



Agenda

DEBT AFFORDABILITY ADVISORY COMMITTEE

Thursday, April 26, 2018
2:00 P.M.

651 Pine Street, 11th Floor - Martinez CA 94553

Robert Campbell, Auditor-Controller
Russell Watts, Treasurer-Tax Collector
Lisa Driscoll, County Finance Director
John Kopchik, Department of Conservation and Development

Agenda Items:

Items may be taken out of order based on the business of the day
and preference of the Committee

1. Introductions/Call to Order
2. Public comment on any item under the jurisdiction of the Committee and not on this agenda (speakers may be limited to three minutes).
3. CONSIDER reviewing and approving modifications to the County Debt Management Policy. **(Page 3)**
Attachments:
Appendix 5 Revisions (Redline)
Proposed Mortgage Credit Certificate Program Policy (Clean)
4. CONSIDER reviewing responses to a request for proposals for independent municipal advisor (IRMA) services and DETERMINE next steps. **(Page 13)**
Attachment:
Request for Proposals
5. Adjourn

The Debt Affordability Advisory Committee will provide reasonable accommodations for persons with disabilities planning to attend Debt Affordability Advisory Committee meetings. Contact the staff person listed below at least 72 hours before the meeting.

 Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the County to a majority of members of the Debt Affordability Advisory Committee less than 96 hours prior to that meeting are available for public inspection at 651 Pine Street, 10th floor, during normal business hours.

 Public comment may be submitted via electronic mail on agenda items at least one full work day prior to the published meeting time.

For Additional Information Contact:

Timothy Ewell, Chief Assistant County Administrator
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Acronyms, Abbreviations, and other Terms (in alphabetical order):

Contra Costa County has a policy of making limited use of acronyms, abbreviations, and industry-specific language in its Board of Supervisors meetings and written materials. Following is a list of commonly used language that may appear in oral presentations and written materials associated with Board meetings:

AB	Assembly Bill	HCD	(State Dept of) Housing & Community Development
ABAG	Association of Bay Area Governments	HHS	Department of Health and Human Services
ACA	Assembly Constitutional Amendment	HIPAA	Health Insurance Portability and Accountability Act
ADA	Americans with Disabilities Act of 1990	HIV	Human Immunodeficiency Syndrome
AFSCME	American Federation of State County and Municipal Employees	HOV	High Occupancy Vehicle
AICP	American Institute of Certified Planners	HR	Human Resources
AIDS	Acquired Immunodeficiency Syndrome	HUD	United States Department of Housing and Urban Development
ALUC	Airport Land Use Commission	Inc.	Incorporated
AOD	Alcohol and Other Drugs	IOC	Internal Operations Committee
BAAQMD	Bay Area Air Quality Management District	ISO	Industrial Safety Ordinance
BART	Bay Area Rapid Transit District	JPA	Joint (exercise of) Powers Authority or Agreement
BCDC	Bay Conservation & Development Commission	Lamorinda	Lafayette-Moraga-Orinda Area
BGO	Better Government Ordinance	LAFCo	Local Agency Formation Commission
BOS	Board of Supervisors	LLC	Limited Liability Company
CALTRANS	California Department of Transportation	LLP	Limited Liability Partnership
CalWIN	California Works Information Network	Local 1	Public Employees Union Local 1
CalWORKS	California Work Opportunity and Responsibility to Kids	LVN	Licensed Vocational Nurse
CAER	Community Awareness Emergency Response	MAC	Municipal Advisory Council
CAO	County Administrative Officer or Office	MBE	Minority Business Enterprise
CCHP	Contra Costa Health Plan	M.D.	Medical Doctor
CCTA	Contra Costa Transportation Authority	M.F.T.	Marriage and Family Therapist
CDBG	Community Development Block Grant	MIS	Management Information System
CEQA	California Environmental Quality Act	MOE	Maintenance of Effort
CIO	Chief Information Officer	MOU	Memorandum of Understanding
COLA	Cost of living adjustment	MTC	Metropolitan Transportation Commission
ConFire	Contra Costa Consolidated Fire District	NACo	National Association of Counties
CPA	Certified Public Accountant	OB-GYN	Obstetrics and Gynecology
CPI	Consumer Price Index	O.D.	Doctor of Optometry
CSA	County Service Area	OES-EOC	Office of Emergency Services-Emergency Operations Center
CSAC	California State Association of Counties	OSHA	Occupational Safety and Health Administration
CTC	California Transportation Commission	Psy.D.	Doctor of Psychology
dba	doing business as	RDA	Redevelopment Agency
EBMUD	East Bay Municipal Utility District	RFI	Request For Information
EIR	Environmental Impact Report	RFP	Request For Proposal
EIS	Environmental Impact Statement	RFQ	Request For Qualifications
EMCC	Emergency Medical Care Committee	RN	Registered Nurse
EMS	Emergency Medical Services	SB	Senate Bill
EPSDT	State Early Periodic Screening, Diagnosis and treatment Program (Mental Health)	SBE	Small Business Enterprise
et al.	et ali (and others)	SWAT	Southwest Area Transportation Committee
FAA	Federal Aviation Administration	TRANSPAC	Transportation Partnership & Cooperation (Central)
FEMA	Federal Emergency Management Agency	TRANSPLAN	Transportation Planning Committee (East County)
F&HS	Family and Human Services Committee	TRE or TTE	Trustee
First 5	First Five Children and Families Commission (Proposition 10)	TWIC	Transportation, Water and Infrastructure Committee
FTE	Full Time Equivalent	VA	Department of Veterans Affairs
FY	Fiscal Year	vs.	versus (against)
GHAD	Geologic Hazard Abatement District	WAN	Wide Area Network
GIS	Geographic Information System	WBE	Women Business Enterprise
		WCCTAC	West Contra Costa Transportation Advisory Committee

**Contra Costa County
Debt Management Policies
For
Multifamily Mortgage Revenue Bond Program**

____, 2018 update

I. SUMMARY

This Appendix 5 provides specific policies and procedures for multifamily mortgage revenue bond (MFMRB) issues, which are in addition to those established by the County in the Contra Costa County, California Debt Management Policy (County Policy). The MFMRB is administered by the County's Department of Conservation and Development (DCD)¹.

Federal, state and local legislation authorize issuance of mortgage revenue bonds by local governments to finance the development, acquisition and rehabilitation of multifamily rental housing projects pursuant to Section 52075 of the California Health and Safety Code, and applicable provisions of the Internal Revenue Code. The allocation of private activity bond authority is secured through the California Debt Limit Allocation Committee (CDLAC). The interest on the bonds can be exempt from federal and state taxation. As a result, bonds provide below market financing for qualified rental projects located within Contra Costa County (the "County")². In addition the bonds issued under the program can qualify projects for allocations of federal low-income housing tax credits (LIHTC), that provide a significant portion of the funding necessary to develop affordable housing.

There is no direct legal liability to the County in connection with the repayment of bonds; there is no pledge of the County's faith, credit or taxing power and the bonds do not constitute general obligations of the issuer because the security for repayment of bonds is limited to project revenue and other sources specified under each financing. Project loans are, in most cases, secured by a first deed of trust on the bond-financed property. The program is completely self-supporting; developers must secure funding to pay for costs of issuance of the bonds and all other costs under each financing.

The bonds may be used for construction, rehabilitation and permanent financing. The effective mortgage rate is the aggregate of the applicable bond rate and the add-on fees charged under the program such as lender, trustee, issuer's fee, etc. The bond rate, for fixed rate bonds, is determined at the time of a bond sale, and the resulting mortgage rate is approximately 1.5-2 percent below conventional mortgage rates. The project loans generally have a 30-year amortization schedule.

The goals of the program include:

- Increase and preserve the supply of affordable rental housing;
- Encourage economic diversity within residential communities;
- Maintain a quality living environment for residents of assisted projects and surrounding properties; and
- In the event of provision of public funds towards the project, optimize the effectiveness of those funds by maximizing the leveraging of private sector funds.

