ordinance

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S, passed January 15, 2008 and effective



REQUEST FOR QUALIFICATIONS (RFQ) – (Feasibility Study of Public Banking)

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February 1, 2008). The Ordinance requires that, unless specific exemptions apply, the Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed late payments are subject to investigation by the City of Oakland Liaison, Division of Contracts and Compliance upon the filing of a complaint. Contractor or its subcontractors 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 Contractor or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Contractor progress 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.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractor is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five (5) 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.

If any amount due by a prime contractor or subcontractor to any claimant for goods and/or services rendered in connection with a purchase contract is not timely paid in accordance the Prompt Payment ordinance, the prime Contractor or subcontractor shall owe and pay to the claimant interest penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the prime contractor or subcontractor from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest payments for late payment Prompt Payment ordinance may not seek further interest penalties on the same late payment in law or equity.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with another contractor or subcontractor that delivers goods and/or services pursuant to or in connection with this City of Oakland purchase contract.

Prompt Payment invoice and claim forms are available at the following City of Oakland website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedule/s/index.htm> or at Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email [vinman@oaklandnet.com](mailto:vinman@oaklandnet.com).

18. Arizona and Arizona-Based Businesses

Contractor agrees that in accordance with Resolution No. 82727 C.M.S., neither it nor any of its subsidiaries, affiliates or agents that will provide services under this agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this agreement with the City of Oakland or until Arizona rescinds SB 1070.

Contractor acknowledges its duty to notify the Purchasing Department if it's Business Entity or any of its subsidiaries affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this agreement.

19. Dispute Disclosure

Contractors are required to disclose pending disputes with the City of Oakland when they are involved in submitting bids, proposals or applications for a City or Agency contract or transaction involving professional services. This includes contract amendments. Contractor agrees to disclose, and has disclosed, any and all pending disputes to the City prior to execution of this agreement. The City will provide a form for such disclosure upon Contractor's request. Failure to disclose pending disputes prior to execution of this amendment shall be a basis for termination of this agreement.

20. Termination on Notice

The City may terminate this Agreement immediately for cause or without cause upon giving (30) calendar days' written notice to Contractor. Unless otherwise terminated as provided in this Agreement, this Agreement will terminate on month date year.

21. Conflict of Interest

a. Contractor

The following protections against conflict of interest will be upheld:

- i. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Contractor 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.
- iii. Contractor 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 Contractor.
- iv. Contractor 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. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Contractor 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 Contractor 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. Contractor agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor'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.).

- vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a “city officer” or “public official” for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- vii. Contractor 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.

b. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor 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, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.

22. Non-Discrimination/Equal Employment Practices

Contractor 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, Contractor agrees as follows:

- a. Contractor and Contractor’s subcontractors, if any, 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.

- b. Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor 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.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities 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.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

23. Local and Small Local Business Enterprise Program (L/SLBE)

- a. **Requirement – For Professional Services, 50% Local and Small Local Business Enterprise Program (L/SLBE):** there is a 50% minimum participation requirement for all professional services contracts over \$50,000. Consultant status as an Oakland certified local or small local firm and subcontractor/subconsultant status as an Oakland certified local or small local firm are taken into account in the calculation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant(s). A business must be certified by the City of Oakland in order to earn credit toward meeting the fifty percent requirement. The City has waived small local business enterprise (SLBE) subcontracting requirements for Oakland certified local businesses that apply for professional services contracts as the prime consultant with the City. The SLBE requirements still applies for non-certified LBEs and non-local business enterprises.
- b. **Good Faith Effort -** In light of the fifty percent requirement, good faith effort documentation is not necessary.
- c. **Preference Points –** Preference points are earned based on the level of participation proposed prior to the award of a contract. Upon satisfying the minimum fifty

- percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to eighty percent participation of the total contract dollars spent with local Oakland certified firms.
- d. A firm may earn up to five (5) preference points for local Oakland business participation and additional preference points for being a long term certified business in Oakland regardless of size and for having an Oakland workforce.
  - e. In those instances where VSLBE participation is evident, the level of participation will be double-counted towards meeting the requirement.
  - f. Additional Preference Points. For Request for Proposal (RFP) and Request for Qualifications (RFQ), additional Preference Points may be earned for having an Oakland workforce on Non-Construction Contracts
  - g. Earning extra preference points for having an existing work force that includes Oakland residents is considered added value. The Request for Proposal “evaluation” process allows for additional preference points over and above the number of points earned for technical expertise. Typically 100 points may be earned for the technical elements of the RFP. Preference points are awarded over and above the potential 100 points.
  - h. The Exit Report and Affidavit (ERA) – This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the **Schedule F, Exit Report and Affidavit** for, and have it executed by, each L/SLBE sub consultant and submitted to the Office of the City Administrator, Contracts and Compliance Unit, along with a *copy* of the final progress payment application.
  - i. Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant is able to develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to the Office of the City Administrator, Contracts and Compliance Unit, prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
  - j. Contractor shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its subcontractors and suppliers, by completing **Schedule D, Ownership, Ethnicity, and Gender Questionnaire**, and **Schedule E, Project Consultant Team**, attached and incorporated herein and made a part of this Agreement.

