

**AGREEMENT FOR BEHAVIORAL
HEALTH SERVICES BY AND BETWEEN THE
COUNTY OF SAN DIEGO AND THE CITY OF SAN DIEGO**

This agreement (“Agreement”) is entered into by and between the County of San Diego (“County”) and the City of San Diego (“City”) collectively referred to as “Parties.”

RECITALS

- A. The County is a political subdivision of the State of California.
- B. The City is a chartered city organized and existing pursuant to the Constitution and the laws of the State of California.
- C. The Parties are litigating the Residual Methodology Case concerning distribution of residual funds and the City may be entitled to residual funds from former redevelopment agencies.
- D. The Parties recognize that there is an immediate and significant mental health crisis in the region including in the City’s jurisdiction, that there are numerous organizations actively helping those in need of assistance, that many organizations could and would do more if they had funds available to expand and improve their facilities and equipment used for these services, and that a portion of the Disputed Funds could significantly improve the immediate and long-term provision of mental health services within the City’s boundaries.
- E. The Parties agree that, despite the Residual Methodology Case, the immediate use, of the Settlement Funds, under certain conditions, will provide a significant benefit to the residents of San Diego City to address the current mental health crisis.

NOW, THEREFORE for good and valuable consideration, County and City agree as follows:

I. DEFINITIONS

“Auditor and Controller” shall mean the County of San Diego Auditor and Controller.

“City’s Release” shall have the meaning set forth in Section III.

“City Representative” shall mean the person designated by the Mayor as having authority to approve an Eligible Project.

“Capital Project” shall mean a project to purchase land, construct improvements, renovate or expand owned or leased existing structures, purchase and install furniture, fixtures and equipment, purchase vehicles, and the like used to provide one or more of the Continuum of Services.

“Continuum of Services” shall mean services, including but not limited to, mental health assessment and treatment, detoxification, crisis stabilization, residential treatment, temporary or

permanent supportive housing, temporary and permanent affordable housing, housing navigation services, and the like.

“County Representative” shall mean the person designated by the Chief Administrative Officer as having authority to approve an Eligible Project.

“Disputed Funds” shall mean those funds that the County believes it is entitled to retain and that the City believes it should be paid from the County. This Agreement concerns only a portion of the Disputed Funds totaling \$25,000,000.

“Eligible Project” shall mean a Capital Project approved by the County Representative and the City Representative for funding in accordance with the requirements of this Agreement.

“Event of Default” shall have the meaning set forth in Section IV of this Agreement.

“Final Decision” shall mean any non-appealable order or judgment directing payment or reallocation of residual funds.

“Project Administration” shall mean the County’s cost to administrate this Agreement, including County staff and associated administrative costs which shall not exceed \$750,000.

“RPTTF” shall mean the Redevelopment Property Tax Trust Fund established by the Auditor and Controller pursuant to Health and Safety Code Section 34170.5(b).

“Residual Methodology Case” shall mean *City of Chula Vista et al., v. Sandoval*, Sacramento Superior Court Case No. 34-2014-80001723-CU-WM-GDS and Third District Court of Appeal No. C080711.

"Settlement Funds" shall mean the \$25,000,000 portion of the Disputed Funds that are the subject of this Agreement.

"Used Settlement Funds" shall mean the portion of the Settlement Funds spent or encumbered for an Eligible Project or Project Administration.

II. USE OF SETTLEMENT FUNDS

A. Eligible Project Funds

County shall, within sixty (60) days of the effective date of this Agreement, appropriate the Settlement Funds (\$25,000,000). County shall take all actions required in order to expend Settlement Funds for Eligible Projects and Project Administration.

B. Eligible Project Selection and Award

1. County shall establish a process for selecting Eligible Projects. County's process shall, at a minimum, include:

- a. Advertising and Public Notice: Opportunities to apply for Eligible Projects shall be advertised and publicly posted for a sufficient time to allow potential applicants to prepare and submit an application for funding.
 - b. Award Criteria: Applications for Eligible Projects shall provide clear direction to applicants on what information is required, and at a minimum, the major factors and relative weighting for those factors to be used in determining which projects will become Eligible Projects.
 - c. Competitive Selection: County shall competitively review applications for Eligible Projects and shall insure that two or more individuals review and evaluate the applications and make final recommendations for award based on the publicized award criteria. The County may establish criteria for selecting Eligible Projects without competing those awards (so-called single source selections), but may only do so in accordance with previously established award policies and procedures agreed to in writing by the Parties. The Parties agree that the County's existing procurement policies and procedures satisfy these competition and single source requirements.
 - d. No applicant may be selected for award as an Eligible Project without the prior written concurrence of the City Representative and the County Representative.
2. Minimum Award Criteria: Eligible Projects shall only be selected from applicants meeting the following minimal award criteria:
- a. The proposed project is for a Capital Project.
 - b. The Capital Project directly supports activities that are part of a Continuum of Services.
 - c. The funding supports one-time Capital Project costs and does not require ongoing funding.
 - d. The applicant identifies separate and sustainable funding source(s) to support the Continuum of Services associated with the Capital Project as well as for the Capital Project's ongoing maintenance and operations.
 - e. The applicant demonstrates that it is financially sound and capable of providing the proposed Continuum of Services for a period of five years.
 - f. The Capital Project will be operational (serving clients) within eighteen (18) months of initial funding. The Parties may agree in writing to extend the required time of completion.
 - g. The applicant agrees to use the Capital Project for the proposed Continuum of Services for a term commensurate with the Capital Project's useful life, except that the Parties may agree in writing to allow the applicant to use the funds differently as long as the funds are used to support the Continuum of Services.
 - h. The Capital Project and Continuum of Services will be located within the geographic boundaries of the City.