¹ DCD also manages a single-family mortgage revenue bond (SF MRB) program. It seeks an annual allocation of SFMRB funds and converts the allocation to Mortgage Credit Certificates (MCCs). MCC program information is available on the County website at <http://ca-contracostacounty2.civicplus.com/4768/Mortgage-Credit-Certificate-Program>.

² The County receives resolutions from the cities and towns for each transaction prior to seeking a reimbursement resolution from the Board of Supervisors.

II. ELIGIBILITY

The project must be located within the County and consist of complete rental units, including full kitchens and bathrooms, and cannot be used for transient or student housing.

There is no limit on the minimum or maximum project size or number of units. However, smaller size projects (fewer than 40 units or less than \$2 million loan) may not find tax exempt financing economically efficient due to the costs of issuance, services of the financial team, rating fees, etc. Proposed combined or pooled projects will be considered on a case by case basis. For projects requiring bond financing greater than \$50 million, it will be necessary to obtain a waiver from CDLAC in order to receive an allocation.

Loan funds may be used for costs of property acquisition (no more than 25% of bond proceeds can be used for the acquisition of land), construction, rehabilitation, improvements, architectural and engineering services, construction interest, loan fees and other capital costs of the project incurred after the Bond Reimbursement date (specified in Section VII - Financing Process).

Pursuant to federal requirements, if bonds are used for acquisition and rehabilitation, at least 15 percent of the portion of the acquisition cost of the building and related equipment financed with the proceeds of the bonds must be used for rehabilitation of the project.

No more than two percent of any tax-exempt bond loan can be used to finance costs of issuance, such as the services of the financing team members, rating and printing of bonds, bond allocation, etc.

III. COUNTY COMPENSATION

The County's fees are comprised of (1) a non-refundable application fee due prior to drafting a Reimbursement Resolution, (2) an issuance fee due upon bond closing, and (3) an annual fee due in advance to cover costs of monitoring compliance with State and federal law requirements as contained in a Regulatory Agreement. The annual fees may be negotiated, however the standard fee is 1/8 of 1 percent (or 0.125 percent) of the principal amount of bonds outstanding. Annual fees are charged for the full term of the Regulatory Agreement, generally 55 years. At the County's discretion, annual fees above a \$5,000 minimum may be subordinated to payment of debt service. The County fees are summarized in the table below:

Issuer Fee Schedule

Application ⁽¹⁾	Issuance Fee		Annual Fee ⁽²⁾	
\$2,500	Rate ⁽³⁾	0.125%	Rate ⁽³⁾	0.125%
	Minimum	\$5,000	Minimum	\$5,000
	Maximum	\$75,000	Maximum	\$25,000
	(1) Payable upon request of a Reimbursement Resolution. Amount is applied to Issuance Fee at closing. DCD may waive this requirement in its sole discretion.			
(2) Amounts above the minimum may be subordinated to bond debt service, at the County's option.				
(3) Percentage applied to the initial bond issuance amount.				

IV. TYPES OF BONDS

The County may issue either tax-exempt or taxable bonds. Taxable bonds would generally be issued in combination with tax-exempt bonds. Tax-Exempt Private Activity Bonds (non-refunding) require an allocation of bond authority from CDLAC. To obtain the allocation the County must submit an application to CDLAC on behalf of the developer (Project Sponsor). Submittal of the application is at the discretion of the County, not the Project Sponsor. The Project Sponsor must pay all required CDLAC fees when due.

The interest on taxable bonds is not exempt from federal taxation. These bonds are not subject to federal volume “cap” limitations and therefore do not require allocation authority from CDLAC. Taxable bonds can be used in combination with low-income housing tax credits awarded by the Tax Credit Allocation Committee. Taxable bond issues must meet all applicable requirements of this Policy (including rating requirements) and any additional regulations that may be promulgated, from time to time, by the County or as set forth in the County Policy.

The County may issue 501(c)(3) bonds on behalf of qualified nonprofit organizations. 501(c)(3) bonds are tax-exempt and do not require an allocation from CDLAC, but cannot be used with the LIHTC Program.

Refunding Bonds will be allowed if the issuance meets the following conditions:

1. The Project Sponsor agrees to cover all costs of the issuer.
2. Projects originally financed by tax-exempt bonds prior to the 1986 Tax Act will have to make a minimum 10 percent of the units affordable to persons earning 50 percent of the median area income with the rents affordable at the same level.
3. The affordability restrictions of the existing bond regulatory agreement are subject to extension and/or additional restrictions. All specifics of refunding proposals must be approved by the County.
4. Default refunding applications require a default refunding analysis (to determine the eligibility for a default refunding). The County shall choose the firm to conduct the analysis. The Project Sponsor will deposit the cost for the study with the County before the study begins.

V. *AFFORDABILITY REQUIREMENTS*

A. Term

The project must remain as rental housing and continuously meet the affordability requirements for at least 55 years from the date of 50 percent occupancy of the project (the “Qualified Project Period” or “QPP”). At the conclusion of the regulatory period, rent of “in-place” tenants will continue to be governed by the applicable affordability restriction, so long as those tenants continue to live in the development.

B. Income Restrictions

To be eligible for tax-exempt bond financing, federal and State law require that the project meet one of the following conditions:

1. A minimum of 20 percent of the units in the project must be set aside for occupancy by households whose income does not exceed 50 percent of area median income, as adjusted for family size; or
2. A minimum of 10 percent of the units in the project must be set aside for occupancy by households whose incomes do not exceed 50 percent of area median income, as adjusted for family size AND an additional 40 percent of the units in the project must be set aside for occupancy by households whose incomes do not exceed 60 percent of area median income, as adjusted for family size.

Project owners must certify their tenant’s eligibility annually. If at the annual certification it is found that a tenant’s income exceeds 140 percent of the current income limit, the owner must rent the next available unit of comparable size to a new income eligible tenant. The owner may raise the current tenant’s rent to market rent only upon renting the next available unit to a new low-income or very low-income household, as applicable. A unit occupied only by full time students does not count towards the set-aside requirement.

C. Rent Restrictions

The maximum rents for all the affordable units are equal to 30 percent of the applicable monthly maximum income level, assuming one person in a studio, two persons in a one-bedroom, three persons in a two-bedroom and four persons in a three-bedroom unit. These assumptions differ for projects using LIHTC. In the event that both are used, the more restrictive rents apply. (If applicable, the County may use TCAC rents pursuant to AB 1714.) The maximum rents are further reduced by the amount of the utility allowance applicable to those units, based on unit size. Utility allowances are set by the Housing Authority of the County of Contra Costa (HACCC) and are based solely upon the utilities paid by the tenant. The utility allowance does not include phone, cable or internet connections.

The set-aside units must proportionately reflect the mix of all units in the project, be distributed throughout the project, and have the same floor area, amenities, and access to project facilities as market-rate units.

D. Regulatory Agreement

The rental and affordability unit requirements will be contained in a regulatory agreement that is recorded against the property and must be complied with by

subsequent buyers for the minimum-rentalapplicable compliance period. The Regulatory Agreement will be drafted by the County's bond counsel and must be in a form acceptable to and approved by the County. Pursuant to Section 5220(c)(1) of the CDLAC Regulations, the Regulatory Agreement must incorporate by reference and as an attachment the CDLAC resolution allocating private activity bond authority to the County for the project. The requirements are terminated at the later of the end of the minimum-rentalapplicable compliance period and repayment in full of the bonds, or in the event of total casualty loss or foreclosure.

VI. FINANCING TEAM

Bond counsel and a municipal advisor, if applicable, specifically represent the interests and concerns of the County in ensuring the integrity of the bond transaction. The Project Sponsor may, at its own expense, add additional members to the finance team to represent its interests.

