

**JOINT EXERCISE OF POWERS AGREEMENT AND
COOPERATION AGREEMENT TO UNDERTAKE
OR TO ASSIST IN THE UNDERTAKING OF
ESSENTIAL ACTIVITIES PURSUANT TO
TITLE I OF THE HOUSING AND COMMUNITY
DEVELOPMENT ACT OF 1974, AS AMENDED,
FOR THE PERIOD OF OCTOBER 1, 2017 TO SEPTEMBER 30, 2020, AND
SUBSEQUENT AUTOMATIC RENEWALS UNLESS TERMINATED**

This Cooperation Agreement (“Agreement”) is entered into by and between the County of Santa Clara (“County”) and the City of Los Altos (“City”) relating to essential community development and housing assistance activities funded by the Federal government for the Community Development Block Grant and HOME Programs, as defined below.

RECITALS

WHEREAS, Congress has enacted the Housing and Community Development Act of 1974, as amended, (the “Act”) and Title I of the Act provides for a program of Community Development Block Grants, hereinafter referred to as “CDBG” for funds that may be used for the support of activities that provide decent housing, suitable living environments and expanded economic opportunities principally for persons of low- and moderate income; and

WHEREAS, Congress has enacted the Cranston-Gonzalez National Affordable Housing Act, as amended, (the “Cranston-Gonzalez Act”), and Title II of this Act created the HOME Investment Partnership Program, hereinafter called “HOME” that provides funds to states and local governments for the purpose of increasing the number of affordable housing opportunities for low- and moderate-income families; and

WHEREAS, all provisions contained in this Agreement that refer to Act, which provides for the distribution of CDBG funds, shall also refer to the HOME Program under Title II of the Cranston-Gonzalez Act; and

WHEREAS, CDBG grants are available to: (1) cities with a population of 50,000 or more persons as entitlement grantees (“Entitlement Grantees”) or (2) counties that have a population of 200,000 or more consisting of the population within their unincorporated areas plus cities of less than 50,000 persons in population within the counties (“Urban County”); and

WHEREAS, HOME formula allocation grants (“HOME Formula Allocation Grants”) are available to: (1) cities with a population of 50,000 or more persons as a HOME participating jurisdiction or (2) counties in a metropolitan area that either (1) have a population of at least 200,000 people, excluding metropolitan cities within the county, with at least 100,000 of that population residing in unincorporated areas or included units of general local government in which the county has the authority to undertake administration of CDBG funds, or (2) has a population

of at least 100,000 people, and a population density of at least 5,000 people per square mile ("HOME PJ"); and

WHEREAS, the City does not meet the population threshold as an Entitlement Grantee or as a HOME PJ and the County is a qualified Urban County and HOME PJ; and

WHEREAS, the City and County wish to enter into this Agreement to enable the County to apply for and receive entitlement funds under HOME and/or CDBG as an Urban County and to establish the respective rights and obligations of the contracting parties to such funds; and

WHEREAS, a cooperative agreement is required by the County and the City in order to implement the provisions and terms of the CDBG and HOME programs, hereinafter collectively referred to as the Urban County Program; and

WHEREAS, the County and City do hereby find and determine that it is in the best interest of the residents of the unincorporated areas of the County and of the City that housing and community development activities be performed jointly in accordance with the provisions of this Agreement in that the U.S. Department of Housing and Urban Development ("HUD") recommends the expenditure of funds for such purpose on a regional basis; and

WHEREAS, the County qualified as an Urban County to administer and implement the Urban County Program for housing and community development activities for the City in accordance with the terms and conditions hereinafter provided; and

WHEREAS, the City and the County agree to "cooperate to undertake, or assist in undertaking, community renewal and lower-income housing assistance activities."

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and the mutual benefits to be derived therefrom, the parties agree as follows:

1. General.

This Agreement gives the County authority to undertake or assist in undertaking activities which will be funded from Urban County Program funds and from any program income generated from the expenditures of such funds. County and City agree to cooperate to undertake, or assist in undertaking community development and affordable housing activities.

