

247-23

**COOPERATION AGREEMENT BETWEEN
THE COUNTY OF ESSEX AND CERTAIN MUNICIPALITIES
FOR CONDUCTING CERTAIN COMMUNITY DEVELOPMENT ACTIVITIES**

THIS COOPERATION AGREEMENT ("Agreement") is entered into and shall be effective as of October 1, 2023 by and between the County of Essex, a body politic and corporate of the State of New Jersey ("County"), and the Township of West Orange, a municipal corporation of the State of New Jersey ("Municipality").

WHEREAS Title I of the Housing and Community Development Act of 1974 (the "Act") provides for substantial federal funds being made to certain urban counties for use therein through the Community Development Block Grant ("CDBG") Entitlement Program, and

WHEREAS the Emergency Shelter Grants program ("ESG") provided through Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act permits for substantial federal funds allocated to prevent homelessness and to enable homeless individuals and families to move toward independent living; and

WHEREAS, Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, as amended, permits and provides for the participation of the United States government in a wide range of local housing activities and programs administered by the U.S. Department of Housing and Urban Development (HUD) , including the HOME Investment Partnerships (HOME) program, and provides that a consortium of geographically contiguous units of general local government can be considered to be a unit of general local government for the purpose of the HOME Program, and;

WHEREAS the Housing and Community Development Act establishes certain criteria which must be met in order for a county to be the recipient of said funding, and

WHEREAS the Uniform Shared Services and Consolidated Act (N.J.S.A. 40A:65-1 et seq.) provides a mechanism through which counties and municipalities may enter into agreements for the provision of joint services, it is therefore agreed by the County and Municipality as follows:

- A. This agreement covers activities to be carried out through the CDBG Entitlement program, and where applicable, the HOME Investment Partnerships (HOME) and Emergency Solutions Grants (ESG) programs, with fund appropriations from Federal Fiscal Years 2024, 2025, and 2026 (October 1, 2023 to September 30, 2026), and for successive three (3) year periods, as provided in the Housing and Community

Development Act and until terminated.

B. Community Development Planning Process

1. Nature and Extent of Services

- a) Purpose. The purpose of this Agreement is to establish a legal mechanism through which the county government may apply for, receive, and disburse federal funds available to establish urban counties under Title I of the Housing and Community Development Act through the CDBG Entitlement Program, and Title II of the Cranston - Gonzalez National Affordable Housing Act of 1990 ("NAHA") through the HOME Program, and to undertake or assist in undertaking such actions in cooperation with the participating municipalities as may be necessary to participate in the benefits of these programs. Federal CDBG funds received by the County shall be for such functions as water and sewer facilities, neighborhood facilities, public facilities, housing rehabilitation, open space and such other purposes as are authorized by the Act. Federal HOME funds received by the County shall be for such functions that expand the supply of decent, affordable housing for low- and moderate-income families. The County and the Municipality agree to cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing, and such other purposes as are authorized by the Act. Nothing contained in this Agreement shall deprive any municipality or other unit of local government of any powers of zoning, development control or other lawful authority which it presently possesses, nor shall any participant be deprived of any state or federal aid to which it might be entitled in its own right, except as herein provided.
- b) Responsibilities of Participating Municipality: The execution of this Agreement by the appropriate officials of the participating Municipality signifies that the Municipality understands that it:
- (1) May not apply for grants from appropriations under the state CDBG Program for fiscal years during the period in which it participates in the County's CDBG Program; and
 - (2) May receive a formula allocation under the HOME Program only through the County's urban county allocation. Thus, even if the County does not receive a HOME formula allocation, the

participating municipality cannot form a HOME consortium with other local governments; and

(3) May receive a formula allocation under the ESG Program only through the urban county.

c) Establishment of Committee: There is hereby established a cooperative CDBG Committee, consisting of two (2) representatives from each participating Municipality and two (2) representatives of the County, each to be appointed for one-year periods coinciding with the calendar year. The governing body and the chief executive of each participating agency shall make one (1) appointment each.

