

## **RESOLUTION NO. 23-77**

### **A Resolution Of The City Council Of The City Of Emeryville Authorizing The Continued Participation Of The City Of Emeryville In The Alameda County Urban County For Community Development Block Grant Funds And Authorizing The Execution Of The Cooperation Agreement Between The City And County Of Alameda Regarding Participation In The Alameda County Urban County For Community Block Grant Program Funds**

**WHEREAS**, the Congress of the United States has enacted the Housing and Community Development Act of 1974 and Federal regulations have been adopted pursuant thereto, hereinafter called the "Act"; and

**WHEREAS**, Title I of the Act consolidates previously separate grant programs for open space, public facility loans, water and sewer grants, urban renewal, model cities, rehabilitation loans, and affordable housing into a program called the Community Development Block Grant ("CDBG") program; and,

**WHEREAS**, Title I makes available entitlement grants to cities whose 2020 Census population exceeds 50,000 persons and to counties which qualify as an urban county; and

**WHEREAS**, the term "urban county" means any county within a metropolitan area which:

(1) is authorized under state law to undertake essential community development and housing assistance activities in its incorporated areas which are not units of general local government; and,

(2) has a combined population of 200,000 or more in such unincorporated areas and in its included units of local government:

(A) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded; or,

(B) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities; and,

**WHEREAS**, the Department of Housing and Urban Development ("HUD") has made a determination that the County of Alameda has the essential powers to operate as an urban county; and

**WHEREAS**, the cities Albany, Emeryville, Newark, and Piedmont, each of which has a 2020 Census population of less than 50,000, and the city of Dublin, which has a 2020 Census population of more than 50,000, have expressed their interest in joining with the Alameda County Unincorporated County to continue in the Alameda County Urban County for federal fiscal years 2024, 2025 and 2026; and

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**WHEREAS**, these same five cities combine with the County of Alameda to form a combined 2020 Census population of 200,000 or more persons, thereby qualifying as an urban county, and becoming eligible for an entitlement of CDBG funds; and

**WHEREAS**, pursuant to HUD requirements, these same five cities must execute cooperation agreements with the County of Alameda, wherein the parties agree to participate in the Urban County for the duration of the three-year funding cycle; now, therefore, be it

**RESOLVED** that the City Council of the City of Emeryville does hereby resolve, declare, determine and order as follows:

**SECTION 1.** The City Council of the City of Emeryville hereby authorizes the continued participation of the City of Emeryville in the Alameda County Urban County.

**SECTION 2.** The City Council of the City of Emeryville hereby authorizes the City Manager to execute a cooperation agreement with the Alameda County in order to continue the City's participation in the Urban County.

**SECTION 3.** This resolution shall take effect immediately upon its adoption.

**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held Tuesday, June 20, 2023, by the following vote:

|          |          |                                                                               |
|----------|----------|-------------------------------------------------------------------------------|
| AYES:    | <u>5</u> | Mayor Bauters, Vice Mayor Welch and Council Members Kaur, Mourra and Priforce |
| NOES:    | <u>0</u> |                                                                               |
| ABSTAIN: | <u>0</u> |                                                                               |
| ABSENT:  | <u>0</u> |                                                                               |

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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SPECIAL COUNSEL

## AGREEMENT

This Agreement is made and entered into this 1st day of July, 2023 by and between the CITY OF EMERYVILLE, hereinafter called "CITY" and the COUNTY OF ALAMEDA, hereinafter called "COUNTY", regarding their cooperation with respect to Community Development Block Grant funding.

WHEREAS, the Congress of the United States has enacted the Housing and Community Development Act of 1974, and subsequent amendments to such Act, hereinafter called "ACT"; and

WHEREAS, Title I of ACT consolidates previously separate grant programs for open space, public facility loans, water and sewer grants, urban renewal, model cities, rehabilitation loans, and affordable housing; and

WHEREAS, Title I makes available entitlement grants to:

- (1) cities whose 2020 Census population exceeds 50,000 persons; and
- (2) counties which qualify as an urban county; and

WHEREAS, the term "urban county" means any county within a metropolitan area which:

