



City of Oakland
Department of Housing and Community Development
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2014

**NOTICE OF FUNDING AVAILABILITY
FOR PRESERVATION AND REHABILITATION
OF EXISTING AFFORDABLE RENTAL HOUSING**

CITY OF OAKLAND
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY (NOFA)
PRESERVATION AND REHABILITATION OF
EXISTING AFFORDABLE RENTAL HOUSING

The Department of Housing and Community Development (DHCD) on behalf of the City of Oakland, is pleased to announce that it is accepting loan applications to preserve and rehabilitate existing affordable rental housing developments.

It is unknown at this time the amount that will be available for funding but funds will include HOME and other City funds. Applicants are advised that projects should be structured to be eligible for HOME funding. Additionally, applicants should request the exact amount needed to ensure feasibility of their project regardless of the amount of funds that will be available through this process.

This NOFA is intended to facilitate emergency repairs and capital improvements of affordable rental housing. Projects that require over 75% of the replacement value should apply under the NOFA for New Construction and Substantial Rehabilitation. Emergency repairs and capital improvements must relate to items that present an immediate threat to the health, safety, and habitability of the housing.

The City will take the following priorities into account for the 2014-15 NOFA process:

1. The preservation of the City of Oakland's affordable housing stock.
2. The creation of affordable homeownership developments.
3. The creation of new affordable rental housing developments.

Applicants are encouraged to contact Christina Morales, Housing Development Coordinator, at (510) 238-6984 with questions regarding program requirements and the application process.

NOFA PROCESS AND TIMELINE

Each sponsor will be permitted to submit one project application for the Preservation and Rehabilitation NOFA. (This does not include applications submitted in response to the NOFA for Affordable Rental and Ownership Housing).

Applications must be received at DHCD's office located at 250 Frank Ogawa Plaza, Suite 5313, no later than 4:00 p.m. on Thursday, October 30, 2014. Applications submitted after this deadline will not be accepted.

Applicants are strongly encouraged to attend a NOFA pre-application meeting on Wednesday, September 10th at 3:00 p.m. at City Hall, Hearing Room 3. Planning staff will explain CEQA and NEPA requirements, the City's required employment and contracting programs will be presented, the Oakland Housing Authority will be present to answer questions about Section 8 Project-Based Voucher Assistance, and there will be time available for general questions and answers on the NOFAs.

Applicants should review the entire NOFA package, as the application includes a certification that they will comply with all requirements. Prior to the application deadline, please check the City's Housing and Community Development website regularly for any updates, corrections, or posted questions and answers regarding this NOFA at <http://www.oaklandnet.com/hcd/>.

Applicants must submit **one original** complete *Application for Preservation and Rehabilitation Financing* with all required supporting materials. Applications should be in a three-ring binder, with numbered dividers that correspond with the *Preservation and Rehabilitation Financing Application Checklist*, which should be used as the Table of Contents for the application.

Some materials must be submitted electronically. These forms/templates may be obtained from housing staff upon request via email to cmorales@oaklandnet.com or downloaded from the City's website at <http://www.oaklandnet.com/hcd/>.

Once the staff review is complete, a staff report will be prepared for presentation, first to the City Council's Community and Economic Development Committee and then to the full City Council. Final funding approval by the City Council is expected in late February 2015. Once funding is approved, staff will draft loan documents for review by the developer and the City Attorney. All items required at this stage must be submitted and approved by the City before the loan can close. Rehabilitation may not start until the loan has been closed, and the City has issued a Notice to Proceed.

Applications become public records: Under the California Public Records Act and the City's Sunshine Ordinance, all documents that applicants submit in response to this NOFA are considered public records and will be made available to the public upon request following application review.

The City of Oakland reserves the right to suspend, amend or modify the provisions of this NOFA, to reject all proposals, to negotiate modifications of proposals, or to award less than the full amount of funding available.

The City of Oakland is an Equal Housing Opportunity and Accessible Housing provider.



CHANGES AND NEW REQUIREMENTS IN THE 2014 PRESERVATION AND REHABILITATION NOFA

The following summarizes significant changes in this year's Preservation and Rehabilitation NOFA. It is not an exhaustive list of all changes. Please make sure to completely review the NOFA.

- HOME Program Changes:** The Department of Housing and Urban Development (HUD) published a Final Rule in the Federal Register on July 24, 2013 to amend the HOME Investment Partnerships (HOME) Program regulations. Applicants should be aware of changes made to HOME program requirements through passage of this Final Rule. A summary of some changes for projects assisted with HOME funds that may be relevant to applicants include:
 - Projects must complete construction within four years of signing a written agreement with the City for the HOME funds.
 - Rental units must be occupied within 18 months of project completion.
 - A market study for the project may be required prior to loan closing.
 - For HOME funded CHDO projects, CHDOs are required to have staff with demonstrated development experience. These staff must be employees of the organization, not contractors, consultants, board members, or volunteers.

