

**THIRD AMENDMENT TO
NSP2 CONSORTIUM FUNDING AGREEMENT**

THIS THIRD AMENDMENT TO THE NSP2 CONSORTIUM FUNDING AGREEMENT ("Second Amendment") is made and entered into as of this 25th day of January, 2013, 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 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 17, 2011, the City and HTSCC executed a first amendment to the Agreement amending provisions regarding reporting and payment of program income;

WHEREAS, on February 2, 2012, the City and HTSCC executed a second amendment to the Agreement to reallocate funding to the Ford and Monterey Special Needs project consistent with HTSCC's September 13, 2010 request for a technical amendment decreasing Activity B and adding Activity E; and

WHEREAS, on October 4, 2012, the City Council authorized the Director of Housing to negotiate and execute any future amendment to the Agreement for City staffing changes or for reallocation of funds between the Agreement's specific activity or strategy allocations and make non-substantive corrections as needed; and

WHEREAS, on November 6, 2012, the City Council authorized the acceptance of an additional \$2,000,000.00 in NPS2 funds from HTSCC for funding in connection with the Ford and Monterey Family Project and authorized the Director of Housing to execute

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an amendment to the Agreement to increase the total Consortium Member1 budget from \$19,139,324 to \$21,139,324 and to make such other modifications to the Agreement as are needed; and

WHEREAS, the additional \$2,000,000.00 in NPS2 funds received from HTSCC and program income are not subject to the February 11, 2013 expenditure deadline listed in the Agreement and Consortium Member1 has met the expenditure and in-kind services requirements in the agreement;

WHEREAS, the Activity on the Ford and Monterey Special Needs Project was erroneously Included in activity for the Acquisition and Rehabilitation Program (25% Set Aside) and it should have been a separate Development of Vacant Land (25% Set Aside) activity;

NOW THEREFORE, the City and HTSCC desire to further amend the amended Agreement as set forth below.

AGREEMENT

The City and HTSCC agree as follows:

1. Article I, Section A of the amended Agreement 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 NSP eligible program Activities 2-4 and inspections for Activity 1 as described below. See **Attachment III** for a detailed list of responsibilities.

Activity #1 Purchase Assistance Loan (PAL): NSP eligible activity (A) - The Lead Member will assist up to 75 eligible homebuyers purchase foreclosed homes by providing mortgage, closing cost and related purchase assistance. Member 1 will provide inspection services for all properties assisted through the Purchase Assistance Loan Program. Program Budget – See Article III of the Agreement, BUDGET, for a detailed budget.

- Activity #2 (a) Acquisition and Rehabilitation Program: NSP eligible activity (B) Purchase and Rehabilitate Foreclosed Homes and Residential Properties. Purchase and rehabilitate up to 53 foreclosed single-family residential properties, and re-sell to income eligible homebuyers. Program Budget – See Article III of the Agreement, BUDGET, for a detailed budget.
- (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 58 NSP2 eligible units to provide affordable housing to very-low income households. Program Budget – See Article III of the Agreement, BUDGET, for a detailed budget.
- Activity #3 Develop Vacant Land (25% Set Aside): NSP eligible activity (E)- Provide funding to development entities for the construction of at least 30 NSP2 eligible units on eligible vacant land to provide affordable housing to very-low income households consistent with the 25% Set-Aside for the benefit of Very-Low-Income Households. Program Budget – See Article III of the Agreement, BUDGET, for a detailed budget.
- Activity #4 Administration: NSP eligible activity to include management and oversight of Activity #1, #2 and #3 above. Activities include program management, compliance and monitoring, financial management, and reporting. Administration Budget – See Article III of the Agreement, BUDGET, for a detailed budget.

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.

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 **\$1,013,554** 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 and #3, 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 Member1. This Agreement supersedes any oral promises, representations, or other agreement with respect to the subject matter of this Agreement."

2. Article I, Section C of the amended Agreement is amended to read as follows:

"The Consortium must comply with the NSP2 performance reporting requirements as described in the NSP2 NOFA and any additional reporting requirements announced by HUD at any time during the duration of this Agreement. As detailed above, under General Administration #8, and as required by the Recovery Act, Consortium Member1 will provide and report information required in FederalReporting.gov on behalf of the Consortium after reviewed and approved by the Lead Member.

The program accomplishments as reported in DRGR for each activity must include such measures as residential units acquired and rehabilitated, and the number of households assisted through NSP2. Accomplishments should also include start and end dates for initiation and completion of work. Quarterly reports should contain concise, but thorough descriptions of program activities.

