

Joint Exercise of Powers Agreement HEART-SV

This Agreement is entered into the ___ day of _____ 2022, pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article 1, §6500 et seq. of the California Government Code), is by and between the Housing Endowment and Trust of San Mateo County (“HEART”) and those Counties, Cities and Towns, School Districts, College Districts and any other Public Agency who become signatories to this Agreement, and relates to the joint exercise of powers among the signatories hereto, each of which, including HEART, is hereafter individually referred to as “Member Agency” and collectively referred to “Member Agencies”.

RECITALS

A. The Member Agencies have determined that there is an undersupply of affordable housing for “low income,” “median income” and “moderate income” residents of the State of California and wish to provide for the public good and promote the health, safety, education, and/or welfare of the citizens of the State by making dwelling units available to such residents within their geographic boundaries.

B. Each Member Agency has the individual power to plan, acquire, construct, manage, regulate, operate, finance and control the development, construction and operation of housing programs generated within its jurisdictional boundaries, as well as to create and issue development agreements for such activities.

C. The Member Agencies find it in their mutual economic interest to address housing needs of their residents on a regional level.

D. An adequate supply of housing will provide social and economic benefits to residents and taxpayers of the Member Agencies.

E. The Member Agencies desire to act in the public interest to lessen the burden on government by reducing the need for each Member Agency to act individually, and to provide charitable support for housing within their geographic boundaries.

F. California Government Code §6500 et seq. (“Joint Exercise of Powers Act” or “Act”) permits two or more public agencies to create joint powers authorities for the purposes cited herein, and permits the agencies to exercise jointly any power that the public agencies could exercise separately, and further grants certain additional powers to such joint powers authorities.

G. Local land-use decisions remain solely with the Member Agencies. Nothing in this Agreement deprives member agencies of their sovereign powers or transfers those powers to the joint powers authority.

NOW, THEREFORE BE IT RESOLVED that the Member Agencies do hereby establish the entity to be known as HEART-SV, to generate and/or maintain housing, disburse funding, and take other actions that will result in permanent additions to the housing stock within HEART-SV’s jurisdictional boundaries, and do hereby agree as follows:

1. **Purpose.**

1.1 The purpose of this Agreement is to establish an organization that shall be responsible for the joint acquisition, management, operation, fundraising, planning, adoption, financing, administration, review, monitoring and reporting of certain housing program activities in the region for the benefit of low, median and moderate income residents. By entering this joint powers authority, the Member Agencies earn economic benefits not realized when operating individually. Further, the establishment of this joint powers authority provides for the economic viability and coordination of housing program financing and facilities throughout HEART-SV’s jurisdictional boundaries.

1.2. HEART-SV shall be an entity which is legally independent from the parties to this Agreement, and shall be responsible for the administration of this Agreement.

1.3 The assets, rights, debts, liabilities, and obligations of HEART-SV shall not constitute assets, rights, debts, liabilities, or obligations of any of the Member Agencies. However, nothing in this Agreement shall prevent any of the Member Agencies from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of HEART-SV, provided that both the Board and the Member Agency approve such contract or assumption.

2. **Powers.**

2.1 HEART-SV is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member Agency could act separately, and as it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations:

- a. Facilitate and assist the Member Agencies and others in the housing sector to acquire, construct, rehabilitate, finance, refinance, operate, regulate and maintain low, median and moderate income and/or affordable housing programs, projects and facilities (“HEART-SV Housing Programs”).
- b. Facilitate the planning, study, and recommendation of proper and appropriate HEART-SV Housing Programs, and management practices. Research and study issues related to housing, including without limitation workforce, affordable and special needs housing.
- c. Educate the public, its Member Agencies, and other agencies and entities as to HEART-SV Housing Programs.
- d. Provide for or enter into agreements to provide for financial, construction, engineering, legal, audit, and any other professional services supporting any of the HEART-SV Housing Programs or related activities.
- e. Solicit, apply for, accept, and receive grants, gifts, donations, advances, and contributions.
- f. Hire agents and employees, including consultants and legal counsel.
- g. Sue and be sued in its own name.