More information about the new HOME requirements can be found at: <https://www.onecpd.info/home/home-final-rule/>. Please be advised that due to the recent release of the HOME Final Rule, all of the new requirements may not yet be reflected in this NOFA.

- Loan Fees:** The loan origination fee has been increased from 1% to 5% of the loan amount. An asset monitoring fee of \$100 per unit per year has been added. Post completion subordination, modification, resale and assumption fee are disclosed.
- Incentive Management Fee:** Language added to clarify that the incentive management fee is intended to pay the sponsor/developer and not the partnership. In the event that there are multiple residual receipt lenders, the percentage of excess cash flow distributed to the sponsor/developer is reduced to 25%.
- Partnership/Asset Management Fee:** Language was added to clarify that the cap for the partnership and asset management fee does not apply to fees paid to the investor. Additionally, prior to payment of deferred Partnership/Asset Management Fees, the City must receive a payment of at least 25% of annual interest expense.
- Contract Compliance Programs:** Due to changes in the City's contracting programs enacted in the last few years, it is recommended that sponsors who receive City funding awards meet with Contract Compliance staff early in the predevelopment process to ensure a full understanding of how the project may meet the requirements.

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NOFA ADDENDA (See Separate Table of Contents)

- #1: Minimum Developer Qualifications
- #2: Guidelines on Developer Fees
- #3: Affirmative Fair Marketing Procedures
- #4: Income, Rent and Utility-Allowance

APPLICATION FORM AND INSTRUCTIONS

Program Description and Underwriting Requirements

The City of Oakland (the City) provides financial assistance to developers of low and moderate income housing. These programs are administered by the Housing Development Services unit of the Department of Housing and Community Development (DHCD).

City requirements are generally consistent regardless of the original source of funding. However, for certain requirements, one source of funds may allow greater flexibility than others (e.g., Affordable Housing Trust Fund compared to HOME). Applicants should assume that federal requirements will apply. If the use of federal funds creates a significant feasibility problem, this should be explained in the application cover letter.

ELIGIBILITY

THRESHOLD ELIGIBILITY REQUIREMENTS

Evidence that the following requirements have been satisfied must be submitted at the time of application.

- The affordable housing development seeking funds must have all of the following characteristics:
 - It must be currently providing permanent or transitional affordable housing.
 - The building must have been constructed at least 10 years ago.
 - It must be serving households or individuals at or below 60% of area median income.
- The majority of the scope of work to be performed must be necessary to maintain or prevent the loss of the habitability of the housing, to correct code deficiencies, or to replace building components or systems that require inordinate and excessive maintenance and repair expenditures.

ELIGIBLE ACTIVITIES

The following are eligible uses of funds offered through this NOFA:

- Repairs or replacements of existing mechanical, plumbing, or electrical equipment to the extent that they are necessary for health and safety reasons. The purchase of high efficiency heating and cooling systems for the approved replacement equipment is encouraged to promote energy conservation.
- Other rehabilitation costs to the extent they are necessary to improve the quality of life for residents and the marketability of the property.
- Architectural and engineering expenses.
- Temporary relocation expenses.
- Construction period insurance and permit fees associated with the rehabilitation work.
- Other necessary soft costs associated with the rehabilitation work.
- Refinancing of existing debt to eliminate operating deficits or maintain affordability, as long as the cost of refinancing does not exceed the budgeted rehabilitation costs.

- Capitalized replacement reserves and operating reserves if necessary to ensure the adequacy of such reserves to meet anticipated capital improvement needs. (See Application for replacement and operating reserves guidelines.)

INELIGIBLE ACTIVITIES

The following are ineligible uses of funds offered through this NOFA:

- Permanent relocation of residential and/or commercial tenants. Projects that require permanent relocation of tenants are not eligible for funding.
- Projects that do not currently have rents regulated by a public agency.
- Costs associated with construction items or materials of a luxury nature.
- Off-site improvements (however utility connections into the adjacent street are eligible costs).
- Developer/sponsor administrative costs (other than those included in the administrative fee).
- Projects that have received HOME funds in the past may not be eligible for additional HOME funds unless the HOME affordability period has expired. Please contact staff if you are unsure if your project will be eligible to receive additional HOME funds.

For eligibility and other updates, please check the City of Oakland website:

<http://www.oaklandnet.com/hcd/>.

APPLICATION REVIEW

All applications received by the deadline will first be reviewed for completeness and eligibility. They will then be evaluated and ranked for presentation to the City Council.