d) Responsibilities of Committee

- (1) The Committee shall take formal action only upon two-thirds vote of the full membership thereof.
- (2) With the concurrence of the Essex County Board of County Commissioners, an Administrative Liaison Officer shall be designated. He/She shall be an employee of the County. He shall within the limits of resources available, provide technical and administrative support to the CDBG Committee, and shall provide liaison between the CDBG Committee and the Board of County Commissioners.
- (3) The CDBG Committee shall meet promptly after its establishment and thereafter as often as required. It shall establish rules of procedure as may be required.
- (4) The CDBG Committee shall study and discuss the community development needs of the County, which affect the participating local governments, and shall determine the most effective and acceptable utilization of CDBG funds available to the County government. It shall recommend to the Board of County Commissioners an application for participation in Federal funding, and towards that end it shall, in the manner herein prescribed, be authorized to develop a 5-year Consolidated Plan for the County, including a housing assistance program, and such other documents and certifications of compliance as are required by the Federal Government for participation by the County in the CDBG Program

- (5) The CDBG Committee shall develop, in full consultation with the county planning board and all affected agencies of the local governments involved, priorities for actual utilization of such funds as are made available from the Federal Government under this Title. The CDBG Committee shall recommend for each project or activity to be carried out with these funds a specific means of accomplishment. This may be for the County to carry out the project or function, for a Municipality to receive the monies to carry it out, or for some other combination of local or State agencies. Such implementation mechanism shall be established either by means of a separate contract entered into between the county government, upon the approval of the CDBG Committee, and the Municipality in which the activity or function is to take place, pursuant to the provisions of the Uniform Shared Services and Consolidation Act, or by inclusion of such information in section C of this Agreement, subject to the same approvals. The implementation mechanism shall be established before submission of the application to HUD, and any relevant documents become part of this agreement and should be submitted to HUD with it.
- (6) Every municipality participating in the CDBG committee may request participation in the expenditure of the Federal funds, comment on the overall needs of the County which may be served through these funds, or otherwise take part in the proceedings of the CDBG Committee through its members of the CDBG Committee. Pursuant to 24 CFR 570.501(b), every participating municipality is subject to the same requirements applicable to sub recipients of the federal funds, including the requirement of a written agreement set forth in 24 CFR 570.503. Pursuant to 24 CFR 570.501 and 24 CFR 570.503, the County shall enter into a written agreement with the Municipality prior to the disbursement of any funds for an approved project. No project may be undertaken or services provided in any municipality without the approval of the governing body of the municipality, which approval shall be established as provided in Subsection (5) above in addition to such other approvals as may be required by law. The Municipal approval of any projects or services shall not be a restriction or veto on the implementation of the approved Consolidated Plan. The County has final responsibility for selecting CDBG (and where applicable, HOME and ESG) activities and submitting the Consolidated Plan to HUD.

2. Standards of Performance

Every Uniform Shared Services and Consolidation Agreement established pursuant to this agreement shall contain standards of performance as required by the Uniform Shared Services and Consolidation Act and by the Housing and Community Development Act. Annually, a report shall be prepared by the Committee by each recipient of funds describing whether the desired objectives have been attained. The Committee shall thereupon report its findings to all participating local governments, and shall submit such reports to the Board of County Commissioners as may be required for submission to the Federal Government.

3. Estimated Cost and Allocation thereof

The amount of Federal funds involved shall be the amount applied for by the County pursuant to the recommendations of the Committee, subject to any modifications made by HUD. Any Federal funds received by letter of credit or otherwise shall be placed in a County Trust Fund established and maintained pursuant to regulations promulgated by the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs. This fund shall be in a separate bank account subject to the control of the County government, which shall be the designated recipient for the funds provided by the Federal Act. Upon authorization by the County, and in compliance with State law and promulgated regulations, funds may be expended from this Trust Fund by the County or by payment to the particular municipality pursuant to a specific contract. Neither the committee, the county government, nor any participating local government may expend or commit funds except as may be authorized pursuant to this agreement and in full compliance with State and Federal laws and regulations. No participant under this contract may in any way be obligated to expend funds of its own except as may be mutually agreed in a lawful manner.

