


City of Brisbane

Agenda Report

To: Honorable Mayor and City Councilmembers
From: Clay Holstine, City Manager 
Subject: Execution of Cooperation Agreement between City of Brisbane and San Mateo County for participation on the County's Housing and Community Development Programs

RECOMMENDATION:

Adopt Resolution 2017-46 authorizing the Execution of New Cooperation Agreements between San Mateo County and City of Brisbane for participation on the County's Housing and Community Development Programs as part of the Urban County for fiscal years 2018, 2019, and 2020 and subsequent three-year periods.

BACKGROUND:

The County of San Mateo (the County) receives funding allocations from the U.S. Department of Housing and Urban Development (HUD) under three programs: Community Development Block Grant (CDBG), HOME Investment Partnership Program (HOME), and Emergency Solutions Grant (ESG) Program. To maximize funding allocations in these programs, the County has been designated as an Urban County by HUD. To maintain Urban County status, the County must requalify with HUD every three-years and enter into a cooperation agreement with all non-entitlement cities including the City of Brisbane to solicit their cooperation and co-participation in the Urban County housing and community development programs.

DISCUSSION:

The County with participation of small, non-entitlement cities, qualifies as an Urban County under the CDBG Program guidelines and therefore is an "entitlement jurisdiction." As such the County is entitled to receive annual allocations of funding under the federal CDBG Program. The San Mateo Urban County also receives funding under the HOME and ESG Programs.

The four largest cities in the County, including Daly City, South San Francisco, San Mateo and Redwood City, have populations of over 50,000 and receive a direct allocation of CDBG funds from HUD. The smaller cities in the County are considered "non-entitlement" jurisdictions and do not receive a direct allocation of funding from HUD. Other non-entitlement cities in the County include: Atherton, Belmont, Burlingame, Colma, East Palo Alto, Foster City, Half-Moon Bay, Hillsborough, Menlo Park, Millbrae, Pacifica, Portola Valley, San Bruno, San Carlos

and Woodside. Through participation in the Urban County, non-entitlement jurisdictions can access CDBG, HOME and ESG funds.

In August 2017, HUD notified San Mateo County of the need to make significant changes to the existing Cooperation Agreement between the County and the non-entitlement cities to requalify as an Urban County. There are two specific changes to the existing Urban County Cooperation Agreement as set forth in HUD Notice CPD-17-03. 1) The inclusion of the Emergency Solutions Grant ("ESG") program as a covered component of Cooperation Agreement. 2) The addition of language referring to the provision obligating the County and participating cities to take all actions necessary to comply with affirmatively furthering fair housing. The Department of Housing has elected to enter into new Cooperation Agreements with each non-entitlement jurisdiction to ensure that all HUD requirements for the Urban County Cooperation Agreements are met. The deadline for submitting fully executed agreements to HUD is September 21, 2017.

Due to these needed changes to the Cooperation Agreement, 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.

FISCAL IMPACT:

There is no fiscal impact.

ATTACHMENTS:

Resolution 2017-44

Cooperation Agreement with the San Mateo County

RESOLUTION No. 2017-46

CITY COUNCIL, CITY OF BRISBANE, STATE OF CALIFORNIA

**RESOLUTION AUTHORIZING EXECUTION OF COOPERATION AGREEMENTS
WITH SAN MATEO COUNTY FOR PARTICIPATION ON THE COUNTY'S HOUSING
AND COMMUNITY DEVELOPMENT PROGRAMS**

WHEREAS, staff recommends authorizing a Cooperative agreement with San Mateo County to secure and award federal funds through the process of Community Development Block Grants (CDBG), Emergency Solutions Grant (ESG) to eligible public entities; 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, 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, 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

NOW THEREFORE, BE IT RESOLVED BY THE City Council of the City of Brisbane that the City Council hereby authorizes a Cooperation Agreement with San Mateo County to award Community Development Block Grants (CDBG), Emergency Solutions Grant (ESG) to eligible public entities; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute documents necessary to effectuate the Cooperation Agreement with San Mateo County.

Lori S. Liu, Mayor

I hereby certify that the foregoing Resolution No. 2017-46 was duly and regularly adopted at the meeting of the Brisbane City Council on September 7, 2017 by the following vote:

AYES: Councilmembers

NOES:

ABSENT:

Ingrid Padilla, City Clerk

COOPERATION AGREEMENT

This Cooperation Agreement (the "Agreement"), entered into this _____ day of _____, 2017, between the COUNTY OF SAN MATEO, a political subdivision of the State of California ("County"), and the CITY OF Brisbane a duly incorporated City within the County of San Mateo ("City").

