



## Item No. 16 Town of Atherton

### **CITY COUNCIL STAFF REPORT – CONSENT AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS, CITY MANAGER**

**THROUGH: GEORGE RODERICKS, CITY MANAGER**

**FROM: THERESA N. DELLASANTA, DEPUTY CITY MANAGER**

**DATE: SEPTEMBER 20, 2017**

**SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF COOPERATION  
AGREEMENTS WITH NON-ENTITLEMENT CITIES FOR  
PARTICIPATION IN THE COUNTY’S HOUSING AND  
COMMUNITY DEVELOPMENT PROGRAMS**

#### **RECOMMENDATION**

Approve Resolution authorizing execution of cooperation agreements with non-entitlement cities for participation in the county’s housing and community development programs.

#### **BACKGROUND**

In 1996, the Town and County entered into a cooperation agreement whereby Atherton, would not be eligible for Community Development Block Grant (CDBG) Funds on our own but rather cooperate and participate in the County Urban County Program to access CDBG Funding.

The Town does not receive enough funds to conduct housing programs locally and chose to participate (and get credit for participation) regionally as part of the Town’s Housing Element commitment to Affordable Housing Projects and Programs.

#### **ANALYSIS**

In May 2017, the Department of Housing sent the Town a letter regarding the automatic renewal of the Cooperation Agreement between San Mateo County and your jurisdiction. Unfortunately, the U.S. Department of Housing and Urban Development (HUD) has made some changes to their requirements regarding what must be included in the Cooperation Agreement in order to participate in the San Mateo County Urban County Program for non-entitlement jurisdictions to access Community Development Block Grant (CDBG) funding.

HUD is requiring the County and participating cities in the Urban County to execute a new Cooperation Agreement and for each jurisdiction to adopt a resolution to authorize the execution

of the new Agreement. A copy of the new Cooperation Agreement and draft authorizing resolution are enclosed with this letter. HUD has informed the County that a new Cooperation Agreement and all authorizing resolutions, adopted by each participating city MUST BE submitted by September 22, 2017.

### **POLICY FOCUS**

The Town does not receive enough funds to conduct housing programs locally and must choose to participate (and get credit for participation) regionally as part of the Town's Housing Element commitment to Affordable Housing Projects and Programs.

### **FISCAL IMPACT**

No fiscal impact at this time.

### **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

### **ATTACHMENTS**

- CDBG Agreement Draft
- Resolution Approving

# COOPERATION AGREEMENT

This AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, between the COUNTY OF SAN MATEO, a political subdivision of the State of California ("COUNTY"), and the Town of Atherton, a duly incorporated City within the County of San Mateo ("CITY"),

## WITNESSETH

WHEREAS, the Housing and Community Development Act of 1974, as amended ("Act"), provides for the distribution of federal funds through the process of Community Development Block Grants to eligible public entities; and

WHEREAS, those public entities which are eligible to receive said funds are cities with a population in excess of 50,000, "hold harmless" public entities, and urban counties; and

WHEREAS, public entities that do not otherwise come within the definition of an eligible public agency may cooperate and participate with an eligible public entity such as an urban county; and

WHEREAS, the County of San Mateo has heretofore qualified as an urban county under the Act, the County again solicits the cooperation and co-participation of public entities such as City in its application for federal assistance under the Act for the Federal Fiscal Years 2018, 2019 and 2020 and subsequent three-year periods thereafter; and

WHEREAS, City, having a population of less than 50,000, desires to cooperate and co-participate with County in this venture; and

WHEREAS, a Cooperation Agreement by and between City and County establishes the formal relationship to cooperate and co-participate and is specifically authorized under the provisions of Government Code Section 6502 and 26227; and

WHEREAS, County is in receipt of a communication from the United States Department of Housing and Urban Development, ("HUD"), with regard to requisites which must be included in said Cooperation Agreement and which further stated that the same must be completed and submitted by September \_\_\_\_ 2017; and

WHEREAS, City has previously, by an official act of pronouncement expressed its intent and desire to cooperate and participate with County in its plan application and to engage in housing and community development activities within its incorporated limits thereunder; and