By executing this Agreement, City understands that it may not apply for grants as a non-entitlement grantee under the Small Cities or State CDBG Programs administered by the California Department of Housing and Community Development ("State HCD") during the term of this Agreement, and City cannot join with other local governments to form a separate HOME PJ other than the County HOME Program authorized under this Agreement regardless of whether County ultimately receives a HOME Formula Allocation Grant from HUD. The County and City may not sell, trade, or otherwise transfer all or any portion of such Urban County Program funds to another such metropolitan city, Urban County, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives Urban County Program funds in exchange for any other funds, credits or non-Federal considerations, but must

use such funds for activities eligible under Title I of the Act and/or Title II of the Cranston-Gonzales Act.

2. Authorities.

Both the City and the County are legally authorized to enter into this Agreement under federal, local and state law, including but not limited to the Act and the Cranston-Gonzalez Act.

3. Definitions.

In the event of any conflict between the definitions in this Agreement and those set forth in the Act, the Cranston-Gonzalez Act and any regulations, as defined below, the latter shall govern.

- a. “Annual Action Plan”: the Annual Action Plan serves as the Urban County’s application to HUD for funding. The Annual Action Plan summarizes the activities that will be undertaken in a program year to meet the goals outlined in the Consolidated Plan and identifies the federal and non-federal resources that will be used.
- b. “Board of Supervisors”: the County’s legislative body responsible for approving the Urban County’s Consolidated Plan and
- c. “CDBG”: Community Development Block Grant, a federal program administered by HUD which provides funding to address housing and community development needs of lower-income persons.
- d. “Citizen Participation Plan”: the plan adopted by the Board of Supervisors of the County which outlines the opportunities and process for citizen input on matters pertaining to planning, monitoring, and evaluation of the Urban County Program projects.
- e. “City”: is the city or town that is a party to this Agreement; such city or town may be referred to as a “Non-Entitlement City,” that is, a city which cannot directly apply for or receive funds through cooperation agreements with HUD.
- f. “City Project”: is a proposal that will be undertaken by the City following approval by the County.
- g. “Consolidated Plan”: describes the housing conditions and goals to address the housing needs of lower income persons, and identifies specific housing actions to be taken by the Urban County to address its housing needs. The Consolidated Plan also serves as a guide for HUD in the distribution of assisted housing resources to communities.
- h. “County”: the County of Santa Clara through action by its Board of Supervisors.
- i. “Eligible Activity”: Activities that are allowable uses of the CDBG funds as defined in the Code of Federal Regulations Title 24 for HUD and of the HOME funds as defined in Title II of the Cranston-Gonzalez National Affordable Housing Act.

- j. "Grant": the CDBG and HOME funds allocated by HUD to the County of Santa Clara as the legal recipient of the funds for the Urban County.
- k. "Grant Agreement": the grant agreement between HUD and the County of Santa Clara for Title I and Title II funding.
- l. "HOME": the HOME Investment Partnership Program, a federal program administered by HUD to assist in addressing the affordable housing needs of lower income persons through such means as new housing development and construction; acquisition and rehabilitation of existing housing units; and provision of emergency rental subsidies.
- m. "Housing and Community Development Advisory Committee": an advisory committee established by the Board of Supervisors of the County to be the policy recommending body to the Board of Supervisors for the Urban County Program.
- n. "HUD": the United States Department of Housing and Urban Development.
- o. "OSH": Office of Supportive Housing, formerly known as the Office of Affordable Housing, responsible for the day to day administration of the Urban County Program.
- p. "Project Proposals": requests for an allocation of Urban County Program funds submitted by eligible applicants to implement specific eligible CDBG or HOME activities, as defined by HUD.
- q. "Regulations": the rules and regulations of the U.S. Department of Housing and Urban Development; particular reference is made to those regulations stated in 24 Code of Federal Regulations Part 570 (containing the general regulations of Community Development Block Grants) and Part 58 (containing the regulations on the Federal Environmental Review Procedures).
- r. "Urban County": a county that is (1) in a metropolitan area; (2) authorized by state law to undertake essential community development and housing assistance activities within its unincorporated areas, and (3) has a population of 200,000 or more within its unincorporated areas and units of general local government (cities) within the county with which it enters into cooperation agreements to undertake or to assist in the undertaking of eligible activities.