Qualifying applications will be reviewed for compliance with relevant City policies and for overall feasibility. Projects will then be ranked based on, but not limited to, the following evaluation criteria:

- The degree to which subsidy is requested below 100% of total development costs and the degree to which outside funding is utilized.
- The building's urgency of need, which will be determined according to factors such as the following:
 - Code violations subject to abatement orders or potential legal enforcement proceedings.
 - Current or imminent conditions that pose significant threats to health, safety or security of residents or staff as per the Physical Needs Assessment (PNA) results.
 - Existing major building and structural components that are in critical condition (e.g. structural collapse, fire damage, failure of elevators in a mid to high-rise, sewer back-up, gas leaks, broken water pipes, lack of heat, catastrophic leaks, broken-down boilers, etc).

- Project attributes such as age of the property, zero capitalized reserve request, and the submission of a comprehensive tenant outreach and/or relocation plan.
- Organization and Projects financial health which will be determined through analysis of financial statement to evaluate the project's net assets, debt equity ratio, current assets and liabilities ratio, cash flow, payment and receivable cycles, growth, operating expense compared to revenue, vacancy loss, bad debt, adequacy of reserves and on-time payment of property taxes and other factors. Additional consideration will be given to the extent the requested subsidy will mitigate areas of concern to improve long-term feasibility of the project.
- The proven technical capacity and experience of the applicant either through staff or contracted services to plan and implement the proposed capital improvements and experience of the management company in managing affordable housing developments.

AFFORDABILITY TARGETING

Upon completion of the rehabilitation (and refinancing if applicable) pursuant to this NOFA, all units shall keep the same level of affordability (or provide an even deeper level of affordability to very low and extremely low income households) as required (or established) prior to the rehabilitation and/or refinancing. If the project is awarded HOME funds, the property will need to maintain the HOME-required rent levels for HOME-assisted units. Furthermore, upon completion of any rehabilitation pursuant to this NOFA, the minimum term of affordability required will be 55 years.

FINANCING GUIDELINES

FINANCIAL HARDSHIP

The applicant must demonstrate that replacement reserves and other non-City sources of financing are insufficient, ineligible or unavailable for use on the project. A detailed narrative describing the lack of other sources must be included in the application cover letter.

MINIMUM AND MAXIMUM LOAN AMOUNTS

- The maximum loan amount is up to \$120,000 per affordable unit per project.
- Applicants who previously received a NOFA award and are reapplying for additional funds are only eligible to apply for a total maximum of \$120,000 per unit per project.
- The minimum suggested loan amount is \$200,000 per project. If applicants are applying for an amount less than the \$200,000, a detailed narrative describing the justification for a lower loan amount must be provided.
- The City loan amount may be up to one hundred percent (100%) of the total development cost of the project's affordable units (those units subject to long term affordability restrictions) as long as the development cost does not exceed the per unit maximum amount.
- Requested loan amounts must be rounded to \$1,000 increments.
- All loan amounts are subject to review.

- Other sources of appropriate financing must be identified, but not necessarily committed, at the time of application. Projects will be reviewed to ensure that only the minimum level of City subsidy needed will be provided. All other sources of funding must be committed before closing of the City loan.

ADMINISTRATION, PARTNERSHIP, AND ASSET MANAGEMENT FEES

Administrative fees are permitted up to \$5,000 per unit and up to \$150,000 per project. Applicants who previously received a NOFA award and are reapplying for additional funds are only eligible to request a total maximum administration fee of \$150,000 per project. This fee is subject to negotiation with the City, and may be reduced for projects with small funding requests. The City may approve a higher fee for projects leveraging significant outside financing, as long as the additional fee is paid from a source other than NOFA funds. Additionally, the City will retain an amount equal to 25% of the administrative fee to be paid upon receipt and approval of a cost certification.

Project sponsors are allowed an Asset Management fee that may not exceed \$10,000 annually. Projects financed with tax credits may take an additional Partnership Management fee of up to \$15,000 annually. Partnership/Asset Management fees may increase by 3% per year and are only allowed to the extent cash flow is available after payment of operating expenses, debt service, and deposits to reserves. If Partnership/Asset Management fees are deferred, prior to paying deferred fees, the City must receive a payment of at least 25% of annual interest expense.

REASONABLE DEVELOPMENT COSTS

Projects with abnormally high costs – generally defined as being more than 15% above the median total development cost per bedroom or per square foot for similar rehabilitation projects – must provide justification for the costs. If staff does not approve the justification for higher costs or the revised budget, the application may be deemed incomplete or the City could require a reduction in the development budget.

Due to the limited funding available, applicants may be requested to reduce their scope of work in order to limit their total development cost to include only the most immediate and urgent items.

CONSTRUCTION CONTINGENCY

A **minimum** of 25% construction cost contingency for projects undergoing rehabilitation is required.