A. Municipal Advisor

If deemed necessary, the Municipal Advisor will be designated by DCD. They will prepare a feasibility study of whether it is economically advisable to proceed with the financing, including: evaluations of the financial strength of the project; assumptions regarding income and expenses; sources of security for bonds in addition to the project; Project Sponsors financial situation and experience in operating and managing rental projects; marketability of the bonds; rights and resources of parties to the transaction in the event of default; and provide financial advice on all relevant issues to best protect the interests of the County. The compensation for municipal advisory services to determine whether it is advisable to proceed with a financing will not be contingent on the sale of the bonds.

B. Bond Counsel

Bond counsel will be designated for each financing by the County Board of Supervisors. Bond counsel will prepare the necessary legal documentation, including provisions regarding compliance with any applicable continuing disclosure requirements, provide an opinion regarding the validity of the bonds and their tax exemption, and provide legal advice on all relevant issues to best protect the interests of the County. (See also Section IV.B, Financing Team in the County Policy.)

C. Additional Parties

The Bond Underwriter, Remarketing Agent, Private Placement Purchaser, Disclosure Counsel, if any, and Bond Trustee, if required, will be selected by the County in consultation with the project sponsor. The fees for such services will be paid solely out of bond proceeds or otherwise by the project sponsor.

VII. THE FINANCING PROCESS

- A. Request for Financing (New or Refunding) – A letter of request must be sent to the DCD to review for consistency with County and CDLAC policy. The letter and accompanying information must state the desire to use the County's Multifamily Mortgage Revenue Bond Program. The letter should include:
 1. Name of Development Project,

2. Name of Project Sponsor, including the Project Sponsor's experience with multifamily housing development
 3. Location by street address and assessor's parcel number (if known);
 4. Estimated number units,
 5. Estimated development costs including land (bonds to be issued cannot exceed this amount),
 6. Exact legal name of the ownership entity at the time of bond closing (e.g. name of individual, partnership, corporation, etc.,
 7. If different, name of the operating entity at the time of bond closing,
 8. Proposed management company with a statement of experience in managing income restricted housing,
 9. Non-refundable application fee of \$2,500 to cover the administrative costs of reviewing the project feasibility, Inducement and TEFRA Hearing processes.
- B. Board of Supervisor Approval of Reimbursement Resolution – The Reimbursement Resolution is a conditional statement of intent on the part of the County to provide tax-exempt financing for the project. The Resolution is non-binding, however it authorizes the submittal of the application to CDLAC by the County and it sets the date (which is 60-days earlier than the Reimbursement Date) from which costs related to the project are eligible for financing.
- C. Public Hearing/Section 147(f) Resolution (“TEFRA”) – Tax law requires that a public hearing be held to take comment on the nature of and location of the facility proposed to be financed with private activity bonds (Multifamily Mortgage Revenue Bonds included). The hearing must be noticed in a local newspaper of general circulation at least 14 days prior to the hearing. The legislative body then adopts a resolution approving the issuance of bonds pursuant to Section 147(f) of the Tax Code after the hearing is held. This is not the final approval of the bond issuance. The DCD holds the hearing administratively and the Board of Supervisors approves the Section 147(f) Resolution at a subsequent Board meeting. DCD may opt to schedule the required public hearing with the Board of Supervisors.
- D. Securement of CDLAC Allocation –CDLAC allocation of private activity bond authority is subject to an application process. The application must be submitted to the County for review and comment at least 10 days prior to the CDLAC deadline. The final application must include the current application fee for CDLAC and a performance deposit in the amount of 0.5 percent of the requested allocation amount to be held by the County. The deposit is returned according to CDLAC procedures, but is subject to reversion to CDLAC if the financing does not close according to their procedures. The CDLAC process includes approximately 60 days for review of applications prior to allocation.
- E. Bond Sale Resolution – When an allocation is received the County and financing parties have 90 days in which to complete the financing and sell and close on the issuance of the bonds. All real estate, lender and bond documents are completed. The Board of Supervisors must approve a Bond Sale Resolution, typically 30 days in advance of the proposed bond closing.

VIII. BOND SALE MODES/ISSUING CRITERIA

Under its tax exempt financing program the County, as a conduit issuer, facilitates loans secured by a first deed of trust. A fundamental requirement for financings is that the project have loan underwriting and credit enhancement from a third party institution that bears the ultimate risk and responsibility of the loan. The County may consider unrated bonds on a case-by-case basis. Subordinate financing from other federal, state, or local agencies may be integrated into a plan of finance for the project. Early consultation with County staff is encouraged.

Any bonds issued under the program that are sold to the public should generally be rated "A", or its equivalent, or better from a nationally recognized rating agency. The same rating requirement applies in the case of a substitution of existing credit facility for bonds that are outstanding.

A preferred way of obtaining the required rating on the bonds is through the provision of additional, outside credit support for the bond issue provided by rated, financially strong private institutions, such as bond insurance companies; domestic and foreign banks and insurance companies; FHA mortgage insurance or co-insurance, etc. The rating on the bonds is based on the credit worthiness of the participating credit enhancement provider. The applicant is required to identify and obtain credit enhancement for each bond issuance. As the primary source of security for the repayment of bonds, the credit enhancement provider reviews and approves the borrower and the project and its feasibility, including the size of the loan and the terms of repayment using their own underwriting criteria.

Fixed rate bonds, or their portion, can be issued without credit enhancement if the proposed financing structure results in the required minimum rating on the bonds by a nationally recognized rating agency. Bonds issued without credit enhancement will be sold to institutional investors in minimum \$100,000 denominations.

Private Placement Bonds

Private Placement Bonds are allowed under the following conditions:

- The bonds are privately placed with "qualified institutional buyers" under Rule 144A of the Securities Act of 1933, or "accredited investors," as generally defined under Regulation D of the Securities Act of 1933.
- The bonds must be sold in minimum \$100,000 denominations.
- All initial and subsequent purchasers must be willing to sign a sophisticated investor letter in a form approved by the County. While the bonds remain unrated, their transferability will be restricted to qualified institutional buyers or accredited investors who sign an Investor Letter.
- The County may limit the number of investors.
- The owner must indemnify the County against any costs incurred by the County, including any lawsuit initiated by the bondholder or any other party, regardless of whether the developer is negligent, and if requested by the County, post a surety bond guaranteeing the same.

IX. OTHER

Underwriter criteria: See Section V. Method of Sale in the County Policy for underwriter selection criteria.

X. OTHER ISSUERS

Projects financed with subordinate financing from the County (CDBG, HOME, etc.) will be financed by bonds issued by the County. The County may consent to the use of statewide issuers for private activity bonds (including 501c3 bonds) to finance projects located within the unincorporated County when such projects are part of a common plan of finance with one or more projects located within the County. DCD may waive the limitations on the use of statewide issuers.

XII POST-ISSUANCE

See County Policy, Post-issuance Tax Compliance Procedures (Appendix 2) and Continuing Disclosure Procedures (Appendix 3). The following policies and procedures are in addition to those procedures and are specific to multifamily mortgage revenue bond issues. Project sponsors are also required to maintain compliance with the CDLAC resolution associated with each bond issuance.

A. Change of Ownership

The County reserves the right to approve any voluntary change in ownership (i) that results in a transfer of 50% or more of the total equity interests in a developer or (ii) that results in a transfer of any general partner or managing member interest in the developer. Such approval to transfer ownership shall be at the discretion of the County. Transfers made by a limited partner tax credit investor to its affiliates may, at the County's discretion, be exempted from this requirement. The County shall review proposed owner management practices on current and previously owned properties, inspections, financial statements and credit histories.

B. Compliance

Post-issuance compliance activities are carried out by DCD staff, including its Redevelopment Housing Specialist, under the supervision of the County's Assistant Deputy Director. The County currently has a license agreement with Compliance Services for its FOCUS program. Project Sponsors access information and submit reports through FOCUS at <http://www.housingcompliance.org/>. (The County reserves the right to change vendors at any time.)