4. Term.

The term of this Agreement shall begin on October 1, 2017 and extend for three Program Years. For the purposes of this Agreement, a Program Year is defined as October 1st through September 30th. This Agreement will subsequently automatically renew if the County re-qualifies as an Urban County during the Agreement term for the next three (3) Program Year period. Upon requalification a new three (3) Program Year term will begin at the conclusion of the first Three Program Year term starting on October 1, 2017. The first of these automatic three (3) Program Year term renewals will occur at the beginning of fiscal year 2020-201 (October 1, 2020) and every three (3) Program Years thereafter. The terms of this Agreement

shall remain in effect until all Urban County Program funds covered under the terms of this Agreement, and any program income generated from the expenditure of such funds, are expended, and the funded activities completed, and that the County and participating units of general local government may not terminate or withdraw from this Agreement while this Agreement remains in effect. This Agreement may not be terminated or withdrawn by the parties for any circumstance or reason during the term of the agreement.

- a. Termination. This Agreement can only be terminated if an earlier date of termination is approved in writing by HUD pursuant to the Urban County Program or until such times as the City and County elect to terminate this Agreement at the conclusion of a three-year term.
- b. Renewal process. As required by HUD, the City and County agree to adopt any amendment(s) to this Agreement necessary to meet the requirements set forth in the Urban County Qualification Notice published by HUD annually providing instructions for Counties seeking to requalify as an urban county. Such failure to comply will void the automatic renewal for such qualification period. Prior to the renewal date, the County will notify City in writing that City has the option to terminate the Agreement and not be included as part of the submission by County to HUD for re-qualification as an Urban County for the subsequent three (3) year qualification period. City agrees to send a timely response to County stating its intention to either continue to be a part of the Urban County Program or to elect to terminate this Agreement and not be a part of the County's upcoming submission to HUD to re-qualify as an Urban County for the subsequent three (3) year period.

The County will submit to HUD the letter notifying the City of its ability to terminate this Agreement as well as the City's response letter. County will also submit to HUD a written legal opinion provided by County Counsel stating that the terms and provisions continue to be authorized under state and local law and that the Agreement continues to provide full legal authority for County.

The County and the City have both adopted resolutions approving the City's participation in the Urban County Program; the resolutions will be sent to HUD along with this Agreement immediately after the Agreement has been approved as well as whenever the County re-qualifies as an Urban County.

5. Purpose of Agreement.

This Agreement is formed to meet the requirements and purposes of the Act, the Cranston-Gonzales Act, and the Regulations with respect to the application for Grants and to establish the respective rights of the parties to such Grants.

6. Administration of Agreement.

- a. The officers and agents of both parties will cooperate in furnishing information and assistance necessary for the preparation, completion, and filing of the County's application with HUD in accordance with the requirements of Urban County Program

and the Regulations. The City shall provide opportunities for public participation as described in the Citizen Participation Plan.

- b. The City shall submit to the County all necessary information required for the completion of a Consolidated Plan in the form required by HUD. This information will detail the City's commitments to providing housing assistance to low- and very- low income persons within the City. The local commitments to housing assistance by the City will be incorporated into the Urban County's Consolidated Plan, which will be reviewed by HUD to determine the local commitments to address housing needs of low- to very-low income persons.
- c. The County shall not alter or amend the information furnished to County by cities in compliance with the Urban County Program and Regulations and consistent with identified Urban County needs and priorities, the County shall have full authority and necessary control of the preparation and filing of its Annual Action Plan to HUD and of other papers and documents in support thereof.

7. Project Proposals.

Any and all Project Proposals for eligible activities, including those of the City, shall be submitted directly to the County during the term of this Agreement by eligible applicants. The three-year Notice of Funding Availability ("NOFA") will outline the eligibility criteria and local priorities. Project Proposals must meet the HUD eligibility criteria within one of the funding categories contained in the NOFA. All Proposals must be submitted directly to the County.

Funding for capital improvement projects will be considered on an annual basis outside of the NOFA process described above. A minimum of one eligible capital improvement project in each of the non-entitlement cities will be funded during the term of this Agreement, pending funding availability. The City will submit a proposal to the County for consideration for a shovel-ready project that can be completed within 12 months of the submittal of the Proposal or a project that can be phased over a two-year period with demonstrable programmatic and financial actions (i.e. design, architectural, construction costs). County and City staff will work together to determine each project's level of readiness and establish an implementation schedule. Unspent funds will not be carried over from year to year to ensure funds are spent in a timely manner. When such capital funds are not expended they will be used to supplement other Eligible Activities, if they are not expended in the agreed upon project's contract term between the City and the County. The County will evaluate the City's timely expenditure of funds to ensure the County is in compliance with HUD before recommending funding for a capital project. Review and comment on City proposed projects shall be to determine HUD eligibility and timely expenditure of funds.