4. Duration of Contract and Automatic Renewal

The term of this Agreement shall be for three (3) years commencing on October 1, 2023, and shall continue in full force and effect for the consecutive three Federal Fiscal Years 2024, 2025, and 2026, and shall end on September 30, 2026, unless an earlier date of termination is fixed by HUD pursuant to law.

This Agreement will automatically be renewed for participation in successive three (3) year qualification periods, unless either the County or Municipality provides written notice to the other party that it elects not to participate in a new qualification period. A copy of this notice must also be sent to the Newark HUD Field Office. By no later than May 5th of the final year of the three (3) year ongoing program, the County will have notified the participating Municipality, in writing, of the Municipality's right not to participate in the new qualification period. By no later than July 7th of the final year of the ongoing three (3) year program, the municipality shall provide written notice to the Newark HUD Field Office and the County should it decide not to participate in the new qualification period. The determination not to participate by either party shall remain in effect for the next three (3) successive years. In no case may the Municipality drop out of an ongoing three (3) year program except as a result of HUD action.

The County and Municipality shall adopt any amendment to this Agreement incorporating changes necessary to meet the requirements for Cooperation Agreements set forth in the Urban County Qualification Notice applicable for a subsequent three (3) year urban county qualification period, and to submit such amendment to HUD at the time of such automatic renewal and, if the consortium's membership has changed, the state certification required under 24 CFR 92.101(a)(2)(i), and that such failure to comply will void the automatic renewal for such qualification period.

The terms of this Agreement shall remain in effect until CDBG {and HOME and ESG where applicable) funds and program income received (with respect to eligible activities carried out during the three (3) year qualification period and each successive qualification periods for which the agreement is renewed) are expended and funded activities completed.

5. Designation of Administrative Liaison Officer

The Administrative Liaison Officer selected pursuant to section B 1 (d) (2) of this Agreement is hereby designated as the administrative agent of the Board of County Commissioners for purposes of compliance with statutory and regulatory responsibilities. He shall be accountable to the Board of County Commissioners, and for this purpose shall be subject to the supervision of the Board.

C. Qualification as Urban County

In addition to such assurances and agreements as may have been made by previously executed ordinances in order to meet the criteria for funding eligibility as an "urban county" the municipality will cooperate with the county by undertaking or assisting in the undertaking of essential community development and lower-income housing assistance activities specifically including community renewal and publicly assisted housing as set forth in the application filed. The Municipality and the County will take all required actions to comply with the Urban County's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, Fair Housing Act, Section 109 of Title I of the Housing and Community Development Act of 1974, the Americans with Disabilities Act of 1990 and other applicable laws. This Agreement shall be effective only when sufficient municipalities have signed the Agreement so that a population of at least 200,000 is represented and when all other federal eligibility criteria for designation as an "urban county" under the Act have been satisfied. In the event that sufficient municipalities meeting these criteria should not sign the Agreement within the time period set forth by HUD, the County Executive or his designee shall so notify all signatories and the Agreement shall thereupon be null and void. In order to comply with federal requirements, the County government, through the Board of County Commissioners, shall be the applicant for community development funds and shall take the full responsibility and assume all obligations of an applicant under the Federal Act. The County shall have final responsibility for selecting activities and annually filing final statements, including the Consolidated Plan, with HUD.

Agreement As to Specific Activities

1. Specific Activities

Defining specific activities to be carried out by each municipality participating in the program will reflect some or all of the following considerations:

- a. community development needs
- b. short- and long-term community development objectives
- c. housing conditions and assistance needs of lower income households
- d. annual and three (3) year goals for housing assistance

- e. The general location of lower income housing and populations

The County will prepare the applications for these activities and assist in the administration thereof. In addition, the County will provide data from HUD and other sources regarding income eligibility for each municipality, surveys and trends for area housing and community needs, and a program summary of community development budgets for activities to be undertaken by and/or on behalf of the Municipality and within the time period to be defined by the activity contract to be executed after official approval of the current application by HUD for CDBG funds.