WHEREAS, City understands that in becoming part of the Urban County, City automatically participates in the HOME and ESG Programs, which provide eligible local jurisdictions with federal funds for affordable housing activities; and

WHEREAS, City now desires to enter into this Cooperation Agreement ("Agreement") with the County of San Mateo so that it may qualify, under applicable provisions of the Act and HUD regulations, as co-participant with County ineligible activities under the Act:

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, the parties hereto agree as follows:

**1. Purpose:**

County and City agree to cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing; economic development, neighborhood facilities, housing rehabilitation, and other appropriate housing assistance to primarily benefit lower and moderate income people. This Agreement includes participation in the Community Development Block Grant (CDBG), the HOME Investment Partnerships Program and the Emergency Solutions Grant (ESG) Program.

**2. Term:**

The term of this Agreement shall be for Federal Fiscal Year 2018, 2019 and 2020 after which the term shall be automatically renewed unless action is taken by the City to terminate this Agreement. As provided by HUD rules and regulations, this Agreement shall automatically be renewed for participation in successive three-year qualification periods, unless County or City provides written notice it elects not to participate in a new qualification period, provided however, that this Agreement shall remain in effect until CDBG, HOME and ESG funds and income received with respect to the three-year qualification period are expended and the funded activities completed. County and City cannot terminate or withdraw from this Agreement while the Agreement remains in effect. The County and City may not withdraw from this Agreement prior to expiration of Federal Fiscal Year 2020.

By the date specified in HUD's Urban County Qualification Notice for a subsequent qualification period, County will notify City in writing of its right not to participate. Should there be changes necessary to meet the requirements for cooperation agreements set forth in the Urban County Qualification Notice applicable for a subsequent three-year urban county qualification period, amendment(s) to this Agreement shall be executed between County and City. Such amendment(s) shall be submitted to HUD; failure to do so will void the automatic renewal of such qualification period.

**3. Applicant Responsibility**

a. County, as applicant, has ultimate responsibility for execution of the community development program, for following its Consolidated Plan, which provides for an

analysis of housing and non-housing community development needs of the geographic area, and for meeting the requirements of other applicable laws, including but not limited to the National Environmental Policy Act, Uniform Relocation Act, Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, and the Americans with Disabilities Act of 1990.

County is the lead agent for carrying out the Urban County CDBG Program and for the ESG Program. The Urban County, as a CDBG entitlement jurisdiction, qualifies to receive its own allocation of federal HOME funds. However, to increase HOME funding access to the County overall, County has formed the San Mateo County HOME Consortium, of which the Urban County is a member.

County is also the lead agent for the HOME Consortium. The HOME Consortium is technically responsible for preparing and submitting to HUD the Consolidated Plan which covers the geographic area of the Consortium. The Urban County is responsible for submitting its own non-housing community development plan, an Action Plan, and required certifications as part of the Consortium's Consolidated Plan. As lead agent for the Urban County and the HOME Consortium, County is responsible for coordinating Consolidated Planning activities, including providing assurances or certifications to HUD.

Therefore, County requires City, and City agrees **to cooperate to undertake, or assist in undertaking community renewal and lower-income housing assistance activities** and to strict adherence to the Consolidated Plan as approved, and to all assurances and certifications provided, including agreeing to take all actions necessary to assure compliance with the Urban County's certifications under Sections 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, the Fair Housing Act, **and affirmatively furthering fair housing. See 24 CFR 91.221(a)** and 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. The County requires the City and the City agrees to comply with all other applicable laws.**

**This Agreement shall also prohibit the Urban County from funding activities in or in support of, any cooperating unit of general local government that does not affirmatively further fair housing within its own jurisdiction or that impedes the County's actions to comply with their own fair housing certification. This provision is required because noncompliance by a unit of general local government included in an urban county may constitute noncompliance by the grantee (i.e. the Urban County) that can, in turn, provide cause for funding sanctions or other remedial actions by the Department.**

County shall not provide CDBG, HOME or ESG funds for activities in, or in support of, any cooperating city that does not affirmatively further fair housing within its own jurisdiction or for activities that impede the County's actions to comply with its fair housing certification. In addition, County and City are responsible for taking all required actions to comply with the provisions of the National Environmental Policy Act of 1969.

