

Attachment 4

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AN AGREEMENT BETWEEN THE COUNTY OF MONTEREY and THE CITY OF
CARMEL-BY-THE-SEA, FOR JOINT PARTICIPATION IN THE
PERMANENT LOCAL HOUSING ALLOCATION FUNDING PROGRAM FOR
FISCAL YEARS 2019-2023, AND TO DELEGATE THE COUNTY OF
MONTEREY AS THE ADMINISTERING LOCAL GOVERNMENT FOR THE
PROGRAM

THIS AGREEMENT is made and entered into this 8th day of November, 2022, by and between the County of Monterey, a political subdivision of the State of California, hereinafter called "County"; and the City of Carmel-by-the-Sea, a municipal corporation of the State of California, located in the County of Monterey, hereinafter referred to as "City", jointly referred to as "Parties".

WITNESSETH

WHEREAS, the State of California Department of Housing and Community Development ("State") is authorized to provide up to \$335 million to Cities and Counties for assistance under the SB 2 Permanent Local Housing Allocation Program ("PLHA Program") Formula Component from the Building Homes and Jobs Trust Fund (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB2))).

WHEREAS, the State issued Permanent Local Housing Allocation Final Guidelines ("PLHA Program Guidelines") in October 2019.

WHEREAS, the State issued a Notice of Funding Availability ("NOFA") dated May 3, 2021, under the Permanent Local Housing Allocation ("PLHA") Formula Component.

WHEREAS, each of the Parties is eligible to apply for and administer Permanent Local Housing Allocation Formula component funds.

WHEREAS, Section 300(c) of the PLHA Program Guidelines allows a local government to delegate another local government to apply and administer on its behalf its formula allocation of Program funds, provided that the local governments enter into a legally binding agreement and the funds are expended for eligible activities consistent with Program requirements.

WHEREAS, City of Carmel-by-the-Sea desires to participate jointly with the County of Monterey in said Program.

WHEREAS, the County of Monterey desires to participate jointly with the City of Carmel-by-the-Sea in said Program, and whereas the County agrees to administer the receipt of formula allocation Program funds on behalf of both Parties and act as the Applicant to the State for the funding.

NOW THEREFORE, in consideration of the mutual promises, recitals, and other

provisions hereof, the Parties agree as follows:

SECTION I. GENERAL

- A. Responsible Officers.** The Director of Housing and Community Development of the County of Monterey (hereinafter referred to as ("Director") is hereby authorized to act as the applicant on behalf of the City of Carmel-by-the-Sea for the PLHA Program and to administer funding and activities under the Program. The City Administrator of the City of Carmel-by-the-Sea is hereby authorized to act as the responsible officer for the City under the Program.
- B. Full Cooperation.** Parties agree to fully cooperate and to assist each other in undertaking eligible programs or projects as defined in Section 301 of PLHA Program Guidelines, including but not limited to the development of affordable rental housing.
- C. Threshold Requirements for Participation.** Parties understand and agree to comply with State's threshold requirements for participation in the formula allocation program as follows:
 - a. Housing Element compliance:** The County as Applicant and the delegating City have a Housing Element that has been adopted by the local government's governing body and subsequently determined to be in substantial compliance with state Housing Element Law pursuant to GC Section 65585.
 - b. Housing Element Annual Progress Report (APR) compliance:** The County as Applicant and the delegating City have submitted to the State the APR required by GC Section 65400 for the current or prior year.
- D. Term of Agreement-Automatic Renewal Provision.** The term of this Agreement shall be for a period encompassing five (5) years of formula allocations (2019-2023), made available in NOFAs issued by the State beginning in February 2020 and extending through 2024, and shall include the years stipulated in the State standard agreement. In addition, this Agreement provides for automatic renewal of participation in successive five-year periods, unless either of the Parties provides written notice of at least 60 days prior to the end of the term that it elects not to participate in a new five-year period. Before the end of the first five-year term, the County will notify the City of Carmel-by-the-Sea in writing of its right not to participate in the joint Program for a successive five-year term. This Agreement remains in effect until the PLHA Program funds received with respect to the five-year planning period are fully committed, expended, and all required reports have been submitted and the required reporting period has ended.
- E. Scope of Agreement.** This agreement covers the PLHA formula program funding administered by the State where each of the Parties is awarded and accepts funding from the State.

