

**JOINT EXERCISE OF POWERS AGREEMENT AND
COOPERATION AGREEMENT TO UNDERTAKE
OR TO ASSIST IN THE UNDERTAKING OF
ESSENTIAL ACTIVITIES PURSUANT TO
TITLE I OF THE HOUSING AND COMMUNITY
DEVELOPMENT ACT OF 1974, AS AMENDED,
FOR THE PERIOD OF OCTOBER 1, 2015 TO SEPTEMBER 30, 2018**

This Agreement (“Agreement”) is entered into by and between the County of Monterey (“County”) and the City of Sand City (“City”) relating to essential community development and housing assistance activities funded by the Federal government.

RECITALS

WHEREAS, Congress has enacted the Housing and Community Development Act of 1974, as amended (the “Act”); and

WHEREAS, Title I of the Act provides for a program of Community Development Block Grants; and

WHEREAS, Title I of the Act makes entitlement grants available to cities with a population of 50,000 or more persons and to counties that qualify as an Urban County; and

WHEREAS, County qualified as an Urban County in 2012 and may thereby receive such funds; and

WHEREAS, the parties hereto wish to enter into this Agreement to enable the County of Monterey to continue to receive entitlement funds as an Urban County and to establish the respective rights and obligations of the contracting parties to such funds.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1) Authorities.

This Agreement is made pursuant to Section 6500 et. seq. of the California Government Code and constitutes an exercise of powers common to both City and County, each being empowered to carry out the purposes of the grant in their own jurisdictions.

This Agreement is further made pursuant to the Housing and Community Development Act of 1974, as amended.

2) Definitions.

For purposes of simplicity and clearer understanding, some of the definitions below have been shortened or rephrased from those set forth in the Act and Regulations thereunder. In the event of any conflict between the definitions in this Agreement and those set forth in the Act and Regulations, the latter shall govern.

- a. “Act”: Title I of the Housing and Community Development Act of 1974, P.L. 93-

383, as amended.

- b. “Advisory Committee”: The committee representing all jurisdictions participating in the County’s Urban County application and comprised of a representative of each jurisdiction.
- c. “Annual Action Plan”: The annual plan prepared by the Urban County to describe projects for which CDBG funds will be used, how those projects address identified community needs, and to assess overall progress toward meeting the goals of the five-year Urban County Consolidated Plan.
- d. “Board of Supervisors”: The County's legislative body which is the legal recipient of the Community Development Block Grant from HUD and is legally responsible for the administration of the Urban County Community Development Block Grant Program in the County of Monterey.
- e. “CDBG”: Community Development Block Grant, a federal program administered by HUD which provides funding to eligible entitlement Cities and Urban Counties to address housing and community development needs of lower income persons.
- f. “City”: Any city that is a party to this Agreement; such city may be referred to as a "Non-Entitlement City," that is, a city which cannot directly apply for or receive funds through cooperation agreements with HUD.
- g. “Consolidated Plan”: The HUD required document to request funding as an Urban County. The Consolidated Plan describes the housing and community development conditions and goals to address the needs of lower income persons and identifies actions to be taken by the Urban County to address its housing and community development needs. The Consolidated Plan also serves as a guide for HUD in the review of the distribution of resources to communities.
- h. “County”: The County of Monterey
- i. “Economic Development Department”: The office established by the County of Monterey Board of Supervisors to undertake the County's housing and community development programs including assistance in the development of affordable housing for low and lower income residents of Monterey County.
- j. “Grant”: The CDBG funds allocated by HUD to the County of Monterey as the legal recipient of the Community Development Block Grant for the Urban County.
- k. “HUD”: The United States Department of Housing and Urban Development.
- l. “Program”: The County of Monterey’s Urban County Community Development Block Grant Program.
- m. “Project Proposals”: Requests for an allocation of CDBG funds submitted by eligible applicants to implement specific eligible CDBG activities, including both projects and services, as defined by HUD.
- n. “Public Participation Plan”: The plan adopted by the Board of Supervisors of the County which outlines the opportunities and process for citizen input on matters pertaining to planning, monitoring, and evaluation of the Urban County CDBG Program’s projects.

o. “Regulations”: The rules and regulations of the U.S. Department of Housing and Urban Development. Particular reference is made to those regulations stated in 24 Code of Federal Regulations Part 570 (containing the general regulations of Community Development Block Grants) and Part 58 (containing the regulations on the Federal Environmental Review Procedures).