- b. Further, pursuant to 24 CFR 570.501(b), County, as applicant, has the responsibility for ensuring that CDBG, HOME and ESG funds are used in accordance with all program requirements, for determining the adequacy of performance under agreements and procurement contracts, and for taking appropriate action when performance problems arise. Therefore, before disbursing any CDBG, HOME or ESG funds to City or projects in the City, County will require City, and City agrees to enter into a written agreement for each individual project.
- c. **The City 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 on 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 new requirement is contained in the Transportation, Housing and Urban Development, and Related Agencies Appropriation Act, 2014, pub. L113-76.**

4. **City Subject to Same Requirements as Subrecipients:**

Pursuant to 24 CFR 570.501(b), the City is subject to the same requirements applicable to subrecipients, including the requirements of a written agreement set forth in 24 CFR 570.503. County as applicant, has the responsibility for ensuring that CDBG, HOME and ESG funds are used in accordance with all program requirements, for determining the adequacy of performance under agreements and procurement contracts, and for taking appropriate action when performance problems arise. Therefore, before disbursing any CDBG, HOME or ESG funds to City or projects in the City, County will require City, and City agrees to enter into a written agreement for each individual project.

5. **The City has adopted and is enforcing:**

- a. 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;
- b. 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 jurisdictions.

6. **By executing this Agreement, the City understands that it:**

- a. May not apply for grants from appropriations under the Small Cities or State CDBG Programs for fiscal years during the period in which it participates in the Urban County's CDBG program;
- b. May participate in a HOME Program only through the Urban County. Thus, even if the Urban County does not receive a HOME formula allocation, City cannot form a HOME consortium with other local governments.
- c. **May receive a formula allocation under the ESG Program only through the urban county, although this does not preclude the urban county or a unit of government participating with the urban county from applying to the State for ESG funds, if the state allows.**

**7. Affirmative Action.**

Under County's ultimate supervision and responsibility, City covenants and agrees that it will abide by and enforce all applicable affirmative action requirements including, but not limited to Executive Order 11246, the Equal Employment Opportunities Act, the San Mateo County Affirmative Action Plan and local affirmative action plans.

**8. County's Responsibility to City.**

In addition to the foregoing obligations, County agrees:

- a. County shall, in preparing future plans under the Act, solicit to the extent allowed by the Act and all lawful HUD regulations, City's participation in the development of such future plans which refer to City's activities under the Act.
- b. In accordance with instructions from HUD, County agrees to permit City to carry out the essential community development and housing assistance activities provided for in the application and in future plans.
- c. County agrees to distribute funding it receives from its current plan application and in future plans, in accordance with the terms and provisions therein contained, or in accordance with such terms and conditions as required by the Act of HUD.

**9. City's Responsibilities to County.**

In addition to the foregoing obligations:

- a. City agrees to expend any funds received by virtue of any of Urban County's plans only in accordance with the terms and conditions stated therein, or amended by HUD.
- b. City agrees to cooperate with Urban County, as it has heretofore, with the development of future plan applications for funds under the Act, with regard to housing and community development activities to be continued or undertaken by City within its boundaries.

**10. Program Income.**

- a. City must inform County of any income generated by the expenditure of CDBG, HOME or ESG funds received by City.
- b. Any such program income must be paid to the County or City may retain the program income subject to requirements set forth in this Agreement.
- c. Any program income City is authorized to retain may only be used for eligible activities in accordance with all CDBG, HOME or ESG requirements as may then apply.
- d. County has the responsibility for monitoring and reporting to HUD on the use of any such program income and County shall require appropriate recordkeeping and reporting by City as may be needed for this purpose and
- e. In the event of close-out or change in status of City, any program income that is on hand or received subsequent to the close-out or change in status shall be paid to County.