1. Issuance Report: Following bond issuance, Bond Counsel submits the Report of Final Sale pursuant to CDLAC regulations.
2. Qualified Project Period: The QPP begins when the development has achieved 50 percent occupancy. Project Sponsor of new construction project are required to submit a recorded Certificate of Commencement of Qualified Project Period. For acquisition/rehabilitation projects which are at least 50 percent occupied at issuance, the QPP begins upon bond issuance.
3. Quarterly Reports: Upon commencement of the QPP, reports are due 15 days following the end of each quarter based on a calendar year using the form embedded in FOCUS.
4. Annual Reports: Annual reports using the CDLAC Self-Certification Compliance forms are due to the County 45 days prior to the CDLAC report deadline. The

County submits its comprehensive reports on all developments prior to the CDLAC deadline.

5. Compliance Verification:

- a. Rent and income limits are calculated annually and are available to the Project Sponsors through FOCUS. The HACCC utility allowance schedule is uploaded in FOCUS. The Project Sponsors supplies the tenant-paid utilities to the County and to FOCUS. The FOCUS program automatically compares the project rent and income information with the current limits and flags any non-compliance issues.
- b. Service amenities are included in the CDLAC resolution and are verified by County staff at project completion, through annual reports, and during periodic site visits.
- c. Site visits are conducted at least once every three years during the compliance period. Staff reviews tenant files to confirm rent and incomes are appropriate and consistent with the on-line reports. Staff also confirms that amenities included in the CDLAC resolution are being provided. Any findings or discrepancies are included in the annual compliance report submitted by the County to CDLAC.
- d. Non-compliance is reported to CDLAC with the annual reports. The report will include the nature of the non-compliance and County staff's efforts to remedy the non-compliance. The County requires Regulatory Agreement for each development to include causes of default and enforcement actions.

6. Record Retention: The CDLAC application, County resolutions (TEFRA, reimbursement, and intent to issue), the bond legal documents, and compliance reports are retained for five years following the later of bond defeasance or expiration of the regulatory agreement.

7. Site-based Record Retention: Tenant income certification information for all initial tenants is retained for five years following the later of bond defeasance or expiration of the regulatory agreement. Tenant files for future tenants a retained for five years following tenant move-out.

County of Contra Costa
Mortgage Credit Certificate Program Policies
(Adopted by the Board of Supervisors on ____)

Summary

The Mortgage Credit Certificate (MCC) Program, authorized by Congress in the Tax Reform Act of 1984, is an alternative to mortgage revenue bond-backed financing and provides financial assistance to "first time homebuyers"¹ for the purchase of new or existing single-family housing. In 1985, the State adopted legislation authorizing local bond issuing agencies to make MCCs available in California. Contra Costa County ("County") applies annually to the California Debt Limit Allocation Committee (CDLAC) for an allocation of mortgage revenue bond-issuing authority for single-family housing and converts that allocation into a Countywide MCC program.

The MCC operates as an Internal Revenue Service (IRS) tax credit. The MCC tax credit (20 percent of annual mortgage interest paid) reduces the federal income taxes of qualified Borrowers purchasing qualified homes, thus having the effect of subsidizing their mortgage payments. The MCC will reduce the amount of federal income taxes otherwise due to the federal government from the Borrower. Therefore, the benefit to the homeowner cannot exceed the amount of federal taxes owed for the year, after other credits and deductions have been taken into account. However, the tax credit can be carried forward three tax years or until used, whichever comes first. This allocation may be used in all cities in Contra Costa County, as well as the unincorporated County. In cooperation with all of the cities in the County, the County Department of Conservation and Development administers the program.

Definitions

The following definitions apply to the administration and operation of the County's MCC Program:

Acquisition Cost has the meaning given that term under Internal Revenue Code 143 (k)(3) and the regulations thereunder.

Affidavit means an affidavit filed in connection with the program made under oath and subject to penalties of perjury.

Applicant means any person who applies for an MCC under the Program.

Close of Escrow means the date the loan is recorded at the County Recorder's Office.

CDLAC Resolution means the Resolution attesting to the transfer of private activity bond allocation adopted by CDLAC

County means Contra Costa County Conservation and Development Department.

Date of Issue means the date on which the escrow closing occurs (i.e., the deed is recorded).

Eligible Dwelling means new or previously-owned single-family, owner occupied houses, townhouses, condominiums, mobile homes, and manufactured housing. (See definition of Manufactured Housing - Mobile Homes, below). The property must be located in Contra Costa County. Ineligible dwellings include: unattached mobile homes and trailers, unimproved land, investment or rental property and vacation homes. No more than 15 percent of an eligible dwelling (i.e., based on useable square footage) can be used for purposes other than a principal residence (i.e., office, rental, etc).

Existing Home means a dwelling unit that has been previously occupied prior to loan commitment.

Income as defined in Appendix A to the Program Manual for the Contra Costa County MCC Program.

Issue Date means the date of close of escrow (record date).

¹ A "first-time homebuyer" may not have owned a home in the previous three years.

Issuer means the Contra Costa County Department of Conservation and Development Department.

Lender (Participating Lender) means a financial institution which is licensed to do business in the State of California, has met all of the requirements established by the County to participate as a Lender in the MCC Program, and has entered into an acceptable MCC Participation Agreement with the County. A Participating Lender can be either be a funding lender, correspondent or mortgage broker. However, only a funding Lender can submit the closing MCC documents.

Loan means an extension of credit provided to an Eligible Borrower to finance the purchase of an Eligible Dwelling. The Mortgage Credit Certificate applies to such loan.

MCC Program means the Mortgage Credit Certificate Program established by the Contra Costa County Department of Conservation and Development and administered by the County pursuant to the rules and regulations included in a MCC Program Manual promulgated by the County.

Mortgage Credit Certificate Rate means that rate specified by the County in the Mortgage Credit Certificate. The rate established by the County for the MCC Program is 20 percent.

Mortgage Credit Certificate of "MCC" means a tax credit designed to reduce the federal income tax of a qualified buyer purchasing a qualified home in order that he/she will have more disposable income to apply toward his/her mortgage payments. The MCC is issued by the County pursuant to Section 25 of the Internal Revenue Code of 1986, as amended, and applicable to state and local requirements.

New Home means a dwelling unit that is proposed to be constructed, currently under construction, or existing but not previously occupied.

Ownership means any of the following interests in residential real property or in a mobile home classified as personal property:

- ▶ fee simple interest
- ▶ joint tenancy
- ▶ tenancy in common
- ▶ interest of a tenant-shareholder in a cooperative
- ▶ life estate
- ▶ interest held in trust for the Applicant that would constitute a present ownership interest if held by the Applicant.

Ownership does not include a remainder interest, a lease with or without an option to purchase or any interest acquired on the execution of the purchase contract.

Principal Residence for purposes of prior homeownership, "principal residence" means (1) a single-family house, (2) condominium or townhouse unit, (3) stock held by a tenant-stockholder in a cooperative housing corporation [as those terms are defined in the Internal Revenue Code Section 216 (b)(1) and (2)]; (4) occupancy of a unit in a multi-family building owned by the applicant; and (5) and manufactured home (including a mobile home) as defined under federal law which is of a type customarily used at a fixed location.

Related Person means a "related person," as that term is defined under Internal Revenue Code and applicable regulations.

Single-Family and Owner-Occupied Residences for purposes of determining eligibility of a home to be purchased under this program, the term "single-family" residence means a housing unit intended and used for occupancy by one household, (i.e., and multi-family buildings are not eligible to be purchased under this program.)

Target Area means Census Tracts in which 70 percent or more of the households have an income which is 80 percent or less of the statewide median family income. At the present time, target areas in Contra Costa County

include portions of Pittsburg, Bay Point, Martinez and San Pablo. Maps are available through the County's Conservation and Development Department. Target areas are not subject to the prior home ownership restriction. Maximum purchase prices can be 110 percent of average area purchase price and household income can be 120 percent of median household income for one and two person households and 140 percent of median for households of three or more persons.