Consortium Member1 agrees to assist and/or implement the following programs as detailed in the scope of work as described in Attachments III:

<u>Activity</u>	<u>Total Households/Units</u>
Activity #1- Purchase Assistance Loans (Inspection)	75 Households
Activity #2a-Acquisition/Rehab SFR	53 Units
Activity #2b-Acquisition/Rehab 25% Set Aside	58 VLI Units
Activity #3-Develop Vacant Land 25% Set Aside	30 VLI Units
Total	216 Units

3. Article I, Section D of the amended Agreement, is amended to read as shown in the attached **Exhibit A**.

4. Article II of the amended Agreement, TIME OF PERFORMANCE, is amended to read follows:

"A. NSP2 funding is subject to certain statutory deadlines for expenditure based on the date that HUD executed the NSP2 grant agreement. HUD executed the NSP2 grant agreement with HTSCC on February 11, 2010.

B. The Lead Member has ensured that at least 50 percent (\$12,500,000) of the originally allocated NSP2 funds were expended within two years from the date HUD signed the grant agreement and 100 percent (\$25,000,000) of grant funds were expended within three years from the date HUD signed the grant agreement.

C. Services of Consortium Member1 shall start on the 11th day of February, 2010 and end on the 11th day of February, 2013, provided however the parties agree that the Services of Consortium Member1 will be continued beyond February 11, 2013 consistent with Article III of the Agreement, BUDGET, as amended so long as Consortium Member1 remains in control of NSP2 funds or other NSP2 assets, including program income.

D. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which Consortium Member1 remains in control of NSP2 funds or other NSP2 assets, including program income.

5. Article III of the Agreement, BUDGET, is amended to read as shown in the attached **Exhibit B**.

6. The last sentence of Article VI of the Agreement, ENTIRE AGREEMENT, shall be amended to read as follows "Any amendment to this Agreement must be consistent with the Action Plan or receive prior approval by HUD for a technical amendment to the Action Plan."

7. This Third 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.

8. Except as otherwise modified by this Third Amendment, the terms of the amended Agreement shall remain in full force and effect.

9. This Third 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 Third Amendment as of the date first written above.

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CITY:

Approved as to Form

CITY OF SAN JOSE, a municipal corporation

By: _____ By: _____

S. Shasta Greene
Sr. Deputy City Attorney

Leslye Corsiglia
Director of Housing

HTSCC:

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

By: _____


Kevin Zwick
Executive Director

Exhibit A

Revised Article I, Section D

Staffing

This chart identifies the names and titles of key staff and roles associated with each activity specified in I.A. above. Personnel costs provided are estimates including (fringe and overhead) for budget purposes and will be charged on an actual basis as required under OMB A-87.

Under this Agreement, Consortium Member1 agreed to provide an amount not less than \$500,000 of in-kind services, including: \$250,000 in staff cost and supplies/materials; and \$250,000 in homebuyer education and counseling as required under NSP2 through a contractual agreement with Neighborhood Housing Services Silicon Valley (Consortium Member2). The parties agree that this requirement for in-kind services has been met.

Since Consortium Member1's in-kind services requirement has been met, grant activities have been adjusted and staff reductions have occurred, the parties agree that changes in staffing are required to carry out the Activities set forth in this Agreement.

Activity #1 #2 and #3 -Project Implementation

The activities listed below are for the execution and implementation of the Activities listed in I.A. above. The Full time Equivalent (FTE) and personnel costs are estimated below. Consortium Member 1 staffing expenditures will be based on actual expenditures either tracked by activity or through an approved allocation plan.

Funded Program Staff	Title	Function	Annual (FTE) Personnel Cost
Assigned – NSP2 Rehabilitation Inspector	Housing Rehabilitation Inspector	Assist Lead Member with Activity #1 feasibility and local housing standards inspections. Inspect Activity #2 homes for feasibility prior to purchase, oversee construction process including Green standards, and other federal requirements, and manage project budget and schedule.	.5 FTE
Assigned – NSP2 Rehabilitation Inspector	Housing Rehabilitation Inspector	Activity #2 -Inspect homes for feasibility prior to purchase, oversee construction process including Green standards, and other federal requirements, manage project budget and schedule.	1 FTE

Assigned – NSP2 Loan Underwriter	Development Officer/Specialist	Underwrite NSP2 homebuyer program loans under Activity #2a.	.25 FTE (SF underwriting)
Assigned – NSP2 Loan Underwriter	Development Officer/Specialist	Provide general oversight of NSP2 multi-family/LH25% set-aside projects including -- negotiations and underwriting of funding activities, monitoring project compliance, track and coordinate construction progress under Activity #2(b) and #3	.25 FTE (SF underwriting) .75 FTE (MF/LH25 underwriting)
Assigned – NSP2 Analyst	Staff Analyst	Support Activities #2(a) – Coordinate day-to-day activities related to acquisition, rehabilitation and resale of single-family properties. Review developer and staff documentation for program compliance and assist with tracking and reporting program outcomes.	.5 FTE
NSP2 Program Implementation Support Staff	Staff Specialist or Office Specialist	Assist with Activity #2 implementation, including data entry, file management, documentation preparation and other general program support duties	1 FTE
Estimated Ongoing Staffing Cost (Salary + Fringe) Not to Exceed estimated total annual amount unless approved by the Lead Member			\$ 1,163,107

