

**SECOND AMENDMENT TO
NSP2 CONSORTIUM FUNDING AGREEMENT**

THIS SECOND AMENDMENT TO THE **NSP2 CONSORTIUM FUNDING AGREEMENT** ("Second Amendment") is made and entered into as of this 24th day of February, 2012, by and between the **CITY OF SAN JOSE**, a municipal corporation ("City" or "Consortium Member1"), and the Housing Trust of Santa Clara County, a California nonprofit public benefit corporation ("HTSCC" or "Lead Member").

RECITALS

WHEREAS, in July 2009, the City, along with the Housing Trust of Santa Clara County ("HTSCC") and Neighborhood Housing Services Silicon Valley ("NHSSV"), entered into a consortium agreement to form the San José NSP2 Consortium ("Consortium") and the Consortium, with HTSCC as the lead member, submitted a \$25 million request for Neighborhood Stabilization Program 2 ("NSP2") funds under the San José NSP2 Consortium ("Consortium") with HTSCC as the lead member; and

WHEREAS, on January 14, 2010, the United States Department of Housing and Urban Development ("HUD") announced that San José was one of 56 recipients of NSP2 funding, and the Consortium was awarded \$25 million to implement various NSP2 activities; and

WHEREAS, on April 6, 2010, the City Council accepted the grant funds and authorized the Director of Housing to negotiate and enter into the a Consortium Funding Agreement ("Agreement") with HTSCC to provide the City with NSP2 funding for NSP2 eligible projects which Agreement was executed on April 8, 2010; and

WHEREAS, on October 17th, 2011, the City and HTSCC executed a first amendment to the Consortium Funding Agreement (collectively, the "Agreement"); and

WHEREAS, City and HTSCC desire to further amend the Agreement as set forth below.

AGREEMENT

1. Article I, Section A is amended to read as follows:

"A. Activities

Consortium Member1 will be responsible for administering NSP2 activities in a manner satisfactory to the Lead Member and consistent with all standards required as a condition of providing these funds. Such program will include the following

uses and corresponding CDBG activities eligible under NSP2 [as listed in the Notice of Funding Availability for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act of 2009 (Notice FR-5321-N-01, published May 5, 2009), the Notice of Fund Availability for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act of 2009; Correction (Notice FR-5321-C-02, published June 11, 2009), and the Notice of Fund Availability for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act of 2009; Correction (Notice FR-5321-C-03, published November 9, 2009) and any subsequent published amendments (the NSP2 NOFA):

Program Delivery

Consortium Member1 will be responsible for the administration and implementation of activities associated with the NSP eligible program activities listed below. See Attachment III for a detailed list of responsibilities.

Activity #1 Purchase Assistance Loan (PAL): NSP eligible activity (A) - Establish Financing Mechanisms. Assist 100 eligible homebuyers purchase foreclosed homes by providing mortgage, closing cost and related purchase assistance. Program Budget - \$5,000,000.

Activity #2 (a) Acquisition and Rehabilitation Program: NSP eligible activity (B) Purchase and Rehabilitate Foreclosed Homes and Residential Properties. Purchase and rehabilitate up to 64 foreclosed single-family residential properties, and re-sell to income eligible homebuyers. Program Budget - \$11,750,000.

(b) Acquisition and Rehabilitation Program (25% Set Aside): NSP eligible activity (B) - Purchase and Rehabilitate Foreclosed Homes and Residential Properties to meet the 25% Set-Aside for the benefit of Very-Low-Income Households. Provide funding to development entities for the purchase and rehabilitation or construction of at least 41 NSP2 eligible units to provide affordable housing to very-low income households. Program Budget - \$6,250,000.

Activity #3 Administration: NSP eligible activity to include management and oversight of Activity #1 and #2 above. Activities include program management, compliance and monitoring, financial management, and reporting. Administration Budget \$2,000,000.

As applicable, the Lead Member is responsible for ensuring that no more than 10 percent of the total grant is used for demolition (unless HUD has given prior written approval for a higher percentage); Consortium Member1 shall use no more than \$2,500,000 for demolition and shall not demolish any public housing as defined at 42 USC 1437a. Consortium Member1 may reallocate budgeted funds between Activity

2(a) and Activity 2(b) provided that at least \$6,250,000 is provided to meet the 25% Set-Aside for the benefit of Very-Low-Income Households.