- k. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- l. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland's business community. The City Administrator will track the City's MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- m. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland's business community.

24. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, then Contractor must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 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, the consultant must 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 \$12.93 with health benefits or \$14.86 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 1<sup>st</sup> of each year, contractor 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 \$1.93 per hour. Contractor 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) - To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service.
- e. Contractor shall provide to all employees and to the Division of Contracts and 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. Contractor 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 – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Division of Contracts and 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. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Division of Contracts and Compliance.



25. Minimum Wage Ordinance

Oakland employers are subject to Oakland's Minimum Wage Law, whereby Oakland employees must be paid the current Minimum Wage rate. Employers must notify employees of the annually adjusted rates by each December 15<sup>th</sup> and prominently display notices at the job site. The law requires paid sick leave for employees and payment of service charges collected for their services.

For further information, please go to the following website:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK05145>

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26. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.32 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors (consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as **Schedule N-1, Equal Benefits-Declaration of Nondiscrimination**.

27. City of Oakland Campaign Contribution Limits

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as **Schedule O**.

28. Nuclear Free Zone Disclosure

Contractor represents, pursuant to **Schedule P, Nuclear Free Zone Disclosure Form**, that Contractor is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete **Schedule P**, attached hereto.

29. 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.

30. Religious Prohibition

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

31. Business Tax Certificate

Contractor shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

32. Abandonment of Project

REQUEST FOR QUALIFICATIONS (RFQ) – (Feasibility Study of Public Banking)

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The City may abandon or indefinitely postpone the project or the services for any or all of the project at any time. In such event, the City shall give thirty (30) days written notice of such abandonment. In the event of abandonment prior to completion of the final drawings, if applicable, and cost estimates, Contractor shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Contractor shall present to the City a complete report of said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the City, together with any other charges outstanding at the time of termination, shall be payable by the City within thirty (30) days following submission of a final statement by Contractor.

Should the project or any portion thereof be abandoned, the City shall pay the Contractor for all services performed thereto in accordance with the terms of this Agreement.

33. Validity of Contracts

This Agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

34. Governing Law

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

35. 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 of Oakland)  
Agency/Department  
Address  
Oakland, CA  
Attn: Project Manager

Name of Contractor  
Address  
City State Zip  
Attn: Project 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.

36. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Contractor for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. 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.

37. Modification

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

38. 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.

39. Time of the Essence

Time is of the essence in the performance of this Agreement.

40. Commencement, Completion and Close out

It shall be the responsibility of the Contractor to coordinate and schedule the work to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

REQUEST FOR QUALIFICATIONS (RFQ) – (Feasibility Study of Public Banking)

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Any time extension granted to Contractor to enable Contractor to complete the work must be in writing and shall not constitute a waiver of rights the City may have under this Agreement.

Should the Contractor 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, the Contractor 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 the Contractor 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 Contractor.

41. Approval

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

42. Inconsistency

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

City of Oakland,  
a municipal corporation

Name of Contractor

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

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

\_\_\_\_\_  
(Agency Director's Signature) (Date)

\_\_\_\_\_  
Business Tax Certificate No.

\_\_\_\_\_  
Approved as to form and legality:

\_\_\_\_\_  
Date of Expiration

\_\_\_\_\_  
Resolution Number

\_\_\_\_\_  
(City Attorney's Office Signature) (Date)

\_\_\_\_\_  
Accounting Number

**END OF PROFESSIONAL SERVICES CONTRACT SAMPLE**

**ATTACHMENT B1  
(Stand-Alone Schedules Required with Proposal)**

**SCHEDULE E  
(PROJECT CONSULTANT TEAM LISTING)**

An interactive version of this form can be downloaded from Contracts and Compliance website <http://www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oak023379.pdf> or request for a copy from Paula Peav at [ppeav@oaklandnet.com](mailto:ppeav@oaklandnet.com) or phone number 510-238-3190

**AND**

**SCHEDULE O  
(CAMPAIGN CONTRIBUTION LIMITS)**

An interactive version of this form can be downloaded from Contracts and Compliance website <http://www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oak023287.pdf> or request for a copy from Paula Peav at [ppeav@oaklandnet.com](mailto:ppeav@oaklandnet.com) or phone number 510-238-3190

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**SCHEDULE E  
PROJECT CONSULTANT TEAM LISTING**

To be completed by prime consultants only.