REFINANCING LOANS

For refinancing in conjunction with emergency repair and capital improvements funding, the following threshold requirements apply:

- Refinancing of existing debt to eliminate operating deficits or maintain affordability is an eligible cost, as long as the cost of refinancing does not exceed the budgeted rehabilitation costs.
- The applicant must provide a detailed narrative that describes the need for refinancing in order to eliminate operating deficits and/or to increase or maintain the affordability of the housing to be refinanced with respect to its targeted population.
- The applicant must demonstrate that concessions from lenders whose loans would be refinanced, such as interest rate reductions, deferrals or partial forgiveness, are

unavailable or insufficient to address the need for refinancing. A letter from the lender demonstrating an unwillingness to make concessions is sufficient evidence.

- The applicant must demonstrate that other alternatives to refinancing, such as modifying management practices to reduce expenditures or raising rents to increase revenues are inappropriate, insufficient or unavailable to address the need for refinancing. If inappropriate management practices such as disinvestment in the property are found to be contributing to an operating deficit, a change in management may be required as a condition of funding under this NOFA.

GENERAL LOAN TERMS

MODIFIED LOAN TERMS

If loan terms other than those listed below are sought for a project, this must be explicitly stated in the cover letter and a separate explanation provided in the application. Such requests are granted at the sole discretion of the City.

TIMELINE OF CITY COMMITMENTS & MONTHLY UPDATES

City financing commitments are made for 24 months from date of City Council approval. All sources of funds must be committed within that time frame or the commitment will expire.

Upon commitment of funds from the City, the borrower must provide written monthly updates to City staff. Monthly updates will allow City staff to anticipate upcoming approvals needed and to stay informed about efforts to move the project forward on schedule. If HOME funds are awarded, monthly updates should include a schedule projection related to the four year completion deadline required by HUD.

Projects funded with HOME must complete construction within four years of signing a written agreement with the City.

Rental units assisted with HOME funds must be occupied within 18 months of project completion.

SUBORDINATION

The City will no longer subordinate its affordability covenants to the deeds of trust securing other lenders' financing, with the exception of State and Federal funding sources (subject to staff approval and to the ratio of loan to total development cost). The affordability covenants control, among other things, the maximum income of tenants of project units, and the maximum rents allowed for project units. The City deed of trust may be subordinated to private financing on a case-by-case basis.

LOAN TERMS

Loans are typically provided at a simple interest rate of three percent (3%) per annum, for a term of fifty-five (55) years. Payments of interest and principal will be due from excess cash flow from operations after payment of operating costs, senior debt and reserves. To the extent payments cannot be made, they will be deferred for the term of the loan. All loans are due on sale, refinancing, or transfer (except to a related entity, such as a limited partnership, subject to City approval).

City loans will be evidenced by a promissory note secured by a deed of trust and recorded against the land and improvements for the project. A loan agreement will specify all development obligations. Post-occupancy use restrictions will be enforced through a regulatory agreement recorded against the land and improvements of the project. The minimum term for affordability restrictions is 55 years. If an existing City loan is already in place for a project, it may be consolidated with the new rehabilitation loan.

LOAN FEES

- Origination fee: A fee equal to five percent (5%) of the loan amount will be charged for all loans. Ordinarily, this fee will be collected from loan proceeds at the initial funding. This fee may be waived for projects receiving only HOME funds.
- Monitoring Fee: After project completion, all projects will be required to pay \$100 per unit per year monitoring fee. This fee should be factored in to the annual operating budget.
- Subordination Fee: \$1000 subordination fee if after project completion, the owner requests subordination of the City's Deed of Trust.
- Modification Fee: \$1000 modification fee if after project completion, the owner requests modification of the City's Deed of Trust or Regulatory Agreement.
- Resale Fee: \$500
- Assumption Fee: \$300

DISBURSEMENT OF FUNDS

Funds will be disbursed to borrower only for costs actually incurred. Payment for construction costs will be made on a progress payment basis, subject to approval of each draw request by the City. The City will retain ten percent (10%) of the amount budgeted for construction hard costs as a performance retention, to be released upon recordation of a Notice of Completion, release of all liens, and satisfactory compliance with any other City requirements, including City contracting programs. Additionally, the City will retain an amount equal to 25% of the administrative fee to be paid upon receipt and approval of a cost certification, and HOME completion report (if applicable) and a final tenant lease up report.

PRESERVATION PROJECTS

Applicants seeking to preserve existing affordable housing in danger of conversion to market-rate rents as a result of the non-renewal of expiring federal subsidies or tax credits must show that the project will remain financially feasible, with all income and rent restrictions met, throughout the term of the regulatory agreement. If a rental or operating subsidy is currently part of the financing plan, applicants must show that the project will still be feasible if that rental or operating subsidy contract is not renewed.