p. “Standing Committee”: The committee appointed by the Board of Supervisors to meet and confer in regard to Project Proposals and to make recommendations to the Board in regard to the Project Proposals.

q. “Urban County”: A county that is (1) in a metropolitan area; (2) authorized by state law to undertake essential community development and housing assistance activities within its unincorporated areas, and (3) has a total combined population of 200,000 or more (excluding metropolitan cities) from the unincorporated areas and participating incorporated areas; or has a total combined population of at least 100,000 but less than 200,000 from the unincorporated areas and participating incorporated areas, provided that, in the aggregate, those areas include the majority of persons of low and moderate income that reside in the county (outside of any metropolitan cities).

r. “Urban County Staff”: Staff persons of the County and cities participating in the Program.

3) Purpose of Agreement.

This Agreement is formed to meet the requirements and purposes of the Act and Regulations with respect to the entitlement grant pursuant to Title I of the Act and to establish the respective rights of the parties to such grant.

The purpose of this Agreement shall be accomplished in the manner hereinafter set forth.

4) Cooperation Agreement.

a. City agrees to undertake, or assist in undertaking of, essential activities as defined in the Act and Regulations thereunder for the term of this Agreement. More specifically, the City agrees to undertake, or to assist in undertaking, community renewal and lower-income housing assistance activities.

b. The City and County will take all actions within their power to assure compliance with the Urban County's certification required by 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. This agreement also includes the obligation 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, and other applicable laws.

c. City and County agree, pursuant to 24 CFR 570.501(b) that cities are subject to the same requirements applicable to subrecipients, including the requirement of a written agreement as set forth in 24 CFR 570.503. City understands and agrees that, should it fail to comply with such requirements or with the terms of this Agreement, funds which may be allocated to City during the effective dates of this Agreement may be terminated, or reduced or otherwise limited in accordance with the Act and

Regulations.

d. This Agreement covers only the County's designation as an Urban County for the Community Development Block Grant Program (CDBG). The County is not seeking Urban County designation for purposes of receiving Emergency Shelter Grant (ESG) or HOME Investment Partnership (HOME) funds.

e. All units of general local government (i.e. Cities and the County) participating in this Agreement understand and agree that they may not apply for grants from appropriations under the State CDBG Programs for fiscal years during the period in which they are participating in the Urban County's CDBG Program.

f. All units of general local government participating in this Agreement understand and agree that they may receive a formula allocation under the HOME Program only through the Urban County. Thus, even if the Urban County does not receive a HOME formula allocation, the participating City cannot form a HOME consortium with other local governments. This does not preclude the Urban County or a participating City from applying to the State for HOME funds, if the State allows.

g. All units of general local government participating in this Agreement understand and agree that they may still receive a formula allocation under the ESG program except through the Urban County.

h. The County will submit the Joint Exercise of Powers Agreement and Cooperation Agreement to the City for signature by the City if City chooses to participate in the Urban County Program. If a City decides not to participate in the Urban County program by not signing a Joint Exercise of Powers Agreement and Cooperation Agreement, it shall not be eligible to receive Urban County entitlement CDBG funding for three successive program years commencing on October 1, 2015 and ending September 30, 2018.

i. Upon qualifying, the County will remain an Urban County (including its unincorporated areas and the included units of general local government) for a period of three years. That is, during the three year qualification period, no included units of general local government can be removed from the Urban County, nor can any additional units of general local government generally be included in the Urban County during that period. To assure that included units of general local government remain an effective part of the Urban County for the entire three year qualification period, this Cooperation Agreement between the Urban County and its included units of general local government covers three successive program years.

j. All units of general local government participating in this Agreement understand and agree that this Agreement remains in effect until the CDBG funds and income received with respect to activities carried out during the three-year qualification period, and in any successive qualification periods under agreements that provide for automatic renewals, are expended and the funded activities completed, and that the County and participating units of general local government may not terminate or withdraw from this Agreement while this Agreement remains in effect.

k. All units of general local government participating in this Agreement have adopted and are enforcing a policy prohibiting the use of excessive force by law enforcement agencies within their own jurisdiction against any individuals engaged in

non-violent civil rights demonstrations.

l. All units of general local government participating in this Agreement have adopted and are enforcing 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 their jurisdictions.

m. Cities 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 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.