Date \_\_\_\_\_



**Note:**  
The consultant herewith must list all subconsultants regardless of tier and their respective percentages of the project work. No other subconsultants, other than those listed below shall be used without prior written approval by the City of Oakland. Provide all information listed and check the appropriate boxes. Firms must be certified with the City of Oakland in order to receive Local/Small Local Business Enterprise credits.

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

Signed: \_\_\_\_\_

Type of Work	Company Name	Address and City	Phone Number	% of Project Work	Dollar Amount	Subcontractor	Local (LBE)	Small Local (SLBE)	* Ethnicity	** Gender

Attach additional page(s) if necessary.  
Contractors are required to identify the ethnicity and gender of all listed firms majority owner. This information will be used for tracking purposes only.  
\* (AA=African American) (AI=Asian Indian) (AP=Asian Pacific) (C=Caucasian) (H=Hispanic) (NA=Native American) (O=Other) (NL=Not Listed)  
\*\* (M = Male) (F = Female)

(Revised as of 6/06)



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SCHEDULE O

CONTRACTOR ACKNOWLEDGEMENT OF CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS

To be completed by City Representative prior to distribution to Contractor

City Representative \_\_\_\_\_ Phone \_\_\_\_\_ Project Spec No. \_\_\_\_\_

Department \_\_\_\_\_ Contract/Proposal Name \_\_\_\_\_

This is an  Original  Revised form (check one). If Original, complete all that applies. If Revised, complete Contractor name and any changed data.

Contractor Name \_\_\_\_\_ Phone \_\_\_\_\_

Street Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Type of Submission (check one)  Bid  Proposal  Qualification  Amendment

Majority Owner (if any). A majority owner is a person or entity who owns more than 50% of the contracting firm or entity.

Individual or Business Name \_\_\_\_\_ Phone \_\_\_\_\_

Street Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

The undersigned Contractor's Representative acknowledges by his or her signature the following:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland and the Oakland Redevelopment Agency during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act and certify that I/we have not knowingly, nor will I/we make contributions during the period specified in the Act.

I understand that the contribution restrictions also apply to entities/persons affiliated with the contractor as indicated in the Oakland Municipal Code Chapter 3.12.080.

If there are any changes to the information on this form during the contribution-restricted time period, I will file an amended form with the City of Oakland.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Signer

\_\_\_\_\_  
Position

To be Completed by City of Oakland after completion of the form

Date Received by City: \_\_\_\_\_ By: \_\_\_\_\_

Date Entered on Contractor Database: \_\_\_\_\_ By: \_\_\_\_\_

**ATTACHMENT B2**  
**(Stand-Alone Schedules Required Prior to Contract Award)**

**SCHEDULE E-2**  
**(OAKLAND WORKFORCE VERIFICATION)**

An interactive version of this form can be downloaded from Contracts and Compliance website <http://www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oak023379.pdf> or request for a copy from Paula Peav at [ppeav@oaklandnet.com](mailto:ppeav@oaklandnet.com) or phone number 510-238-3190

**AND**

**SCHEDULE Q**  
**(INSURANCE REQUIREMENTS)**

An interactive version of this form can be downloaded from Contracts and Compliance website <http://www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oak023287.pdf> or request for a copy from Paula Peav at [ppeav@oaklandnet.com](mailto:ppeav@oaklandnet.com) or phone number 510-238-3190

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Oakland Workforce Verification

Schedule E-2

Date Submitted: \_\_\_\_\_ Consultant/Service Provider: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ email: \_\_\_\_\_ # additional sheets attached: \_\_\_\_\_

PLEASE NOTE: All prime consultants seeking additional preference points for Oakland workforces must complete this form and submit with "required attachments" to Contracts and Compliance no later than four (4) days after proposal due date. For questions, please contact the assigned Compliance Officer named in the RFP/RFQ.

REQUIRED ATTACHMENTS

Please check box below to confirm attachments

	EMPLOYEE Use additional sheets if needed	CURRENT STREET ADDRESS	DATE OF HIRE	LAST 4 DIGITS OF Soc. Sec. #	WORK CLASSIFICATION	REQUIRED ATTACHMENTS		
						1 Valid Photo ID	2 Other Proof of Oakland Residency	3 DE9
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

PLEASE NOTE BELOW:

1) A valid photo ID is required to prove Oakland residency. If the employee does not have a valid photo ID, the employer must submit at least two (2) other acceptable forms of ID/Other acceptable proofs of residency. Valid photo IDs include: a) U.S. Passport, b) Employment Authorization Document, c) State Driver's license or ID Card, d) School ID Card, and or e) U.S. Military Card.

2) Other Acceptable Proofs of Oakland Residency: Utility Bills, Bank Account Statements, Auto Registration, Mortgage Statements, Rental Agreements, and/or Verification of Public Assistance.

