

**COOPERATION AGREEMENT (AGREEMENT) FOR THE
[REDACTED] COUNTY PERMANENT LOCAL HOUSING ALLOCATION (PLHA)
PROGRAM CONSORTIUM**

This Agreement is entered into by and between the City [REDACTED] (hereinafter referred to as CITY) and the County [REDACTED] (COUNTY), acting as the "Lead Entity" of the PLHA Consortium for the [REDACTED] County.

WITNESSETH:

WHEREAS, In 2017, Governor Brown signed a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs, which included the Building Homes and Jobs Act (SB 2), which established a \$75 recording fee on real estate documents to increase the supply of affordable homes in California; and

WHEREAS, Because the number of real estate transactions recorded in each county will vary from year to year, the revenues collected will fluctuate; and

WHEREAS, SB 2 directs the California Department of Housing and Community Development (State HCD) to use seventy percent (70%) of the annual revenue collected for locally administered affordable housing programs beginning in calendar year 2019, which establishes the Permanent Local Housing Allocation program (PLHA); and

WHEREAS, one or more local governments may designate another Local government to administer on its behalf its formula allocation of PLHA funds provided that the local governments enter into a legally binding agreement and the funds are expended for eligible activities and consistent with program requirements; and

WHEREAS, COUNTY has formed a [REDACTED] County PLHA Consortium (Consortium), whereas Cities within the jurisdictional boundaries of [REDACTED] County may elect to join the Consortium; and

WHEREAS, COUNTY has agreed to be designated as the Lead Entity of the Consortium; and

WHEREAS, the CITY has elected to join the Consortium pursuant to Resolution # _____ passed by the City Council on _____, and included as Exhibit B to this Agreement; and

WHEREAS, it is the desire of COUNTY and CITY that this Agreement be automatically renewed at the end of the Term, as defined herein, unless, within sixty (60) days prior to the end of the Term, COUNTY or CITY elects not to renew the Agreement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **TRUE AND CORRECT.** The above recitals are true and correct.
2. **BENEFICIARY.** A beneficiary is a member of the low-income public that will reside in an affordable housing unit, shelter, or other housing developed with Consortium Funds or will utilize one or more services provided by Recipients of Consortium Funds.
3. **CITY FUNDS.** CITY funds are the portion of the Consortium Funds that were identified by State HCD as the amount of PLHA funds that would have been allocated to CITY. By execution of this Agreement, CITY authorizes that its PLHA funds be allocated to the Consortium and restricted for use by the eligible uses contained in the Plan. CITY may exercise control over the eligible uses of its own funds as provided for in Section 21(b) of this Agreement.
4. **CONSORTIUM.** The Consortium consists of COUNTY, CITY and the cities of [REDACTED], and [REDACTED] (individually "Consortium Member" and together "Consortium Members"), during the term of this Agreement.
5. **CONSORTIUM FUNDS.** Consortium funds include the annual allocations of PLHA funds allocated by State HCD to the COUNTY on behalf of the Consortium.
6. **COMPLIANCE WITH LAW.** COUNTY and CITY agree to comply with the State of California PLHA program and any guidelines, rules, policies, or standards of general application as may be revised from time-to-time by the State Department of Housing and Community Development.
7. **ELIGIBLE APPLICANT.** Eligible Applicant is a jurisdiction identified in the PLHA Guidelines as Eligible Applicant, is in the County [REDACTED], and receives an annual allocation of PLHA funds from the State.
8. **FISCAL YEAR.** The fiscal year is the period July 1 through June 30.
9. **GEOGRAPHIC BOUNDARIES.** The geographic areas where Consortium Funds may be used or from which beneficiaries are located, include the jurisdictional boundaries of Consortium members and the cities of [REDACTED] and [REDACTED].
10. **GUIDELINES.** Guidelines are the Permanent Local Housing Allocation Final Guidelines, dated October 2019 and attached hereto as Exhibit A, as amended from time to time by State HCD.
11. **HCD.** HCD is the County [REDACTED] Division of Housing and Community Development under the County Department [REDACTED].