SECTION II. PREPARATION AND SUBMITTAL OF PLHA FUNDING APPLICATION AND PLAN

- A. PLHA Application and Plan.** Pursuant to the requirements listed in Section 302(c) of the PLHA Program Guidelines, the County shall prepare its own application requesting the formula funds, and a Plan which details how the allocated funds will be used for eligible activities, how investments will be prioritized to increase the supply of housing for households with incomes at or below 60% of Area Median Income, and how the Plan is consistent with the programs set forth in its Housing Element. The County will also provide evidence that the Plan was authorized and adopted by resolution by the Board of Supervisors of the County of Monterey and that the public had an adequate opportunity to review and comment on its content. The County will also prepare an application on behalf of the City of Carmel-by-the-Sea requesting the formula funds, and a Plan which details how the allocated funds will be used for eligible activities, how investments will be prioritized to increase the supply of housing for households with incomes at or below 60% of Area Median Income, and how the Plan is consistent with the programs set forth in the City of Carmel-by-the-Sea's Housing Element. The County will also provide evidence that the Plan was authorized and adopted by resolution by the Board of Supervisors of the County of Monterey and that the public had an adequate opportunity to review and comment on its content.
- B. Application Submittal.** The County agrees to commit sufficient resources to completing and submitting the PLHA Applications and Plans to State in time for the Parties to be eligible to receive funding beginning in 2019, dependent upon State's execution of a Standard Agreement with County.

SECTION III. PROGRAM ADMINISTRATION

- A. Responsibilities of Parties.** The Parties agree, in the delegation of the County as the administering local government for the PLHA Program, that the County shall be responsible for execution of the Standard Agreements with State and the proper performance of the PLHA Plans. County agrees to perform necessary administrative tasks such as, but not limited to, environmental clearance under CEQA or NEPA, establishment of loan underwriting policies and terms, execution and management of any loans made using PLHA funds, monitoring of programs and projects as needed to fulfill PLHA requirements, and submittal of annual reports to State on PLHA-funded activities. The City of Carmel-by-the-Sea agrees to fully cooperate with the County in all things required and appropriate to comply with the provisions of the Standard Agreement with State. During the first year of the five-year Plan term, the Parties agree to meet on a quarterly basis to discuss the plans for the use of PLHA funds and progress being made. Beginning in the second year of the five- year Plan term, through the end of the fifth year, Parties will agree to a meeting schedule which will provide adequate opportunity for communication and decision-making.
- B. Program Administration Funding.** In consideration of the County's agreement to

be the administering local government for the PLHA Program and its assumption of the responsibilities inherent in this role, the Parties agree that the allowable Program Administration for the funding, which is equal to a maximum of 5% of each year's allocation for each local government jurisdiction, shall be retained exclusively by the County of Monterey for these administrative purposes.

- C. Maintenance of Records. The County shall maintain records of activities for any projects undertaken pursuant to the PLHA Program, and said records shall be available for inspection by staff and/or auditors representing the City of Carmel-by-the-Sea, on reasonable notice during the normal business hours of County.

