

**PERMANENT LOCAL HOUSING ALLOCATION  
CONSORTIUM AGREEMENT  
BETWEEN THE COUNTY OF SANTA CLARA AND THE CITY OF CUPERTINO  
FOR THE PERIOD OF DECEMBER 15, 2021 TO JUNE 30, 2026, AND  
SUBSEQUENT AUTOMATIC RENEWALS UNLESS TERMINATED**

This Permanent Local Housing Allocation Consortium Agreement (“Agreement”), dated for reference purposes only as of December 15, 2021, is made by and between the City of Cupertino (hereinafter referred to as “City”) and the County of Santa Clara, a political subdivision of the State of California (hereinafter referred to as “County”), acting as the lead entity for the County of Santa Clara Urban County Program, which program consists of the unincorporated areas of Santa Clara County and the cities of Campbell, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill, and Saratoga (hereinafter collectively referred to as the “Urban County” and of which the seven cities only, excluding County, are hereinafter collectively referred to as “Urban County Cities”), relating to implementation of housing and homelessness activities funded by the State of California for Permanent Local Housing Allocation program funds, as defined below.

**RECITALS**

WHEREAS, in 2017 Chapter 364, Statutes of 2017 (SB 2), authorized by Health and Safety Code section 50470, which created the Building Homes and Jobs Trust Fund and the Permanent Local Housing Allocation (hereinafter referred to as “PLHA”) program, was enacted, the primary objective of which is to create a permanent source of funding available to eligible local governments in California for housing-related projects and programs that assist in addressing the unmet housing needs of their local communities; and

WHEREAS, the PLHA Final Guidelines (hereinafter referred to as the “Guidelines”), dated October 2019, implement, interpret, and make specific the PLHA program and establish the terms, conditions, and procedures for local governments to submit applications to the California Department of Housing and Community Development (HCD) for PLHA funds; and

WHEREAS, under the PLHA program, City and County are each considered an Eligible Applicant (as defined in Section 300 of the Guidelines) to receive PLHA funding under the Entitlement Formula Component, which distributes funding to metropolitan cities and urban counties that were allocated a grant for federal fiscal year 2017 pursuant to the federal Community Development Block Grant formula specified in 42 USC section 5306; and

WHEREAS, the Guidelines authorize an Eligible Applicant to delegate another Eligible Applicant to submit an application and administer on its behalf its formula allocation of PLHA funds provided that the entities enter into a legally binding agreement and the funds are expended for eligible activities consistent with PLHA requirements; and

WHEREAS, City wishes to delegate authority to County to submit an application and administer the funding on City's behalf; and

WHEREAS, County wishes to accept the delegation of authority from City to apply for and administer City's PLHA allocation and serve as the administrator (hereinafter the "Administering Local Government") responsible for all PLHA requirements; and

WHEREAS, it is the desire of City and County to enter into this Agreement and, along with the City of Santa Clara and the City of Gilroy, create the Santa Clara County PLHA Consortium for the purpose of implementing the objective of addressing unmet housing needs (the City, along with the City of Santa Clara and the City of Gilroy, may be referred to herein as the "Consortium Cities"); and

WHEREAS, it is the desire of City and County that this Agreement be renewed every five years.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. **RECITALS.** The above recitals are true and correct and incorporated herein.
2. **CREATION OF SANTA CLARA COUNTY PLHA CONSORTIUM.** By entering into this Agreement the City and County agree to be part of the Santa Clara County PLHA Consortium (the "PLHA Consortium") for the purpose of receiving PLHA funds and undertaking affordable housing activities within the areas served by the PLHA Consortium, which includes the cities of Cupertino, Gilroy, and Santa Clara and the Urban County. City understands and agrees that City will not be eligible for a separate PLHA allocation from HCD during any time City is participating in the PLHA Consortium, and City may not withdraw from the PLHA Consortium until the end of the term of this Agreement.
3. **TERM OF AGREEMENT.** The term of this Agreement shall commence on the later of December 15, 2021 and the Effective Date and shall expire on June 30, 2026 (such period hereinafter referred to as the "Initial Term"), subject to renewal for successive five-year periods pursuant to section 4 (the Initial Term and any renew thereof may be referred to as the "Term"). The Initial Term is intended to cover revenues collected under SB2 and allocated to the PLHA program by HCD during Calendar Years 2019, 2020, 2021, 2022 and 2023.
4. **RENEWAL; EXPIRATION; TERMINATION.** The Term of this Agreement shall automatically renew for subsequent periods of five years each unless either party gives the other written notice of nonrenewal at least thirty (30) days prior to expiration of the current Term.