3) It is required that all firms submit their most recently filed DE9.

ADDITIONAL SHEET

Consultant/Service Provider \_\_\_\_\_ RFP/RFQ Title \_\_\_\_\_  
Additional Page # \_\_\_\_\_ of \_\_\_\_\_

REQUIRED ATTACHMENTS

Please check box below to confirm attachments

	EMPLOYEE Use additional sheets if needed	CURRENT STREET ADDRESS	DATE OF HIRE	LAST 4 DIGITS OF Soc. Sec. #	WORK CLASSIFICATION	REQUIRED ATTACHMENTS		
						1 Valid Photo ID	2 Other Proof of Oakland Residency	3 DE9

## 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

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less than \$\_\_\_\_\_ each claim and \$\_\_\_\_\_ aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:

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

- i. **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,

REQUEST FOR QUALIFICATIONS (RFQ) - (Feasibility Study of Public Banking)

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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.

## ATTACHMENT C: City Schedules and Policies

**PLEASE READ CAREFULLY:** It is the prospective primary proposer's/bidder's/grantee's responsibility to review all listed City Schedules, Ordinances and Resolutions.

If you have questions regarding any of the schedules, Ordinances or Resolutions, please contact the assigned Contract Compliance Officer listed on the Request for Proposals (RFP), Notice Inviting Bids (NIB), Request for Qualifications (RFQ) and Grant announcements.

**By submitting a response to this RFP/Q, NIB, or Grant opportunities, to the City Of Oakland the prospective primary participant's authorized representative hereby certifies that your firm or not-for profit entity has reviewed all listed City Schedules, Ordinances and Resolutions and has responded appropriately.**

Note: additional details are available on our website as follows:

<http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/policies/index.htm>.

1. **Schedule B-2** - (Arizona Resolution) – **Applies to all agreements and is part of the “Combined Contract Schedules”.**
  - i. This Agreement is subject to Resolution No. 82727 C.M.S. For full details of the Resolution please go to the City's website <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/policies/index.htm>.
  - ii. *Excerpt:* (Resolution #82727) RESOLVED: That unless and until Arizona rescinds SB 1070, the City of Oakland urges City departments to the extent where practicable, and in instances where there is no significant additional cost to the city or conflict with law, to refrain from entering into any new or amended contracts to purchase goods or services from any company that is headquartered in Arizona.
  - iii. Prior to execution of this agreement and/or upon request, the contractor shall complete the Schedule B-2 form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (*see Combined Schedules*)
  
2. **Schedule C-1** - (Declaration of Compliance with the Americans with Disabilities Act) – **Applies to all agreements and is part of the “Combined Contract Schedules”.**
  - i. This Agreement is subject to the Americans with Disabilities Act (ADA). It requires that private organizations serving the public make their goods, services and facilities accessible to people with disabilities. Furthermore, the City of Oakland requires that all of its Contractors comply with their ADA obligations and verify such compliance by signing this Declaration of Compliance.



REQUEST FOR QUALIFICATIONS (RFQ) – (Feasibility Study of Public Banking)

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- (1) You certify that you will comply with the Americans with Disabilities Act by:
  - (2) Adopting policies, practices and procedures that ensure non-discrimination and equal access to Contractor's goods, services and facilities for people with disabilities;
  - (3) Providing goods, services and facilities to individuals with disabilities in an integrated setting, except when separate programs are required to ensure equal access;
  - (4) Making reasonable modifications in programs, activities and services when necessary to ensure equal access to individuals with disabilities, unless fundamental alteration in the nature of the Contractor's program would result;
  - (5) Removing architectural barriers in existing facilities or providing alternative means of delivering goods and services when removal of barriers is cost-prohibitive;
  - (6) Furnishing auxiliary aids to ensure equally effective communication with persons with disabilities;
  - (7) If contractor provides transportation to the public, by providing equivalent accessible transportation to people with disabilities.
- ii. Prior to execution of this agreement and/or upon request, the contractor shall complete the Schedule C-1 form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see *Combined Schedules*)

For Declaration of ADA compliance for facility and other special events agreements please reference C-2 on the above web site.

3. **Schedule D** – (Ownership, Ethnicity, and Gender Questionnaire) – **Applies to all agreements and is part of the “Combined Contract Schedules”**. *Please be advised that ethnicity and gender information will be used for reporting and tracking purposes ONLY.*

This agreement is subject to the reporting of Ownership, Ethnicity and Gender questionnaire form. Prior to execution of this agreement and/or upon request, the contractor shall complete the Schedule D form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see *Combined Schedules*)

4. **Schedule E** – (Project Consultant or Grant Team). **Applies to Non-Construction agreements and is a “stand alone Schedule”<sup>1</sup> and must be submitted with proposal.**

- i. This Agreement is subject to the attached hereto and incorporated herein as Schedule E form, this form is required to be submitted with the proposal.
- ii. The form can also be found on our website at <http://www2.oaklandnet.com/>

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<sup>1</sup> Stand Alone Schedule is not part of the “Combined Schedule”.

