

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2014-190

Council Meeting Date: 06-09-2014

Date Adopted: 06-09-2014

TITLE: A RESOLUTION AUTHORIZING THE MAYOR AND CLERK TO EXECUTE A COOPERATIVE AGREEMENT WITH THE COUNTY OF UNION FOR FISCAL YEARS 2015 - 2017

Councilperson Galluccio submitted the following resolution, which was duly seconded by Councilperson Madden.

WHEREAS, the Uniform Shared Services and Consolidation 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; and

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

WHEREAS, a Cooperative Agreement between the County of Union and the Municipality of New Providence shall be utilized to establish a legal mechanism through which the County government may apply for, receive and disburse federal funds from federal fiscal year 2015, 2016 and 2017 appropriations; and

WHEREAS, it is the desire of the Municipality of New Providence to enter into a Cooperative Agreement with the County of Union for successive three year periods; and

WHEREAS, it is the desire of the County of Union to re-qualify for Entitlement status as an Urban County.

NOW THEREFORE BE IT RESOLVED that the Municipality of New Providence hereby is authorized to enter into and execute said Cooperative Agreement. Said Cooperative Agreement is to be substantially in the form of Agreement attached hereto and made a part hereof; and

BE IT FUTHER RESOLVED that a copy of the Resolution shall be forwarded to the County of Union.

APPROVED, this 9th day of June, 2014.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO			X	
KAPNER			X	
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 9th day of June, 2014.

Wendi B. Barry, Borough Clerk

COOPERATIVE AGREEMENT BETWEEN THE COUNTY OF UNION AND
PARTICIPATING MUNICIPALITIES FOR CONDUCTING CERTAIN COMMUNITY
DEVELOPMENT ACTIVITIES

THIS COOPERATIVE AGREEMENT ("Agreement"), dated this day of June, 2014, by and between the County of Union, a body politic and corporate of the State of New Jersey ("County"), with its principal address at 10 Elizabethtown Plaza, Elizabeth, NJ 07207 and the Borough of New Providence, a municipal corporation of the State of New Jersey ("Municipality") with its principal address at 360 Elkwood Ave., New Providence, N.J. 07974.

WHEREAS, Title I of the Housing and Community Development Act of 1974 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, Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act provides for the Emergency Solutions Grants program ("ESG") which 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-Gonzalez National Affordable Housing Act of 1990 ("NAHA") established the HOME Investment Partnership Program ("HOME") which provides substantial Federal Funds to qualified local jurisdictions including the County and its participating Municipalities; and

WHEREAS, the County desires to requalify for Entitlement Status as an Urban County; and

WHEREAS, these Acts establish 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 Consolidation Act (N.J.S.A. 40A:65-1et seq.) provides a mechanism through which Counties and Municipalities may enter into agreements for the provision of joint services; and

Now, in consideration of the mutual covenants and agreements set forth herein, the County and the Municipality hereby agree as follows:

- A. Authorization by County and Municipality - The Board of Chosen Freeholders of the County of Union and the governing body of the Municipality authorize this agreement. The County Manager of the County of Union and the chief executive officer of the Municipality shall execute this agreement. Each such signatory agrees to cooperate with all other signatories and be bound if all had signed the same Agreement, if the Agreement is signed in counterpart.
- B. Legal Authority - Pursuant to the requirements of the HUD regulations, this Agreement was reviewed by the Office of the County Counsel for compliance therewith and it is the opinion of the County Counsel that the terms and provisions of the Agreement are fully authorized under state and local law. Further, the Agreement provides full legal authority for the County to undertake or assist in undertaking essential community renewal and lower-income housing assistance activities.
- C. Programs Covered - This Agreement covers the CDBG Entitlement program and, where applicable, the HOME Investment Partnership (HOME) and Emergency Solutions Grant (ESG) Programs.

- D. 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 Municipalities.
 3. May receive a formula allocation under the ESG Program only through the Urban County.
- E. Time Period Covered; Automatic Renewal - This agreement covers activities to be carried out with annual CDBG funds from Federal fiscal years 2015, 2016, and 2017 (FY 2015-2017) appropriations, and for successive three (3) year periods, as provided in the Housing and Community Development Act unless the County or the Municipality provides written notice it elects not to participate in a new qualification period. A copy of that notice must be sent to the HUD Field Office.
- Where such Agreements are used, the Agreement must state that, by the date specified in HUD's Urban County qualification notice for the next qualification period, the Urban County will notify the Municipality in writing of its right not to participate. A copy of the County's notification to the Municipality must be sent to the HUD Field Office by the date specified in the Urban County qualification schedule in Section II.
- Both the County and the Municipality must adopt any amendments to this Agreement incorporating changes necessary to meet the requirement for cooperation agreements set forth in an Urban County Qualification Notice applicable for a subsequent three-year Urban County qualification period and to submit such amendment to HUD.
- F. This Agreement remains in effect until the CDBG (and where applicable, the HOME and ESG) funds and programs income received (with respect to activities carried out during the three (3) year qualification period and any successive qualification periods) are expended and the funded activities completed and that the County and Municipality cannot terminate or withdraw from the Cooperation Agreement while it remains in effect.
- G. The County and the Municipality agree to cooperate to undertake, or assist in undertaking, community renewal and lower-income housing assistance activities.
1. The County and the Municipality are obligated to take all action 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 Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and affirmatively furthering fair housing.

2. The County and the Municipality are obligated to comply with section 109 of Title I of the Housing and Community Development Act of 1974, which incorporates Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975.
 3. The County and the Municipality are prohibited from using Urban County funding for activities in, or in support of, any Municipality that does not affirmatively further fair housing within its own jurisdiction or that impedes the County's action to comply with the County's fair housing certification.
- H. Municipality's Policies Relative to Civil Rights Demonstrations - The execution of this Agreement by the appropriate officials of the 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 its 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 non-violent civil rights demonstrations within its jurisdiction.
- I. Pursuant to 24 CPR 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 CPR 570.503. Pursuant to 24 CPR 570.501 and 24 CPR 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 (d) 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 Municipality 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 COB 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. This requirement is codified in the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2014, Pub. L. 113-76.

J. Community Development Planning Process

1. 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 of 1974, the COB Entitlement Program, Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 ("NAHA"), the HOME Program, and through Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Acts, the EST program. This Agreement is made 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 COB 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 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.

2. Establishment of Committee- There is hereby established a cooperative COB 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.
3. Responsibilities of Committee - The COB Committee shall elect a chairman. A quorum shall be required to approve a grant application. A quorum shall enable the committee to take formal action on policy matters, including contingency requests, contract amendments, and major budget modification. A quorum consists of ten (10) Municipalities and the County.
 - a) With the concurrence of the Board of Chosen Freeholders an Administrative Liaison Officer shall be designated. He shall be an employee of the County. He shall within the limits of resources available, provide technical and administrative support to the COB Committee, and shall provide liaison between the COB Committee and the Board of Chosen Freeholders.
 - b) The COB Committee shall meet promptly after its establishment and thereafter as often as required. It shall establish rules of procedure as may be required.
 - c) The CDBG Committee shall study and discuss the community development needs of the County which affect the participating Municipality, and shall determine the most effective and acceptable utilization of CDBG funds available to the County government. It shall recommend to the Board of Chosen Freeholders an application for participation in Federal funding, and towards that end it shall, in the manner herein prescribed, be authorized to develop a Five (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.
 - d) The CDBG Committee shall develop, in full consultation with the County planning board and all affected agencies of the Municipality 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, 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.

- e) 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.
- K. Standards of Performance - Every Shared Services 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
- L. Estimated Cost and Allocations - The amount of Federal Funds involved shall be the amount applied for by the Board of Chosen Freeholders 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 Funds 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 expanded from this Trust Fund by the County or by payment to the particular Municipality pursuant to a specific contract. Neither the committee, the County, nor any participating Municipality 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 Agreement may in any way be obligated to expend funds of its own except as may be mutually agreed in a lawful manner.
- M. Designation of Administrative Liaison Officer - The Administrative Liaison Officer selected pursuant to section I, 3(a) of this Agreement is hereby designated as the administrative agent of the Board of Chosen Freeholders for purposes of compliance with statutory and regulatory responsibilities. He/she shall be accountable to the Board of Chosen Freeholders, and for this purpose shall be subject to the supervision of the Board.
- L. Agreement As to Specific Activities - Attached hereto and made a part of this agreement between the County of Union and certain Municipalities are exhibits which set forth the specific activities for each and every Municipality participating in the program. In particular each of these exhibits describe:

1. community development needs;
2. long-term community development objectives;
3. short-term community development objectives;
4. a program for community development activities to be undertaken by and/or on behalf of the Municipality and within a year of related and official approval of the current application by HUD for CDBG funds;
5. a community development cost estimates and related budget for the current year program;
6. a survey of housing conditions;
7. housing assistance needs of lower income households;
8. annual and three (3) year goals for housing assistance; and,
9. the general location of lower income housing, as applicable.

The County will prepare the application for the above activities and assist in the administration thereof.

- O. Identification of Participants and Authorized Officials - The chief executive officers of the participating Municipalities and 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, the County of Union, New Jersey. For purposes of this agreement, the County Manager represents the County.

- P. 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 Municipality shall be as follows:
1. The Municipality 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;
 2. After the appropriations have been provided for the Municipality shall, in accordance with the Local Public Contracts 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;
 3. The Clerk of the Municipality shall certify to the Union County Board of Chosen Freeholders compliance with Paragraphs 1 and 2 hereof, and submit all proofs of

compliance therewith including Affidavits of Publication, Minutes of receipt of bids and awards;

4. Any and all contracts for any project shall be between the Municipality and the contractor or sub-contractors, as the case may be, in accordance with the Local Public Contracts Law; and
 5. Any and all payments in pursuance of the contract entered into under Paragraph 4 shall be made by and through the Treasurer of the Municipality and the source of funds thereunder shall be as follows:
 - a) Those payments first to be made by the Treasurer/Finance Director of the Municipality shall be from funds derived or secured through the bonding ordinances or bond anticipation notes or appropriations authorized issued by the Municipality to the full extent of said appropriations.
 - b) Prior to the delivery of the funds by the County Treasurer to the Municipality, the Treasurer/Finance Director of the Municipality shall submit a schedule of all payments heretofore made by the Treasurer/Finance Director of the Municipality 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 Administrative Liaison for his/her examination and verification.
 - c) Thereafter the payment of funds by the Treasurer/ Finance Director of the Municipality 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/ Finance Director of the Municipality on a 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 Municipality.
- Q. Standards of Performance - The Municipalities shall comply with all applicable state and federal laws and regulations, toward proper implementation of activities as described herein. The County and all Municipalities shall take all required actions to comply with the provisions of the National Environmental Policy Act of 1969, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11988, Section 109 of the Housing and Community Development Act of 1974, and other applicable laws.
- R. Time Period - The activities covered by this Agreement shall commence immediately after date of execution of this Agreement by and/or behalf of the participating Municipality. These activities shall be completed within a year from the date of the related and official HUD approval of the current year application for CDBG funds.
- S. 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.

- T. **Activities Subject to Review** - Each activity, as described herein, is subject to review by the CDBG Committee and to any action that the Union County Board of Chosen Freeholders may take that is, in its discretion, necessary to the proper administration of this program.
- U. **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 obtaining, 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.
- V. **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.
- W. **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.

Notices to the County shall be given to:
 James E. Pelletiere, Clerk,
 Union County Board of Chosen Freeholders
 Administration Building - 6th Floor
 10 Elizabethtown Plaza
 Elizabeth, NJ 07207

with a copy of the notices sent to:

Robert E Barry, Esq. County Counsel
 Union County Board of Chosen Freeholders
 Administration Building - 6th Floor
 10 Elizabethtown Plaza
 Elizabeth, NJ 07207

Notices to Municipality shall be given to:
 Name of Clerk, Clerk
 Municipality Address
 City, State, Zip

- X. **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 full force and effect.

Y. A copy of this Agreement shall be filed with the Division of Local Government Services in the New Jersey Department of Community Affairs pursuant to N J S A 40A 65-4(b).

Z. Entire Agreement - This Agreement represents the entire agreement amongst the parties.

IN WITNESS WHEREOF, the parties have signed this Cooperative Agreement and have caused this Agreement to be executed by their duly authorized representatives or officers on the date and year first written above.

ATTEST :

MUNICIPALITY:

Wendi B. Barry, Borough Clerk

By: _____
J. Brooke Hern, Mayor

ATTEST:

COUNTY OF UNION:

James E. Pellettiere, Clerk

By: _____
Alfred J. Faella, County Manager

APPROVED AS TO FORM:

Robert E. Barry, Esq., County Counsel