- h. Incur and discharge debts, liabilities, and obligations which may include but shall not be limited to being in the form of secured bonds, revenue bonds or other forms of secured or unsecured debt.
- i. Issue bonds or notes and associated covenants, for designated purposes, subject to the provisions and limitations of the California Government Code.
- j. Acquire or protect any necessary security or leasehold interests involved in loans, bonds, notes, or other financing methods implemented to carry out the purposes of this Agreement.
- k. Acquire, hold, lease, improve, construct, rehabilitate, maintain, pledge, assign, mortgage, operate and dispose of real and personal property as may be necessary and appropriate in connection with the creation, construction, financing, development, and maintenance of certain workforce and affordable housing, and the programmatic needs of HEART-SV.
- l. Issue and receive loans.
- m. Acquire such insurance protection as it deems necessary.
- n. Adopt, as authorized by California law, resolutions necessary to carry out the purposes of this Agreement
- o. Utilize and establish advisory committees or subcommittees whenever necessary.
- p. Form wholly owned and controlled affiliate entities to accomplish any of its purposes.
- p. Adopt bylaws and such other rules and procedures as may be deemed necessary.
- q. Convey real and/or personal property interests, and/or funds.
- r. Other acts necessary to carry out the actions identified above.

2.2 HEART-SV shall undertake, facilitate and encourage the acquisition, creation, construction, development, and maintenance of certain workforce, affordable and other public benefit housing, programs, projects and facilities.

3. **Term and Termination**

3.1 This Agreement shall be effective upon its execution by HEART and at least one Member Agency.

3.2 This Agreement shall continue at least until _____, 2032, and thereafter shall continue until terminated or dissolved pursuant to Section 3.3 of this Agreement. However, in no event shall the Member Agencies vote to terminate or dissolve HEART-SV if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation by or on behalf of HEART-SV, including, without limitation, indentures, resolutions, and letter of credit agreements.

3.3. This Agreement may be terminated by consent of all Member Agencies, and upon full and complete liquidation of all liabilities, including, but not limited to any bonds. Upon the date of termination (hereinafter "Termination Date"), payment of any and all obligations and division of any and all assets of HEART-SV shall be conducted subject to the then-applicable requirements of the law, pursuant to the following:

a. In the event of termination of HEART-SV, where there is a successor public agency that will conduct all of the activities of HEART-SV and will assume all of its obligations, any and all HEART-SV assets and liabilities remaining upon termination of HEART-SV shall be transferred to the successor public agency.

b. If there is no successor public agency that would conduct HEART-SV's activities, all assets and liabilities shall be apportioned to each Member Agency in proportion to the contribution of each Member Agency's total contribution during the term of this Agreement. Notwithstanding the above, any real property assets shall be distributed to the Member Agency in which such real asset is located.

c. If there is a successor public agency that would conduct some of HEART-SV's activities, then the Board shall allocate HEART-SV's assets and liabilities between the successor public agency and the Member Agencies each in proportion to its total contribution during the term of this Agreement. Notwithstanding the above, any real property assets shall be distributed to the Member Agency in which such real asset was located.

d. In the event HEART-SV is terminated under circumstances falling within (b) or (c) above, all decisions of the Board with regard to determinations of amounts to be transferred under the requirements of this Agreement to the Member Agencies or any successor shall be final.

f. By unanimous agreement of all then current Member Agencies, said current Member Agencies may dispose of, divide, distribute, or return assets on a basis different from that established in this Section 3, but only in accordance with the terms of any financing related to such assets and if such financing was exempt from state and federal income taxation, only with an opinion of bond counsel that such disposition will not adversely affect such tax exemption.

g. The assets distributed pursuant to this Section 3 to Member Agencies will be used for public purposes and will not inure to the benefit of any private person.

4. **Governance**

4.1 HEART-SV is governed and administered by a Board of Directors (“Board”) that shall exercise all powers and authority on behalf of HEART-SV. The Board shall consist of no more than 31 voting members (hereinafter “Directors”), as follows:

21 No more than twenty-one (21) voting Public Directors and At Large Directors of the HEART Board of Directors (“HEART Directors”).

10 No more than ten (10) Member Agency representatives or individuals who are not representatives of a Member Agency, appointed by a majority vote of the Directors present at the meeting. These Directors shall be referred to as the “Regional Directors”.

15 The sum of all Directors representing a Public Agency, whether a HEART Director or a Regional Director, shall at all times be at least one more than the number of Directors from a non-public agency.

The number of HEART-SV Directors shall at all times be at least one more than the number of Regional Directors.

Additional ex-officio, non-voting, Affiliate Directors may be established by majority Board action, and such Affiliate Directors shall be referred to as “Affiliates”. Regular attendance by each Director and Affiliate shall be encouraged by the HEART-SV Board and the Member Agencies.

4.2. Directors shall hold office as follows:

a. The HEART Directors' terms shall be the same as their HEART Board terms, and shall be served concurrently with their HEART Board term. If a HEART Director is no longer serving on the HEART Board, they shall immediately be removed from the Board.

b. The Regional Directors' terms shall be three (3) calendar years, running from March of the first year through February of the third year.

c. There shall be no limit to the number of terms that a Director may serve.