- i. The applicant is not debarred or ineligible to receive federal or State funding or to contract with the City or County.
- j. The applicant agrees to enter into a binding agreement to comply with program requirements.

C. Eligible Project Administration

1. County shall establish an enforceable agreement for each Eligible Project.

The enforceable agreement shall, at a minimum, include the following:

- a. A statement of work and payment provisions that clearly defines the Eligible Project and provide for progress payments based on defined deliverables.
- b. Record keeping and record access sufficient for City and County to audit the fund recipient.
- c. Access rights sufficient to insure that City and County can inspect the Eligible Project and audit the associated records.
- d. Insurance sufficient to protect City and County from third party liability, including naming City and County as additional insureds, and as appropriate, builders risk insurance for construction.
- e. An indemnification and hold harmless provision indemnifying City and County and holding each harmless for liability arising out of the Eligible Project.
- f. A provision excluding any third parties as intended third party beneficiaries.
- g. Other terms and conditions required by law, customary to County's agreements, or as reasonably requested by City.

2. County Reporting

- a. County shall report semi-annually (June 30, and December 31) to City the following:
 - i. The name, short project summary, scheduled project completion and award amount for each Eligible Project.
 - ii. Funds paid to funding recipients and dates of payment(s) for each Eligible Project, if any.
 - iii. Any delays, disputes, breaches or alleged breaches of the agreement, for any Eligible Project.
 - iv. Funds allocated for Project Administration with a general description of applicable costs.
- b. County shall require and maintain for City's inspection documentation sufficient to support all invoices submitted for payment by an Eligible

Project fund recipient for at least three years after the distribution of the funds to an Eligible Project.

- c. County shall make available to City within thirty (30) calendar days of City's written request all Eligible Project records. City may review, inspect and copy any or all of the Eligible Project records.

III. RELEASE OF LIABILITY FOR SETTLEMENT FUNDS AND RESERVATION OF RIGHTS

A. City's Release and Reservation of Rights

1. Waiver and Release: Subject to County's compliance with the terms of this Agreement, City, on behalf of itself and anyone who may claim through it (including without limitation, successors, assigns, representatives, agents, elected officials and attorneys), hereby expressly irrevocably waives and releases any and all claims it has (or may have) to the Used Settlement Funds, and any amount equivalent to the Used Settlement Funds.

Additionally, City, on behalf of itself and anyone who may claim through it (including without limitation, successors, assigns, representatives, agents, elected officials and attorneys), also releases the County (including without limitation its employees, agents, elected officials and attorneys) from any claims, causes of actions, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, pre-judgment or similar interest, or other demands related to or arising out of the Used Settlement Funds (collectively "City's Release").

Notwithstanding the language above, the City shall be entitled to pre-judgment or similar interest that is ordered in a Final Decision for any amount accruing prior to the effective date of this Agreement.

2. Reservation of Rights: The City in no way waives or releases the County (including without limitation its employees, agents, elected officials and attorneys) from any claim, causes of actions, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, pre-judgment or similar interest, or other demands, whether known or unknown at the present time, for or related to the Disputed Funds other than that portion of the Disputed Funds meeting the definition of Used Settlement Funds. The City expressly reserves any rights it may have to pursue as against the County or any other taxing entity (including without limitation its employees, agents, elected officials and attorneys) any claim, causes of actions, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, pre-judgment or similar interest, or other demands, whether known or unknown at the present time, regarding any Disputed funds not otherwise meeting the definition of Used Settlement Funds.

B. Subject to City's compliance with the terms of this Agreement, County, on behalf of itself and anyone who may claim through it (including without limitation, successors, assigns, representatives, agents, elected officials and attorneys), hereby agrees not to seek return from the City any Used Settlement Funds the County disburses pursuant to this Agreement.

C. Any Settlement Funds that City Representative and County Representative have not approved for an Eligible Project or used to fund an Eligible Project —i.e., unused Settlement Funds—when a Final Decision is issued, shall be distributed in accordance with the Final Decision.

D. Any Disputed Funds—i.e., not Settlement Funds—when a Final Decision is issued in the Residual Methodology Case shall be distributed in accordance with the Final Decision.

E. The Final Decision shall govern and bind the City and the County as to each distribution of residual funds after January 30, 2020.

F. The waivers and releases set forth in this Section III shall not in any way constitute a waiver or release of any claim, causes of actions, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, pre-judgement or similar interest, or other demands, made in the Residual Methodology Case as to Disputed Funds other than the Used Settlement Funds.

IV. DEFAULT; REMEDIES

If either Party fails to perform or fulfill any obligation required of it under this Agreement and does not cure or commence to cure such failure within ninety (90) days following written notice thereof from the non-defaulting Party (or has commenced to cure such failure, but is not diligently proceeding to cure such failure), then the alleged-breaching Party shall be in default under this Agreement (each such event or occurrence, an "Event of Default").

For any Event of Default, the non-defaulting Party may, in its sole discretion: (a) extend the time for the defaulting Party to perform its obligation(s) hereunder, or (b) terminate this Agreement by giving written notice of such termination to the other Party. In addition to these rights, the Parties may agree in writing to any mutually agreeable resolution to an Event of Default.

The remedies set forth in this Agreement are the only remedies available to the Parties, except that neither Party waives any right to seek other non-monetary remedies including specific performance.

The Parties shall, before the commencement of any lawsuit or court action against the other Party relating to this Agreement, attempt in good faith to settle their dispute by third-party mediation.

V. GENERAL TERMS AND CONDITIONS

A. Defense and Indemnity

1. Claims Arising From Sole Acts or Omissions of County

County hereby agrees to defend and indemnify City, its agents, officers, elected officials and employees from any claim, action or proceeding against City, arising solely out of the acts or omissions of County in the performance of this Agreement. At its sole discretion, City may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve County of any obligation imposed by this Agreement. City shall notify County promptly of any claim, action or proceeding and cooperate fully in the defense.

2. Claims Arising From Sole Acts or Omissions of City

City hereby agrees to defend and indemnify the County, its agents, officers, elected officials and employees from any claim, action or proceeding against County, arising solely out of the acts or omissions of City in the performance of this Agreement. At its sole discretion, County may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve City of any obligation imposed by this Agreement. County shall notify City promptly of any claim, action or proceeding and cooperate fully in the defense.

3. Claims Arising From Concurrent Acts or Omissions

County hereby agrees to defend itself, and City hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of County and City. In such cases, County and City agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in Section V.A.5 of this Agreement.

4. Joint Defense

Notwithstanding Section V.A.3 of this Agreement, in cases where County and City agree in writing to a joint defense, County and City may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of County and City. County and City shall by mutual agreement select joint counsel. County and City agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in Section V.A.3 of this Agreement. County and City further agree that neither party may bind the other to a settlement agreement without the written consent of both County and City.

5. Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, County and City may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

B. Term

This Agreement shall be effective on the date on which the last of the Parties sign, and except for those provisions that survive termination, shall terminate: (i) for default as allowed by Section IV, (ii) on the date on which County has expended all Settlement Funds and has

provided all reports required by Section II, or (iii) the Agreement is terminated in writing by the Parties.

C. Amendments

This Agreement may only be amended in writing and approved by the County's Chief Administrative Officer and the City Council.

D. Notices

Notices required or permitted hereunder shall be in writing and may be personally delivered; or by mail by depositing such notice in the United States mail, first-class postage prepaid, return receipt requested; or by reputable overnight delivery service (such as Federal Express, UPS or DHL); addressed as follows or to such other place as each party may designate by subsequent written notice to each other.

To the County: Chief Administrative Officer
1600 Pacific Highway, Room 201
San Diego, California 92101

To the City: Mayor
Address
San Diego, California 92101

A notice shall be effective on the date of personal delivery, if personally delivered before 5:00 p.m. on a business day, or otherwise on the business day following personal delivery; or two (2) business days following the date the notice is postmarked, if mailed; or on the day following delivery to the applicable overnight courier, if sent by overnight courier for next business day delivery; and otherwise when received. The term "business day" shall mean a date on which both the County and City are open for business. If the term "business day" is not used, the number of days shall be calculated using "calendar days" and includes holidays. If a date on which notice is due or an action is required falls on a Saturday, Sunday, or holiday on which the County and City are closed for business, the notice date or deadline shall be the immediate next business day on which the County and City are open for business.

E. Partial Invalidity and Survival

If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent possible permitted by law. The following provisions survive the termination or expiration of this Agreement: Section II.C.2, III, IV, and V.A.,

F. Venue and Governing Law

Venue for any legal proceeding shall be in San Diego County, California. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

G. Drafting Presumption

The Parties acknowledge that this Agreement has been agreed to by the Parties and that each Party has consulted with attorneys with respect to the terms of this Agreement and that no presumption shall be created against a drafting Party. Any deletion of language from this Agreement prior to its execution by the Parties shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language.

H. Section Headings

The captions of articles and sections are for convenience only and shall not be deemed to limit, construe, affect, or alter the meaning of such articles and sections.

IN WITNESS THEREOF, the authorized representatives of each of the Parties hereto have executed this Agreement as of the last date and year set forth below.

COUNTY OF SAN DIEGO

Date: _____

By: _____
HELEN-ROBBINS-MEYER
Chief Administrative Officer

Approved as to form and legality:
Thomas E. Montgomery, County Counsel

By: _____

Chief Deputy

CITY OF SAN DIEGO

Date: _____

By: _____
KEVIN FAULCONOR
Mayor

Approved as to form:
Mara Elliott, City Attorney

By: _____
Senior Deputy City Attorney