Compliance

The County operates the program in a manner consistent with the CDLAC resolution for each MCC allocation. This includes reporting requirements described below as well as participation goals such as the percentage of MCCs issued either in a Qualified Census Tract or to households earning up to 80 percent of the area median income.

Within 24 hours of converting the allocation to MCCs, the County will notify CDLAC of the conversion in the manner described in the applicable CDLAC resolution. Within 15 days of issuance of the first MCC from a new allocation, the County will submit a Report of Action Taken to CDLAC. The County will include a copy of its MCC election notice to the IRS, which is sent to the IRS concurrently with the report to CDLAC.

By March 1 of each year, the County submits its Annual Applicant Public Benefit and Ongoing Compliance Self-Certification report to CDLAC.

In addition, the County completes the IRS Form 8329 for all participating lenders and submits quarterly reports to the IRS using IRS form 8330.

Program Operation

The County pre-approves lenders for participation in the MCC Program. A list of participating lenders may be found at <http://www.co.contra-costa.ca.us/4768/Mortgage-Credit-Certificate-Program>. Homebuyers apply for a Mortgage Credit Certificate with a participating Lender/Broker at the same time he/she makes a formal application for a mortgage loan. The lender submits the application package to the County.

The County assesses a non-refundable fee in applying for an MCC. Lenders work with borrowers on a first-come, first served basis. There is no allocation of Mortgage Credit Certificates by Lender. After an application is filed, the Lender will arrange with the County to reserve an allocation for an MCC-assisted mortgage loan. This reservation (MCC Commitment) will hold the MCC while the application is being processed by the Lender and the County.

Eligibility

An MCC can only be used for new (never previously occupied) or existing (resale) single-family homes including single family detached homes, condominiums, half-plexes, duplexes, townhouses or manufactured houses (including some mobile homes) in Contra Costa County. Triplexes and four-plexes do not qualify as eligible structures.

An MCC can be used with conventional, fixed-rate or adjustable rate loans; FHA and VA loans; and privately insured loans. MCC's are not available with (tax-exempt) bond backed loans such as programs backed by the California Housing Finance Agency (CalHFA) that carry a below-market fixed interest rate.

A first time homeowner may use the tax credit provided by the MCC as long as he/she lives in home as his/her principal residence and maintains the original mortgage.

Purchase price and income limitations

MCCs are available to first-time homebuyers within all cities in Contra Costa County, as well as in the unincorporated County. The purchase price and income limitations for MCC Program participants are set pursuant to Internal Revenue Code Sections 143(f) and by the US Department of Housing and Urban Development respectively. The current limits for Contra Costa County may be viewed at <http://www.co.contra-costa.ca.us/4768/Mortgage-Credit-Certificate-Program>. The

County will not underwrite the loans. Rather, all underwriting and execution of required state and federal certifications or affidavits will be performed under agency agreement by Lenders participating in the program. The County will review executed certifications and affidavits from the Lender in order to determine qualification and eligibility. Lenders process the underlying mortgages using standard procedures, with adjustments to those procedures as needed in order to satisfy MCC requirements.

BORROWER, PURCHASE PRICE AND MORTGAGE UNDERWRITING REQUIREMENTS.

A. OVERVIEW

For loans involving MCCs, the conventional underwriting standards are modified to reflect recognition of the MCC-derived mortgage interest credit in determining housing expense and indebtedness ratios. The secondary mortgage market and the mortgage insurance industry have established underwriting policy acceptable for their requirements for MCC-linked loans. These are available as policy statements from the mortgage lending industry.

The Borrower income, purchase price, and loan underwriting requirements discussed set forth herein are incorporated in the MCC program documents that are available for viewing at <http://www.co.contra-costa.ca.us/4768/Mortgage-Credit-Certificate-Program>. All applicants and program participants are required to complete and sign the appropriate MCC Program documents and attest to their validity. The Lender will be required to submit certifications on which it will state that to the best of its knowledge, no material misstatements, whether negligently or willfully made, are set forth in the program documents. The Lender must notify the County immediately if they become aware of misstatements. The County will take all lawful action to correct or modify the problem.

The Lender also should be aware and inform the Borrower that criminal penalties are provided by federal and California law if a person makes a false statement or misrepresentation so as to obtain participation in this Program.

B. BORROWER ELIGIBILITY REQUIREMENTS.

Similar to any conventional mortgage loan program, the Borrower must meet the credit and underwriting criteria established by the participating Lender providing the mortgage loan. Based on applicable federal and state regulations, in order to qualify for an MCC, a Borrower must also meet the following requirements.

1. The Borrower may not have held an ownership interest in his/her principal residence within the past three years. The Borrower applying for an MCC cannot have had a present ownership interest in a principal residence at any time during the preceding three years ending on the date the mortgage is executed (date that the deed is recorded). This requirement does not apply to acquisitions of units in Target Areas. This requirement qualifies the Borrower as a "first-time homebuyer" under the federal regulations.

Special Exception for Housing In Target Areas

The "first-time homebuyer" requirement does not apply if the home is located in a designated "Target Area."

2. The MCC applicant must occupy the acquired residential housing as a "Principal Residence." The Borrower must use the housing being purchased with the MCC-linked mortgage as a principle residence. The Lender must obtain from the Borrower, using the program affidavits, a statement of the Borrower's intent to use the residence as his/her principal residence with a reasonable time (60 days) after the MCC is issued. This affidavit further states that the MCC holder will notify the Lender and issuer of the MCC if the residence ceases to be his/her principal residence.

No more than 15 percent of the residence being purchased may be used for purposes other than the "principal residence" of the Borrower (e.g., office, rental, daycare operation, etc.).

3. In order to qualify for the MCC Program, the purchasers' must meet applicable income limits. Program limits are available for viewing at <http://www.co.contra-costa.ca.us/4768/Mortgage-Credit-Certificate-Program>.
 4. The MCC may be automatically revoked if the applicant fails to comply with program requirements. An MCC may be revoked under certain circumstances
1. Strict penalties may be imposed on any applicant making a material misstatement, misrepresentation or fraudulent act on documents submitted to obtain an MCC.

Any person making a negligent material misstatement or misrepresentation in any affidavit or certification made in connection with the application for the issuance of an MCC shall be subject to all applicable fines and penalties.

C. PURCHASE PRICE REQUIREMENTS

The Borrower must comply with program purchase price limits in order to qualify. The limits vary between new (never previously occupied) housing units, existing (resale) housing units, and homes in designated target areas. See program limits available for viewing at <http://www.co.contra-costa.ca.us/4768/Mortgage-Credit-Certificate-Program>

D. MORTGAGE REQUIREMENTS

1. New Mortgage Requirements. A Mortgage Credit Certificate cannot be issued in conjunction with the acquisition or replacement of an existing mortgage or land contract.
2. Prohibited Mortgages.
 - a. First mortgages only. If a Borrower takes out a first and second mortgage, the MCC tax credit applies only to the first mortgage.
 - b. A Mortgage Credit Certificate shall not be used in direct or indirect connection with a qualified mortgage bond or a qualified veteran's mortgage bond.
3. No Interest Paid to Related Persons. No interest on the mortgage (or certified indebtedness) amount may be paid to a person who is a "related person", as that term is defined under the Internal Revenue Code and applicable regulations. The Lender must obtain from the Borrower, using the program affidavits, a statement to the effect that no related person has or is expected to have, and interest as a creditor in the certified indebtedness amount.

MCC COMMITMENTS

A. RESUBMISSION OF MORTGAGE CREDIT CERTIFICATE APPLICATIONS RETURNED OR REJECTED.

If an MCC application as represented by the submitted MCC Program documents and exhibits has been returned or denied by the County, any resubmission, if appropriate, must include all information which the County has determined necessary for reconsideration. An MCC application that is being submitted a second time will be reviewed in depth, and a final disposition made.

B. COMMITMENT FOR MORTGAGE CREDIT CERTIFICATE

1. Issuance

The County will review each MCC submission package for acceptability and completeness. Acceptable loan packages will be kept on file at the County, and an MCC Commitment will be issued to the Lender

with an expiration period of one hundred twenty (120) days after the Lender has verified income with signed Application Affidavit.