OPERATING BUDGET

Operating budgets and 30-year proformas must meet the following criteria:

- Include operating and replacement reserves (See Replacement and Operating Reserve Requirements below).
- Include Asset Monitoring Fee of \$100 per unit per year.
- 5% annual vacancy/collection loss for family, senior, and preservation projects and 10% annual vacancy/collection loss for SRO or special needs projects.
- 3.5% annual increase for expenses (other than property taxes and replacement reserves deposits) and 2.5% annual increase for income.
- The operating budget will be reviewed to ensure it is sufficient for proper maintenance and management but is not excessive compared to other similar properties.

- The operating budget must show at least break-even cash. Ideally, the budget should show sufficient cash flow to make a modest payment to residual receipt loans.
- If the project has Project Based Section 8 or other rental assistance, two operating proformas must be provided, one assuming rental assistance will be renewed and one assuming rental assistance will expire after the initial contract term. Rents must remain restricted according to City requirements even if the rental assistance is no longer available.
- If the project intends to apply for rental assistance, two operating proformas can be provided, one assuming no rental assistance and one assuming rental assistance; however, the project can only be evaluated based on rental assistance that is committed at the time of application.
- Asset Management fees may not exceed \$10,000 annually. Tax credit projects are allowed an additional Partnership Management fee of up to \$15,000 annually. Partnership/Asset Management fees may increase by 3% per year, and are only allowed to the extent cash flow is available after payment of operating expenses, debt service, and deposits to reserves.

CASH FLOW/INCENTIVE MANAGEMENT FEE

For nonprofits, if a project has no monitoring findings or other violations of City or other agreements, and reserves are fully funded, excess cash flow (after payment of operating costs, reserves, senior debt, deferred developer fee, and partnership/asset management fee) will be split between the developer/sponsor and the City, with 50% of excess cash flow paid to the City as a residual receipts loan payment and 50% for the developer/sponsor as an Incentive Management Fee. If the project is owned by a partnership, the partnership agreement should clearly indicate that the Incentive Management Fee will be paid to the developer/sponsor. This fee shall be used for projects and activities contributing directly to the developer's (or its affiliate's) affordable housing programs and community development activities. If other lenders also require residual receipts payments, the developer/sponsor's proportion of the excess cash flow will be reduced to 25%. The lenders will receive distributions of the remaining 75% of the excess cash flow based on relative loan amounts. Staff should be included in any negotiations of residual receipts loan payments. A payment of 25% of the annual interest expense on the City's loan will be required to be paid prior to paying any deferred partnership/asset management fee.

REPLACEMENT AND OPERATING RESERVE REQUIREMENTS

City financing and regulatory requirements are generally in place far longer than other financing sources. As a result, the owner's ability to maintain and repair the project over the long term is extremely important to the City. Exceptions to the stated requirements will be granted in rare cases only. Use of replacement and operating reserves is subject to prior review and approval by the City.

- **Replacement Reserves**
Developers will be required to submit a third party replacement cost analysis in which the lifecycle and cost of major building systems is estimated and amortized over the number of units and years. Replacement reserve amounts will be reviewed and approved by the City. The City reserves the right to request a replacement reserve analysis every 5 years.
- **Operating Reserves**
Initial operating reserve of at least 2% of the gross rental income must be capitalized on a monthly basis until the reserve reaches an amount equal to six months operating costs

(including debt service costs). The operating reserve must be maintained at the level of six months of operating costs for the period during which the property is regulated by the City regulatory agreements.

SECTION 8 PROJECT-BASED VOUCHER ASSISTANCE

The Oakland Housing Authority (OHA) may utilize the City of Oakland's 2014-15 NOFA process as a first step in the competitive selection process required for awarding any available Section 8 Project-Based Vouchers. However, due to federal funding cuts and sequestration, Section 8 Project-Based Voucher awards may be severely limited or unavailable at the time of the NOFA Awards. OHA reserves the right to suspend, amend or modify the provisions of this Project-Based Voucher (PBV) offering and may negotiate modifications, award less than the full amount of PBV funding requested by a project or reject all proposals entirely.

If the project is selected for NOFA funding by the City, OHA will issue a Letter of Invitation to submit a request for Project Based Section 8 vouchers for the project. The project must then submit a request to OHA for Project-Based Vouchers, in accordance and in response to the Letter of Invitation. OHA will then review these responses to the Letter of Invitation, and based on those guidelines and the priorities outlined in the OHA Development Policy, make provisional awards of Project Based Section 8 voucher funding based on available funding. The OHA Board of Commissioners must then approve the award of any Project-Based Voucher to a project.

Projects must be an eligible housing type for PBV assistance (24 CFR 983.52 and 983.53) and are subject to an environmental review under the National Environmental Policy Act (NEPA), a subsidy layering review, HUD Section 3 hiring goals and Davis-Bacon labor standards. The project must also meet accessibility requirements in accordance with the regulations implementing Section 504 of the Rehabilitation Act of 1973. Projects completing all applicable OHA and HUD reviews may then execute a Section 8 Project-Based Voucher Housing Assistance Payments (HAP) contract with OHA for an initial 15-year contract term.

