



Memorandum

TO: BOARD OF COMMISSIONERS,
CITY HOUSING AUTHORITY AND
HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: August 24, 2017

Approved

D. OSYL

Date

8/29/17

**SUBJECT: COOPERATION AGREEMENT FOR THE TRANSFER AND
EXPENDITURE OF ALL HOUSING AUTHORITY LITIGATION AWARD
FUNDS**

RECOMMENDATION

1. Adopt a resolution of the Board of Commissioners for the Housing Authority of the City San José ("City Housing Authority") authorizing the Executive Director of the City Housing Authority to execute a Cooperation Agreement with the City for the transfer of approximately \$36.3 million in Housing Authority Litigation Award funds to the City to commit and expend such funds consistent with State Housing Authority law.
2. Adoption of a resolution of the City of San José authorizing the City Manager to execute a Cooperation Agreement to enable the City to commit and expend the transferred Housing Authority Litigation Award funds consistent with State Housing Authority law.

OUTCOME

Acceptance of this report will enable the City Housing Authority and the City's Housing Department to commit and expend funds awarded to the City Housing Authority as a result of successful litigation against the U.S. Department of Housing and Urban Development.

BACKGROUND

The City Housing Authority is a public entity formed under State Housing Authority law. Housing authorities typically receive rental vouchers, administrative funds, and other resources from the U.S. Department of Housing and Urban Development ("HUD"). However, the City

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Housing Authority has an agreement with the Santa Clara County Housing Authority (“SCCHA,” formerly known as the Housing Authority of the County of Santa Clara County or HACSC) under which the City Housing Authority authorizes SCCHA to administer the City Housing Authority rental voucher and other HUD programs on its behalf. The agreement requires SCCHA to consult the City Housing Authority Board on policy and strategic decisions. The City Council is the Board of the City Housing Authority and its Executive Director is the Director of Housing. The City Housing Authority has no dedicated staffing.

The City Housing Authority and HACSC jointly filed suit against HUD in the U.S. Court of Federal Claims for breach of contract by HUD that had resulted in underpayment of funds. The suit was successful, and City Housing Authority received \$36.3 million in a litigation award in 2016 (“Housing Authority Litigation Award funds” or “HALA funds”). Since the City Housing Authority has no dedicated staff, it needs to enter into a Cooperation Agreement (“Agreement”) with the City under which the City is permitted to administer and expend the funds consistent with the Agreement.

ANALYSIS

The Cooperation Agreement gives the City the authority to spend, hold and otherwise administer the HALA funds on behalf of the City Housing Authority. The Agreement is a necessary precursor to spending HALA funds. Permitted uses of HALA funds include those authorized under State Housing Authority law, including State Housing Authority Cooperation law.

Under State Housing Authority law, housing authorities may provide rental subsidies to low-income households. They may also develop, rehabilitate, subsidize, or operate low-income housing projects. Low-income housing projects include any undertaking to provide decent, safe and sanitary dwellings, apartments, or living accommodations for low-income households if they are financed in whole or part by a public entity or with public entity bonds. A low-income housing project may include an undertaking that involves both traditional City or County financed low-income housing, motel rooms, contracted apartments, or other living accommodations used in order to provide safe and sanitary housing for low-income households.

A housing authority may provide additional services and programs in connection with the low-income housing project in its jurisdiction. These include rehabilitation of restricted affordable housing, and operation of related programs that support the health and welfare of lower-income households eligible for those programs. Additionally, California Housing Authority law authorizes the payment of administrative costs related to low-income housing projects and related programs.

As HALA funds are awarded to the City Housing Authority, the uses are limited to projects and programs in San José. Examples of eligible uses and programs for which the Housing Department anticipates spending HALA funds include:

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- Rental subsidy vouchers and administration of subsidy and related services for rapid rehousing program benefitting low income families and individuals experiencing homelessness;
- New construction and rehabilitation of low income housing projects and related programs for low-income residents;
- Outreach and case management supporting placement of eligible households in certain low income housing projects;
- One-time subsidies paid to landlords for low income tenants in connection with the Coyote Creek Flood Landlord Incentive Program; and,
- Project delivery and administrative costs related to these uses.

Although there is no sunset to the Agreement, the Housing Department will immediately start to commit and expend the funds. It is expected that HALA funds will be fully committed in the next two years.

Approval of this Agreement is a necessary requirement for use of HALA funds. This approval however, does not by itself authorize physical work to be done that may affect the environment under CEQA. The environmental analysis under CEQA will be conducted for programs and individual projects on a case-by-case basis. Housing Department staff will continue to work closely with Planning staff on CEQA analysis of programs and individual projects under separate approvals.

EVALUATION AND FOLLOW-UP

The Housing Department has previously brought funding commitments and appropriation approval requests for HALA funds to the City Council for services effective after July 1, 2017. After the Cooperation Agreement is executed, it is anticipated that HALA funds will be used for those services retroactive to July 1, 2017.

The Housing Department will bring forward additional funding commitments and appropriation approval requests in order to use HALA funds for eligible projects and programs providing affordable housing for low-income households.

PUBLIC OUTREACH

This item will be posted on the City's website for the City Council Agenda for September 12, 2017.

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COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and the City Attorney's Office.

COMMISSION RECOMMENDATION

This item was not heard by the Housing and Community Development Commission, as it does not fall under the functions, powers and duties of the Commission delineated in Section 2.08.2840 of the San José Municipal Code.

FISCAL/POLICY ALIGNMENT

Approval of this item will permit the use of HALA funds for affordable housing provision consistent with the following plans: the City's *Envision 2040 General Plan*, *The 2014-23 Adopted Housing Element* in that it may help the City meet its Regional Housing Needs Allocation for affordable housing production; the City's *Adopted FY 2016/7-2017/8 Housing Investment Plan* in that the funds can be used to increase the supply of affordable housing; the City's *2015-20 HUD Consolidated Plan* in that it can create and rehabilitate homes affordable for very low- and extremely low-income households and can operate programs consistent with the City's goals therein; and, the *Community Plan to End Homelessness* approved by the City Council in February 2015 in that funds can be used for affordable homes and related programs for homeless residents.

COST SUMMARY/IMPLICATIONS

HALA funds have been allocated by previous City Council actions, pending availability of the funds. This memorandum and approval of the Cooperation Agreement itself does not commit the City Housing Authority or City to any specific expenditures. At this time, the City's FY 2017-2018 Adopted Operating Budget includes a \$4.0 million appropriation for the operation of the Homeless Rapid Rehousing program in 2017-2018, \$4.0 million set aside in a reserve for funding of the Homeless Rapid Rehousing program in 2018-2019, and \$300,000 for the Rock Springs Landlord Incentive program. Future expenditure of HALA funds will be brought forward to the City Council for approval and appropriation action on an individual basis.

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CEQA

Not a Project, File No. PP17-004, Governmental Funding Mechanism.

/s/

JACKY MORALES-FERRAND
Director, Housing Department

For questions, please contact Kristen Clements, Division Manager, at (408) 535-8236.