

AGREEMENT BETWEEN
THE COUNTY OF MONTEREY
AND
THE MONTEREY BAY ECONOMIC PARTNERSHIP
PROVIDING CONTRIBUTIONS TO THE MONTEREY BAY HOUSING TRUST

THIS AGREEMENT is made and entered into as of July 1, 2017, by and between the County of Monterey, (“County”) and MONTEREY BAY ECONOMIC PARTNERSHIP (“Partnership”), a California non-profit corporation.

RECITALS

A. The County and the Partnership acknowledge and agree that affordable housing is a region-wide issue and not limited to one particular city or county, and further acknowledge that residents of the tri-county region (Monterey, Santa Cruz, and San Benito Counties) work and live across cities and counties, so addressing the housing crisis is an endeavor in which all jurisdictions must work together.

B. In an effort to address the issue of affordable, available housing in the tri-county region, the Partnership has entered into an agreement with Housing Trust Silicon Valley (HTSV) (the HTSV Agreement) for the purpose of establishing the Monterey Bay Housing Trust (MBHT), a program of the Partnership that identifies regional affordable housing projects. (A copy of the HTSV Agreement is attached hereto as Appendix A.) Private individuals, corporations and public agencies may choose to participate in the program and support regional affordable housing projects by providing grants to the MBHT. MBHT in turn supports regional affordable housing projects through a revolving loan fund.

C. Pursuant to the HTSV Agreement the Partnership will provide local services to identify qualifying affordable housing projects and provide 20% of the loans to approved projects, and HTSV will provide 80% of the loans to approved projects. HTSV will also provide all credit analysis, underwriting, loan processing, and any default workout as needed. Loans to affordable housing projects, both private and non-profit, are expected to be primarily for land acquisition and pre-development to get projects initiated and prepared for commercial bank financing. Generally, commercial bank financing will pay out HTSV and MBHT loans so that funds can be re-loaned to new affordable housing projects.

D. The County desires to increase, improve or preserve affordable housing for its residents, including persons and families of low and moderate income or very low income, by participating in the Partnership, as specified in this Agreement.

E. The County and Partnership enter into this Agreement to increase, improve, and preserve affordable housing for persons and families of low and moderate income or very low income in the County of Monterey.

In view of the above, the parties agree as follows:

SECTION 1 INCORPORATION OF RECITALS

The Recitals set forth above are hereby incorporated by reference as if fully set forth herein.

SECTION 2 AUTHORITY AND STATUS OF THE PARTNERSHIP

The Partnership represents and warrants that the information contained in this Agreement is true and accurate to the best of its knowledge, and that it is a duly organized, validly existing nonprofit corporation in good standing under the laws of the state of California; that its signatory to this Agreement is authorized by resolution, bylaws or constitution of the non-profit corporation, currently in full force and effect, to execute this Agreement on the Partnership's behalf.

SECTION 3 DEPOSIT OF COUNTY'S FUNDS INTO THE MONTEREY BAY HOUSING TRUST OF THE PARTNERSHIP

3.1 County agrees to provide funding to the Partnership in the total amount of \$500,000 (County's Housing Funds) for the purpose of supporting the development of qualifying affordable housing projects within the unincorporated area of Monterey County, subject to Section 4.1.5, within thirty days of the mutual execution and delivery of this agreement. The County may choose at any time to provide additional funding to the Partnership subject to a further written agreement between the parties.

3.2 The Partnership shall set up an account into which the County's Housing Funds shall be deposited and maintained and shall keep such account and the County's Housing Funds separate from any other funds received by the Partnership, except as otherwise provided in Section 4.1.6.

SECTION 4 USE OF COUNTY'S HOUSING FUNDS BY THE PARTNERSHIP

4.1 The Partnership shall serve as the fiscal agent. The initial disbursement of the County's Housing Funds from the Partnership shall be used exclusively for one or more projects that meet all of the following criteria:

4.1.1 Any such project must increase, improve, or preserve affordable housing at any location within the incorporated, or, unincorporated area of Monterey County.

4.1.2 Such housing must be affordable to persons and families of low or moderate income, or very low income households, as those terms are defined in Sections 50053, 50079.5, 50093, and 50105 of the California Health and Safety Code Sections, as applicable.

4.1.3 Any new or substantially rehabilitated housing that is developed, financed or assisted, in whole or in part, with the County's Housing Funds shall remain available at affordable housing costs to persons and families of low or moderate income, or very low income households, as the case may be, and so restricted through a regulatory agreement or other appropriately restrictive document or agreement recorded at the time of the issuance of a certificate of occupancy.

4.1.4 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any such project, or any part thereof, nor shall any recipient of the County's Housing Funds, or any person claiming under or through 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 of any such project.

4.1.5 Subject to California law, the restrictions of this Section 4.1 shall apply only to the initial use of the entire amount of the County's Housing Funds by the Partnership. After the initial use of the entire amount of the County's Housing Funds by the Partnership, reinvestment of funds that are repaid to or otherwise recaptured by the Partnership shall not be subject to this Section 4.1, but shall otherwise assist affordable housing projects in the Monterey Bay Region defined for this purpose as the County of Monterey, San Benito and Santa Cruz.