- 12. LEAD ENTITY.** COUNTY will serve as Lead Entity of the Consortium and by CITY's signature to this Agreement, CITY consents to COUNTY applying for, receiving, committing, and managing Consortium Funds as authorized by this Agreement and Guidelines.
- 13. PLHA PROGRAM.** PLHA is the Permanent Local Housing Allocation program established by the State of California pursuant to Senate Bill 2 (2017) and administered by State HCD.
- 14. PLAN.** The Plan is the document submitted by the Consortium to the State HCD as part of a complete application in which the Consortium proposes to use allocated funds for at least one eligible Activity. The Plan shall have a term of five years. In succeeding years, the Consortium is required to obtain the approval of State HCD for any amendments made to the Plan, as set forth in Section 302(c)(5) of the Guidelines. Attached hereto as Exhibit C is a list of Eligible Activities selected by the Consortium to be included in the initial five (5) year Plan submitted to State HCD. Reallocations of more than 10% of funds among activities require amendment of the Plan, with approval granted by the governing body of the Lead Entity at a publicly noticed public meeting. Amendments to the Plan for the succeeding five (5) years must be approved by State HCD.
- 15. PROGRAM INCOME.** Program Income includes funds returned by a Recipient of Consortium Funds due to non-use of the funds for an eligible use as described in the Guidelines, or recaptured by COUNTY for ineligible uses, or funds paid by a Recipient pursuant to the terms and conditions of a loan agreement executed by the Recipient and COUNTY to use Consortium Funds for an eligible use. COUNTY reserves the right to administer and service such loans, collect payments, and reuse the funds for other eligible uses as described in the Plan without consideration of the origin of the funds, whether from COUNTY or Consortium members' allocations. Such funds shall be considered Consortium Funds and be utilized for eligible uses countywide. This provision will survive the termination of this Agreement pursuant to Section 16 of this Agreement and, if the PLHA Program ceases to exist and State HCD does not otherwise restrict the uses of Program Income, COUNTY may, at COUNTY'S discretion, use Program Income for any other community benefit that serves low-income persons, defined as household income that does not exceed eighty-percent (80%) of the area median income as published annually by the U.S. Department of Housing and Urban Development for the [REDACTED] Metropolitan Statistical Area.
- 16. STATE HCD.** State HCD is the State of California Department of Housing and Community Development.
- 17. RECIPIENT.** Recipient is a non-profit 501 (c)(3) charitable organizations or for-profit entity authorized by written agreement (Recipient Agreement) entered into with COUNTY to expend funds eligible uses of Consortium Funds as authorized by the Recipient Agreement.
- 18. TERM OF AGREEMENT.** The term of this Agreement shall begin on the date signed by COUNTY and will terminate on the earlier of a) the end of the fiscal year in which the COUNTY or CITY no longer is an Eligible Applicant as defined in the Guidelines, or b) the

end of the Fiscal Year in which CITY elects to terminate its participation in the Consortium and CITY has given COUNTY notice of its intent to terminate at least sixty (60) days' prior to the end of the Fiscal Year, or c) State HCD has terminated its agreement with COUNTY or Consortium, or d) the end of the fifth year of the five (5) year Plan currently in effect and submitted to State HCD by COUNTY on behalf of the Consortium as required by the Guidelines, subject to the Automatic Renewal provisions as described in Section 12, or e) the State of California discontinues the PLHA program. Notwithstanding the above, if CITY terminates this Agreement pursuant to b) above, then COUNTY reserves the right to retain CITY Funds that had been allocated to CITY, or to the Consortium on CITY's behalf, and that have not been committed to one or more eligible uses during the term of this Agreement.

19. AUTOMATIC RENEWAL. This Agreement shall automatically renew for the next five Fiscal Years of the Plan. COUNTY will submit to the State of California a new five-year Plan as required by the State HCD outlining the planned uses of Consortium Funds allocated by State HCD unless CITY provides COUNTY with notice of termination at least sixty (60) days prior to the end of the fifth (5th) Fiscal Year of the Plan period.

20. AMENDMENTS. Any amendments to this Agreement must be in writing. In the event that amendments to this Agreement are required by State HCD to meet the requirements of the Guidelines, COUNTY and CITY will not unreasonably withhold their consent to amend the Agreement. Notwithstanding, if an amendment is necessary to comply with the Guidelines and no other substantial changes reallocating funds by more than 10% amongst eligible activities are made, such changes may be made administratively by COUNTY upon notifying CITY.