2. Extensions

With regard to any MCC Commitment which is currently outstanding and which will not close prior to the expiration date, an extension may be requested prior to the expiration date, provided that income status is re-verified.

3. Cancellations

The Lender will immediately notify the County in writing of commitments to be canceled by submitting written notification and returning the original MCC commitment. A reason for the cancellation should be included.

C. CHANGES PRIOR TO CLOSING

1. Changes in the Applicant's financial or marital status after issuance of commitment and prior to closing.

a. Changes in current income. The eligibility of the applicant for a loan is based upon the applicant's (and co-mortgagor's) current income (provided the loan closes 120 days after income verification by the Lender), and the MCC Program will issue its Commitment based on facts as they are determined as of the date the Commitment is issued. Subject to the foregoing, changes in the applicant's financial status occurring after the MCC Commitment whether or not foreseen or predictable at the time of the issuance of the Commitment, and changes in the working status of a spouse will not affect the validity of an MCC Commitment.

b. Changes in marital status. If the applicant experiences a change in marital status after issuance of the Commitment and prior to loan closing, a new spouse must satisfy the prior homeownership requirements contained in the Application Affidavit, and the Lender must notify the MCC Program.

2. Changes in Homeownership Status, Acquisition Cost and Amount of Mortgage Loan after Issuance of Commitment and Prior to Closing.

a. If the Borrower(s) acquires a present ownership interest in a principal residence prior to loan closing, the commitment shall be revoked if the residence is located in a non-target area; or

b. If the total acquisition cost of the residence purchased in connection with the MCC increases so as to exceed the acquisition cost limitations set forth herein, the Commitment shall be revoked; or,

c. If the amount of the loan increases, thereby causing an increase in the credit amount, the Commitment will be revoked if that increase in credit amount serves to increase the aggregate credit amount of all MCCs issued by the County above the aggregate credit limit imposed by law.

3. Other Changes in Circumstances after Issuance of MCC Commitment and Prior to Closing

The MCC Commitment is issued in reliance upon the Closing Affidavit (Borrower), Seller's Affidavit and the Lender's Closing Certificate that the requirements necessary for issuance of a qualified MCC has been met. The Lender must immediately notify the County in writing of any change in the circumstances upon which the Commitment was issued occur so that the MCC to be issued will not meet the requirements of a qualified MCC, the Commitment will be revoked.

County Administrator

County Administration Building
651 Pine Street, 10th Floor
Martinez, California 94553-1229
(925) 335-1080

David J. Twa
County Administrator

Contra Costa County



Board of Supervisors

John M. Gioia
1st District
Candace Andersen
2nd District
Diane Burgis
3rd District
Karen Mitchoff
4th District
Federal D. Glover
5th District

REQUEST FOR PROPOSALS (“RFP”) INDEPENDENT REGISTERED MUNICIPAL FINANCIAL ADVISOR (“IRMA”) SERVICES

Purpose

The County of Contra Costa (the “County”) is seeking proposals from IRMAs (“respondents”) to advise the County on financial strategy, policy issues and issuance of debt on the County’s behalf. Based on responses, the County may choose to retain one or more advisors to assist the County with specific projects, as needed, through June 30, 2021. The County may also elect to extend the term of the engagement by up to two years.

The schedule for the RFP process is set forth in the following table.

Schedule of Events

County and Successor Agency RFP is issued	March 26, 2018
Written questions due from respondents	April 9, 2018
Proposals are due	April 16, 2018
Proposal evaluation completed	May 3, 2018
Board Action on staff recommendation	May 22, 2018
Contract start date	July 1, 2018

Scope

The County’s goal is to select an IRMA who can provide a comprehensive range of services to meet the County’s needs, which services include advice regarding issuance of municipal securities but also a number of non-issuance services. The consultant(s) selected will report to the County Administrator’s Office and will provide services in the following areas:

A. Provide Advice:

- Financial policies regarding the issuance of debt and debt capacity.

- Financial strategy, taking into account market conditions, state and federal securities and tax law and County priorities and procedures.
- Issuance of securities, including advice on the structure, timing, terms and other factors.

B. Manage Transactions Involving Issuance of Securities:

- Assist in preparation of timetables of actions and responsible parties necessary for the sale of securities.
- Review and comment on all documents necessary for debt issuance that are prepared by bond and disclosure counsel (such as lease documents, Preliminary and Final Official Statements, Notices of Sale, Bid Forms and other legal documents etc.).
- Conduct quantitative financial analysis to assess various financial transactions, including evaluation of refunding opportunities. Analyze the costs/benefits of alternative structuring and pricing options including, but not limited to, fixed vs. variable rate bonds, insured vs. uninsured, callable vs. non-callable, par and/or premium vs. discounted bonds.
- Assist in overseeing the marketing of County debt to investors by underwriters.
- Manage competitive sales of County debt.

Assist the County in its Relations with other Financial Service Providers:

- Solicit qualified firms to assist the County in various aspects of the debt issuance process, including, as applicable, underwriting, placement agent, feasibility consulting, verification, disclosure counsel, investment, trustee, printing, and municipal bond insurance services, as well as other professional services as needed. Evaluate and negotiate pricing and fees for such services.
- Assist in presentation of County financial condition to rating agencies for purposes of obtaining credit ratings.

C. Assist the County with *ad hoc* projects that do not involve issuance of securities, such as preparation of the County's annual Debt Report and various post-issuance and debt management matters.

Proposal Submittal

Number of Proposals

Please submit six (6) copies of your proposal in sufficient detail to allow for thorough evaluation and comparative analysis. Respondents are discouraged from providing boilerplate material and instead should focus on providing on-point responses to the Required Elements below.

Submission of Proposals

Complete written proposals must be submitted to:

Hang Nguyen, Management Analyst
County of Contra Costa
County Administrator's Office
651 Pine Street, 10th Floor
Martinez, CA 94553-0063

Proposals must be received no later than 5:00 p.m. (PT) on April 16, 2018 (no postmarks accepted). Proposals will not be accepted after this deadline. Faxed or e-mailed proposals will not be accepted.

Potential Financings

The County issues the following types of debt from time-to-time:

<u>Type of Debt</u>
Tax Revenue Anticipation Notes
Lease Revenue Bonds
Assessment District Financing
Pension Obligation Bonds
Tax Allocation Bonds (Refunding)
Single and/or Multi-Family Housing Bonds
Mello Roos Tax Bonds

Required Elements

Proposals must include the respondent's description of the following (please limit your response to no more than 8 pages):

A. Indicate below the types of municipal debt issuances for which your firm is interested in providing advice and whether you are prepared to provide the other non-issuance services described in Parts A and C above:

- Tax and Revenue Anticipation Notes
- Lease Revenue Bonds
- Assessment District Financing
- Pension Obligation Bonds
- Tax Allocation Bonds
- Single and/or Multi-Family Housing Bonds

- Mello Roos Special Tax Bonds
 - Part A non-issuance services
 - Part C non-issuance services
- B. Experience of the firm and the individuals to be assigned in providing the services outlined above to California counties over the past two years.
- C. List of debt issuance transactions executed in the past two years by the individual to be assigned as the lead contact for the County, including the type of securities and the amounts. For each transaction, please provide a contact name and phone number for the issuer.
- D. Experience of the firm and the individuals to be assigned in issuance of or refunding of Tax and Revenue Anticipation Notes (TRANs), Lease Revenue Bonds and/or Pension Obligation Bonds.
- E. Experience of the firm and the individuals to be assigned in issuance of Assessment District and/or Special benefit Assessment District financings and Mello Roos bonds.
- F. Experience of the firm and the individuals to be assigned in issuance of Tax Allocation Refunding bonds.
- G. Experience of the firm and the individuals to be assigned in issuance of Single Family Housing bonds.
- H. Experience of the firm and the individuals to be assigned in issuance of Multi-Family Housing bonds.
- I. Experience of the firm and the individuals to be assigned conducting quantitative analysis of potential financial transactions (“running numbers”). Describe whether this service is provided by individuals on staff or through a subcontractor. Indicate what resources the firm uses to prepare number runs and access daily municipal market news and data.
- J. A discussion of your knowledge of the County’s debt database along with any analyses of the County’s debt you can provide. Details can be placed in an Appendix to the RFP.
- K. Experience of the firm or individuals in preparation of debt reports and other *ad hoc* project materials. Provide relevant samples of such work in an Appendix to the RFP.
- L. Resumes of all individuals who will be involved in providing the services proposed, including relevant experience and areas of expertise. For each individual identified, indicate their role in providing services proposed and office location.

