

**CONTRACT AGREEMENT (AGREEMENT) FOR THE
SUBGRANT OF THE CITY OF FORTUNA'S 2019 ALLOCATION OF THE
PERMANENT LOCAL HOUSING ALLOCATION (PLHA) TO THE CITY OF ARCATA**

This Agreement is entered into by and between the City Fortuna (SUBGRANTOR) and the City of Arcata (SUBGRANTEE) in which the SUBGRANTEE shall submit a 2022 PLHA application on behalf of the SUBGRANTOR and wholly administer the entire formula component of the PLHA funds on behalf of the SUBGRANTOR for the full term of the PLHA Plan, as set forth in PLHA Guidelines 300(c).

WITNESSETH

WHEREAS, in 2017, Governor Brown signed a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs, which included the Building Homes and Jobs Act (SB 2), which established a \$75 recording fee on real estate documents to increase the supply of affordable homes in California; and

WHEREAS, because the number of real estate transactions recorded in each county will vary from year to year, the revenues collected will fluctuate; and

WHEREAS, SB 2 directs the California Department of Housing and Community Development (State HCD) to use seventy percent (70%) of the annual revenue collected for locally administered affordable housing programs beginning in calendar year 2019, which establishes the Permanent Local Housing Allocation program (PLHA); and

WHEREAS, the California Department of Housing and Community Development (State HCD) announced the release of the 2022 Entitlement and Non-Entitlement Local government formula component Notice of Funding Availability (NOFA) for approximately \$335 million in calendar year 2021 funds plus an additional \$131 million in remaining calendar year 2019 funds for the Permanent Local Housing Allocation (PLHA) program; and

WHEREAS, the funding provides formula grants to Entitlement and Non-Entitlement Local governments in California for housing-related projects and programs that assist in addressing unmet housing needs of their local communities; and

WHEREAS, Section 300(c) of the PLHA Program Guidelines allows a local government to subgrant to another local government to submit an application on its behalf a portion of its formula allocation of Program funds, provided that the local government enter into a legally binding

agreement and the funds are expended for eligible activities consistent with Program requirements; and

WHEREAS, each of the Parties is eligible to submit an application for and administer Permanent Local Housing; and

WHEREAS, Fortuna does not have the employee capacity to manage a PLHA award and desires to participate in the PLHA Program by delegating its 2019 allocation of \$108,619; and

WHEREAS, Arcata will participate in 2022 PLHA NOFA and apply for estimated five-year funding amount of \$1,056,372 for eligible housing-related project(s); and

WHEREAS, Arcata agrees to accept the delegation of the City of Fortuna's 2019 allocation of \$108,619 on behalf of Fortuna, as set forth in PLHA Guidelines Section 300(c) and the NOFA Section II.A.1; and

WHEREAS, upon delegating its 2019 allocation to the City of Arcata, the City of remains fully accountable and responsible for compliance with statute and for meeting all of the Department's requirements, including any penalties for non-compliance.

NOW, THEREFORE, the City of Fortuna delegates the City of Arcata to submit an application and administer on its behalf Fortuna's 2019 allocation of PLHA Program funds and will enter into a legally binding agreement to expend funds for eligible housing-related activities.

- 1. TRUE AND CORRECT.** The above recitals are true and correct.
- 2. BENEFICIARY.** A beneficiary is a member of the low-income public that will reside in an affordable housing unit, shelter, or utilize one or more housing-related services provided in the City of ARCATA'S PLHA Plan.
- 3. CITY FUNDS.** CITY funds are the PLHA Funds identified by State HCD that would have been allocated to FORTUNA. By execution of this Agreement, FORTUNA authorizes that its PLHA funds be allocated to ARCATA restricted for use by the eligible uses contained in the PLHA Plan.
- 4. COMPLIANCE WITH LAW.** ARCATA agrees to comply with the State of

California PLHA program and any guidelines, rules, policies, or standards of general application as may be revised from time-to-time by the State Department of Housing and Community Development.