Projects that request PBV should also understand that the Fair Market Rents shown in the Income, Rent, Utility Allowance, and Owner-Occupied Housing Payment Limits addendum are published by HUD annually and the basis for which public housing agencies set their voucher payment standards. It is the OHA Voucher Payment Standard that establishes the maximum approvable contract rents for PBV program units. OHA will utilize a rent comparability survey prepared by a state certified appraiser to determine the initial PBV contract rents for the project.

For additional information about the Oakland Housing Authority's PBV program, sample contracts, and applicable Federal requirements, contact Doug Lee, OHA Senior Management Analyst at (510) 587-2155, or email: dlee@oakha.org.

Sponsors are requested to submit their applications and project budgets assuming no Section 8 PBV assistance will be available. If a project receives a PBV award and is able to leverage additional permanent financing that reduces the need for City funding, the City's funding commitment will be reduced based on the amount of additional funds leveraged.

OTHER GUIDELINES AND CITY REQUIREMENTS

SITE CONTROL

At the time a development proposal is submitted, the developer must demonstrate that it has, or will maintain, site control of the property for which funding is being requested.

PRE-APPLICATION MEETING WITH BUILDING DEPARTMENT

Applicants are required to meet with the Engineer of the Day in the Building Code Department to better understand what additional code regulations may be triggered by the planned rehabilitation work. The building code meeting must be held prior to submitting the NOFA application and a detailed copy of meeting notes is required for verification. The meeting notes must include engineer's name and contact information.

RELOCATION

Permanent relocation of residential and commercial tenants is an ineligible use of funds offered through this NOFA. Projects that require permanent relocation are suggested to apply for the City of Oakland's NOFA for New Construction and Substantial Rehabilitation of Affordable Housing. Local, state and/or federal relocation law apply to projects that will temporarily displace current business or residential occupants. Relocation assistance and benefits may be required, which can add substantially to the project cost. A detailed relocation plan and budget is required for all projects that involve temporary relocation of tenants.

TENANT NOTIFICATION AND INVOLVEMENT

Applicants are required to work closely with tenants and give them sufficient notice(s) about the rehabilitation plans for the project. The notification(s) should include scope, scheduling, whether or not temporary relocation is likely to be required and if it is required, the length of time of the relocation. It is also important that the notice to tenants reassures them that if temporary relocation is required, tenants will be moved to vacant units in the building to the greatest extent possible. However, if off-site temporary relocation is required, the notice must inform tenants that they will be assisted financially. All relocations must comply with local/state/federal laws.

PHYSICAL NEEDS ASSESSMENT

All applications must include a Physical Needs Assessment (PNA), prepared by a third party qualified architect, contractor or construction manager, completed within the last 12 months. The PNA should describe the emergency repairs or the capital improvements that are either required or recommended for immediate attention and the rationale for doing so. City staff recommends that all hard costs be confirmed by contractor's and/or architect's estimate.

All applications must include a 20-year Replacement Reserve Analysis, including anticipated replacement reserve deposits and expenditures over the same period.

GREEN REHABILITATION REQUIREMENTS

The City of Oakland has adopted a Green Building Ordinance that will apply to all projects. For more information about the Ordinance, go to the following website:

<http://www2.oaklandnet.com/Government/o/PBN/OurServices/GreenBuilding/index.htm>.

Rehabilitation projects must be GreenPoint Rated and certified. Utilize the **GreenPoint Rated Existing Home Multifamily Checklist** for rehabilitation projects on the Build It Green website (<http://www.builditgreen.org/guidelines--checklists/>). Two GreenPoint certifications are possible for rehab projects using this checklist, an "Elements" certification (for minor rehabilitations) or a "Whole House" certification (for more extensive rehabs). The Green Point checklist will be required prior to loan closing for all awarded projects and evidence of certification must be provided at the completion of the project.

Rehab projects are also encouraged to utilize the Multifamily component of Energy Upgrade California, which provides free technical assistance and rebates for energy saving upgrades. More information can be found at <http://multifamily.energyupgradeca.org/local#bayarea> .

More information regarding green rehabilitation techniques can be found from the following resources:

- Oakland's Green Building Resource Center (2nd Floor, 250 Frank Ogawa Plaza), or www.oaklandpw.com/page273.aspx,
- StopWaste, at www.stopwaste.org or www.multifamilygreen.org,
- Build It Green, at www.builditgreen.org,
- The Affordable Green Housing Coalition, at www.greenaffordablehousing.org,
- For rehabilitation projects, LISC's Green Rehabilitation of Multifamily Rental Properties is available at www.lisc.org.