Should City or County wish to withdraw from the PLHA Consortium and terminate this Agreement during the Term, both parties agree that termination is subject to approval by HCD and both parties agree to take necessary steps required by HCD to effectuate the termination. Should approval not be provided by HCD, City and County agree that they cannot withdraw and this Agreement cannot be terminated until the end of the current Term.

5. **AMENDMENTS.** Notwithstanding anything to the contrary in this Agreement, if amendments to this Agreement are necessary solely to meet requirements identified in any communication published and/or issued by HCD or required under the PLHA program, City and County agree that they will amend this Agreement to comply with such requirements. County shall provide thirty (30) days' notice of any proposed amendment to City as set forth in section 11. County shall provide additional advance notice to City of any such amendment to the extent practicable. City's failure to object to the proposed amendment within thirty (30) days of receipt of notice shall be deemed an acceptance of the proposed amendment. Except as set forth in this section and section 15.3, all other amendments to this Agreement must be approved in writing by City and County.
6. **PROGRAM ADMINISTRATION.** County shall serve as the Administering Local Government, as the term is used in the Guidelines, under this Agreement. County shall assume overall responsibility for submitting applications for funding and administering PLHA programs in accordance with the Guidelines. County shall be specifically responsible for the following:

#### 6.1 RESPONSIBILITIES OF COUNTY

- 6.1.1 Preparation and submission to HCD of the application in compliance with section 302(c) of the Guidelines, PLHA Plan in accordance with section 302(c)(4) of the Guidelines, and all other documents necessary for the PLHA Consortium to qualify and receive allocations of PLHA funding to carry out the purposes of this Agreement;
- 6.1.2 Preparation of amendments to the PLHA Plan, in consultation with City, pursuant to section 302(c)(5) of the Guidelines;
- 6.1.3 Execution of the Standard Agreement with HCD for PLHA funding;
- 6.1.4 Administration of the development of funding recommendations to be discussed with the PLHA Consortium and development of a set of recommendations for funding to County's Board of Supervisors, which holds final approval responsibilities;
- 6.1.5 Contract preparation, management, and monitoring during activity implementation, affordability period, and record retention period of all activities funded with PLHA;
- 6.1.6 Financial compliance with PLHA program requirements, including compliance with all set-aside requirements; and receipt, disbursement,

and accounting of all PLHA program funds, and program income generated by activities funded;

- 6.1.7 Achieve and maintain compliance of its Housing Element as determined by HCD and submittal of Housing Element Annual Progress Reports (APRs) to HCD. Housing Element compliance and submission of Housing Element APRs are PLHA threshold requirements under section 302 of the Guidelines;
- 6.1.8 Preparation and submission of a PLHA Plan detailing proposed uses of PLHA funding for each upcoming five-year term or other subsequent document as required by HCD, in collaboration with City;
- 6.1.9 Submission of all reports, including the PLHA Annual Report on a form to be provided by HCD, and data as may be required by HCD, including but not limited to those detailed in section 503 of the Guidelines; and
- 6.1.10 Technical assistance on all aspects of the PLHA program.

7. **CITY RESPONSIBILITIES.** City shall take all actions necessary to comply with the PLHA program and applicable state laws and regulations as they relate to its activities located within the City. City shall be specifically responsible for the following:

**7.1 RESPONSIBILITIES OF CITY**

- 7.1.1 Cooperate with County, prepare and supply information to be included in the PLHA application and PLHA Plan;
- 7.1.2 Prepare and supply in a timely manner information as required by HCD on housing programs and plans within City;
- 7.1.3 Achieve and maintain compliance of its Housing Element as determined by HCD and submittal of Housing Element APRs to HCD. Housing Element compliance and submission of Housing Element APRs are PLHA threshold requirements under section 302 of the Guidelines.

8. **CONTRACT ADMINISTRATION.** The County Executive Officer or his or her designee shall be the County administrator and shall administer this Agreement on behalf of County. City's City Manager shall administer this Agreement on behalf of City.

9. **RECORDS AND REPORTS.** County shall maintain records as required by HCD. All records, including but not limited to records identified section 501 of the Guidelines, shall be open and available for inspection by auditors assigned by HCD and/or City during normal business hours of County. City shall submit such reports and information as may be necessary for County to fulfill its obligations as administrator of the PLHA Consortium.