8. Disbursement of Funds.

- a. City understands and agrees that Urban County Program funds disbursed under this Agreement are the obligation of County and that such obligation of the County is dependent upon the qualification of the County as an Urban County applicant and upon the availability of federal funds to implement the Urban County Program.

b. Funds disbursed to the City and other sub-recipients will be expended on eligible activities as described in the Consolidated Plan. The 2015-2020 Consolidated Plan includes goals and strategies to address housing and community development needs in the Urban County and identifies the following Goals:

1. Assist in the creation and preservation of affordable housing for lower-income and special needs households.
2. Support activities to end homelessness
3. Support activities that provide basic services, eliminate blight, and/or strengthen neighborhoods
4. Promote environmental sustainability

c. County and City agree that the County has the authority to transfer CDBG funds to another CDBG-eligible project/program at County's sole discretion if City is not spending its CDBG funds in a timely manner, i.e. within 12 months of Proposal approval. Prior to transferring the CDBG funds, the County will notify the City in writing that the City is at risk of not meeting this timeliness requirement and therefore County will transfer CDBG funds if timeliness is not met.

9. Compliance with Final Programs and Plans.

County and City shall comply in all respects with final Annual Action Plans and the Consolidated Plan which are developed through mutual cooperation pursuant to the application requirements of the Urban County Program and the Regulations and approved by HUD.

10. Compliance with Legislation and Regulations

City and County agree, pursuant to 24 CFR 570.501(b) that cities are subject to the same requirements applicable to sub-recipients, including the requirement of a written agreement between the County and the City specific to the proposed Proposal as set forth in 24 CFR 570.503. City understands and agrees that should it fail to comply with such requirements or with the terms of this Agreement, that funds which may be allocated to City during the term of this Agreement may be terminated, or reduced or otherwise limited in accordance with the Urban County Program and Regulations.

County and City shall comply with all applicable requirements of the Urban County Program and associated regulations, in utilizing grant funds under legislation that created and govern these grants, and shall take all actions necessary to assure compliance with County certifications required by Section 104(b) of Title I of Act, as amended regarding the provisions of the National Environmental Policy Act of 1969, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1968, Executive Order 11988, Section 109 of Title I of the Act which incorporates Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, the Fair Housing Act, and affirmatively furthering fair housing and other applicable federal laws.

The City agrees that use of Urban County Program funding for activities in or in support of City is prohibited if City does not affirmatively further fair housing within its own jurisdiction

as defined by Federal law or impedes County actions to comply with its fair housing certification included with the Annual Action Plan. The City may be required to demonstrate how it complies with the fair housing requirement.

Furthermore, City hereby covenants by and for itself, its successors and assigns, and all persons claiming under or through it that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, marital status, familial status, disability, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any project funded by Urban County Program funds, nor shall City itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees in any project funded as a result of this Agreement.

The City hereby covenants has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individual engaged in non-violent civil rights demonstrations. Furthermore, the City has adopted and is enforcing a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within such jurisdictions.

11. Conflict of Interest.

City shall comply with all applicable federal and state laws, regulations and policies governing conflict of interest, including State conflict of interest regulations found in California Government Code Sections 1090, 1126, 87100 et seq., Federal conflict of interest regulations found in 24 CFR 570.611, 85.36 ad 84.42, and any other applicable policies, rules and regulations related to conflict of interest.

Any person who is an employee, agent, consultant, officer, elected or appointed official of the City, who exercises any functions or responsibilities with respect to Urban County Program-funded activities identified in this Agreement and who is in a position to participate in the decision-making process or gain inside information with regard to activities identified in this Agreement, may not obtain a financial interest or benefit from the Urban County Program-assisted activities identified in this Agreement or any related agreement, subcontract, or contract, either for themselves, an immediate family member or business partner, during his/her tenure. City shall maintain written standards of conduct governing performance of its employees engaged in the award and administration of contracts funded by the Urban County Program.

12. Areas of Housing Authority Operation.

Nothing herein shall affect the rights and obligations of the parties with respect to any agreement which the City may have with the Housing Authority of the County of Santa Clara ("HACSC").