4.3. Directors shall receive no compensation from HEART-SV for serving on the Board. HEART-SV may reimburse Directors for reasonable expenses necessarily incurred on the Board's behalf, with prior approval of the Board.

4.4 The Board shall establish an Executive Committee to carry out any and all functions of the Board that the Board may delegate to said Executive Committee. Executive Committee members shall be Board members, but the exact composition of the Executive Committee shall be as determined by the Board.

4.5 The Board may establish an Advisory Committees to advise the Board or the Executive Committee. Advisory Committee members need not be Board members. The composition and role of an Advisory Committee shall be as determined by the Board.

5. **Budgets and Financing.**

5.1 The Board annually shall adopt, by a date HEART-SV designates by resolution, an operating budget for HEART-SV setting forth anticipated expenses, financing sources and proposed service levels necessary to carry out the purposes of this Agreement. The budget for HEART-SV shall distinguish between Administrative costs (i.e., the cost of operating HEART-SV) and Program costs (i.e., the financing of the programs funded or sponsored by HEART-SV). HEART-SV shall establish its fiscal year by resolution. Contributions from private persons or entities and not-for-profit entities, whether or not their interests are represented by any Directors, are acceptable so long as they do not cause a violation of any applicable conflict of interest statutes, rules or regulations.

5.2 The particular Programs and Program budget, funded, sponsored or operated by HEART-SV, as well as the level of, and mechanisms for, the involvement of HEART-SV and each Member Agency, in such Programs and Program budget, shall be determined and approved by the Board. A Member Agency's individual contribution, involvement and role in any particular Program or the Program budget shall be as may be mutually agreed between the Member Agency and HEART-SV. By way of example only, said contributions, involvement or role may include: cash contributions, provision of services or staffing, use or transfer of title to real or personal property, pledges, guarantees or whatever other instruments or involvement the Member Agency and HEART-SV may agree to. Contributions of all kinds to the Program budget from private persons or entities and not-for-profit entities, whether or not their interests are represented by any Directors, are encouraged, so long as they do not cause a violation of any applicable conflict of interest statutes, rules or regulations.

6. **Financial Management**

6.1. HEART-SV may appoint a financial manager to manage, hold, invest and distribute the funds of HEART-SV ("Financial Manager"). The duties of the Financial Manager shall include those responsibilities as deemed necessary or appropriate by the Board. There shall be a strict accountability of all funds and report of all receipts and disbursements.

6.2. The public office or officers or person or persons who may be designated to have charge of, handle, or have access to any property of HEART-SV, shall file an official bond in an amount to be fixed by the Board.

7. **Staffing.**

7.1. It is understood that HEART-SV will require the support of administrative staff. When deemed necessary, the Board may employ or use a managing agent ("Managing Agent"), to implement the objectives of HEART-SV. The Managing Agent may consist of a separate entity or an executive director. The Board shall have responsibility for all employment decisions regarding said Managing Agent, who shall serve at the pleasure of the Board.

7.2. The Managing Agent may be delegated authority as deemed necessary or appropriate by the Board.

7.3. The Managing Agent shall be responsible for the day-to-day administration of HEART-SV under the direction of the Board. The Managing Agent shall have the authority to employ or use administrative staff consistent with the goals, needs and approved budget of HEART-SV.

7.4. If there is a Managing Agent that is a separate entity, that Managing Agent shall designate who on its staff shall be the Executive Director of HEART-SV, but the acceptance of such choice shall be subject to the approval of the Board.

8. **Meetings**

8.1. The Board shall schedule by Resolution at least two (2) regular meetings each Fiscal Year.

8.2. Special meetings of the Board may be called by the Chairperson and otherwise as in accordance with provisions of California Government Code §54956 and/or HEART-SV's bylaws.

8.3. All meetings of the Board shall be held subject to the provisions of California Government Code §54950 et seq. (the "Brown Act") and other applicable laws of the State of California.

8.4. All meetings of the Board must be held within the County of San Mateo at a location determined by the Chairperson, except that the Board may hold a special meeting outside the County of San Mateo upon an affirmative vote in accordance with Section 8.8 of this Agreement.

8.5. The Secretary shall cause the taking and keeping of minutes of all Board meetings. Promptly after each meeting, the Secretary shall cause a copy of the minutes to be forwarded to each Director, either electronically or in paper form.

8.6. A majority of the current and appointed Directors shall constitute a quorum for the transaction of business of the Board, except that Directors constituting less than a quorum may adjourn any meeting.