**10. INDEMNIFICATION AND INSURANCE.**

**10.1 INDEMNIFICATION**

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between City and County pursuant to California Government Code section 895.6, City and County agree that all losses or liabilities incurred by either City or County shall not be shared pro rata but instead City and County agree that pursuant to California Government Code section 895.4, each shall fully indemnify and hold the other, its 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 to this Agreement, 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.

#### **10.2 INSURANCE**

Each party 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.

11. **NOTICE.** Any and all notices pursuant to, or in furtherance of the purposes of, this Agreement shall be deemed delivered if personally served upon the County Executive Office of County or upon the City Manager's Office of City or if sent via the United States Postal Service, postage prepaid:

Directed to County, addressed as follows:

Director  
Office of Supportive Housing  
County of Santa Clara  
2310 N. First Street, Suite 201  
San Jose, CA 95131

Directed to City of Cupertino, addressed as follows:

City Manager  
City of Cupertino  
10300 Torre Ave.  
Cupertino, CA 95014

12. **DISTRIBUTION OF FUNDS.** Funds available on an annual basis for PLHA activities will equal the amount of the annual allocation of PLHA funds to the PLHA Consortium

less 5% of the total annual allocation for administrative costs in accordance with Article V of the Guidelines.

Program income received in a Calendar Year or funding that was returned (through loan repayments, return of unused funds, or otherwise) from any prior Calendar Year may be added to the amount to be made available for PLHA-assisted activities in any given year, in compliance with the HCD-approved Program Income Reuse Plan. Notwithstanding the foregoing, County has and retains the right to reallocate uncommitted funds (that is, funds that are not allocated to an eligible activity) or funds committed to PLHA activities that are not progressing in compliance with PLHA program requirements to other activities to ensure compliance with section 300(e) of the Guidelines and ensure that the PLHA Consortium is eligible to receive annual allocations of PLHA.

There will be no guaranteed minimum nor maximum amount of funding allocated to County or any Consortium City or to activities located within County or any Consortium City.

#### **12.1 PLHA FUNDING CYCLE**

The PLHA Consortium will utilize the County's existing solicitation process to identify multifamily affordable and supportive housing rental housing and homeownership opportunities. Specifically, the over-the-counter Supportive Housing Development Program Notice of Funding Availability will be utilized to identify development proposal or consideration. All proposals must be submitted directly to the County. The County through the Office of Supportive Housing will provide a recommendation to the PLHA Consortium for consideration. Services provided to the homeless will be consistent with the 2020 – 2025 Community Plan to End Homelessness, the recommendations from the 2020 Countywide Unhoused Task Force, and the Santa Clara County Continuum of Care Quality Standards.

County will request a list of activities from the Consortium Cities every February for PLHA-assisted activities. Each Consortium City reserves the right to establish such list through a formal action or discussion at the City Council level. The County intends to establish a funding cycle calendar which delineates the steps the PLHA Consortium will take and deadlines for activities to be considered for an award of PLHA funding. County reserves the right to determine threshold eligibility of proposed activities and to work with the PLHA Consortium on developing a set of recommendations that are not administratively burdensome. To that end, the PLHA Consortium agrees to establish a minimum award of \$100,000 for any approved activity.

Prior to final approval of the funding recommendations by County's Board of Supervisors, which shall take place during a regularly scheduled Board of Supervisors meeting, County will make available for review and comment by the Consortium Cities the following information: a description of the proposed activities to be undertaken and

preliminary allocations of funding. Each Consortium City shall have 21 calendar days after the information is made available to request revisions to the funding recommendations. In the event that a revision is requested, a committee will be convened, with up to one representative from each Consortium City that chooses to participate, to discuss, determine and approve the final funding recommendations. The committee shall adhere to established funding priorities and consider threshold eligibility as well as each activity's readiness, when making final funding recommendations to the Board of Supervisors.

#### **12.2 ADMINISTRATIVE FEES**

Pursuant to section 301(b) of the Guidelines, HCD permits a jurisdiction to retain up to 5% of each annual PLHA allocation for the administration of the PLHA program. County, as the Administering Local Government, will retain the administrative set-aside to offset the costs of administering the PLHA program. No administrative funds will be allocated to any Consortium City.

#### **12.3 EXCLUSION OF FUNDS**

This Agreement applies only to those funds received under the PLHA program and program income generated by PLHA funds. This Agreement does not apply to or control funds other than those described in this section.