13. Services, Equipment and Property Reimbursement.

County shall provide or be primarily responsible for providing the services, equipment and other property necessary for the planning, preparation and filing of the Annual Action Plan and for the administration of the Grant funds subject to the right of the County to seek reimbursement for actual expenses and costs of furnishing such services, equipment and property. Subject to the provisions of the application or of the grant award made thereon, all property furnished by County as herein-above described shall belong to County during the term of this Agreement and after its termination.

At the termination of the Urban County Program, all property and equipment acquired with CDBG funds will be subject to the requirements and conditions contained in 24 CFR section 570.505 (24 CFR section 570.502(a)(5)).

14. Program Income.

Any revenue directly generated from the use of Urban County Program funds shall be included as available funds for the following funding cycle and thus shall be subject to regulations and reported to HUD. The County has the responsibility for monitoring and reporting to HUD on the use of any such program income, including but not limited to appropriate record keeping.

15. Revolving Loan Fund.

- a. The County is authorized to maintain a separate fund in conjunction with a single-family home rehabilitation program for eligible activities in accordance with all CDBG requirements as may apply. The Revolving Loan Fund must be held in an interest bearing account and the interest must be remitted to HUD annually.
- b. Eligible activities for single family home rehabilitation may be funded through loans. The loans, in turn, generate payments to the Revolving Loan Fund for use in carrying out the same activities.

16. Records.

City and County shall maintain appropriate books, records, files, and accounts relating to the receipt and disbursement of the Grant funds, including records in accordance with 24 CFR Sec 570.503 as they relate to the application, acceptance, and use of federal funds for this federally assisted program and any other records imposed by County's grant agreement with HUD. All such books, records, files and accounts shall be made available for inspection at reasonable times and places by authorized representatives of City, County, and HUD or any other person authorized by the Urban County Program or the Regulations.

17. Contractual Obligations.

It is expressly understood and agreed that, as the applicant to HUD, County must take full responsibility and assume all obligations of an applicant under the Urban County Program and that HUD will look only to the County in this regard. However, County assumes no responsibility nor liability for any failure to include City in the application as a result of City's failure to supply County with information necessary to prepare and file the application, or as a

result of City's failure to supply County with such information upon designated dates, or as a result of City's failure to comply with the Urban County Program and the Regulations.

18. Indemnification.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to 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 the County and City agree that pursuant to 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 Government code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any performance of obligations required by this Agreement, the Urban County Program, Annual Action Plan, Grant Agreement the Regulations or other applicable laws relating to this Agreement 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 the other parties hereto, their officer, board members, employees or agents, under or in connection with or arising out of any performance of obligations required by this Agreement, the Urban County Program, Application, Regulations or other applicable laws relating to this Agreement delegated to such other parties under this Agreement.

19. Self-Insurance.

The City and County are authorized self-insured public entities for purposes of general liability, automobile liability, professional liability and worker's compensation. City and County warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against any liabilities arising out of their performance regarding the terms and conditions of this Agreement.

20. Discretionary Actions.


Nothing herein contained shall be construed to prohibit the City from exercising its discretion on any legislative quasi-judicial and/or administrative matter (including but not limited to any action involving zoning of General Plan amendments). Nothing herein shall compel the City to take any action on any matter save and except as expressly required in this Agreement. It is understood and agreed that the City does not by this Agreement commit itself or delegate the exercise of any of its police powers in any matter whatsoever save and except as expressly set forth in this Agreement.

21. Timeliness.

When any action is required hereunder upon request for action on a document or material furnished by the County to the City said request for action on a document or material shall be furnished at least 30 days prior to the date said action is required in order to allow sufficient time for the City to review and act on said document or material.

IN WITNESS WHEREOF, parties hereto have executed this Agreement on the dates set forth below.

CITY OF LOS ALTOS

By: 

Christopher Jordan
City Manager

Date: 7/18/17

COUNTY OF SANTA CLARA

By: 

Jeffrey V. Smith
County Executive


Date: 7/27/17

Attest:

By: 


J. Logan
Assistant City Manager/Deputy City Clerk

Approved as to form:

By: 

Christopher Diaz
City Attorney

Approved as to form and legality:

By: 

Christopher R. Cheleden
Lead Deputy County Counsel