- M. Firm address, branch locations, licenses and liability coverage maintained, errors and omissions insurance coverage maintained that does not exclude “issuance of securities”, and the number of employees and years in business.
- N. Detailed estimate of the cost of providing the services proposed in the Scope section by the categories described in the Potential Financings section and the hourly rates for the staff assigned to such transactions and any other non-issuance services. Please include separately both the professional fees for services and estimated expenses per transaction or service type.
- O. Current Municipal Advisor registration number (even if it is still a temporary registration number) with the Securities and Exchange Commission (SEC) and the firm’s registration number with the Municipal Securities Rulemaking Board (MSRB), as required by federal law. Please explain the reasons your firm qualifies as an IRMA.

Evaluation Process

Proposals will be evaluated by the County’s Debt Affordability Advisory Committee (DAAC), which is composed of representatives of the County Administrator, the County Auditor-Controller, the County Treasurer-Tax Collector and the Conservation and Development Director, or designee. Responses will be evaluated according to the following criteria:

1. Firm’s experience, record of performance, strength of key personnel, resources, technical skills, familiarity with the County’s debt profile and ability to provide the comprehensive services required by the County;
2. The County’s Small Business program goals; and
3. Estimated cost of services proposed.

Following a review by an evaluation committee, respondents may be invited for an oral interview. The individual who will be the County’s primary day-to-day contact on all services must be the lead presenter in the interview. Respondents should be prepared to discuss all aspects of their proposal in the interview.

The County reserves the right to reject any and all proposals submitted. Any award made will be made to the best-qualified respondent in the opinion of the County. All selections are subject to approval by the County Board of Supervisors.

Contractual Arrangements

The successful contractors selected will be required to enter into a standard contract with the County. Any modifications must be reviewed and approved by County Counsel.

Enclosure: Form of County’s Standard Contract

GENERAL CONDITIONS
(Purchase of Services - Long Form)

1. **Compliance with Law.** Contractor is subject to and must comply with all applicable federal, state, and local laws and regulations with respect to its performance under this Contract, including but not limited to, licensing, employment, and purchasing practices; and wages, hours, and conditions of employment, including nondiscrimination.
2. **Inspection.** Contractor's performance, place of business, and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the County, the State of California, and the United States Government.
3. **Records.** Contractor must keep and make available for inspection and copying by authorized representatives of the County, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the County.
 - a. **Retention of Records.** Contractor must retain all documents pertaining to this Contract for five years from the date of submission of Contractor's final payment demand or final Cost Report; for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for this Contract's funding period. Upon request, Contractor must make these records available to authorized representatives of the County, the State of California, and the United States Government.
 - b. **Access to Books and Records of Contractor, Subcontractor.** Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor must, upon written request and until the expiration of five years after the furnishing of services pursuant to this Contract, make available to the County, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Contract and books, documents, and records of Contractor necessary to certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Contract through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract must contain a clause to the effect that upon written request and until the expiration of five years after the furnishing of services pursuant to such subcontract, the subcontractor must make available to the County, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of the subcontractor necessary to verify the nature and extent of all costs and charges thereunder.

This provision is in addition to any and all other terms regarding the maintenance or retention of records under this Contract and is binding on the heirs, successors, assigns and representatives of Contractor.

4. **Reporting Requirements.** Pursuant to Government Code Section 7550, Contractor must include in all documents and written reports completed and submitted to County in accordance with this Contract, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section applies only if the Payment Limit of this Contract exceeds \$5,000.

GENERAL CONDITIONS
(Purchase of Services - Long Form)

5. **Termination and Cancellation.**

- a. **Written Notice.** This Contract may be terminated by either party, in its sole discretion, upon thirty-day advance written notice thereof to the other, and may be cancelled immediately by written mutual consent.
- b. **Failure to Perform.** County, upon written notice to Contractor, may immediately terminate this Contract should Contractor fail to perform properly any of its obligations hereunder. In the event of such termination, County may proceed with the work in any reasonable manner it chooses. The cost to County of completing Contractor's performance will be deducted from any sum due Contractor under this Contract, without prejudice to County's rights to recover damages.
- c. **Cessation of Funding.** Notwithstanding any contrary language in Paragraphs 5 and 11, in the event that federal, state, or other non-County funding for this Contract ceases, this Contract is terminated without notice.

6. **Entire Agreement.** This Contract contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties hereto.

7. **Further Specifications for Operating Procedures.** Detailed specifications of operating procedures and budgets required by this Contract, including but not limited to, monitoring, evaluating, auditing, billing, or regulatory changes, may be clarified in a written letter signed by Contractor and the department head, or designee, of the county department on whose behalf this Contract is made. No written clarification prepared pursuant to this Section will operate as an amendment to, or be considered to be a part of, this Contract.

8. **Modifications and Amendments.**

- a. **General Amendments.** In the event that the total Payment Limit of this Contract is less than \$100,000 and this Contract was executed by the County's Purchasing Agent, this Contract may be modified or amended by a written document executed by Contractor and the County's Purchasing Agent or the Contra Costa County Board of Supervisors, subject to any required state or federal approval. In the event that the total Payment Limit of this Contract exceeds \$100,000 or this Contract was initially approved by the Board of Supervisors, this Contract may be modified or amended only by a written document executed by Contractor and the Contra Costa County Board of Supervisors or, after Board approval, by its designee, subject to any required state or federal approval.
- b. **Minor Amendments.** The Payment Provisions and the Service Plan may be amended by a written administrative amendment executed by Contractor and the County Administrator (or designee), subject to any required state or federal approval, provided that such administrative amendment may not increase the Payment Limit of this Contract or reduce the services Contractor is obligated to provide pursuant to this Contract.

9. **Disputes.** Disagreements between County and Contractor concerning the meaning, requirements, or performance of this Contract shall be subject to final written determination by the head of the county department for which this Contract is made, or his designee, or in accordance with the applicable procedures (if any) required by the state or federal government.

GENERAL CONDITIONS
(Purchase of Services - Long Form)

10. **Choice of Law and Personal Jurisdiction.**

- a. This Contract is made in Contra Costa County and is governed by, and must be construed in accordance with, the laws of the State of California.
- b. Any action relating to this Contract must be instituted and prosecuted in the courts of Contra Costa County, State of California.

11. **Conformance with Federal and State Regulations and Laws.** Should federal or state regulations or laws touching upon the subject of this Contract be adopted or revised during the term hereof, this Contract will be deemed amended to assure conformance with such federal or state requirements.

12. **No Waiver by County.** Subject to Paragraph 9. (Disputes) of these General Conditions, inspections or approvals, or statements by any officer, agent or employee of County indicating Contractor's performance or any part thereof complies with the requirements of this Contract, or acceptance of the whole or any part of said performance, or payments therefor, or any combination of these acts, do not relieve Contractor's obligation to fulfill this Contract as prescribed; nor is the County thereby prevented from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.

13. **Subcontract and Assignment.** This Contract binds the heirs, successors, assigns and representatives of Contractor. Prior written consent of the County Administrator or his designee, subject to any required state or federal approval, is required before the Contractor may enter into subcontracts for any work contemplated under this Contract, or before the Contractor may assign this Contract or monies due or to become due, by operation of law or otherwise.