#### **12.4 PLHA CONSORTIUM'S OBLIGATION TO DISTRIBUTE FUNDS**

If PLHA funds are not awarded to the PLHA Consortium by HCD or if this Agreement is terminated or suspended, County has no obligation to provide PLHA funding.

13. **ELIGIBLE ACTIVITIES.** The PLHA Consortium recognizes the creation and preservation of affordable housing in Santa Clara County and assistance to persons who are experiencing or at-risk of homelessness as high priorities. The implementation of the programs will be determined by County upon consultation with the Consortium Cities and will depend upon the availability of funding to operate the program and the administrative capacity of County and/or subcontractor(s).

The following eligible activities under the PLHA program were selected to address the lack of housing availability and affordability and need for assistance to persons experiencing or at-risk of homelessness in Santa Clara County and are the focus of the Initial Term of the PLHA program administered by County:

Consortium Members agree to the following:

- 13.1 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. As such the City of Cupertino directs that their annual PLHA allocation be used for the following specific use(s):

13.1.i 100% of the City of Cupertino’s annual PLHA allocation, minus the five (5%) administrative fee, will be directed to, pursuant to section 301(a)(1) of the Guidelines, the predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-, very low-, low-, or moderate-income households (pursuant to section 101(c)(1) and (3) of the Guidelines), including necessary operating subsidies.

13.1.ii In the event that funds cannot be spent on affordable housing projects due to circumstances such as delays or cancellations, remaining funds may be directed, pursuant to section 301(a)(6) of the Guidelines, to provide rapid rehousing to those who are experiencing or at-risk of homelessness.

14. **PROGRAM INCOME REUSE PLAN.** As required by HCD, PLHA program income will be governed by a Program Income Reuse Plan and utilized for eligible activities as set forth in section 301 of the Guidelines. The Program Income Reuse Plan will be prepared by County and approved by HCD.

In the event the PLHA Consortium is dissolved, and County continues to manage a PLHA program, remaining program income as well as any program income subsequently received from activities undertaken by the PLHA Consortium may be used for the activities of County's PLHA program. In the event the PLHA Consortium is dissolved and County does not continue to manage a PLHA program, remaining PLHA and program income subsequently received from activities undertaken by the PLHA Consortium will be reallocated in accordance with the Program Income Reuse Plan or at the direction of HCD.

15. **NEW MEMBERS.** New members to the PLHA Consortium may be allowed upon receipt of a request made to County to join the PLHA Consortium as provided for below.

**15.1 AUTHORIZING RESOLUTIONS**

Each request to join the PLHA Consortium must be accompanied by a certified copy of the authorizing resolution by the governing body of the requesting jurisdiction.

**15.2 AVAILABILITY OF HOME FUNDS**

PLHA funds shall not be available to a new member of the PLHA Consortium until the year in which HCD includes that jurisdiction in its calculations for distribution of PLHA funds.

**15.3 AUTHORITY TO AMEND AGREEMENT TO ADD NEW MEMBERS**

County is authorized to amend this Agreement on behalf of City and County to add a new



member to the PLHA Consortium except that County shall notify City as soon as practical but no less than two months in advance of an addition of a new member, and if County receives written notice from City that such City wishes a meeting to discuss the matter, a meeting thereupon will be held by County with regard to such potential new membership.

16. **AUTHORITY TO JOIN PLHA CONSORTIUM.** County and City each hereby certify that it is authorized to enter into this Agreement.

17. **COOPERATION IN UNDERTAKING HOUSING ASSISTANCE UNDER PLHA.** City and County agree to cooperate to undertake or to assist in the undertaking of housing assistance activities for the PLHA program.

18. **COUNTERPARTS AND ELECTRONIC SIGNATURES.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute one and the same agreement. This Agreement may be executed through the use of digital or electronic signatures provided they meet the requirements of the Electronic Signatures in Global and National Commerce (ESIGN) Act and the California Uniform Electronic Transactions Act (UETA). The counterparts of this Agreement may be executed and delivered by electronic signature by either of the parties and the receiving party may rely on the receipt of such document so executed and delivered electronically as if the original had been received.

**IN WITNESS WHEREOF,** City and County have executed this Agreement as of the dates set forth below.

COUNTY OF SANTA CLARA

By \_\_\_\_\_  
Consuelo Hernandez, Director

Date \_\_\_\_\_

CITY OF CUPERTINO

By \_\_\_\_\_  
XXXX, City Manager

Date \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
KAREN WILLIS  
Deputy County Counsel

Date \_\_\_\_\_