4.1.6 If any portion of the County's Housing Funds have not been disbursed in accordance with this Section 4.1 within forty-eight (48) months after the date of the County's deposit, then the funds will go into the general pool of the Monterey Bay Housing Trust and be used for affordable housing projects in the Monterey Bay Region as defined in Section 4.1.5 above.

4.2 All disbursements by the Partnership shall be made with the advice and suggestion of the Housing Trust Silicon Valley (HTSV), which has been formed by its Board of Directors in accordance with its Articles of Incorporation or Bylaws. Through the HTSV Agreement, it is understood that MBHT will qualify and prioritize affordable housing projects and HTSV shall be responsible for credit analysis, underwriting, loan processing, and any default workout as needed. HTSV shall follow the recommendations regarding disbursement rendered by its Program & Policy Committee unless to do so would be a violation of law, this Agreement, or HTSV's Articles of Incorporation or Bylaws.

SECTION 5 INVESTMENT OF THE FUNDS

The Partnership shall hold, manage, invest and reinvest the MBHT funds in accordance with the utmost diligence, highest standard of care and scrutiny and consistent with Section 8 and Appendix A of the Monterey County Treasurer's Investment Policy for Fiscal Year 2017-2018.

SECTION 6 FINANCIAL REPORTS

6.1 The Partnership shall establish and maintain, in accordance with generally accepted accounting principles, a complete record of all financial transactions related to the Partnership's housing funds.

6.2 The Partnership shall provide the County with quarterly reports which shall set forth in detail all financial transactions related to the County's funds. The Partnership shall also provide the County on no less than an annual basis with a copy of the audited report of HTSV, prepared by independent certified public accountants.

6.3 The Partnership shall provide the County with a written report on the initial expenditure of the County's Housing Funds, including, at a minimum, for each project assisted with County's Housing Fund assisted project(s); number of units; rent or sale price income restrictions; and terms of restrictions.

6.4 County and its representative, agents and/or nominees shall have the absolute right, upon reasonable notice, to inspect and copy any, and, all accounting records and or supporting documents related to the expenditure, loaning, and or investing of the funds which are the subject of this Agreement.

SECTION 7 ADMINISTRATIVE FEES

The Partnership may charge an annual administrative fee equal to five percent (5%) of the County's Funds contributed to the Partnership in any fiscal year. The administrative fee shall be drawn from County Funds on deposit with the Partnership. The fee will be used to support the origination and structuring of affordable housing projects and loans, interface with HTSV to finance said projects, and ongoing reporting requirements to the County. The administrative fee shall apply only to the initial deposit of the County's Housing Funds and shall not apply once the entire amount of the County's Housing Funds has been exhausted. The Partnership shall report the fees charged against the County's funds in its quarterly and annual reports.

SECTION 8 NOTICES

Any communication or notice which either party is required to send to the other or which

either party desires to send to the other, shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, to the respective parties addressed as follows:

County:

County Administrative Officer
County of Monterey
168 W. Alisal
Salinas, California 93901

With a Copy to:

County Counsel
County of Monterey
168 W. Alisal
Salinas, California 93901

Partnership:

Monterey Bay Economic Partnership
Aka Monterey Bay Housing Trust
3180 Imjin Road, Suite 104B
Marina, CA 95110

Either party may change its address by sending notice of the new address to the other party pursuant to this section.

SECTION 9 COMPLIANCE WITH ALL LAWS

The Partnership shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 10 MISCELLANEOUS PROVISIONS

10.1 The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Monterey, and/or exclusively in the United States District Court, Northern District of California, San Jose, California.

10.2 The headings of the sections and subsections of this Agreement are inserted for

convenience only. They do not constitute a part of this Agreement and shall not be used in its construction.

10.3 The waiver by any party to this Agreement of a breach of any provisions of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provisions of this Agreement.

10.4 This Agreement constitutes the entire agreement between the parties and supersedes all prior written or oral understanding between the parties. This Agreement may only be modified by formal written agreement executed by both parties.

10.5 If a court of competent jurisdiction adjudges any provisions of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect; provided that construction of the agreement without the invalid or unenforceable provisions does not deprive the parties of the benefit of their bargain.

10.6 This Agreement may be terminated by either party with or without cause at any time upon written notice. In the event of such termination, any County Housing Funds provided pursuant to section 3.1 which have not been encumbered or otherwise dedicated for use pursuant to paragraphs 4.1.5 or 5.1.6 of this Agreement shall be returned to the County within thirty (30) days of the effective date of the termination.

10.7 Where this agreement refers to the County and no Officer of the County is named, the County's Administrative Officer and/or his/her designee shall have the authority to act on the County's behalf.

10.8 Nothing in this Agreement shall require County to perform any action if County has insufficient available funds or personnel to perform such action.