5) Allocation of Funding.

a. As an Urban County, the County of Monterey receives a direct allotment of CDBG funding from HUD. The annual funding will be distributed as follows:

i. A minimum of ten percent (10%) of the allocation will be retained by the County for general administration.

ii. A minimum of ten percent (10%) of the Services allocation will be retained by the County for administration of service programs.

iii. Up to fifteen percent (15%) will be set aside for Project Proposals for services.

iv. City will receive an allocation which is the greater of the City's HUD allocation of funds or \$10,000.

b. City must receive the minimum annual funding allocated at least once during each three-year funding cycle. City may elect to decline receipt of a portion or all of City's annual allocation if it does not have projects ready for implementation. All funding allocations declined by City will be allocated to County unless County agrees to allocate the declined funding back to City in a future year within the three year JPA term.

6) Administration of Agreement.

Both City and County, the Advisory Committee, and the Standing Committee shall have specific duties and authorities.

The City is charged with:

a. Cooperating in furnishing information and assistance necessary for the preparation, completion and filing of required HUD documents in accordance with the requirements of the Act and the Regulations. In accordance with such cooperation, the City shall annually furnish the City's local plan and process for citizen participation in the development of the City's project proposals requested to be funded with Urban County CDBG funds to the County. The City's local citizen participation final commitments will be incorporated into the official Urban County Public Participation Plan.

b. Submitting to the County all necessary information required for the completion of a Consolidated Plan, Annual Action Plan, Analysis of Impediments to Fair Housing, Consolidated Annual Performance and Evaluation Report, or any other reports as

necessitated by the Urban County status in the form required by HUD. This information will detail the City's commitments to providing assistance and opportunities to very low and low income persons within the City. The local commitments by all participating cities will be incorporated into documents submitted by the Urban County to HUD to determine the local commitments to address the needs of very low and low income persons. The County shall not alter or amend the information furnished to County by cities in compliance with the Act and Regulations. Consistent with identified Urban County needs and priorities, the County shall have full authority and necessary control of the preparation and filing of documents submitted to HUD and of other papers and documents in support thereof.

c. Making recommendations to the Advisory Committee in regard to Project Proposals for projects and programs within its jurisdiction.

The County is charged with:

- a. Undertaking all Urban County activities including:
 - i) Issuing a NOFA each year for funding;
 - ii) Analyzing funding requests submitted in response to the NOFA;
 - iii) Acting as staff to the Advisory Committee;
 - iv) Acting as staff to the Standing Committee;
 - v) Overseeing activities of Subrecipients;
 - vi) Reporting to HUD as required;
 - vii) Preparing all reports for submittal to IDIS on Subrecipient activities; and
 - viii) Preparing all reports as required by HUD in regard to the Urban County program.
- b. Working with and keeping participating Cities informed as to overall activities of the Urban County.

The Advisory Committee is charged with:

- a. Reviewing all Project Proposals.
- b. Making recommendations to the Standing Committee in regard to awards of loans and/or grants on all Project Proposals.
- c. Advising in regard to the development of a comprehensive coordinated housing and community development plan, as necessary.
- d. Recommending awards of loans and grants for service programs proposed by jurisdictions, agencies, and non-profit organizations to jurisdictions and the Standing Committee.

The Standing Committee is charged with:

- a. Recommending awards of loans and grants for projects and service programs proposed by jurisdictions, agencies, and non-profit organizations to the County Board of Supervisors.

7) Term of Agreement.

This Agreement shall become effective upon full execution by the governing bodies of County and of the City and it shall remain in full force and effect through September 30, 2018.

8) Proposals.

Any and all Project Proposals for eligible projects and services located totally within the sphere of influence of City must be considered by the City as part of its project proposal development process.

For a Project Proposal for eligible services limited to City's jurisdiction, it should be reviewed and approved by the City and then submitted to the Advisory Committee.

9) Project Proposal Processing.

In general, projects will be processed in the following manner:

- a. Cities and the County will solicit project proposals from entities serving the community and from jurisdictional departments.
- b. Cities and the County will review, rate and rank all Projects Proposals within their jurisdiction using a form provided by the County and approved by the Advisory Committee.
- c. Cities will forward their rated and ranked Projects Proposals to the County for consolidation into one document.
- d. The consolidated list of Project Proposals will be evaluated by the Advisory Committee to ensure that:
 - i) Projects meet the goals identified in the Consolidated Plan and Annual Action Plan.
 - ii) No more than 15% of total funds are allocated to public services.
- e. The Advisory Committee will rate and rank the Projects Proposals and make final recommendations to the Standing Committee.
- f. The Standing Committee will rate and rank the Projects Proposals and make final recommendations to the County Board of Supervisors.
- g. The Standing Committee recommendations will be reviewed at a public hearing before the Board of Supervisors. It is understood and agreed that as the legal recipient of the grant, the County, through its Board of Supervisors, must officially approve the recommended Project Proposals to be included in the application in order to ensure that the program submitted to HUD is consistent with the County's Consolidated Plan.