WITNESSETH

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

WHEREAS, those public entities which are eligible to receive said federal funds are cities with a population more than 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 entity may cooperate and participate with an eligible public entity such as an Urban County; and

WHEREAS, since County has heretofore qualified as an "Urban County" under the Act, 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 of 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, this Agreement by and between City and County establishes the formal relationship to cooperate and co-participate and is specifically authorized under the provisions of California Government Code sections 6502 and 26227; and

WHEREAS, County has received a communication from the United States Department of Housing and Urban Development ("HUD"), regarding additional language which must be included in this Agreement; and

WHEREAS, the Agreement with this additional language must be executed by the parties and submitted to HUD by September 21, 2017; and

WHEREAS, City has previously, by an official act of pronouncement, expressed its intent and desire to jointly participate in the housing and community development programs of the Urban County and to submit a joint application to establish or re-establish the Urban County for the fiscal years 2018, 2019 and 2020 and subsequent three-year periods thereafter, as designated under Government Code Sections 6502 and 26227 as required by the U.S. Department of Housing and Urban Development; and

WHEREAS, City understands that in becoming part of the Urban County, City automatically participates in the HOME Investment Partnership ("HOME") Program and the Emergency Solutions Grant ("ESG") Program, which provide eligible local jurisdictions with federal funds for housing and community development activities; and

WHEREAS, City now desires to enter into this Agreement with County so that it may qualify, under applicable provisions of the Act and HUD regulations, as co-participant with County in eligible 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 CDBG, HOME and ESG Programs.

2. Term:

The term of this Agreement shall be for the Federal Fiscal Years of 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 electing 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 are completed. County and City cannot terminate or withdraw from this Agreement while the Agreement remains in effect.

By the date specified in HUD's Urban County Qualification Notice CPD – 17-03, and for a subsequent qualification period of three years, 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 and then submitted to HUD. Failure to do so will void the automatic renewal of such qualification period.

3. County's Responsibilities as Applicant:

- a. County, as applicant, has ultimate responsibility for executing the housing and community development programs on behalf of the Urban County, following its Consolidated Plan, which provides for an analysis of housing and non-housing community development needs of the geographic area, and meeting the requirements of other applicable laws, including but not limited to the National Environmental Policy Act, the Uniform Relocation Act, the 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 the ESG Program. The Urban County, as a CDBG entitlement jurisdiction, is qualified to receive its own allocation of federal HOME funds. However, to increase HOME funding access to 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 all activities necessary to prepare and submit a five-year Consolidated Plan on behalf of the Urban County, 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, strictly adhere to the Consolidated Plan as approved and to all assurances and certifications provided to HUD, including taking all actions necessary to comply with the Urban County's certifications under Section 104(b) of Title I of the Act, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and affirmatively further fair housing. All parties to the Cooperation Agreement must comply with 24 CFR § 91.225(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. County requires City, and 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 County's actions to comply with its 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 may, in turn, provide cause for funding sanctions or other remedial actions by HUD.

County shall not provide CDBG, HOME or ESG funds for activities in, or in support of City that does not affirmatively further fair housing within its own jurisdiction or for activities that impede 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, determining the adequacy of performance under agreements and procurement contracts, and taking appropriate action when performance problems arise. Therefore, before disbursing any CDBG, HOME or ESG funds to City or projects in City, County will require City, and City agrees to enter into a written agreement for each individual project.
- c. City may not sell, trade, or otherwise transfer all or any portion of CDBG 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 Housing and Community Development Act of 1974, as amended. This requirement applies to the qualification and requalification of an Urban County and is contained in the Transportation, Housing and Urban Development, and Related Agencies Appropriation Act, 2014 Pub. L 113-76.

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

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

5. **City's Adoption and Enforcement of Policies:**

- 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; and
- 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. **City Eligibility for CDBG, HOME and ESG Funding**

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 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; and

- 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 No. 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:

- a. County shall, in preparing Consolidated Plans, Annual Action Plans, and any relevant future plans ("plan") 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 Consolidated and/or Annual Action Plans.
- c. County agrees to distribute funding it receives from its current Annual Action Plan and in future Consolidated and/or Annual Action Plans, in accordance with the terms and provisions therein contained, or in accordance with such terms and conditions as required by the Act or 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 the Urban County's plans only in accordance with the terms and conditions stated therein, or as amended by HUD.
- b. City agrees to cooperate with the Urban County, as it has heretofore, with the development of current and future Consolidated Plans for the Urban County in which housing and community development activities are funded by CDBG, HOME and/or ESG to be continued or undertaken by City within its boundaries are included.

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 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.
- 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:

If at any time after CDBG funds are allocated, in whole or in part, for the acquisition or improvement of real property, which is within the control of City, and if there is a change in the proposed use of said property, including disposition, City shall notify County of the proposed change. 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 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 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 BRISBANE

By _____
Clay Holstine, Chief Executive Officer

ATTEST:

Ingrid Padilla 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