SECTION IV. USE OF PLHA FUNDS

- A. Joint Participation in Funding of Projects. The Parties agree it is in the best interest of the public that the allocations made available to each local government jurisdiction be combined into a pool of funds to be used throughout either jurisdiction, pursuant to the criteria described in Section IV. D. of this Agreement. The Parties agree this method will allow for more timely development of the housing units assisted by the funding, and therefore address the current shortage of affordable housing throughout both jurisdictions, which is of vital importance and a high priority to all Parties.
- B. Use of Funding During the First Five-Year Term. Given the importance of the existence of critical public infrastructure (water, sewer, storm drainage) to the development of multi-family housing, and due to the general lack of such infrastructure in much of the unincorporated areas of the County, the Parties agree that funding received during the first five-year term will be focused on projects in the City of Carmel-by-the-Sea where such infrastructure is typically available. County agrees to the use of its funding allocations for projects and the City understands that units developed within the City would count towards the City RHNA numbers.
- C. Projects Included in PLHA Plan. In order to develop the PLHA Plan, the Parties have agreed upon the need for multi-family, affordable housing units throughout the County. In accordance with this need, the Parties have shared the status of potential projects in the City of Carmel-by-the-Sea, which may be targeted for PLHA funding. These potential projects have been used to develop the unit count and affordability targeting required to be described in the PLHA Plan. Due to the preliminary nature of the potential projects, the Parties agree that these are subject to change.
- D. Project Assistance Criteria. As the Parties have agreed to combine their allocations into a pool of funds to be used throughout the County, the following criteria shall be considered by the County as funding decisions are made for the use of the PLHA funds.
 - a. Meeting PLHA Commitment Requirements: Pursuant to Section 300(e) of the PLHA Program Guidelines, the County shall consider how individual project

readiness and project funding needs will impact the County's ability to remain in compliance with the commitment requirements of PLHA.

- b. Project Readiness:** Projects will be prioritized for funding within the following tiers of readiness:
 - i. High Readiness: Project Sponsor has site control, has been awarded any needed planning entitlements, has completed environmental review/clearance, and has developed a neighborhood outreach strategy.
 - ii. Medium Readiness: Project Sponsor has site control, planning entitlements and environmental clearance are under way, and is actively working on a neighborhood outreach strategy.
 - iii. Low Readiness: Project Sponsor is in negotiations for site control and has inquired of each jurisdiction what will be needed for planning entitlements and environmental review, as well as neighborhood outreach.
- c. Project Funding Needs:** In addition to consideration of Project Readiness, projects with a demonstrated need for the PLHA funding to ensure or enhance project viability will be prioritized.
- d. Targeting to the Lowest Income Households:** PLHA funds can be used for households at a variety of income levels, but are especially intended to be used to meet the housing needs of households at or below 60% of Area Median Income. Projects which have units targeted for affordability for these households will be prioritized for funding.

E. Minimum Project Assistance by Jurisdiction. Notwithstanding the criteria described above, the Parties agree to make every reasonable effort to ensure that during the five-year term of the agreement, a minimum of one project is funded in the City.

F. Funding Assistance in the Form of Loans. The Parties agree that any funding provided to a housing developer for a project will be provided in the form of a low interest deferred loan, with the loan amount and loan terms (including conditions for the payment of accrued interest and principal from residual receipts), delineated at the time the loan commitment is approved by the County Board of Supervisors. The loan shall be evidenced through a Promissory Note secured by a Deed of Trust in favor of the County of Monterey. A recorded Regulatory Agreement shall restrict occupancy and rents for a term of at least 55 years.

G. Use of Program Income. The Parties agree that program income generated as a result of the receipt of PLHA funds will be retained by the County and utilized to fund future PLHA-eligible activities. Program income will include payments from residual receipts, accrued interest, and any monitoring fees the County chooses to charge.

NOW THEREFORE, the Parties hereto have caused this Agreement to be executed and attested by their proper officer thereunder duly authorized and their official seals to be hereunto affixed, all as of the day first above written.

County Counsel Certification

The Office of the County Counsel hereby certifies that the terms and provisions of this Agreement are fully authorized under State and local laws, and that this Agreement provides full legal authority for the County to undertake all responsibilities as the delegated local government to administer the PLHA funding.

COUNTY OF MONTEREY

APPROVED AS TO FORM:

By: _____
Erik Lundquist
Director of Housing and Community Development

By: _____
Sean Collins
Deputy County Counsel,
County of Monterey

CITY OF CARMEL-BY-THE-SEA:

APPROVED AS TO FORM:

By: _____
Chip Rerig
City Administrator

By: _____
Brian Pierik
City Attorney, City of Carmel-by-the-Sea