REQUEST FOR QUALIFICATIONS (RFQ) – (Feasibility Study of Public Banking)

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Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm.

- iii. This form is use for establishing level of certified local Oakland for profit and not for profit participation and calculating compliance with council's 50% local participation policy.
  - iv. In response to this RFP/Q or grant opportunity, the prime shall be a qualified for profit or not-for profit entity.
  - v. Sub-Consultants (if used) or sub-grantees must be listed to include: addresses, telephone numbers and areas of expertise/trace category of each. Briefly describe the project responsibility of each team member. Identify if contractors are certified MBE, WBE, Local Business Enterprises (LBE) and Small Local Business Enterprise (SLBE), Locally Produced Goods or Very Small Local Business Enterprise. Additionally, for LBEs/SLBEs, please submit a copy of current business license local business certificate and date established in Oakland.
5. **Schedule E-2 (Oakland Workforce Verification Form) – Referenced in Attachment B. Applies to Non-Construction agreements and is a “stand alone Schedule”, and must be submitted with proposal if seeking extra preference points for an Oakland Workforce.**
- i. All prime consultants, contractors, or grantees seeking *additional preference* points for employing an Oakland workforce must complete this form and submit with "required attachments" to Contracts and Compliance no later than four (4) days after the proposal due date. For questions, please contact the assigned Compliance Officer named in the RFP/Q, NIB, and competitive grant opportunity.
  - ii. The Schedule E-2 form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>
6. **Schedule F – (Exit Report and Affidavit) – Applies to all agreements and is a “stand alone Schedule”.**
- i. This Agreement is subject to the Exit Reporting and Affidavit form. The Schedule F form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.
  - ii. The Prime Contractor/Consultant/Grantee must complete this form as part of the close-out process. Each LBE/SLBE sub-contractor/sub-consultant and sub-grantee (including lower tier LBE/SLBE sub-contractors/sub-consultants, sub-grantees, suppliers and truckers). The Exit Report and Affidavit must be submitted to Contracts and Compliance with the final progress payment application. (Remember to please complete an L/SLBE Exit Report for each listed L/SLBE sub-contractor/sub-consultant or sub-grantee).

7. **Schedule G – (Progress Payment Form) – Applies to all agreements and is a “stand alone Schedule”.**

This Agreement is subject to the reporting of subcontractor progress payments on a monthly basis. The Schedule G form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.

8. **Schedule K – (Pending Dispute Disclosure Policy) – Applies to all agreements and is part of the “Combined Contract Schedules”.**

- i. Prior to execution of this agreement and/or upon request the contractor shall complete the Schedule K form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (*see Combined Schedules*)
- ii. Policy – All entities are required to disclose pending disputes with the City of Oakland when they submit bids, proposals or applications for a City contract, contract amendments or transaction involving:
  - (1) The purchase of products, construction, non-professional or professional services, Contracts with concessionaires, facility or program operators or managers, Contracts with project developers, including Disposition and Development Agreements, lease Disposition and Development Agreements and other participation agreements Loans and grants, or acquisition, sale, lease or other conveyance of real property, excluding licenses for rights of entry or use of city facilities for a term less than thirty (30) consecutive calendar days.
  - (2) Disclosure is required at the time bids, proposals or applications are due for any of the above-described contracts or transactions when an entity is responding to a competitive solicitation and at the commencement of negotiations when bids, proposals or applications are solicited by or submitted to the City in a non-bid or otherwise non-competitive process.
  - (3) The disclosure requirement applies to pending disputes on other City and Agency contracts or projects that: (1) have resulted in a claim or lawsuit against the City of Oakland (2) could result in a new claim or new lawsuit against the City of Oakland or (3) could result in a cross-complaint or any other action to make the City of Oakland a party to an existing lawsuit. “Claim” includes, but is not limited to, a pending administrative claim or a claim or demand for additional compensation.
  - (4) Entities required to disclose under this Disclosure Policy include (1) any principal owner or partner, (2) any business entity with principal owners or partners that are owners or partners in a business entity, or any affiliate of such a business entity, that is involved in a pending dispute against the City of Oakland or Agency.
  - (5) Failure to timely disclose pending disputes required by this policy may result in (1) a determination that a bid is non-responsive and non-responsible for price-based awards, or (2) non-consideration of a bid or proposal for a professional service contract or other qualification-based award. The City may

elect to terminate contracts with entities that failed to timely disclose pending disputes and/or initiate debarment proceedings against such entities.