2. Identification of Participants and Authorized Officials

The chief executive officers of the participating municipalities as identified in the attached exhibits shall bear responsibility for compliance with the proper implementation of the activities in their respective municipalities and as described herein.

Full ultimate responsibility for compliance with the proper implementation of the activities described herein rests with the applicant and the County of Essex, New Jersey. For the purposes of this agreement, the County Executive represents the County.

3. Fund Transmittal Procedures and Standards

The means of paying for a local project and transmitting the funds from the Federal Government under the applicable Title of the Housing and Community Development Act of 1974 through the Trust Account created pursuant to N.J.S.A. 40A:4-39 to the local governing bodies shall be as follows:

- a. The local governing body shall provide for any and all legal budgetary appropriations, together with all appropriations which are to be made by rider as shall be available through the Trust Account as herein above mentioned.
- b. After the appropriations have been provided for, the local body shall, in accordance with the Public Contract Law, prepare the necessary plans and specifications for the local project and secure bids pursuant to the statute. It shall in all respects comply with the statutory laws of the State of New

Jersey for public improvements.

- c. The Clerk of the Municipality shall certify to the County Board of County Commissioners compliance with Paragraphs a and b hereof and submit all proofs of compliance therewith including Affidavits of Publication, Minutes of receipt of bids and awards.
- d. Any and all contracts for any project shall be between the local unit and the contractor or subcontractors, as the case may be, in accordance with the Public Contract law.
- e. Any and all payments in pursuance of the contract entered into under Paragraph d shall be made by and through the treasurer of the local body and the source of funds thereunder shall be as follows:
 - (1.) Those payments first to be made by the treasurer of the local body shall be from funds derived or secured through the bonding ordinances or bond anticipation notes or appropriations authorized issued by the local body to the full extent of said appropriations.
 - (2.) Prior to the delivery of the funds by the County Treasurer to the local body the local treasurer shall submit a schedule of all payments heretofore made by the local treasurer to the contractor or contractors working on said project together with copies of the certification of the architect setting forth that said work had been completed and that said contractors were entitled to said payment which schedules and certification shall be submitted to the County Administrator for his examination and verification.
 - (3.) Thereafter the payment of funds by the treasurer of the local body shall be from those funds secured and held in the Trust Account pursuant to N.J.S.A. 40A:4-39. Payments from said Trust Account shall be made upon written request from the treasurer of the local body on a regular County voucher to the County Treasurer at least one week prior to date of payment. The County Treasurer shall thereafter secure the necessary funds for said Trust Account, in accordance with a request on a letter of credit and shall forthwith deliver said funds to the treasurer of the local unit.

4. Standards of Performance

County and all other cooperating municipalities shall take all actions necessary to assure compliance with the Urban County's certification under Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding the National Environmental Policy Act of 1969, the Uniform Relocation Act, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and the implementing regulations at 24 CFR Part 1, affirmatively furthering fair housing, Title VIII of the Civil Rights Act of 1968, Executive Order 11988, the Fair Housing Act, and the implementing regulations at 24 CFR Part 100, Section 109 of Title I of the Housing and Community Development Act of 1974, and the implementing regulations at 24 CFR Part 6, which incorporates Section 504 of the Rehabilitation Act of 1973, and the implementing regulations at 24 CFR Part 8, Title II of the Americans with Disabilities Act, and the implementing regulations at 24 CFR Part 35, the Age Discrimination Act of 1975 and the implementing regulations at 24 CFR Part 146, Section 3 of the Housing and Urban Development Act of 1968, and other applicable laws. Use of urban county funds for activities in, or in support of, any cooperating city that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with the county's fair housing certification shall be prohibited. Pursuant to 24 CFR 570.501(b), the Municipality is subject to the same requirements applicable to sub recipients, including the requirement of a written agreement as described in 24 CFR 570.503. County, City, all other cooperating cities, metropolitan cities, urban counties, units of general local government, Indian tribes, and insular areas that directly or indirectly receive funds provided under Title I of the Housing and Community Development Act of 1974, as amended, may not sell, trade, or otherwise transfer all or any portion of such funds to another such entity in exchange for any other funds, credits, or non-Federal considerations, but must use such funds for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended.