**11. Acquisition, Change in Use, and Disposition of Real Property Acquired or Improved with CDBG Funds.**

- a. City shall notify County of any change in use including disposition of real property, within the control of City, which was acquired or improved in whole or in part with CDBG funds, from that approved at the time CDBG funds were authorized for acquisition or improvement.
- b. City shall reimburse County in an amount equal to the current fair market value (less any portion thereof attributable to expenditures of non-CDBG funds) of property acquired or improved with CDBG funds that is sold or transferred for a use which does not qualify under the CDBG regulations at any time prior to or subsequent to the close-out, change of status or termination of this Agreement between the County and City.

**12. Headings.**

The headings in this document are merely for the convenience of the parties, and do not form a material part of this document. Headings shall not be considered in the construction of this document.

**13. Minor Amendments to the Agreement.**

Notwithstanding, Paragraph 2 above, should it become necessary to change the language of this Agreement to meet HUD approval, without making major changes and without altering the intent of the Agreement, such changes may be made administratively by the City Manager of City.

All remaining provisions of said Agreement shall remain in full force and effect for the term provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**COUNTY OF SAN MATEO**

**By** \_\_\_\_\_  
**President, Board of Supervisors**

**ATTEST:**

\_\_\_\_\_  
**Clerk of Said Board**

**CITY OF** \_\_\_\_\_

**By** \_\_\_\_\_  
**Chief Executive Officer**

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

**Certificate of Delivery  
(Government Code Section 25103)**

**I certify that a copy of the original document filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.**

\_\_\_\_\_  
**By  
Clerk of the Board of Supervisors**

**RESOLUTION 17-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ATHERTON  
AUTHORIZING EXECUTION OF COOPERATION AGREEMENTS WITH NON-  
ENTITLEMENT CITIES FOR PARTICIPATION IN THE COUNTY'S HOUSING  
AND COMMUNITY DEVELOPMENT PROGRAMS.**

RESOLVED, by the City Council of the Town of Atherton, State of California, that

WHEREAS, the Housing and Community Development Act of 1974, as amended ("Act"), provides for the distribution of federal funds through the process of Community Development Block Grants to eligible public entities; and

WHEREAS, those public entities which are eligible to receive said funds are cities with a population in excess of 50,000, "hold harmless" public entities, and urban counties; and

WHEREAS, public entities that do not otherwise come within the definition of an eligible public agency may cooperate and participate with an eligible public entity such as an urban county; and

WHEREAS, the County of San Mateo has heretofore qualified as an urban county under the Act, the County again solicits the cooperation and co-participation of public entities such as City in its application for federal assistance under the Act for the Federal Fiscal Years 2018, 2019 and 2020 and subsequent three-year periods thereafter; and

WHEREAS, non-entitlement cities, having a population of less than 50,000, and do not qualify to receive their own allocation of Community Development Block Grant (CDBG), HOME Investment Partnership, or Emergency Solutions Grant (ESG) funding desire to cooperate and co-participate with County in this venture; and

WHEREAS, a Cooperation Agreement by and between City and County establishes the formal relationship to cooperate and co-participate and is specifically authorized under the provisions of Government Code Section 6502 and 26227; and

WHEREAS, non-entitlement cities have previously, by an official act of pronouncement expressed its intent and desire to cooperate and participate with County in its plan application and to engage in housing and community development activities within its incorporated limits thereunder; and

WHEREAS, participating non-entitlement cities understand that in becoming part of the Urban County, City automatically participates in the CDBG, HOME and ESG Programs, which provide eligible local jurisdictions with federal funds for affordable housing activities; and

WHEREAS, participating non-entitlement cities desire to enter into this Cooperation

Agreement ("Agreement") with the County of San Mateo so that it may qualify, under applicable provisions of the Act and HUD regulations, as co-participant with County ineligible activities under the Act:

NOW, THEREFORE, IT IS HEREBY DETERMINED AN ORDERED, that the Atherton City Council concurs with and approves the Cooperation Agreements between the County and non-entitlement cities, as approved by County Counsel as to form, and hereby authorizes execution of Cooperation Agreements with non-entitlement cities for participation in the County's housing and community development programs.

TOWN OF ATHERTON

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Michael Lempres, Mayor

ATTEST

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Theresa Della Santa, City Clerk