5. **ELIGIBLE APPLICANT.** Eligible Applicant is a jurisdiction identified in the PLHA Guidelines as Eligible Applicant, is in the County of Humboldt, and receives an annual allocation of PLHA funds from the State.
6. **FISCAL YEAR.** The fiscal year is the period July 1 through June 30.
7. **GEOGRAPHIC BOUNDARIES.** The geographic areas where PLHA Funds may be used or from which beneficiaries are located, include the jurisdictional boundaries of Humboldt County;
8. **GUIDELINES.** Guidelines are the Permanent Local Housing Allocation Final Guidelines, dated October 2019, as amended from time to time by State HCD.
9. **HCD.** HCD is the State of California Department of Housing and Community Development.
10. **LEAD ENTITY.** ARCATA will serve as Lead Entity of the PLHA application and by FORTUNA's signature to this Agreement, FORTUNA consents to ARCATA applying for, receiving, committing, and managing PLHA Funds as authorized by this Agreement and Guidelines.
11. **PLHA PROGRAM.** PLHA is the Permanent Local Housing Allocation program established by the State of California pursuant to Senate Bill 2 (2017) and administered by State HCD.
12. **PLAN.** The Plan is the document submitted by ARCATA to the State HCD as part of a complete application in which the ARCATA proposes to use allocated funds for at least one eligible Activity. The Plan shall have a term of five years. In succeeding years, ARCATA is required to obtain the approval of State HCD for any amendments made to the Plan, as set forth in Section 302(c)(5) of the Guidelines. Attached hereto as Exhibit A is a list of Eligible Activities selected by ARCATA to be included in the initial five (5) year Plan submitted to State HCD. Reallocations of more than 10% of funds among activities require amendment of the Plan, with approval granted by the governing body of the Lead Entity at a publicly noticed public meeting. Amendments to the Plan for the succeeding five (5) years must be approved by State HCD.
13. **PROGRAM INCOME.** Program Income includes funds returned by a Recipient of PLHA Funds due to non-use of the funds for an eligible use as described in the Guidelines, or recaptured by ARCATA for ineligible uses, or funds paid by a Recipient pursuant to the terms

and conditions of a loan agreement executed by the Recipient and ARCATA to use PLHA Funds for an eligible use. ARCATA reserves the right to administer and service such loans, collect payments, and reuse the funds for other eligible uses as described in the Plan without consideration of the origin of the funds, whether from ARCATA or FORTUNA's allocations. Such funds shall be considered PLHA Funds and be utilized for eligible uses. This provision will survive the termination of this Agreement pursuant to Section 15 of this Agreement and, if the PLHA Program ceases to exist and State HCD does not otherwise restrict the uses of Program Income, ARCATA may, at ARCATA's discretion, use Program Income for any other community benefit that serves low-income persons, defined as household income that does not exceed eighty-percent (80%) of the area median income as published annually by the U.S. Department of Housing and Urban Development for the County of Humboldt Area.

- 14. RECIPIENT.** Recipient is a non-profit 501 (c)(3) charitable organizations or for-profit entity authorized by written agreement (Recipient Agreement) entered into with ARCATA to expend funds eligible uses of PLHA Funds as authorized by the Recipient Agreement.
- 15. TERM OF AGREEMENT.** This legally-binding agreement is a permanent delegation of the 2019 allocation and the State Standard Agreement will not allow for cancellation. The term of this Agreement shall begin on the date signed by ARCATA and will terminate when a) the end of the fiscal year in which ARCATA or FORTUNA are no longer Eligible Applicants as defined in the Guidelines, or b) State HCD has terminated its agreement with ARCATA or c) the end of the fifth year of the five (5) year Plan currently in effect and submitted to HCD by ARCATA as required by the Guidelines, subject to the Automatic Renewal provisions as described in Section 16, or e) the State of California discontinues the PLHA program.
- 16. AUTOMATIC RENEWAL.** This Agreement shall automatically renew for the next five Fiscal Years of the Plan. ARCATA will submit to the State of California a new five-year Plan as required by the State HCD outlining the planned uses of PLHA Funds allocated by State HCD unless FORTUNA provides ARCATA with notice of termination at least sixty (60) days prior to the end of the fifth (5th) Fiscal Year of the Plan period.
- 17. AMENDMENTS.** Any amendments to this Agreement must be in writing. In the event that amendments to this Agreement are required by State HCD to meet the requirements of the Guidelines, ARCATA and FORTUNA will not unreasonably withhold their consent to amend the Agreement. Notwithstanding, if an amendment is necessary to comply with the Guidelines and no other substantial changes reallocating funds by more than 10% amongst eligible activities are made, such changes may be made administratively by ARCATA upon notifying FORTUNA.