14. **Independent Contractor Status.** The parties intend that Contractor, in performing the services specified herein, is acting as an independent contractor and that Contractor will control the work and the manner in which it is performed. This Contract is not to be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association. Contractor is not a County employee. This Contract does not give Contractor any right to participate in any pension plan, workers' compensation plan, insurance, bonus, or similar benefits County provides to its employees. In the event that County exercises its right to terminate this Contract, Contractor expressly agrees that it will have no recourse or right of appeal under any rules, regulations, ordinances, or laws applicable to employees.

15. **Conflicts of Interest.** Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Contract, no person having any such interests will be employed by Contractor. If requested to do so by County, Contractor will complete a "Statement of Economic Interest" form and file it with County and will require any other person doing work under this Contract to complete a "Statement of Economic Interest" form and file it with County. Contractor covenants that Contractor, its employees and officials, are not now employed by County and have not been so employed by County within twelve months immediately preceding this Contract; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government

GENERAL CONDITIONS
(Purchase of Services - Long Form)

Code section 1090. In addition to any indemnity provided by Contractor in this Contract, Contractor will indemnify, defend, and hold the County harmless from any and all claims, investigations, liabilities, or damages resulting from or related to any and all alleged conflicts of interest. Contractor warrants that it has not provided, attempted to provide, or offered to provide any money, gift, gratuity, thing of value, or compensation of any kind to obtain this Contract.

16. **Confidentiality**. To the extent allowed under the California Public Records Act, Contractor agrees to comply and to require its officers, partners, associates, agents and employees to comply with all applicable state or federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract, their records, or services provided them, and assures that no person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor agrees to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
17. **Nondiscriminatory Services**. Contractor agrees that all goods and services under this Contract will be available to all qualified persons regardless of age, gender, race, religion, color, national origin, ethnic background, disability, or sexual orientation, and that none will be used, in whole or in part, for religious worship.
18. **Indemnification**. Contractor will defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, demands, losses, costs, expenses, and liabilities for any damages, fines, sickness, death, or injury to person(s) or property, including any and all administrative fines, penalties or costs imposed as a result of an administrative or quasi-judicial proceeding, arising directly or indirectly from or connected with the services provided hereunder that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control. If requested by County, Contractor will defend any such suits at its sole cost and expense. If County elects to provide its own defense, Contractor will reimburse County for any expenditures, including reasonable attorney's fees and costs. Contractor's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of the County, its officers and employees. This provision will survive the expiration or termination of this Contract.
19. **Insurance**. During the entire term of this Contract and any extension or modification thereof, Contractor shall keep in effect insurance policies meeting the following insurance requirements unless otherwise expressed in the Special Conditions:
 - a. **Commercial General Liability Insurance**. For all contracts where the total payment limit of the contract is \$500,000 or less, Contractor will provide commercial general liability insurance, including coverage for business losses and for owned and non-owned automobiles, with a minimum combined single limit coverage of \$500,000 for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence. Such insurance must be endorsed to include County and its officers and employees as additional insureds as to all services performed by Contractor under this Contract. Said policies must constitute primary insurance as to

GENERAL CONDITIONS
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County, the state and federal governments, and their officers, agents, and employees, so that other insurance policies held by them or their self-insurance program(s) will not be required to contribute to any loss covered under Contractor's insurance policy or policies. Contractor must provide County with a copy of the endorsement making the County an additional insured on all commercial general liability policies as required herein no later than the effective date of this Contract. For all contracts where the total payment limit is greater than \$500,000, the aforementioned insurance coverage to be provided by Contractor must have a minimum combined single limit coverage of \$1,000,000.

- b. **Workers' Compensation.** Contractor must provide workers' compensation insurance coverage for its employees.
- c. **Certificate of Insurance.** The Contractor must provide County with (a) certificate(s) of insurance evidencing liability and worker's compensation insurance as required herein no later than the effective date of this Contract. If Contractor should renew the insurance policy(ies) or acquire either a new insurance policy(ies) or amend the coverage afforded through an endorsement to the policy at any time during the term of this Contract, then Contractor must provide (a) current certificate(s) of insurance.
- d. **Additional Insurance Provisions.** No later than five days after Contractor's receipt of: (i) a notice of cancellation, a notice of an intention to cancel, or a notice of a lapse in any of Contractor's insurance coverage required by this Contract; or (ii) a notice of a material change to Contractor's insurance coverage required by this Contract, Contractor will provide Department a copy of such notice of cancellation, notice of intention to cancel, notice of lapse of coverage, or notice of material change. Contractor's failure to provide Department the notice as required by the preceding sentence is a default under this Contract
20. **Notices.** All notices provided for by this Contract must be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to County must be addressed to the head of the county department for which this Contract is made. Notices to Contractor must be addressed to the Contractor's address designated herein. The effective date of notice is the date of deposit in the mails or of other delivery, except that the effective date of notice to County is the date of receipt by the head of the county department for which this Contract is made.
21. **Primacy of General Conditions.** In the event of a conflict between the General Conditions and the Special Conditions, the General Conditions govern unless the Special Conditions or Service Plan expressly provide otherwise.
22. **Nonrenewal.** Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased by County under a new contract following expiration or termination of this Contract, and Contractor waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Contractor.
23. **Possessory Interest.** If this Contract results in Contractor having possession of, claim or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue & Taxation Code Section 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest. Contractor agrees that this provision complies with the notice

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requirements of Revenue & Taxation Code Section 107.6, and waives all rights to further notice or to damages under that or any comparable statute.

24. **No Third-Party Beneficiaries.** Nothing in this Contract may be construed to create, and the parties do not intend to create, any rights in third parties.
25. **Copyrights, Rights in Data, and Works Made for Hire.** Contractor will not publish or transfer any materials produced or resulting from activities supported by this Contract without the express written consent of the County Administrator. All reports, original drawings, graphics, plans, studies and other data and documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Contract are "works made for hire" (as defined in the Copyright Act, 17 U.S.C. Section 101 et seq., as amended) for County, and Contractor unconditionally and irrevocably transfers and assigns to Agency all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. Unless required by law, Contractor shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without County's prior express written consent. If any of the works made for hire is subject to copyright protection, County reserves the right to copyright such works and Contractor agrees not to copyright such works. If any works made for hire are copyrighted, County reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.
26. **Endorsements.** In its capacity as a contractor with Contra Costa County, Contractor will not publicly endorse or oppose the use of any particular brand name or commercial product without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not participate or appear in any commercially produced advertisements designed to promote a particular brand name or commercial product, even if Contractor is not publicly endorsing a product, as long as the Contractor's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Contra Costa County. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.
27. **Required Audit.** (A) If Contractor is funded by \$500,000 or more in federal grant funds in any fiscal year from any source, Contractor must provide to County, at Contractor's expense, an audit conforming to the requirements set forth in the most current version of Office of Management and Budget Circular A-133. (B) If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, but such grant imposes specific audit requirements, Contractor must provide County with an audit conforming to those requirements. (C) If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, Contractor is exempt from federal audit requirements for that year; however, Contractor's records must be available for and an audit may be required by, appropriate officials of the federal awarding agency, the General Accounting Office (GAO), the pass-through entity and/or the County. If any such audit is required, Contractor must provide County with such audit. With respect to the audits specified in (A), (B) and (C) above, Contractor is solely responsible for arranging for the conduct of the audit, and for its cost. County may withhold the estimated cost of the audit or 10 percent of the

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contract amount, whichever is greater, or the final payment, from Contractor until County receives the audit from Contractor.

28. **Authorization**. Contractor, or the representative(s) signing this Contract on behalf of Contractor, represents and warrants that it has full power and authority to enter into this Contract and to perform the obligations set forth herein.
29. **No Implied Waiver**. The waiver by County of any breach of any term or provision of this Contract will not be deemed to be a waiver of such term or provision or of any subsequent breach of the same or any other term or provision contained herein.