General Administration

The Lead Member must ensure that no more than 10 percent of the total grant amount is used for planning and administration activities described at 24 CFR 570.205 and 570.206; Consortium Member1 shall use no more than **\$1,113,554** for these planning and administration activities. Additionally, the Lead Member must ensure that Consortium Member1 uses no more than 10 percent of program income for planning and administration activities. This amount does not include project delivery costs associated with the provision of eligible NSP2 activities.

General Administrative services to be performed by Consortium Member 1 in support of activities noted above include:

1. NSP2 Steering Committee: Mandatory member and participation in the San Jose NSP2 Consortium Steering Committee.
2. Compliance with NSP2 Requirements: Member shall take reasonable actions necessary to assure compliance with the-Lead Member certifications identified in Exhibit A, as required by NSP2 Requirements.
3. Internal Audits: Consortium Member1 is authorized conduct internal audits (or cause such audits to be conducted) of the NSP2 Activities of the Lead Member and Neighborhood Housing Services Silicon Valley (Consortium Member2) as consistent with the NSP2 requirements. The Lead Member and Consortium Member1 shall cooperate in the audit process.
4. Environmental Review: Consortium Member1 is authorized to perform any environmental reviews of all NSP2 Activities as required by the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 CFR parts 58.
5. Equal Opportunity and Fair Housing: Under Activity #2, Consortium Member1 shall comply with the equal opportunity and fair housing requirements of 24 CFR Part 92.350.
6. Other Federal Requirements: Consortium Member1 shall comply with all applicable federal requirements, including the Uniform Relocation Act (URA), Davis Bacon and other applicable labor laws, Lead Based Paint, Section 3 and MBE/WBE.
7. NSP Tenant Protection: Under Activity #2, Consortium Member1 agrees to comply with the Protecting Tenants at Foreclosure Act of 2009 (TAF) designed to protect bona fide tenants occupying residential property under a lease on properties foreclosed on after February 17, 2009.
8. Reporting: Consortium Member1 agrees to submit necessary information on NSP2 activity into: FederalReporting.gov and. post on the City's website for program transparency; Recovery Act and Performance System (RAMPS) a data collection tool on NEPA requirements; and the Disaster Recovery Grant Reporting System

('DRGR), a tool to report quarterly performance, obligations and drawdowns. These reports are to be updated and submitted on a timely basis. Reports and/or updates shall be completed within 8 days of the quarter end to ensure timely submission of the reporting due date of 10 days after the quarter end.

9. Indemnification: Each Member to the Consortium agree to indemnify, defend and hold harmless the other Members, their officers and employees from all claims, demands, liabilities, actions or causes of action, whether in law or in equity, arising from the Member's acts or omissions in connection with its authority or obligations under this Agreement. This indemnification provision shall survive the termination or expiration of this Agreement.
 10. Amendments: No amendment or modification to this Agreement shall be valid unless made in writing and approved and signed by Consortium Memberl. This Agreement supersedes any oral promises, representations, or other agreement with respect to the subject matter of this Agreement.”
2. This Second Amendment was approved by HUD.
 3. This Second Amendment may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same amendment.
 4. Except as otherwise modified by this Second Amendment, the terms of the Agreement shall remain in full force and effect.
 5. This Second Amendment is governed by and construed in accordance with the laws of the State of California.

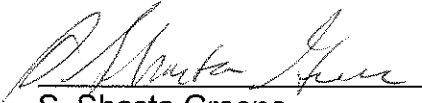
This document continues on the following page.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first written above.

CITY:

Approved as to Form


CITY OF SAN JOSE, a municipal corporation

By: 
S. Shasta Greene
Deputy City Attorney

By: 
Leslye Corsiglia
Director of Housing

HTSCC:

HOUSING TRUST OF SANTA CLARA COUNTY, a California nonprofit public benefit corporation

By: 
Kevin Zwick
Executive Director