5. Time Period

The activities covered by this Agreement shall commence immediately after the date of execution of this Agreement by and/or on behalf of the participating Municipality. These activities shall be completed in a timely manner and within the term defined in the activity contracts beginning from

the date of the related and official HUD approval of the current year application for CDBG funds.

6. Availability of Records for Audit

The participating municipalities and the County shall maintain and share between themselves and the CDBG Committee all the necessary and sufficient records for review and audit that pertain to the implementation of the activities described herein, and as required by HUD.

7. Activities Subject to Review

Each activity, as described herein, is subject to review by the CDBG Committee and to any action that the Board of County Commissioners of the County may take that is, in its discretion, necessary to the proper administration of this program.

8. Arbitration

Arbitration of all questions in dispute under this Agreement shall be at the choice of either party hereto and shall be in accordance with the provisions, then existing, of the American Arbitration Association. This Agreement shall be specifically enforceable under the prevailing arbitration laws, and judgment upon the award may be entered, in the Court of the Forum, State or Federal, having jurisdiction. The laws of the State of New Jersey are deemed to govern this contract. The decision of the arbitrators shall be a condition precedent to the right of any legal action.

D. Prohibitions on Funding

No urban county funding shall be provided for activities in or in support of any participating municipality that does not affirmatively further fair housing within its own jurisdiction or that impedes the County's actions to comply with its fair housing certification.

E. Municipality's Policies Relative to Civil Rights Demonstrations

The execution of this Agreement by the appropriate officials of the participating municipality signifies that the municipality has adopted and is enforcing the following policies:

1. A policy prohibiting the use of excessive force by law enforcement agencies within the jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and
2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

F. Non-Trade Clause

A unit of general local government may not sell, trade or otherwise transfer all or any portion of such funds to another such metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Act.

G. Notices

All notices required to be given pursuant to this Agreement shall be deemed to have been given when the same shall be placed in writing and deposited in the United States Mail with postage prepaid as certified mail, return receipt requested, at the address of the parties to this Agreement as first hereinabove set forth.

H. Duplicate Originals

This Agreement may be executed in substantially similarly worded counter parts, each of which shall be signed by the County Executive and the chief executive of a participating municipality.

Each such signatory agrees to cooperate with all other signatories and be bound as if all had signed the same Agreement.

I. Opinion of County Counsel

Pursuant to the requirements of the HUD regulations, this Agreement was reviewed by the County's Counsel for compliance therewith and it is the opinion of County Counsel that the terms and provisions of the Agreement are fully authorized under state and local law and that the Agreement provides full legal authority for the County to undertake or assist in undertaking essential community renewal and lower-income housing assistance activities.

J. Severability and Modification Clause

In the event that any portion of this agreement shall be made inoperative by reason of judicial or administrative ruling, the remainder shall continue in effect.

Separate copies of this Cooperation Agreement may be signed by one or more individual participating municipalities to the same effect as if all participating municipalities executed the same copy. All executed copies shall be deemed to be duplication originals.

IN WITNESS WHEREOF the Parties hereto have caused these present to be signed by its proper chief executive officer, attested by its clerk and affixed thereto its corporate seal.

Township of West Orange

By _____
(Signature)

Date: _____

Susan McCartney, Mayor
(Typed Name/Title)

ATTEST:

By _____
(Signature)

Date: _____

By **Karen J. Carnevale, Municipal Clerk**
(Typed Name/Title)
(seal)

County of Essex

By _____
(Signature)

Date: _____

Joseph N. DiVincenzo, Jr., County Executive

By _____
(Signature)

Date: _____

**Deborah Davis Ford, Clerk of the Board
of County Commissioners**

(seal)

APPROVED AS TO FORM:

By _____
(Signature)

Date: _____

Jerome St. John, County Counsel