Multi-family Recycling Program

All multi-family buildings (5+ units) are required by state and local law to arrange for recycling services for residents and provide information at least annually to employees, tenants, and contractors describing how to properly use the recycling and garbage containers. All residents in multi-family buildings or complexes may recycle bottles, cans, jars, rigid plastic containers, paper and cardboard. For information about your recycling rights and requirements under both state and local law, go to the following websites:

<http://www.calrecycle.ca.gov/Recycle/Commercial/default.htm> www.RecyclingRulesAC.org

CONTRACT COMPLIANCE – EMPLOYMENT PROGRAMS AND REQUIREMENTS

Applicants must comply with the following City of Oakland Employment and Contracting programs:

- 50% Local and Small Local For Profit and Not For Profit Business Enterprise Program (L/SLBE)
- 50% Local Employment Program
- 15% Oakland Apprenticeship Program
- Payment of Prevailing Wages
- City of Oakland Living Wage Ordinance
- City of Oakland Equal Benefits Ordinance
- Electronic Certified Payroll Submittals

More information can be obtained from the City of Oakland's website at <http://www2.oaklandnet.com/Government/o/CityAdministration/d/CP/index.htm> and during the pre-application meeting. It is recommended that sponsors who receive City funding awards meet with Contract Compliance staff early in the predevelopment process to ensure a complete understanding of all the options regarding how the project may meet the requirements.

Submission of documentation regarding the above requirements and a meeting with the Contract Compliance Department will be required prior to loan closing and construction start.

Additional contracting requirements include:

- The use of contractors that appear on the federal government's list of suspended and debarred contractors is expressly prohibited.
- The Developer must require Prime Contractors and all subcontractors to enter ALL certified payroll reports into the Labor Compliance Program (LCP) tracker. The LCP tracker is a web based program that monitors the payment of Davis Bacon and State of California prevailing wages. The prime contractor will be charged a monthly fee for this service (subcontractors will not be charged).
- The 50% L/SLBE requirement must be met on both the professional services and construction phases of each project. A minimum of 25% of this requirement must be met with SLBE participation.
- The general contractor selected must comply with Davis Bacon, if applicable, and the State of California Prevailing Wage as determined by the Department of Industrial Relations and HUD Davis Bacon requirements if HOME funds are used.
- Please note that, pursuant to the California Code of Regulations Section 16001(d), residential projects consist of single-family homes and apartments up to and including four stories.
- Applicants seeking residential wage rates must submit a request to Contract Compliance at least 90 days prior to the bid advertisement. The request for residential rates must include a description of the project, type of project (i.e. new construction or rehabilitation), the number of units, and the anticipated bid advertisement date.
- The residential prevailing wage determination includes those crafts(s)/classifications(s), or type of worker(s) not covered by the general determination. Special determinations are issued on a project-by-project basis and cannot be issued retroactively to the bid advertisement date of the project. In the absence of a residential prevailing wage determination, the awarding body should refer to the State of California Director's General Prevailing Wage Determinations.
- Residential prevailing wage determinations are issued based upon information provided which indicates that the contract has not been signed for the project. If the construction contract is not signed and work does not begin within twelve (12) months of the residential wage determination, you must inform the division of Contract Compliance so that updated rates can be obtained.
- In the absence of a special residential wage determination, the general prevailing wage determination must be used. These rates can be obtained via the internet at www.dir.ca.gov/DLSR.

INSURANCE

During development, developers must obtain comprehensive general liability and property (hazard) insurance coverage of at least \$2 million. The City also requires property damage or builder's risk insurance in an amount equal to 100% of the replacement cost of the structure, with a lender's loss payable endorsement in favor of the City. Construction contractors will be required to obtain liability and builders risk insurance in an amount equal to \$2 million.

Automobile insurance, professional liability, workers compensation, and employer's liability coverage are also required. After completion, similar levels of liability and hazard coverage are specified by the regulatory agreement. All policies must name the City as an additional insured; property insurance must have a lenders loss payable endorsement.

CEQA

All projects are required to fill out the CEQA-NEPA checklist exhibit. Additional review may be necessary for rehabilitation projects. This will particularly be true for projects where historic resources are affected. Similarly, exterior work which requires design review by the City's Planning Department will require CEQA Review. If you believe your proposal will affect historic resources, or will require design review, please contact housing staff as soon as possible before submission.

If additional work is needed to confirm exemption from CEQA and that work cannot be completed promptly, the application will probably have to be delayed for a future NOFA.

NEPA

If the proposed project is financed with federal funds, the project must also be assessed in accordance with the National Environmental Policy Act of 1960 (NEPA) prior to loan closing.

