

COOPERATIVE AGREEMENT TO FORM A HOME CONSORTIUM

This Agreement is entered into by and between the Cities of Carlsbad, Encinitas, La Mesa, San Marcos, Santee and Vista (hereinafter referred to as "Cities") and the County of San Diego (hereinafter referred to as "County"), on April 22, 2011

WITNESETH:

WHEREAS, there has been enacted into law the HOME Act, Title II of the Cranston-Gonzalez National Affordable Housing Act (the "Act"), creating the HOME Investment Partnerships Program that provides funds to expand the supply of affordable housing for very low-income and low-income persons; and

WHEREAS, the HOME Program authorizes contiguous units of general local government to join together in a consortium; and

WHEREAS, the County and the Cities have each prepared Consolidated Plans which were submitted to the U.S. Department of Housing and Urban Development (HUD) in accordance with Title 24 of the Code of Federal Regulations, Part 92; and

WHEREAS, it is the desire of the Cities and the County to form a consortium (hereinafter referred to as the "Consortium") to implement the objective of increasing the local supply of decent affordable housing to low- and very low-income persons.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. **PROGRAM ACTIVITY:** All members of the Consortium agree to cooperate to undertake or to assist in undertaking housing assistance activities for the HOME program.

1.1 **COMPLIANCE WITH LAW:** All members of the Consortium agree to comply with the applicable portions of: 24 CFR Parts 42, 58, 92; the Housing and Community Development Act of 1974 as amended; Title VI of the Civil Rights Act of 1964 (42 USC § 2000d); Title VII of the Civil Rights Act of 1964 (Public Law 88-352); Title VIII of the Civil Rights Act of 1968 (Fair Housing Act, 42 USC § 3601, *et seq.*); Section 109 of the Housing and Community Development Act of 1974; Executive Order 11246, as amended (equal employment opportunity); Executive Order 11063 (non-discrimination), as amended by Executive Order 12259; Section 3 of the Housing and Urban Development Act of 1974; the Uniform Relocation Assistance and Real Property Acquisition Policies Act (49 CFR Part 24); OMB Circular A-133, revised June 27, 2003, Audits of States, Local Governments, and Non-profit Organizations; National Historic Preservation Act of 1966 (Public Law 89-665); the Archaeological and Historical Preservation Act of 1974 (Public Law 93-291); the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151, *et seq.*); Executive Order 11593; the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106 and the implementing regulations in 44 CFR Parts 59-79); the Clean Air Act (42 U.S.C. § 7401, *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, *et seq.*) and the regulations adopted pursuant thereto (40 CFR Part 6); and, the Drug-Free Workplace Act of 1988 (Public Law 100-690), as amended.

1.2 **FAIR HOUSING:** Each member of the Consortium shall affirmatively further fair housing.

2. **TERM OF AGREEMENT:** The qualification period of this Agreement is for Fiscal Year 2012 through Fiscal Year 2014; July 1, 2012 to June 30, 2015.

2.1 **AUTOMATIC RENEWAL:** This Agreement shall automatically be renewed for participation in each successive three-year Fiscal Year qualification periods (i.e. July 1, 2015 to June 30, 2018). By **June 1**, the Lead Entity shall provide written notification to each Consortium member of their right not to participate in the next qualification period.

2.2 **ADOPT FUTURE CONSORTIA AGREEMENT REQUIREMENTS:** In the event that the requirements for consortia agreements are modified by HUD, the Consortium shall adopt any amendments to this Agreement that incorporate the future changes necessary to meet the requirements for consortia agreements in subsequent qualification periods.

2.3 **TERMINATION OF AGREEMENT:** In accordance with §92.101(e) of the Code of Federal Regulations, this Agreement cannot be terminated during any active three-year qualification period. No Consortium member may withdraw from this Agreement while it remains in effect.

2.4 **PROGRAM YEAR:** The Fiscal Year for the Consortium, its members, and the CDBG, HOME, ESG and HOPWA programs is July 1 through June 30.

3. **PROGRAM ADMINISTRATION:** The Program Administrator for this Consortium shall be the County of San Diego. The County of San Diego shall act in a representative capacity as the Lead Entity for all members of the San Diego HOME Consortium for the purposes of administering the HOME Program.