10.9 Partnership shall, during the entire term of this Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, partnership, or allow County to exercise discretion or control over the professional manner by which Partnership operates under the terms of this Agreement. Partnership staff performing work shall at all times remain employees of Partnership and shall not be deemed employees of County for any purpose. Partnership shall be solely responsible for any and all compensation, payroll taxes, withholdings, workers' compensation and any other insurance or benefits of any kind for any Partnership employee performing work. Similarly, County shall, during the entire term of this Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, partnership, or allow Partnership to exercise discretion or control over the professional manner by which County operates pursuant to the terms of this Agreement.

County staff performing work under this Agreement shall at all times remain employees of County and shall not be deemed employees of Partnership for any purpose. County shall be solely responsible for any and all compensation, payroll taxes, withholdings, workers' compensation and any other insurance or benefits of any kind for any County employee performing work under this Agreement.

10.10 Partnership shall, at all times herein remain a separate legal entity separate and apart from the County of Monterey, pursuant to this Agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9 (for actions brought within the time frame set forth in Government Code Section 66499.37), immediately defend, indemnify, and hold harmless, at the Partnership's sole expense, the County of Monterey and its employees, officers, contractors, and agents ("the County Indemnitees") from and against any claim, action, or judicial or administrative proceeding whatsoever brought against the County Indemnitees, or any of them, to attack, set aside, void, annul, review, or otherwise challenge any approval or action whatsoever by County Indemnities arising out of or in connection with this Agreement, any environmental review or absence thereof associated with this Agreement, the manner in which the County interprets or enforces the terms and conditions of this Agreement, at any time, and, including the County Indemnitee's active or passive negligence, except for such loss or damage determined to be solely caused by the gross negligence or willful misconduct of the County Indemnities. The Partnership shall further pay all losses, liabilities, damages, penalties, costs, awards, interest, judgments, fees (including reasonable attorney's fees) and expenses arising from any such claim, action, or judicial or administrative proceeding whatsoever. Counsel for the County Indemnities in any such legal defense shall be selected by the County. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve Partnership of its obligations under this condition. The County shall promptly notify the Partnership of any such claim, action, or proceeding and the County shall cooperate fully in the defense thereof. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as permitted by the law of the State of California. This provision shall survive any administrative or judicial order, decree writ, mandate, determination, or other action which sets asides, voids, annuls, or otherwise invalidates any County action related to this Agreement.

10.11 Insurance requirements

The Monterey Bay Economic Partnership (MBEP), including its officers, directors, members, agents, lenders, subsidiaries, corporate parent and employees, agrees to provide and maintain during the term of this Agreement the following minimum insurance, subject to the Insurance General Conditions below, as follows:

- a. General Liability Insurance on an occurrence basis including coverage for premises and operations, including both bodily injury and property damage; independent contractors protective coverage; blanket contractual coverage, including both oral and written contracts; personal and advertising injury coverage, with contractual exclusion deleted; broad form property damage coverage, including completed operations; liquor liability; severability of interests (e.g., no cross suits exclusions); fellow employee exclusion

deleted; additional insured endorsement ISO CG2010 11/85 or equivalent wording to be approved by COUNTY OF MONTEREY; and defense costs shall not erode the limits of insurance. Such coverage shall have minimum limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

- b. Workers' Compensation Insurance in accordance with all applicable state and federal statutes, covering all employees, volunteers and others directly or indirectly involved in the provision of CONCESSIONAIRE services under this Agreement. Such insurance shall be endorsed to provide for a waiver of subrogation against the County of Monterey.
 - Employer's Liability Insurance with the following minimum limits:
 - Bodily Injury by accident \$1,000,000 each accident
 - Bodily Injury by disease \$1,000,000 policy limit
 - Bodily Injury by disease \$1,000,000 each employee
 - Master Crime Insurance for employee dishonesty; on/off premises money & securities; computer and credit card fraud; and robbery & safe burglary in the amount of at least \$3,000,000 each coverage part.
- c. Directors and Officers Liability (D&O) Insurance coverage, which shall have minimum limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate. D&O insurance shall be maintained at-all-times during the performance of services under this Agreement. If said insurance is underwritten on a "claims made and reported" basis, it must have a retroactive date prior to or coinciding with the effective date of this Agreement; and (i) shall have an extended reporting period of not less than 36 months; or (ii) be maintained for at least three years following termination or expiration of this Agreement.

10.12 Neither party hereto may assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the other party.

10.13 The parties hereto agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

10.14 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

10.15 This Agreement shall be deemed effective as of the date corresponding to the last signature below.

COUNTY OF MONTEREY

Lew Bauman, County Administrative Officer

APPROVED AS TO FORM & LEGALITY

Charles McKee, County Counsel
By Brian Briggs, Deputy County Counsel

ATTEST:

MONTEREY BAY ECONOMIC PARTNERSHIP

Bud Colligan, Co-Chairman