9. **Schedule M** – (Independent Contractor Questionnaire, Part A). – **Applies to all agreements and is part of the “Combined Contract Schedules”**.

Prior to execution of this agreement and/or upon request, the contractor shall complete the Schedule M form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (*see Combined Schedules*)

10. **Schedule N** - (LWO - Living Wage Ordinance) – **Applies to Non-Construction agreements and is part of the “Combined Contract Schedules”**.

- i. This Agreement is subject to the Oakland Living Wage Ordinance. The full details of the Living Wage Ordinance can be found on the City’s website ([https://library.municode.com/HTML/16308/level2/TIT2ADPE\\_CH2.28LIWAO\\_R.html#TOPTITLE](https://library.municode.com/HTML/16308/level2/TIT2ADPE_CH2.28LIWAO_R.html#TOPTITLE)).
- ii. Prior to execution of this agreement and/or upon request the contractor shall complete the Schedule N form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (*see Combined Schedules*)

11. **Schedule N-1** - (EBO - Equal Benefits Ordinance) – **Applies to Non-Construction agreements over \$25,000 and is part of the “Combined Contract Schedules”**.

- i. This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.32 of the Oakland Municipal Code and its implementing regulations. The full details of the Equal Benefits Ordinance can be found on the City website at [http://library.municode.com/HTML/16308/level2/TIT2ADPE\\_CH2.32EQBEOR.html#TOPTITLE](http://library.municode.com/HTML/16308/level2/TIT2ADPE_CH2.32EQBEOR.html#TOPTITLE).
- ii. Prior to execution of this agreement and/or upon request the contractor shall complete the Schedule N-1 form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (*see Combined Schedules*)

12. **Schedule O** – (City of Oakland Campaign Contribution Limits Form) - **Applies to all agreements and is a “stand alone Schedule”, and must be submitted with proposal.**

- i. This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits Contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates

between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations. If this Agreement requires Council approval, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Schedule O.

- ii. The form is also available on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>

**13. Schedule P – (Nuclear Free Zone Disclosure) - **Applies to all agreements and is part of the “Combined Contract Schedules”.****

- i. This agreement is subject to the 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”. The full details of the Ordinance 111478 C.M.S. can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/policies/index.htm>.
- ii. Prior to execution of this agreement and/or upon request the contractor shall complete the Schedule P form and submit to the City. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (*see Combined Schedules*)

**14. Schedule Q - (Insurance Requirements) - **Applies to all agreements and is a “stand alone Schedule”, and evidence of insurance must be provided.****

- i. This Agreement is subject to the attached hereto and incorporated herein as Schedule Q Insurance Requirements. Unless a written waiver is obtained from the City’s Risk Manager, Contractors must provide the insurance as found at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> Schedule Q.
- ii. A copy of the requirements are attached and incorporated herein by reference. Liability insurance shall be provided in accordance with the requirements specified.
- iii. When providing the insurance, include the Project Name and Project Number on the ACORD form in the section marked Description of Operations/Locations.
- iv. When providing the insurance, the “Certificate Holder” should be listed as: City of Oakland, Contracts and Compliance, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612.

**15. Schedule R – (Subcontractor, Supplier, Trucking Listing) – applies to Construction agreements only and is a “stand alone Schedule”.**

- i. This Agreement is subject to the attached hereto and incorporated herein as Schedule R form. The form can also be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm>.
- ii. For establishing level of certified local Oakland for profit and not for profit participation and calculating compliance with council’s 50% local participation policy.
- iii. In response to this Notice Inviting Bids (NIB) opportunity, the prime shall be a qualified for profit or not-for profit entity.
- iv. The contractor herewith must list all subcontractors and suppliers with values in excess of one-half of 1 percent of the prime contractor’s total bid or ten thousand dollars (\$10,000) whichever is greater regardless of tier and all trucking and dollar amount regardless of tier to be used on the project. The contractor agrees that no changes will be made in this list without the approval of the City of Oakland. Provide the address, type of work, dollar amount and check all boxes that apply. Bidders that do not list all subcontractors and suppliers with values greater than one half of one percent and all truckers regardless of tier and dollar amount shall be deemed non-responsive.
- v. Identify if contractors are certified MBE, WBE, Local Business Enterprises (LBE) and Small Local Business Enterprise (SLBE), Locally Produced Goods or Very Small Local Business Enterprise.