3.1 **RESPONSIBILITIES OF PROGRAM ADMINISTRATOR:** The Program Administrator shall assume overall responsibility for ensuring that the Consortium's HOME Program is carried out in compliance with the requirements of the HOME Program, including requirements concerning a Consolidated Plan in accordance with HUD regulations in 24 CFR Parts 92 and 91 respectively. The Program Administrator shall be specifically responsible for the following:

- (a) Receipt, disbursement and accounting of all HOME Program and matching funds;
- (b) Submission of all reports and data as may be required by HUD.

4. **CONTRACT ADMINISTRATION:** The Director, San Diego County Department of Housing and Community Development shall administer this Agreement on behalf of the County. The City Manager shall administer this Agreement on behalf of each City. The Cities agree to supply to County, within a reasonable period of time after request, progress reports or other documentation as shall be required by the County's contract administrator to audit performance of this Agreement.

5. **RECORDS AND REPORTS:** The Program Administrator shall maintain records as required by HUD. All records of the County respecting individual projects and programs shall be open and available for inspection by auditors assigned by HUD and/or the Cities during the normal business hours of the County. The Cities shall maintain records and submit such reports and information as may be necessary for the County to fulfill its obligations as Program Administrator of the Consortium.

6. **LIABILITY AND INDEMNIFICATION:** Pursuant to Section 895.4 of the Government Code, County and Cities agree that each will assume the full liability imposed upon it or any of its officers, agents, or employees for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, and each party agrees to indemnify and hold harmless the other party for

any loss, cost or expense that may be imposed upon such other party by virtue of sections 895.2 and 895.6 of the Government Code.

7. **NOTICE:** Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party or may be served by certified mail.

8. **DISTRIBUTION OF FUNDS:** Funds awarded to the Consortium shall be distributed to Consortium members by the following formula:

$$A + B + (C*2) = \text{DISTRIBUTION TO CONSORTIUM MEMBERS}$$

Where A equals the City's population, B equals the number of overcrowded households, C equals the number of households at or below the poverty rate. All figures shall be based upon the most current census data as provided by the San Diego Association of Governments (SANDAG).

8.1 **COMMITMENT AND EXPENDITURE OF FUNDS:** Funds must be committed to specific HOME projects or programs no later than two years following the date of HUD's Grant Agreement and expended within five years. If a Consortium member does not commit their share of HOME funds to a specific project or program within 18 months following the date of HUD's Grant Agreement for each respective Fiscal Year, that Consortium member's share of HOME funds shall be distributed according to paragraph 8.2 below. An activity shall be considered eligible if it conforms to the requirements of Title 24, Part 92, Subpart E of the Code of Federal Regulations.

8.2 **METHOD OF REDISTRIBUTION:** All funds not committed in accordance with paragraph 8.1 above, shall be recaptured by the Lead Entity and reallocated to an eligible activity at its sole discretion.

8.3 **ADMINISTRATIVE FEES:** Administrative expenses, if any, shall be disbursed as described below, for each of the three fiscal years covered by this Agreement.

Definitions:

1) Administrative Cap = 10% of the County of San Diego Consortium HOME Investment Partnerships Entitlement

2) Program Administrator's Allocation = 90% of the HOME Administrative Cap

3) Consortium Cities' Administrative Allocation = 10% of the HOME Administrative Cap

4) Each Consortium City's Administrative Allocation = Total City Allocation Divided by 6

The administrative allocation for each Consortium City represents the maximum amount of administrative expenses that can be reimbursed to the Cities in any year. The Cities will receive equal allocations of HOME administrative funds that total up to a maximum of 1% of the HOME entitlement. Claim forms with documentation of expenses will need to be submitted to the County for reimbursement of Consortium City's administrative expenses incurred. Remaining funds in each City's administrative allocation will be returned to the Program Administrator at the end of each fiscal year. Only staff costs associated with the management and administration of the HOME Program may be charged by each Consortium City against HOME administrative allocations. Only costs associated with the management and administration of the HOME

Program may be charged against the Program Administrator's share of the HOME administrative allocation.

8.4 MATCHING CONTRIBUTIONS: Each member of the Consortium shall be responsible for meeting the federal matching requirements of 92.218 and 92.220 of the Code of Federal Regulations for each activity it sponsors or proposes. All matching funds shall be deposited in the Local HOME Account and shall be credited to the specific activity for which the funds were intended. Credit for excess matching funds shall be applied to the overall match requirements of the Consortium.