- (1) is authorized under state law to undertake essential community development and housing assistance activities in its incorporated areas which are not units of general local government; and
- (2) has a combined population of 200,000 or more in such unincorporated areas and in its included units of local government:
  - (A) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded; or
  - (B) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities; and

WHEREAS, four cities (Albany, Emeryville, Newark and Piedmont) in Alameda County have a 2020 Census population of less than 50,000 and desire to participate in the Alameda County Urban County; and one city has a population over 50,000 (Dublin) and desires to participate in the Alameda County Urban County; and

WHEREAS, the participating cities, combined with the unincorporated portions of the County of Alameda, form a combined 2020 Census population of 200,000 or more persons, thereby qualifying as an urban county, and becoming eligible for an entitlement of Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) funds; and

WHEREAS, the participating cities agree that by executing these cooperative agreements they may not apply for grants under the Small Cities or State CDBG Program from appropriations for fiscal years during the period in which it is participating in the Urban County's CDBG program; and

WHEREAS, the COUNTY and CITY cannot withdraw from the cooperative agreement while the Program Year 2024-2026 Agreement remains in effect.

THEREFORE, it is agreed that:

1. CITY agrees that by executing this Agreement, CITY may not apply for grants from appropriations under the Small Cities or State CDBG Program from appropriations for fiscal years during the period in which it is participating in the Urban County's CDBG program.
2. CITY agrees that by executing this Agreement, it may only receive a portion of the formula allocation under the HOME Program through the Urban County. If the Urban County does not receive a portion of the HOME formula allocation, the CITY cannot form a HOME Consortium with other local governments. An Urban County or a unit of government participating with the Urban County may apply to the State of California for HOME funds, if the State allows.
3. CITY agrees that by executing this Agreement, it may only receive the formula allocation under the Emergency Solutions Grant (ESG) Program through the Urban County. If the Urban County does not receive the ESG formula allocation, the CITY cannot form an Urban County with other local governments. An Urban County or a unit of government participating with the Urban County may apply to the State of California for ESG funds, if the State allows.
4. The Department of Housing and Urban Development, hereinafter called "HUD", has made a determination that the COUNTY has the essential powers to operate as an urban county.
5. CITY and COUNTY will cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing, hereinafter called "PROGRAM", to be carried out with annual Community Development Block Grant and HOME Investment Partnership funds, hereinafter called "CDBG/HOME FUNDS", from Federal fiscal years 2024, 2025 and 2026 appropriations and from any program income generated from the expenditure of such funds. Community renewal and lower income housing assistance activities shall be those designated or referred to within Title I of the ACT and Title II of the Cranston-Gonzalez National Affordable Housing Act and the regulations issued pursuant thereto.
6. To carry out community renewal and lower income housing activities, COUNTY shall distribute to CITY a portion of the CDBG funds received under the ACT from Federal fiscal years 2024, 2025 and 2026 appropriations. The funds distributed to CITY shall be determined in accordance with such needs, objectives, or strategies, as COUNTY shall decide. In preparing the needs, objectives or strategies, COUNTY shall consult with CITY before making its determinations. The distribution of HOME funds to the Urban County is based on the review and

recommendations of proposals received in response to an annual RFP.

7. It is expressly understood that as a recipient of the CDBG/HOME/ESG Funds from HUD, COUNTY and CITY must take all actions necessary to assure compliance with the Urban County's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and to affirmatively further fair housing. COUNTY and CITY must comply with Section 109 of Title I of the Housing and Community Development Act of 1974, which incorporates Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, and other applicable laws, and all regulations issued pursuant thereto. Further, urban county funding for activities in or in support of any city that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with its fair housing certification is prohibited.

a. COUNTY and CITY must have 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; and

b. COUNTY and CITY must have 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 jurisdictions.

8. CITY may not sell, trade, or otherwise transfer all or any portion of the CDBG/HOME FUNDS to a metropolitan city, urban county, unit of general local government, or Indian tribe or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-federal considerations, CITY must use the CDBG/HOME FUNDS for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended and Title II of the Cranston-Gonzalez National Affordable Housing Act.

9. Pursuant to 24 CFR 570.501(b), CITY is subject to the same requirements applicable to sub-recipients, including the requirement of a written agreement set forth in CFR 570.503.