21. PROGRAM ADMINISTRATION.

a. The Lead Entity assumes overall responsibility for the Consortium and Consortium Funds, and will ensure that funds are used in accordance with the Guidelines and Plan. The Lead Entity will perform the following activities:

- i. Ensure that Consortium activities are carried out in compliance with the Guidelines and the Plan;
- ii. Prepare applications to State HCD on behalf of the Consortium to apply for PLHA funds on behalf of Consortium members
- iii. Prepare the five (5) year plan in consultation with Consortium members and submit to State HCD;
- iv. Award and distribute Consortium Funds in accordance with the Guidelines and Section 21(a)(vii) of this Agreement, and prepare and execute Recipient agreements;
- v. Prepare and submit to State HCD required reports pursuant to the Guidelines and provide copies to Consortium Members;
- vi. Monitor Recipients' uses of Consortium Funds, including long-term monitoring of affordable housing developments;
- vii. Publish an annual Notice of Funding Availability (NOFA) to solicit applications from potential Recipients to use Consortium Funds for eligible activities in

accordance with the Guidelines and Plan. The NOFA will show PLHA allocations by Consortium Member. The NOFA may accept full applications for any eligible use as included in the Plan and, for housing development projects, may accept a notice of intent to apply for funds, in lieu of a full application, for projects that will be ready to commence within the next Fiscal Year and that have all other funding commitments in place necessary to complete the project with the exception of Consortium Funds or State program funds, such as the low-income housing tax credit program; provided that the applicant otherwise meets the requirements of and is ready to submit the application to the State;

- viii. Process applications through HCD's established application review procedures and:
 - 1. A review team may be convened by COUNTY and may include one or more Consortium Members;
 - 2. COUNTY will distribute to Consortium Members a list of applicants and, upon request by a Consortium Member, a copy of the full applications by a potential Recipient that proposes an eligible use in the Consortium Member's jurisdiction;
 - 3. Consult with a Consortium Member on any proposed use of CITY Funds.
- b. Consortium Members agree to the following:
 - i. Cities may direct that all or a portion of their annual PLHA allocation be used for specific use(s) to benefit their respective city or pool their funds with other Consortium Funds to fund eligible uses countywide, provided that no one eligible use will utilize less than the lesser of the city's total allocation for that Fiscal Year, or \$100,000. Cities that will administer the eligible use directly will be required to enter into an agreement with COUNTY;
 - ii. Cities may save or "bank" their annual allocation(s) for use in a future year for an eligible use within their city, up to a total of three years' allocations, except that COUNTY as the Lead Entity preserves the right to award CITY Funds to eligible uses without CITY's consent, if necessary to meet certain commitment and expenditure deadlines provided in the Guidelines. If, after three years of banking its funds, CITY has not identified eligible use(s) for the CITY Funds; COUNTY will include the funds in the next annual NOFA or award the funds pursuant to Section 18 (b) ii of this Agreement;
 - iii. COUNTY may, at COUNTY's discretion, set a minimum amount of funds for a particular eligible activity for example, for a public service type activity, the minimum amount may be set at \$50,000 and for a housing development project, the minimum amount may be set at \$300,000. These amounts may be revised by COUNTY as COUNTY's discretion;
 - iv. COUNTY will keep a pipeline of proposed housing development projects that includes projects identified from any notices of intent to apply received in response to the annual NOFA as described in Section 21(b)(vii) of this Agreement. Development projects will be prioritized based on project

readiness, including zoning and planning approvals, commitment of funding sources, and other considerations as outlined in the annual NOFA. Full applications will be required from the applicant or Recipient in order to be considered for an award of Consortium Funds.

- v. Consortium Funds for affordable housing new construction, rehabilitation, and preservation, unless otherwise restricted by the PLHA program, will mirror federal HOME Investment Partnerships (HOME) program's requirements for income limits, rent limits, occupancy requirements, and monitoring requirements, and PLHA funds use on projects that meet the HOME requirements may be used by the COUNTY as HOME Match as required by the HOME program. Income and rent limits for projects will be determined by COUNTY for each project funded with Consortium Funds in consideration of population served and other factors. Such restrictions will be memorialized by the execution and recordation of a County Regulatory Agreement with terms of not less than twenty (20) years for new construction and fifteen (15) years for acquisition only, or rehabilitation. Income eligibility will be established using the requirements at 24 CFR 5.609 – 612. Ongoing monitoring of the affordable developments will utilize the federal Housing Quality Standards or other required by the HOME program;
- vi. All uses of Consortium Funds are subject to approval by the County Board of Supervisors;
- vii. COUNTY will retain the percentage of the total annual Consortium Funds for administrative purposes as permitted by the PLHA program, currently set at five-percent (5%).

22. RESPONSIBILITIES OF CITY. CITY authorizes COUNTY to act as Lead Entity of the Consortium and authorizes COUNTY to administer CITY Funds pursuant to this Agreement, the Plan, and Guidelines. CITY shall, as required by the Guidelines or when otherwise requested by State HCD, provide written confirmation of CITY's participation in the Consortium and authorizes COUNTY to administer its CITY Funds. Such written authorization will be provided by the method described in the Guidelines, which may require a resolution passed CITY's governing body. CITY will not reasonably withhold executing this Agreement or passing a required resolution and will ensure that this Agreement and resolution are executed and provided by CITY to COUNTY in a timely manner to meet any deadlines imposed by State HCD as described in the Guidelines and/or PLHA Notices of Funding Availability.