8.5 RECAPTURE OF FUNDS: If a member of the Consortium does not commit or expend funds on an eligible activity in accordance with Paragraph 8.1, the funds shall be recaptured by the Lead Entity and reallocated in accordance with Paragraph 8.2. Unexpended funds, including any balances remaining after an activity is completed by a jurisdiction shall be recaptured and reallocated in accordance with Paragraph 8.2.

8.6 EXCLUSION OF FUNDS: This Agreement applies only to those funds received under the HOME Program and funds received as matching contributions. This Agreement does not apply to or control funds other than those described in this paragraph.

8.7 CONSORTIUM'S OBLIGATION TO DISTRIBUTE FUNDS: If HUD does not award HOME funds to the Consortium, the Consortium's and/or the County's obligation to distribute those funds to Consortium members will be terminated.

9. CONSOLIDATED PLAN STRATEGY: The Program Administrator shall be responsible for the preparation and submission of Consolidated Plan (s) as required under Title 24, Part 91 of the Code of Federal Regulations.

9.1 APPROVAL OF CONSOLIDATED PLAN (S): The Consolidated Plan (s) shall not be submitted to HUD until it (they) has (have) been approved by the elected representatives of each member of the Consortium.

9.2 AMENDMENTS TO THE CONSOLIDATED PLAN (S): Any required amendments to the Consolidated Plan (s) shall be made in accordance with Title 24 of the Code of Federal Regulations, Parts 91 and 570.

10. NEW MEMBERS: Upon receipt of a request to join the Consortium, new members may be allowed to join the Consortium only during the second and third year of a three-year Fiscal Year qualification period.

10.1 AUTHORIZING RESOLUTIONS: Each request to join the Consortium must be accompanied by certified copies of authorizing resolutions by the governing body of the local government.

10.2 FULL COST RECOVERY: Any and all costs associated with a new member joining the Consortium, including any required amendments to the Consolidated Plan (s), shall be paid by the local government wishing to join the Consortium prior to becoming a member.

10.3 AVAILABILITY OF HOME FUNDS: HOME funds shall not be available to a new member of the Consortium until the fiscal year in which HUD includes that locality in its calculations for distribution of HOME funds.

11. **AUTHORITY TO AMEND AGREEMENT:** The Program Administrator is authorized to amend the Consortium agreement on behalf of the entire Consortium. In addition, the Program Administrator is authorized to add new members, on behalf of the entire Consortium.

12. **COOPERATION IN UNDERTAKING HOUSING ASSISTANCE UNDER HOME:** Each member of the Consortium agrees to cooperate to undertake or to assist in the undertaking of housing assistance activities for the HOME Program

13. **AUTHORITY TO JOIN CONSORTIUM:** The signatories below certify that they are authorized to sign this Agreement on behalf of the Consortium member that they represent and that each member of the Consortium hereby certifies that it is authorized to enter into this Agreement. Authorizing resolutions from the governing body of each unit of local government joining the Consortium are incorporated into this Agreement under Attachment A and made part of this Agreement.

COUNTY COUNSEL STATEMENT:

The terms and provisions of this Agreement are fully authorized under State and local law. This Agreement provides full legal authority for the Consortium to undertake or assist in undertaking housing assistance activities for the HOME Program.



RACHEL H. WITT, Senior Deputy County Counsel

4/5/11

Date

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and the year first above written.

COUNTY:

BY: 

DAVID ESTRELLA, Director
Department of Housing & Community Development

Date: 4-22-11

CITY OF CARLSBAD:

BY: 
LISA HILDABRAND, City Manager

Date: 2-9-11

CITY OF ENCINITAS:

BY: Phil Cotton
PHIL COTTON, City Manager

Date: 3-1-11

CITY OF LA MESA:

BY: Art Madrid
ART MADRID, Mayor

Date: 2/24/11

Attest:

BY: Nancy N. Neufeld
NANCY N. NEUFELD, Deputy City Clerk

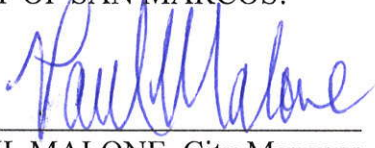
Date: 2/24/11

Approved as to form:

BY: G. Sabine
GLEN SABINE, City Attorney

Date: 2/17/11

CITY OF SAN MARCOS:

BY: 
PAUL MALONE, City Manager

Date: 4/12/11

CITY OF SANTEE:

BY: 

KEITH TILL, City Manager

Date: February 24, 2011

CITY OF VISTA:

BY: Rita L. Geldert
RITA L. GELDERT, City Manager

Date: February 22, 2011