10. CITY shall inform COUNTY of any income generated by the expenditure of CDBG funds received by the CITY. CITY shall pay any such program income to COUNTY or CITY may retain program income subject to requirements set forth in this Agreement and with written approval of the COUNTY. Any program income CITY is authorized to retain may only be used for eligible activities in accordance with all CDBG requirements as may then apply. COUNTY has the responsibility for monitoring and reporting to HUD on the use of any such program income thereby requiring appropriate record keeping and reporting by CITY as may be needed for this purpose. In the event of close-out or change in status of CITY, any program income that is on hand or received subsequent to the close-out or change in status shall be paid to COUNTY.

11. In regard to real property that is within the control of CITY due to being acquired or improved in whole or in part using CDBG funds, CITY must give timely notification to COUNTY for any modification or change in the use of the real property from that planned at the time of acquisition or improvement including disposition. CITY must reimburse COUNTY in an amount equal to the current fair market value (less any portion thereof attributable to expenditures of non-

CDBG funds) of property acquired or improved with CDBG funds that is sold or transferred for a use which does not qualify under the CDBG regulations. Any program income generated from the disposition or transfer of property prior to or subsequent to the close-out, change of status or termination of the cooperation agreement between COUNTY and CITY shall be paid to COUNTY.

12. CITY shall provide COUNTY with all information concerning CITY and the activities CITY carried out under this agreement which COUNTY requires to prepare 1) documents required to be submitted to HUD, 2) annual performance report, 3) such other documents as COUNTY may require to carry out community renewal and lower income housing activities or meet Federal requirements. All information shall be submitted on forms prescribed by COUNTY. In addition, CITY agrees to make available upon request all records concerning the activities carried out under this Agreement for inspection by COUNTY or Federal officials during regular business hours.

13. CITY designates City Administrator or his/her designee as the official to whom all notices and communications from COUNTY shall be directed. COUNTY's duty to notify CITY shall be complete when the communication is sent to the designated official or deputy. It is the exclusive duty of the designated official or deputy to notify the correct individuals or departments within CITY.

14. CITY shall defend, indemnify and hold harmless COUNTY, its officers, employees and agents from liability for any fines, penalties, or damage of any type accruing to COUNTY by virtue of CITY's failure to comply with any requirement of the ACT and the regulations issued pursuant thereto, or failure to comply in any respect with the PROGRAM described herein. Further, CITY shall defend, indemnify and hold harmless COUNTY, its officers, employees, and agents against any and all liability for injury or damage caused by any act or omission of CITY or any of CITY's employees or volunteers in the performance of the contract or PROGRAM and CITY shall hold COUNTY harmless from any and all loss occasioned in the performance of, or otherwise arising out of, this Agreement or PROGRAM.

15. This Agreement shall go into effect immediately upon the signature of both parties and shall continue in full force and effect until the CDBG/HOME/ESG Funds and program income received with respect to activities carried out during the three-year qualification period (Federal fiscal years 2024, 2025 and 2026) are expended and the funded activities completed. CITY will be included in the urban county for the entire three years period funded by CDBG/HOME/ESG Funds from Federal fiscal years 2024, 2025 and 2026. Appropriations may not be withdrawn from the urban county during this agreement period. During the three-year qualification period, Federal fiscal years 2024, 2025 and 2026, CITY and any other included unit of general local government shall not withdraw from nor be removed from the Urban County and cannot terminate or withdraw from the cooperation agreement.

16. CITY agrees that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations and 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 its jurisdiction.

17. CITY agrees that COUNTY has final responsibility for selecting CDBG, ESG and HOME activities and annually filing the Annual Action Plan with HUD, although if the COUNTY is a member of a HOME Consortium, the Consortium submits the Plan developed by the COUNTY.

18. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

[SIGNATURES TO FOLLOW ON THE NEXT PAGE]

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

CITY OF EMERYVILLE,  
A municipal corporation

COUNTY OF ALAMEDA

\_\_\_\_\_  
Paul Buddenhagen  
City Manager

\_\_\_\_\_  
President, Board of Supervisors

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Clerk, Board of Supervisors

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:  
Donna R. Ziegler, County Counsel

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John Kennedy  
City Attorney

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By \_\_\_\_\_  
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Kathleen J. Hall, Deputy County Counsel

DATE: 06/07/2023

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.