23. INDEMNIFICATION AND INSURANCE.

A. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to California Government Code Section 895.6, the parties agree

that all losses or liabilities incurred by a party shall not be shared pro rata but instead all parties agree that pursuant to California Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by California Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

B. INSURANCE

Each party to this Agreement shall maintain its own insurance coverage, through commercial insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this Agreement.

- 24. NOTICE.** Any notice or notices required or permitted to be given pursuant to this agreement must be provided either by certified mail or personal service.
- 25. EXCLUSION OF FUNDS.** This Agreement applies only to those funds received under the PLHA Program and Program income generated by the uses of Consortium Funds and any matching contributions. This Agreement does not apply to or control funds other than those described herein.
- 26. COUNTY'S OBLIGATION TO DISTRIBUTE FUNDS.** If PLHA Funds are not awarded to the Consortium by State HCD or if the State HCD agreement with the COUNTY or Consortium is terminated or suspended, then this Agreement shall also terminate and COUNTY as Lead Entity has no obligation under this Agreement or to State HCD to distribute PLHA Funds to Consortium Members or otherwise administer the PLHA Program.
- 27. PLAN IMPLEMENTATION.** In the event that there are insufficient responses to the NOFA requesting funds for an eligible activity in a given Fiscal Year, COUNTY has authority to deviate from eligible uses in the Plan and fund other eligible activities as permitted by State HCD and contemplated in Section 20 of this Agreement. Reallocation of PLHA funds by more than 10% among eligible activities in the Plan shall require County Board of Supervisors approval.
- 28. NEW CONSORTIUM MEMBERS.** COUNTY may add new Consortium members to this Consortium Agreement as permitted by the Guidelines. COUNTY and the new member city will

mutually determine the administration of PLHA funds previously allocated to the new member city that have not been awarded to eligible uses: the new member city may continue to utilize allocated PLHA Funds on hand, or may remit these PLHA Funds to COUNTY to be allocated pursuant to this Agreement. COUNTY and the new member city will mutually determine the appropriate time to enter the Consortium and execute an agreement whether it be at the start of a Fiscal Year or other point in time. Each new member city must:

- a) Pass a resolution by its governing body as prescribed in the Guidelines;
- b) Execute an agreement with COUNTY, in a form substantially similar to this Agreement;
- c) Meet threshold requirements detailed in Section 302 of the Guidelines.

29. AUTHORITY TO JOIN CONSORTIUM. Each Consortium Member hereby certifies that it is authorized to enter into this Agreement. Authorizing Resolutions from the governing body of each local government joining the Consortium are incorporated into this Agreement as Exhibit B and made part of this Agreement.

30. RECORDS AND REPORTS. The Lead Entity shall maintain records as required by State HCD for a minimum of three (3) years, including and not limited to records identified in Sections 500 and 501 of the Guidelines and each participating jurisdiction respecting individual projects and programs shall be open and available for inspection by auditors assigned by State HCD and/or the CITY or Consortium during normal business hours of COUNTY. Each city shall submit such reports and information as may be necessary for the Lead Entity to fulfill its obligations as administrator of the Consortium.

31. COOPERATION IN UNDERTAKING ELIGIBLE USES UNDER PLHA. Each member of the Consortium agrees to cooperate to undertake or to assist in the undertaking of eligible activities specified in the Plan.

32. SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

33. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written. This agreement may be executed in counterparts, each of which shall be an original and all of which together constitute one and the same agreement.

ATTEST:

[REDACTED]
Clerk [REDACTED]

COUNTY:

County [REDACTED]
[REDACTED]

By: _____
[REDACTED]

By: _____
[REDACTED]

**APPROVED AS TO ACCOUNTING
FORM:**

[REDACTED]

By: _____
[REDACTED]

By: _____
[REDACTED]

APPROVED AS TO FORM

[REDACTED]
COUNTY [REDACTED]

By: _____
[REDACTED]

APPROVED AS TO FORM:

[REDACTED]

By: _____
[REDACTED]

CITY [REDACTED]

By: _____
[REDACTED]

ATTEST:

By: _____
[REDACTED] City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
[REDACTED]

Exhibit A
PLHA Guidelines

Exhibit B

Consortium Member City Authorizing Resolutions

Exhibit C
Plan