**16. Schedule V – (Affidavit of Non-Disciplinary or Investigatory Action) - Applies to all agreements is part of the “Combined Contract Schedules”.**

This Agreement is subject to the Schedule V - Affidavit of Non-Disciplinary or Investigatory Action. The form can be found on our website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/s/FormsSchedules/index.htm> (see Combined Schedules)

**PLEASE NOTE:** *By submitting an RFP/Q, NIB or Grants to the City Of Oakland the prospective primary participant’s authorized representative hereby obligates the proposer(s) to the stated conditions referenced in this document.*

ATTACHMENT D  
PUBLIC BANKING FEASIBILITY STUDY  
STATEMENT OF WORK

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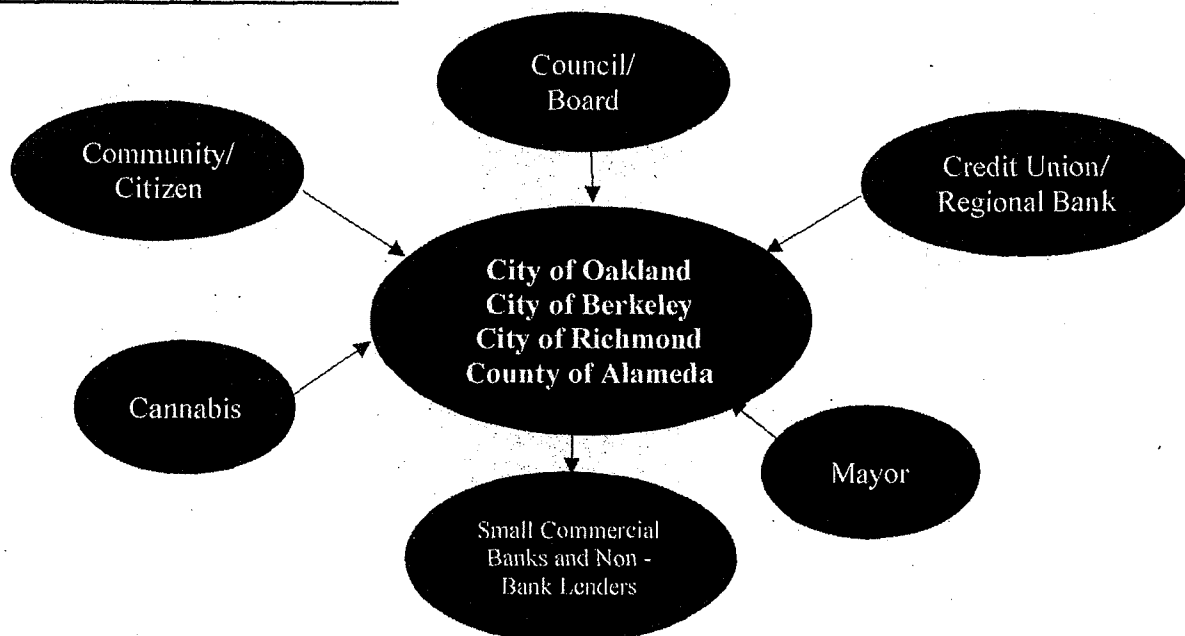
The City of Oakland, together with other East Bay jurisdictions recognized the vital importance of financial institutions within society, therefore, requests for a feasibility study for establishing a publicly owned bank to help finance community projects, reduce risks the public finds in existing financial markets, and provide better financial returns on public investments. This Statement of Work (SOW) will specifically address the followings for structuring a multi-jurisdiction public bank:

1. Research the feasibility of Public Bank Options
  - a. Public Bank for Municipalities (full service depository bank and related structures (sweep accounts, lockbox, targeted balance, etc.))
  - b. Unbanked/Cannabis Industry
  - c. Community Reinvestment/Lending (small business lending, consumer loans, etc.)
2. Interview Stakeholders

This Statement of Work (Exhibit A) to the Agreement between the City of Oakland (the “City”) and Global Investment Company (the “Contractor”) provides an overview of the services to be provided. Exhibit A is intended to be comprehensive and sufficiently detailed as to allow a full understanding of the scope of services to be provided by the Contractor.

The feasibility study shall include major components of a public bank that addresses the general banking requirements, the ability to provide community benefit lending and the ability to handle cannabis business deposits. The study would also include the costs and governance structures as well as provide the benefits and risks to establishing a public bank under each of the three public banking options. The Contractor shall prepare a feasibility study that addresses the three public banking options identified above for establishing a multi-jurisdictions public bank. At a minimum it should include the following:

**Section. 1 Identify Stakeholders**







**ATTACHMENT D**  
**PUBLIC BANKING FEASIBILITY STUDY**  
**STATEMENT OF WORK**

**Section 2. Research Public Bank Options**

**Option A: Public Bank for Municipalities**

1. Provide a mission statement.
2. Describe the structure of the public bank including the types of services to be provided.
3. Identify the banking services that a public bank would provide that are not currently being provided (or provided adequately or affordably) by community banks and credit unions.
4. Determine the initial investment requirement for a public bank to assume the responsibility of banking services to municipal customers. This raises the question of the optimal scale of a public bank given a range of customers, including but not limited to municipalities.
5. Identify options, sources and needs for initial capitalization of the public bank.
6. Identify potential revenue stream(s) for operational of a public bank.
7. Identify institutions and steps needed to obtain regulatory approval for the establishment of a public bank. Include required licenses, insurance, governance structure, etc., including the feasibility of obtaining each.
8. Meet with various stakeholders to obtain feedback based on approved questionnaires (Approved on \_\_\_\_\_ by the City.)
9. Describe requirements to ensure sustainability and continued alignment with the social responsibility objectives established by participating jurisdictions.
10. Describe any opportunities for partnership with existing credit unions, commercial banks, non-bank lenders and small business lending and mortgage companies.
11. Provide a risk analysis including fiscal, legality and any other constraints. Also, quantify the impact of the transfer of investments and banking services to a public bank, or providing capital to a public bank, on the credit rating of the City of Oakland and other participating East Bay jurisdictions.
12. Develop a credit scoring model that equitably reflects the risks of lending to underserved residents.
13. What would be the credit rating(s) of the public bank?
14. Identify the challenges or opportunities for a public bank.
15. Provide a comprehensive summary of why this structure is feasible or not. If so, please provide a timeline for implementation – from approval of concept to market readiness.

**Option B: Unbanked/Cannabis**

1. Identify the capital requirements and the sources of that capital.
2. Provide a risk analysis including fiscal, legality and any other constraints. Also, quantify the impact of the transfer of investments and banking services to a public bank, or providing capital to a public bank, on the credit rating of the City of Oakland and other participating East Bay jurisdictions.



**ATTACHMENT D**  
**PUBLIC BANKING FEASIBILITY STUDY**  
**STATEMENT OF WORK**

3. Describe what method can be used to identify unbanked communities and what outreach programs are available. Identify any challenges and how to overcome these challenges.
4. For the purposes of attracting unbanked individual depositors, describe how a public bank would succeed where other community banks may not have succeeded in the past.
5. Since banks are overseen and insured by federal agencies, describe in detail how a public bank that serves the cannabis industry might overcome these federal rules and the Federal Reserve System; since without an account at the Federal Reserve, a bank is “nothing but a huge cash vault.”
6. Address how a public bank serving the cannabis industry will meet the requirements for Federal Deposit Insurance Corporation (FDIC) insurance. Describe the challenges of securing deposits if FDIC insurance is not available.
7. Describe how it might be possible for a cannabis bank to get private insurance, describe the benefits, costs, and risks of obtaining private insurance.
8. Describe the most important functions and services of a bank which cannabis businesses need. For instance, do cannabis businesses need merchant services, payroll functions, technological features, etc.? Can a public bank easily provide these services? Please address the fact that the only other Public Bank in the United States, the Bank of North Dakota, is a wholesale bank and probably does not provide these retail services.
9. Describe the risks associated with lending activities (i.e., loans) to the cannabis industry.
10. Is there any potential liability for members of a public agency including city officials and employees, if a public bank takes cannabis clients?
11. What entity will regulate the public bank? What entity will examine the public bank? If the public bank loses money, what entity will absorb the loss?
12. Finally, for a public bank which accepts cannabis clients, comment on the recent State Treasurer’s report and describe how a local public bank could succeed where—in the Treasurer’s opinion—a state public bank could not at present succeed.

**Option C: Community Reinvestment/Lending**

1. Identify what the needs are.
2. What services have not been met and why? How much of the reason is that potential borrowers are not creditworthy? And how much is because of an unwillingness by banks to lend to creditworthy borrowers for other reasons?
3. Advocacy for undocumented.
4. What would be the methodology used for developing certain mortgage products or small loans (business and consumer) to mitigate risks, given the overall impact of the great recession of 2007-2009, which left small business vulnerable to and battered by the financial crisis of 2007-2008, real estate hit hard by the subprime mortgage crisis, and financial institutions to constrain lending, citing the need to conserve capital and make fewer risky loans?
5. Identify opportunities and risks associated with servicing the student loan market.
6. What entity would bear the risk of any non-performing loans?



**ATTACHMENT D  
PUBLIC BANKING FEASIBILITY STUDY  
STATEMENT OF WORK**

**Section 3. Provide Case Study**

Provide a case study associated with each of the options identified in Section 2 of the SOW.

**Section 4. Cost Analysis for Each Option**

Provide a detail cost analysis for each of the options identified in Section 2 of the SOW.

**Section 5. Identify the Next Steps**

If an option is proposed, identify the next steps and associated costs.

**Section 6. Payment Schedule**

The City shall pay the Contractor an initial payment in the amount of \$25,000 on or about February 15, 2018, the remaining balance of the contract (\$73,900) will be payable upon completion and acceptance of the final feasibility report.