- Choice Limiting Actions Prohibited during NEPA Review
Since federal funds may be awarded, applicants must refrain from undertaking activities that would have an adverse environmental impact or would otherwise limit the choice of reasonable alternatives between the time of application submittal and when the City has completed its environmental review process. Such activities include acquiring, rehabilitating, converting, leasing, repairing or constructing property, any kind of site preparation, or committing or expending HUD or non-Federal funds for HOME program activities with respect to any project eligible under this NOFA. If the applicant has entered into a purchase agreement or contract for any of the above activities prior to applying for NOFA funds, work may continue pursuant to that contract. But amendments to the contract or new contracts may not be entered into. HOME funds may not be used to reimburse an applicant for project related costs incurred after the applicant has submitted the application for funding and before the completion of the City's environmental review process except for activities that are excluded and not subject to federal environmental review requirements, and for certain relocation costs.
- Applicants must sign a certification that they understand this restriction (see *Application*). The prohibition against choice-limiting actions begins on the date that the application is submitted to the City. Applicants are encouraged to check with housing staff regarding eligible expenditures after the submission of an application. Failure to comply with this requirement could result in a project being ineligible for City funding.
- City of Oakland staff will seek to obtain NEPA approval in a timely manner. Completing the NEPA review, including local and federal noticing periods, takes a minimum of 6-8 weeks after receipt of all necessary information.

DISABLED AND SENIOR ACCESSIBILITY

Developments assisted by the City must meet the requirements of the Americans with Disabilities Act and the Fair Housing Act, among other local, state, and federal laws. Projects with any federal funds must also meet the more stringent accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (24 CFR 100.205 and Part 8). Section 504 sets minimum percentages of accessible units, and calls for fully accessible common areas, among its numerous requirements. For projects funded with HOME, 5% of the total number of units must be accessible to people with physical disabilities, and an additional 2% of units must be accessible to people with auditory and visual disabilities, as defined in the Uniform Federal

Accessibility Standards (UFAS). Where Section 504, the Fair Housing Act, or ADA apply, the developer and project architect must make a written certification of compliance.

LEAD-BASED PAINT

The use of lead-based paint on City funded projects is prohibited. Testing and abatement of lead-based paint in rehabilitation projects may be required. Projects typically must follow the federal guidelines, which require lead-safe work practices and notification to prospective residents of potential lead-based paint hazards, among other requirements. In addition, Project sponsors should be aware of the EPA regulation that requires all renovators of pre-1978 homes and child-occupied facilities to be trained in lead-safe work practices and certified by the EPA. For more information go to www.epa.gov/lead/pubs/renovation.htm. Training is available through the Alameda County Lead Poisoning Prevention Program and other EPA accredited training providers.

Alameda County Lead Poisoning Prevention Program may have funds available for lead hazard control work at family rental properties (1-bedroom units or larger) built before 1978 that are either vacant or occupied by low-income tenants. More information is available at www.aclppp.org/programs/leadfunding.htm.

RESTRICTION ON CONDOMINIUM CONVERSIONS

Project owners may not convert restricted rental units to condominium or cooperative ownership or sell condominium or cooperative conversion rights for the property during the term of the 55-year Regulatory Agreement. Oakland will give reasonable consideration to any proposal to convert project units to limited-equity cooperative ownership.

COST CERTIFICATION

Developers must submit a cost certification by a certified accountant on completion of a project. Approval of this certification is a requirement for the City's Certificate of Satisfaction of Development Obligations and the release of a substantial portion of the developer fee. Note that this will likely require additional information from what is required in a TCAC cost certification.

Before the developer begins the cost certification process, the City should review the proposed format and information to be included. Each cost certification must include a cost reconciliation schedule and analysis of all reserve accounts. At a minimum, the City Cost Certification should include:

- **Cost Reconciliation Schedule** - The analysis must include a final sources and uses budget that contains all of the line items of the original City approved budget. The borrower must list all sources in lien order and include general partner contributions, if applicable. All uses should be either loans or equity contributions that were made during the construction period and expenses that were paid during the construction period.

The borrower must show the total proposed initial sources and uses and the actual sources and uses by line item. The analysis must explain any difference for line items that are over or below 10% of the original sources and uses budget. Please note that the City's approved budget must be used for this analysis. For HOME projects, ensure that all of the City's final uses were used for eligible costs.

- **Analysis of All Reserve Accounts** - The borrower must show the total proposed initial reserve amount and the actual initial reserve deposit. The analysis must explain any difference between the proposed reserve amount and the deposited amount.

OAKLAND REDEVELOPMENT AGENCY DISSOLUTION

According to state law, the Oakland Redevelopment Agency dissolved on February 12, 2012. The City of Oakland elected to assume the housing assets, functions, and obligations of the Redevelopment Agency. Therefore, all previous housing development loans, agreements, and obligations entered into by the Redevelopment Agency have now been assumed by the City of Oakland.

NONDISCRIMINATION

All applicants must agree not to discriminate on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis.