RECOMMENDED CHANGES IN POLICY AND PROCESS FOR THE 2023 SUPPORTIVE HOUSING NOTICE OF FUNDING AVAILABILITY (NOFA)

1. PRIORITY AND PREFERENCE FOR NOFA APPLICATIONS

Proposed –
To encourage applicants/developers to leverage available funding sources for development of supportive housing, County Housing & Community Development (HCD) will accept applications based on a tier system:

- Days 1-60 from the release of the 2023 NOFA: Only applications/submissions with existing State Homekey Program funding awards or eligible and applying for State Homekey Program funding under the Homekey Round 3 NOFA will be accepted.
    - Up to 110 housing choice vouchers will be made available during this 60-day window to ensure the County's resources are used to develop diverse housing options and not be limited to motel rehabilitations/conversions.
- From days 61-90 after the release of the NOFA, HCD will accept applications for developments located in unincorporated Orange County and Urban County Participating Cities.
- From days 91-120 after the release of the NOFA, HCD will accept applications for any developments located in unincorporated Orange County, Urban County Participating Cities and Entitlement Cities, except in the cities of Santa Ana, Anaheim and Garden Grove.
- One-hundred and twenty days after the release of the NOFA, applications for any development eligible under this NOFA throughout the County (except for project-based voucher requests in the cities of Santa Ana, Anaheim, and Garden Grove) will be accepted based on the remaining eligible funding, vouchers and lending policies.

Applicants seeking only Mental Health Services Act (MHSA) or American Rescue Plan Act Coronavirus State and Local Fiscal Recovery Funds (ARPA-SLFRF) (and not another source or project-based vouchers) under this NOFA need not comply with the preferences and timeframes above. Those applications will be accepted upon the release of the 2023 NOFA.

On a case-by-case basis and upon release of the 2023 NOFA, HCD may accept applications requesting only additional capital funding for developments previously approved by the Board of Supervisors.

Current –
HCD provides a 60-day window from the commencement of the 2020 NOFA, where only applications for developments with committed Special Needs Housing Program (SNHP) and/or No Place Like Home (NPLH) funds in unincorporated Orange County and Urban County Participating Cities will be accepted. From days 61-90, HCD will accept applications for developments with committed SNHP and/or NPLH funds in unincorporated Orange County, Urban County Participating Cities and Entitlement Cities, except Santa Ana, Anaheim, and Garden Grove. From days 91-120, HCD will accept applications for any other developments eligible under this NOFA located in unincorporated Orange County and Urban County Participating Cities. After

120 days, the applications for any development eligible under this NOFA throughout the County will be accepted based on the remaining eligible funding and lending policies. Developers seeking only MHSA funding under this NOFA need not comply with the preferences and timeframes below. Those applications will be accepted upon commencement of the 2020 NOFA.

Discussion –
The proposed priority and preference for NOFA submissions will allow the County to encourage developers to seek and leverage available state and other funding sources, such as the State Homekey Program, to finance the development of supportive housing. The proposed tier system will also allow the County to continue to prioritize funding and voucher requests for developments located in the Orange County Housing Authority jurisdiction, unincorporated county and in cities where the County administers their federal funding allocations such as Federal HOME Investment Partnerships Program.

2. ENVIRONMENTAL REVIEW COSTS

Proposed –
For a submission/application that will trigger the National Environmental Policy Act (NEPA) process, the Applicant shall pay all actual consultant fees and other fees incurred in connection with the preparation and finalization of the federally required environmental review process for the proposal. Payment of all fees must be made before the County loan is funded.

Current –
No current policy/process.

Discussion –
The proposed language will allow the County to offset costs and fees associated with the completion of the NEPA environmental review process for developments requesting federal funding and/or vouchers from the County. These costs and fees are currently being paid by the County.

3. THRESHOLD REVIEW

Proposed –
Allow County staff fifteen (15) working days to review submission to accommodate a more comprehensive due diligence process and accurate assessment of the appropriate environmental review process. A Phase I Environmental Report and Lead Paint and Asbestos Report, if applicable, will be required as part of the application to meet threshold.

Additionally, the County staff will review submission to ensure that the Applicant has completed the attestation regarding compliance with the best practices, principles and commitments of the Housing Pillar as defined by the Commission to End Homelessness's Homeless Service System Pillars Report. The Homeless Service System Pillars were adopted by the County's Board of

Supervisor and outline what is required of housing developments to be the most effective in serving the homeless population.

Current –
Requires staff to review all complete applications for threshold completion within ten (10) working days of submission. Allows a 30-day written response for deficiencies found in the following areas:

- Exhibit 4.13: Audited Financial Statements
- Exhibit 4.21: Current Appraisal
- Exhibit 4.28: Phase I Environmental Report
- Exhibit 4.29: Lead Paint and Asbestos Report, if applicable

Discussion –
Due to necessary assessments and lengthy timeframes for the environmental review process, staff will require that all environmental reports and due diligence items be submitted to meet threshold.

4. DISBURSEMENT OF COUNTY FUNDS

Proposed –
Disbursement of loan funds will be made in accordance with County of Orange loan documents at acquisition/construction loan closing and/or permanent loan conversion, as applicable, based on previously negotiated deal terms and as approved by the Board of Supervisors.

Current –
Disbursement of loan funds will be made in accordance with County of Orange loan documents at permanent loan conversion.

Discussion –
Due to the County's participation in the State's Homekey Program over the last few years, the County has been involved in funding the acquisition and construction of supportive housing development. Prior to this, the County was a permanent lender and would only fund or disburse County loans after the development has been constructed and occupied. The proposed policy allows flexibility to fund housing development prior to construction completion in an effort to expedite production of supportive housing throughout the County.

5. CAPITALIZED OPERATING SUBSIDY RESERVE PROGRAM

Proposed –
The County may implement a Capitalized Operating Subsidy Reserve (COSR) Program utilizing Mental Health Services Act (MHSA) funds, if no project-based rental assistance vouchers or other rental subsidies are available through the County and/or a participating city, to address operational deficits attributable to restricted MHSA supportive housing units. COSR funding, if approved, will be part of the total financial assistance awarded by the County and subject to any determination of maximum eligible gap financing to be made available by the County to a proposed supportive housing development. The County will consider COSR funding only for MHSA units within a

development, and will provide the funding as a zero interest, forgivable loan over a maximum of twenty (20) years.

Current –
No Capitalized Operating Subsidy Reserve (COSR) Program is currently being implemented.

Discussion –
The proposed MHSA COSR Program will allow the County to fund and administer an operating subsidy reserve to help developments maintain a healthy cash flow by offsetting operational costs for MHSA units in developments that do not have long-term project-based rental assistance.

6. RESIDENCY PREFERENCES

Proposed –
Persons and households that live and/or work in Orange County will be given a preference for occupancy in County assisted units funded under this NOFA. For certain developments, including but not limited to those receiving Federal Project Based Section 8 from the Cities of Anaheim, Garden Grove or Santa Ana, or are subject to special zoning ordinances requiring preference for City residents, further documentation from the applicant will be required demonstrating that residents throughout the County will have equal opportunity at obtaining units in the development.

Where consistent with the California Fair Employment and Housing Act and California Senate Bill (SB) 649 (Local governments: affordable housing: local tenant preference) and also where the proposed affordable housing development is funded by the state's low-income housing tax and tax-exempt bond program and County HOME funds, the County will allow local resident occupancy preferences in Urban County Participating Cities. Applicant must submit a letter of compliance from the legal counsel of the local government agency where the development will be located that certifies it has adopted a local tenant preference policy consistent with the requirements of SB 649 and has done so subject to the duty of public agencies to affirmatively further fair housing. The local government compliance letter must confirm that the local government has also created a webpage on its current website containing the ordinance and its supporting materials. Local resident preferences, certified as consistent with state regulations by the local government agency's legal counsel, will be prioritized through the Coordinated Entry System (CES).

Housing vouchers provided by public housing authorities that are not funded through the Continuum of Care, such as Project-Based Vouchers, shall be prioritized by CES in compliance with the administrative plan for the Public Housing Authority (PHA) providing the housing voucher. No local residency occupancy preference will be permitted unless it is specified in the PHA's administrative plan and certified as consistent with state regulations by the local government agency's legal counsel. Prioritization and case conferencing will be used to refer individuals and families who are the most appropriate referral to the available resources.

Compliance with CES policies and procedures as approved by the Orange County Continuum of Care Board will be required for all County assisted units. CES Workflow is included as an Exhibit to this NOFA.

Current –
The County will allow preferences for occupancy to local residents for homeless developments in Urban County Participating Cities on a case-by-case basis. Local resident preferences if applicable, will be prioritized through the Coordinated Entry System (CES).

Discussion –
The NOFA includes a combination of housing funds including funds designated for regionally/county-wide use and others being tied to specific geographic regions or jurisdictions. The proposed changes to the residency preferences are intended to provide clarification on when and how the County can accommodate and/or prioritize local preferences.

7. TENANT SELECTION POLICY, MANAGEMENT AND MARKETING PLANS

Proposed –
Draft marketing and management plans shall be submitted to the County for review and approval prior to construction loan closing and are subject to final review and approval by the County prior to lease-up.

The requirements for PBVs set forth in 24 CFR 92.253 are incorporated into this NOFA as if fully set forth herein. To ensure compliance with the requirements set forth in 24 CFR 92.253, and other tenant selection criteria required by the U.S. Department of Housing and Urban Development (HUD), the applicant shall submit a management plan with respect to the funded units for review and approval by the County, and the Orange County Housing Authority (OCHA) when applicable, prior to construction loan closing. The tenant selection criteria established by the applicant/developer and/or property management company cannot be more restrictive than the eligibility criteria established by HUD, unless the restriction is a requirement related to the development's funding source. At no time shall the criminal background threshold set by the applicant/developer and/or property management company be more restrictive than that established by HUD, and where HUD defers to PHA, the threshold cannot be more restrictive than the PHA's criminal background threshold. Where more than one PHA is a party to the development, each PHA's administrative plan shall apply to the specific unit(s) under that PHA's housing opportunity/rental assistance.

Marketing materials referencing PBV units may not be published without prior consent and approval from the PHA providing the PBVs, the CES, and OC Heath Care Agency if receiving MHSA funding. CES referrals will not begin until the tenant selection plan is approved by all required parties.

Compliance with CES policies and procedures as approved by the Continuum of Care Board will be required for all County assisted units. CES Workflow to be included as an Exhibit to the NOFA.

Current –
County will require final marketing and management plans prior to funding and lease up of the development and are subject to County approval.

Persons and households that live and/or work in Orange County will be given a preference for occupancy in developments that are funded under this NOFA. For certain developments, including but not limited to those receiving Project Based Section 8 from the Cities of Anaheim, Garden Grove or Santa Ana, or are subject to special zoning ordinances requiring preference for City residents, further documentation from the developer will be required demonstrating that residents throughout the County will have equal opportunity at obtaining units in the development. County will require the final marketing plan prior to startup. The final plan is subject to County approval.

Discussion –
The NOFA includes a combination of funding and resources from various County agencies and the intent of the proposed change is to clarify requirements for County review and approval of the development's tenant selection policy, management and marketing plan. This will ensure applicants are aware of the requirements and will coordinate with the County prior to finalizing the tenant selection policy and marketing the units to the public.

8. REGIONAL HOUSING NEEDS ASSESSMENT TRANSFERS

Proposed –
The following Regional Housing Needs Assessment (RHNA) transfer credit policies are applicable to developments applying for capital funding and/or Housing Choice Project Based Vouchers:

a. Pursue RHNA credit transfers for developments:

    i. For developments located in cities which are funded with local revenue (such as General Funds, Housing Successor Agency funds or ARPA-SLFRF funds) the County will require acceptance of the transfer of a RHNA allocation from the County to the City on a pro-rata basis of funds to total development costs. The Developer is responsible for conveying to and obtaining proof of the acquiescence of this policy via approval by the governing board of the jurisdiction in which the project will be located at the time it approves the development. When the County determines that a development meets a County business need, such as serving extremely low-income households, HCD will return to the Board for approval of a waiver of the RHNA transfer policy.

b. Optional RHNA credit transfer for developments:

    i. For developments located in cities funded with regional revenue resources or meeting regional priorities; including, developments with Mental Health Services Act funding, Veterans Administration Supportive Housing vouchers, and Homeless projects.

ii. For developments located in participating cities utilizing Federal Urban County funds; including, Federal HOME Investment Partnerships Program, Community Development Block Grant, and Emergency Solutions Grant funds.

Current –
The following Regional Housing Needs Assessment transfer credit policies are applicable to projects applying for capital funding and/or Housing Choice Project Based Vouchers:

a. Pursue Regional Housing Needs Assessment credit transfers for projects

i. For projects located in cities which are funded with local revenue, such as General Funds and Housing Successor Agency funds, require acceptance of transfer of a Regional Housing Needs Assessment allocation from the County on a pro-rata basis of funds to total development costs. If a project meets a County business need such as serving extremely low-income households, HCD will return to the Board for approval of a waiver of the Regional Housing Needs Assessment transfer policy.

b. Optional Regional Housing Needs Assessment credit transfer for projects:

i. Located in cities funded with regional revenue resources or meeting regional priorities; including, projects with Mental Health Services Act funding, Veterans Administration Supportive Housing vouchers, and Homeless projects.

ii. Located in participating cities utilizing Federal Urban County funds; including, Federal HOME Investment Partnerships Program, Community Development Block Grant, and Emergency Solutions Grant funds.

Discussion –
This is a clarification in policy and process that will hold the Developer accountable for any required RHNA credit transfers.

9. OCCUPANCY LIMITS

Proposed –
Developments must meet the County's occupancy limits outlined below and be consistent with the OCHA administrative plan, if requesting PBVs. Applicants shall be required to utilize the assumed household size for the purposes of calculating affordable rents for County restricted units.

Unit Size	Maximum Household Size for Occupancy	Assumed Household Size for Rent Calculations
SRO	1	1
Studio (0-Bedroom)	2	1
1-Bedroom	4	1
2-Bedroom	6	2
3-Bedroom	8	4

4-Bedroom	10	6
5-Bedroom	12	8

Current –
Projects must also meet the following HCD occupancy limits.

Unit Size	Maximum Household Size
SRO	1
Studio (0-Bedroom)	2
1-Bedroom	4
2-Bedroom	6
3-Bedroom	8
4-Bedroom	10
5-Bedroom	12

Discussion –
Since the 30 percent restricted rent for assisted units are calculated by household size, the proposed language will allow the County to see more realistic rent amounts if the rents are calculated using an assumed household size that is lower than the occupancy limit.

10. AFFORDABILITY REQUIREMENTS AND SUBORDINATION POLICY

Proposed –
Affordability Covenants
Affordability levels will be enforced through a Regulatory Agreement between the borrower and the County that will generally be recorded against the property in first position recording order and will run with the land, except where a municipal financing authority issuing bond debt and the State of California Department of Housing and Community Development, require their Regulatory Agreement be in senior position.

Security Instruments
Lien priority will be based on amount of financial assistance provided by the County. When calculating the financial assistance provided by the County, it will calculate both the County-contributed capital and value of long-term rental subsidies OCHA is contributing toward the development. Recording order must be negotiated and finalized by the applicant and other non-County funders of the development prior to Board of Supervisors approval to commit funding to the development.

Financial Assistance from Cities
The Security Instruments and Affordability Covenants for financial contributions from cities must be subordinated to the County's security instruments and affordability covenants (i.e. the County Regulatory Agreement). Exceptions may be made where the amount of a city's financial contribution exceeds the amount of financial assistance provided by the County. When calculating the financial assistance provided by the County, it will calculate both the County-contributed capital and value of long-term rental subsidies OCHA is contributing toward the development.

When applicable, the County will evaluate the value of land donations and fee waivers as part of the City financial assistance to the development. Where the city is a lender and has land use authority, the County may consider allowing their land use restrictive covenant and/or affordable housing agreement to be recorded against the property in a senior position so long as the use and affordability restrictions are not in conflict with the County's Regulatory Agreement.

The applicant's financial assumptions must include the County policy regarding its Affordability Requirements and Subordination Policy and must include and disclose this assumption and this policy to other potential funders when seeking additional financing for their development. The County strongly encourages the applicant to notify the County on any issues it encounters with this requirement and policy as soon as possible. Failure to adhere to this policy may result in loss of funding.

Current –
Affordability levels will be enforced through a Regulatory Agreement between the borrower and the County that will be recorded against the property and will run with the land. It is the County's policy to not subordinate its Regulatory Agreement. However, OC Community Resources may, at its sole discretion, subordinate repayment, security positions, and affordability covenants to a conventional lender or other public agency lenders such as the State of California HCD, and CalHFA or AHP loans. City loans (including Deeds of Trust and Regulatory Agreements) must be subordinated to County loans and County Regulatory Agreement, except where the amount of such loan exceeds the amount of financial assistance (capital and value of long-term rental subsidies) provided by the County. Where applicable, the County will consider the value of land donations and fee waivers as part of the City loan.

Discussion –
The proposed changes to the affordability requirements and subordination will clarify the County's intent to have the County's Regulatory Agreement in senior position with a few exceptions in cases where the State of California HCD and a public agency issuer of bond debt require seniority and/or the local jurisdiction/city has land use authority. The proposed language also puts the burden on applicants to coordinate and negotiate lien priority prior to funding approval/commitment and clarifies the County's position in lien priority, which is based on proportionate contribution from soft lenders.

11. RENT INCREASES

Proposed –
Increases in rent may be allowed annually as determined by increases in the HUD Area Median Income. For developments receiving PBVs from Orange County Housing Authority (OCHA), increases in rent may be allowed annually at the anniversary date of the Housing Assistance Payment (HAP) Contract. An owner's request for a rent increase must be submitted to the OCHA no less than sixty (60) days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing, pursuant to the OCHA Administrative Plan, Chapter 17.

Current –
Increases in rent may be allowed annually as determined by increases in the HUD Area Median Income.

Discussion –
The proposed language clarifies the process for which rent increases may be allowed and requested through OCHA, if applicable.

12. MAXIMUM LOAN AMOUNTS/SUBSIDY LIMITS

Proposed –
The maximum loan/subsidy amounts shall be calculated on the basis of the number of units assisted by the County and shall vary by unit size and location of the proposed development. The maximum subsidy limits are shown below:

Unit Size	Unincorporated Areas and Participating Cities	All Other Cities
0 Bedroom (Studio)	$137,500	$95,000
1 Bedroom	$137,500	$100,000
2 Bedroom or larger	$137,500	$105,000

Current –

Unit Size	Unincorporated Areas and Participating Cities	All Other Cities
0 Bedroom (Studio)	$125,000	$48,600
1 Bedroom	$125,000	$56,700
2 Bedroom or larger	$125,000	$59,940

Discussion –

The County's maximum loan/subsidy amounts have remained constant since the release of the 2016 NOFA. In the 2022 Housing Funding Strategy Update (HFS Update), the funding projections built upon the success the County experienced to date in attracting financial investment in supportive/affordable housing from non-local sources at a 1:5.5 ratio and updated the anticipated units that need to be financed (2,396 total) over six years and produced over a seven-year period.

The assumptions for development costs and funding availability were also updated in the HFS Update, with the impacts heavily influenced by the pandemic. The total development cost estimate for supportive housing increased from approximately $345,000 per unit (2018) to approximately $550,000 per unit (2022) and represents a 59% increase in development costs over four years largely due to increasing land costs as well as pandemic-related construction supply cost increases which are expected to have an ongoing cost accelerator impact for several more years.