8.7 Each Director is entitled to cast one vote on any matter presented to the Board for a vote.

8.8 All decisions and actions shall be by a majority of the total number of Directors, regardless of the number of Directors and/or Affiliate Directors present, unless otherwise provided in this Agreement. For example, with 21 total current Directors, 11 votes are required for a decision or action by the Board; and with 13 total current Directors, 7 votes would be required.

8.9 Meetings of the Board shall be conducted by a Chairperson, or in the Chairperson's absence by the Vice Chairperson. In the absence of both the Chairperson and the Vice Chairperson, meetings shall be conducted by the HEART Director in attendance who represents the largest HEART Member Agency with Board representation, by population.

9. **Bylaws.** The Board from time to time may adopt and amend bylaws for the conduct of its affairs, provided that they are consistent with this Agreement and are necessary and appropriate in order to carry out HEART-SV's purpose.

10. **Officers and Employees.**

10.1 Every two (2) years, the Board shall elect a Chairperson and a Vice Chairperson from among its members.

10.2 The Board shall appoint a Secretary who may, but need not be, a member of the Board.

10.3 The Board shall select a Treasurer, from one of the Member Agencies or a certified public accountant, who shall be the depository and have custody of all the money and property of HEART-SV from whatever source. The duties of HEART-SV Treasurer shall include those set forth in the Act, including those set forth in Government Code §6505.5. The Treasurer may, if the Board so elects, also serve as the Financial Manager.

10.4 HEART-SV shall designate its legal counsel.

11. **New Members.** New Member Agencies may be added to HEART-SV by a majority vote of the Directors present at the meeting. Membership is effective immediately upon execution of this Agreement by the new Member.

12. **Withdrawal.** Any Member Agency may withdraw from this Agreement effective as of the end of any fiscal year, provided ninety (90) days prior written notice is provided to the other Member Agencies. The rights and obligations of such withdrawing Member Agency shall terminate as of the last day of the fiscal year. The withdrawal of any Member Agency from this Agreement shall in no way affect the rights and obligations of the remaining parties. If a Member Agency withdraws from this Agreement, such Member Agency shall not be entitled to the return of any funds contributed to HEART-SV nor to the return in cash or in kind of any materials or supplies until termination of this Agreement. If a withdrawing Member Agency has obligations under contracts or commitments, including bonds, that are independent from its obligations to HEART-SV, such withdrawal from HEART-SV shall have no impact on such independent obligations.

13. **Amendments.** Except as provided in Section 11, as needed to admit a new Member Agency, subject to all legal obligations of HEART-SV, this Agreement may be amended by one or more supplemental agreements executed by all of the Member Agencies of HEART-SV.

14. **Filings.** The Secretary shall cause to be filed all required notices with the California Secretary of State, in accordance with California Government Codes §6503.5 and §53051.

15. **Notices.**

15.1. All notices to the Member Agencies shall be deemed to have been given to the Member Agencies when mailed, postage prepaid by United States mail, or when hand delivered to the governing body of each Member Agency during usual business hours at the principal office, or to the person apparently in charge of that office.

15.2 All notices to HEART-SV shall be deemed to have been given to HEART-SV when mailed, postage prepaid by United States mail, or when hand delivered to each of the

Chairperson, Vice Chairperson, and any Executive Director of HEART-SV during usual business hours at the principal office, or to the person apparently in charge of that office.

16. **Assignments; Other Agreements.** This Agreement shall be binding upon and shall inure to the benefit of the successors of any Member Agency. No Member Agency may assign any right or obligation hereunder without the written consent of all other Member Agencies. Participation in HEART-SV is not intended to preclude Member Agencies from entering into similar agreements with other jurisdictions.

17. **Severability.** If any provision of this Agreement or its application to any person or circumstances is held invalid or illegal by a final judgment of a court of law in the State of California, the remainder of this Agreement and the application of the provision to other persons or circumstances shall not be affected.

18. **Headings.** All section headings contained in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any provision of this Agreement.

19. **Confirmation of Jurisdictional Authority.** By signing this Agreement, the Member Agencies retain all jurisdictional authority granted to them by the State and/or their respective Charters. The powers and/or authority granted to HEART-SV pursuant to this Agreement shall in no way serve to limit or restrict an individual Member Agency's jurisdictional authority.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representative, have affixed their signatures on this Agreement, effective as of the date first stated above.

**HOUSING ENDOWMENT AND
REGIONAL TRUST OF SAN MATEO
COUNTY**

By  _____

Executive Director
Armando F. Sanchez
5/4/23

ATTEST:

Secretary of the Board

COUNTY OF SAN MATEO

By _____

President of the Board of Supervisors

ATTEST:

Clerk of the Board