18. PROGRAM ADMINISTRATION.

The Lead Entity assumes overall responsibility for the PLHA application and Funds, and will ensure that funds are used in accordance with the Guidelines and Plan. In coordination with the Lead Entity, the Subgrantor shall remain fully accountable and responsible for compliance with the governing statute and for meeting all Department requirements as described in the NOFA. The Lead Entity will perform the following activities:

- i. Ensure that PLHA activities are carried out in compliance with Guidelines and the Plan;
- ii. Prepare the five (5) year plan PLHA Plan and submit to State HCD;
- iii. Award and distribute PLHA Funds in accordance with the Guidelines;
- iv. Prepare and submit to State HCD required reports pursuant to the Guidelines;
- v. Monitor uses of PLHA Funds, including long-term monitoring of affordable housing developments;
- vi. Process applications through HCD's established application review procedures.

19. RESPONSIBILITIES OF FORTUNA.

FORTUNA authorizes ARCATA to act as Lead Entity of the PLHA application and authorizes ARCATA to administer FORTUNA Funds pursuant to this Agreement, the Plan, and Guidelines. FORTUNA shall, as required by the Guidelines or when otherwise requested by State HCD, provide written confirmation of FORTUNA's participation in the PLHA application and authorizes ARCATA to administer its FORTUNA Funds. Such written authorization will be provided by the method described in the Guidelines, which may require a resolution passed FORTUNA's governing body. FORTUNA will not reasonably withhold executing this Agreement or passing a required resolution and will ensure that this Agreement and resolution are executed and provided by FORTUNA to ARCATA in a timely manner to meet any deadlines imposed by State HCD as described in the Guidelines and/or PLHA Notice of Funding Availability.

20. INDEMNIFICATION AND INSURANCE.

A. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to California Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead all parties agree that pursuant to California Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by California Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in

connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

B. INSURANCE

Each party to this Agreement shall maintain its own insurance coverage, through commercial insurance, self-insurance or a combination thereof, against any claim, expense, cost, damage, or liability arising out of the performance of its responsibilities pursuant to this Agreement.

- 21. NOTICE.** Any notice or notices required or permitted to be given pursuant to this agreement must be provided either by certified mail or personal service.
- 22. EXCLUSION OF FUNDS.** This Agreement applies only to those funds received under the PLHA Program and Program income generated by the uses of PLHA Funds and any matching contributions. This Agreement does not apply to or control funds other than those described herein.
- 23. ARCATA'S OBLIGATION TO DISTRIBUTE FUNDS.** If PLHA Funds are not awarded to ARCATA by State HCD or if the State HCD agreement with the ARCATA is terminated or suspended, then this Agreement shall also terminate and ARCATA as Lead Entity has no obligation under this Agreement or to State HCD to distribute PLHA Funds or otherwise administer the PLHA Program.
- 24. PLAN IMPLEMENTATION.** In the event that there are insufficient responses to the NOFA requesting funds for an eligible activity in a given Fiscal Year, ARCATA has authority to deviate from eligible uses in the Plan and fund other eligible activities as permitted by State HCD. Reallocation of PLHA Funds by more than 10% among eligible activities in the Plan shall require ARCATA City Council approval.
- 25. RECORDS AND REPORTS.** The Lead Entity shall maintain records as required by State HCD for a minimum of three (3) years, including and not limited to records identified in Sections 500 and 501 of the Guidelines and each participating jurisdiction respecting individual projects and programs shall be open and available for inspection by auditors assigned by State HCD and/or the FORTUNA during normal business hours of ARCATA.

26. COOPERATION IN UNDERTAKING ELIGIBLE USES UNDER PLHA. ARCATA agrees to cooperate to undertake or to assist in the undertaking of eligible activities specified in the Plan.

27. SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

28. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written. This agreement may be executed in counterparts, each of which shall be an original and all of which together constitute one and the same agreement.

By: _____ Date: _____
City of Fortuna City Manager

By: _____ Date: _____
City of Arcata City Manager

I, Buffy Gray, Deputy City Clerk of the City of Fortuna, State of California, hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted by said City Council on this 17th day of October 2022.

Buffy Gray, Deputy City Clerk of the City of
Fortuna, State of California

By: _____
Sue Long, Mayor

Note: The attesting officer cannot be the person identified in the Resolution as the authorized signer.

Exhibit A

Eligible Activities

The City will work with existing affordable housing partners or prepare and release a competitive RFP in the spring of 2023 to solicit proposals for development of an affordable housing project. The City will work with the award recipient to secure additional sources of funding as needed. The first-year funding will be used for predevelopment costs. The City of Arcata plans to use the PLHA funds for predevelopment, development, acquisition, rehabilitation, and preservation of housing that is affordable to extremely low-income, very-low income, low-income, and moderate-income households.