The HFS Update projection of capital funding needed from local sources to develop the 2,396 supportive housing units in Orange County over the next six years is 25% of the estimated $1.3 billion in total development costs, with $92,246,000 (7%) from the cities and $237,204,000 (18%) from the County. This projection is based on a $550,000 per unit cost which would reflect an average of $99,000 per unit of funding from the County based on the 18% figure and would be $137,500 per unit of funding if the County was contributing the full 25% as the only local source for developments that are located in unincorporated county or participating cities.

To be consistent with projections for County capital funding under the HFS Update and to continue attracting significant additional capital investment in Orange County to maximize housing development, including ensuring affordable and supportive housing developments, an increase to the per unit loan limits is being recommended.

13. MINORITY BUSINESS ENTERPRISES, WOMEN-OWNED BUSINESSES AND DISADVANTAGED BUSINESSES

Proposed –
Expanding contracting opportunities to include Disadvantaged Business Enterprises (DBEs).

Current –
Established guidelines to affirmatively further contracting opportunities for Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs).

Discussion –
The proposed language is included to align with HUD’s efforts to ensure small and disadvantaged businesses, minority firms, and women-owned businesses can compete for and win a fair share of contracts.

14. PARTNERSHIP MANAGEMENT FEES

Proposed –
Annual Partnership Management Fee of up to $25,000 may be paid from project cash flow, prior to residual receipts payments. This fee must be substantiated in writing prior to construction closing by the applicant/developer and cannot include charges for any office overhead for the development of the project or project operating expenses. This fee may only be paid during the tax credit compliance period and includes payments to both the general partner(s) and the limited partner. Payments above this limit must made from the borrower’s portion of residual receipts. No annual escalations are permitted and unpaid Partnership Management Fees cannot be accrued. All underwriting assumptions submitted in the application must assume and incorporate this policy.

Current –
Project Cash Flow Worksheet may include partnership management fees in an amount not to exceed $15,000 annually with a maximum inflation factor of three (3) percent.

Discussion –
Current partnership management fees are currently $15,000 and has not been meeting with current industry standards for allowable partnership management fees. The proposed language allows for the initial fee to be increased to $25,000 to reflect industry standards but removes the escalation factor and provides clarification for when and how the partnership management fee can be applied.

15. HOMELESS SERVICE SYSTEM PILLARS REPORT

Proposed –
On an annual basis, the County will conduct an assessment to assess and confirm adherence to the best practices, principles and commitments as described in the Homeless Service System Pillars, specifically to the Housing and Supportive Services Pillars. The assessment may be conducted by OC Community Resources and/or the County Executive Office and findings of the assessment may be reported to the Board of Supervisors and/or the Commission to End Homelessness.

Current –
This is a new policy and process being incorporated.

Discussion –
The inclusion of the proposed language will support the creation of housing resources that will follow the best practices, guiding principles, and commitments of the Homeless Service System Pillars Report which was created by the Commission to End Homelessness and accepted by the Board on October 4, 2022.

16. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Proposed –
Government Code section 84308, a provision of the Political Reform Act generally known as the "Levine Act," was amended, effective January 1, 2023, to apply to County elected officials. To comply with this change in the law, each applicant must complete and submit a Campaign Contribution Disclosure Form with their application.

Current –
This is a new policy and process being incorporated. The Levine Act is effective January 1, 2023.

Discussion –
All applicants responding to the 2023 NOFA will be subject to the Levine Act, which is applicable to nearly all County contracts. The Campaign Contribution Disclosure Form will ensure the County elected official's compliance with Government Code section 84308.

17. PARTNERSHIP WITH CALOPTIMA HEALTH

Proposed –
Applicants are encouraged to partner with CalOptima Health for potential services and/or community supports for any eligible assisted units in the development.

Current –
This is a new policy and process being incorporated.

Discussion –
To leverage additional funding and encourage developers to seek alternative strategies to reduce project costs, applicants responding to the 2023 NOFA are encouraged to consider partnering with CalOptima Health to offset operating costs related to the services provisions required for supportive housing units.