Activity #4 - Administration

Funded Administration Staff	Title	Function	FTE Personnel Cost
NSP2 Manager Senior Staff	Housing Policy and Planning Administrator	NSP2 Administrative Oversight, of program implementation Activity #2(a). Provide support in managing aspects of Activities #2(b) and #3 as required. Program and contract compliance, program and contract monitoring,	.75 FTE

		reporting and budgets.	
NEW - NSP2 Analyst	Staff Analyst	Support general administration of Activity #2(a) – including review and updates of program policies and procedures, fiscal coordination, general program data tracking and reporting and internal compliance monitoring.	.5 FTE
Fiscal Support	Senior Accountant, Accountant or Account Tech	Review all NSP related fiscal documentation, review and process all payments, reimbursements and wire requests	.25 FTE
Program Compliance Officer	Senior Development Officer or Development Officer	Monitor overall program compliance, coordinate with Lead Member, coordinate with HUD offices as required	.5 FTE
Senior Staff	City of San Jose Department of Housing Administrative Officer	Review and approve all NSP related fiscal documentation, review and approve all payments, reimbursements and wire requests	This position will be allocated (allocation plan will be reviewed and approved by Lead Member)
Senior Staff	Senior Deputy City Attorney and Legal Support	Assist with documentation preparation and review; prepare loan documents for all NSP activities	.25 FTE
Senior Staff	City of San Jose Housing Department Assistant Director	Administrative oversight of Activity #3.	This position will be allocated (allocation plan will be reviewed and approved by the Lead Member)
Senior Staff	City of San Jose Department of Housing Division Manager	Administrative oversight of Activity #3.	This position will be allocated (allocation plan will be reviewed and approved by the Lead Member)
Senior Staff	City of San Jose Department of Housing Division Manager	Administrative oversight of Activity #2(b).	This position will be allocated (allocation plan will be reviewed and approved by the Lead Member)
Estimated Ongoing Staffing Cost (Salary + Fringe) Not to Exceed estimated total annual amount unless approved by the Lead Member			\$ 1,013,554

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Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Lead Member.

Exhibit B
Revised Article III

I. BUDGET

The detailed and estimated budget below is based on approved activities for the duration of the Agreement. This budget does not include costs from Program Income.

<u>Line Item</u>	<u>Amount</u>	
<u>Eligible Activity #1: Purchase Assistance Loans</u>		
City of San Jose		
Salaries and Fringe	\$ 32,528	
Overhead	\$ 8,132	
Mileage	\$ 500	
Total City of San Jose	\$ 41,160	
HTSCC	\$3,058,840	
TOTAL ACTIVITY #1		\$ 3,100,000
<u>Eligible Activity #2: Acquisition/Rehabilitation and Re-sale or Re-occupancy</u>		
City of San Jose		
Salaries and Fringe	\$ 911,107	
Overhead	\$ 227,777	
Mileage	\$ 4,500	
Total Staff Cost	\$ 1,143,384	
Activity #2 Project Budget	\$13,414,726	
Total City of San Jose	\$14,558,110	
HTSCC	\$ 15,390	
TOTAL ACTIVITY #2		\$14,573,500
<u>Eligible Activity #3: Development of Vacant Land</u>		
City of San Jose		
Salaries and Fringe	\$ 252,000	
Overhead	\$ 63,000	
Mileage	\$ 500	
Total Staff Cost	\$ 315,500	
Activity #2 Project Budget	\$ 5,211,000	
Total City of San Jose	\$ 5,526,500	
HTSCC	\$ 0	
TOTAL ACTIVITY #3		\$ 5,526,500

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Eligible Activity #4: Administration

City of San Jose	
Salaries Fringe	\$ 810,667
Overhead	\$ 197,208
Mileage/Travel	\$ 5,679
Total City of San Jose	\$ 1,013,554
HTSCC	\$ 786,446
TOTAL ACTIVITY #4	\$ 1,800,000

CITY OF SAN JOSE BUDGET SUMMARY	
Total Personnel Cost	\$ 2,513,598
Project Budget	\$18,625,726
Total Consortium Member1 Budget	\$21,139,324

*The Lead Member may require a more detailed budget breakdown than the one contained herein, and Consortium Member1 shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Lead Member. Any amendments to the budget must be approved in writing by both the Lead Member and Consortium Member1.