10) Grant Disbursement.

- a. City understands and agrees that CDBG funds disbursed under this Agreement are the obligation of the County and that such obligation of the County is dependent upon the availability of federal funds to implement Title I of the Act. Funds disbursed to the City will be expended on eligible activities which have been approved by the Board of Supervisors and described in the adopted Annual Action Plan. The Annual Action Plan includes a description of prioritized needs, strategies to address the needs, and a project funding submission and evaluation process. This process will be used to

evaluate all project proposals according to their ability to address the adopted, prioritized needs and other criteria described in the adopted Annual Action Plan.

Parties hereto agree that Urban County funding will be prohibited for activities in or in support of any participating City 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.

b. Upon approval of the County Board of Supervisors and HUD approval of the CDBG allocations and with the release of said funds, the City may begin implementation of approved activities. Information on the progress of approved activities will be submitted to the County on a monthly or quarterly basis during the program years the activities are being carried out. This information will be included in the Urban County's monitoring reports which are reviewed by HUD during the program year. Projects which fail to meet schedules according to the approved time schedule will be evaluated according to the process detailed in the approved Urban County CDBG Program Guidelines.

11) Areas of Housing Authority Operation.

Nothing herein shall affect the rights and obligations of the parties with respect to any agreement which the City or County may have with the Housing Authority of the County of Monterey (HACM).

12) Services, Equipment and Property; Reimbursement.

The County shall provide or be primarily responsible for providing the services, equipment and other property necessary for the planning, preparation and filing of CDBG documents and for the administration of the grant funds subject to the right of the County to seek reimbursement for actual expenses and costs of furnishing such services, equipment and property. Subject to the provisions of the application or of the grant award made thereon, all property furnished by County as herein-above described shall belong to County during the term of this Agreement and after its termination.

At the termination of the CDBG program, all property and equipment acquired with CDBG funds will be subject to the requirements and conditions of OMB Circular A-102 Attachment N, Property Management Standards.

13) Program Income.

a. This Section 13 only applies to Program Income generated through activities funded by the Urban County Program.

b. The City and the County acknowledge that they must continue to maintain separate Program Income records for 1) Program Income generated through State CDBG revolving loan fund programs and 2) for Program Income generated through the Urban County Program.

c. Any Program Income generated by Urban County approved projects will be paid to the County except as cited in Section 14 below.

d. Any Program Income the City or County is authorized to retain may only be used specifically for eligible activities in accordance with the project approved by the Advisory Committee to which the Program Income relates and all CDBG

requirements as may apply.

e. The County has the responsibility for monitoring and reporting to HUD on the use of any such Program Income; accordingly, City and County shall provide appropriate record keeping and reporting as may be needed for this purpose.

f. In the event of close-out or change in status of the City, any Program Income that is on hand or received subsequent to close-out or change in status shall be paid to the County, with the exception of Program Income generated by an approved project and held in a revolving loan fund as cited in Section 14 below.

g. On an annual basis, the City shall submit to the County written certification that such Program Income has been and shall continue to be used for approved purposes.

h. Any Program Income which exceeds one hundred twenty five percent (125%) of the annual allocation at a point in time one hundred twenty (120) days prior to the fiscal year end must be returned to the County and will be added to the fund balance. To the extent possible, any Program Income returned to the County may be reallocated and reissued to the City or County from which it came for new projects.

14) Revolving Loan Fund.

a. This Section 14 only applies to Program Income generated through the Urban County Program.

b. The purpose of this provision is to enable the City or County to continue a revolving loan program, if established, in the event of close-out or a change in status of the City or County. Such Program Income shall not be used for any purpose other than that for which it was approved and only for the benefit of low and very-low income households.

c. If a City or County establishes a revolving loan fund project approved by the Standing Committee such as a first time home buyer or housing rehabilitation loan program or a Business Assistance or a Micro-Enterprise economic development loan fund, the City or County may request that it retain Program Income for continued use in the revolving loan project. The request must be approved by the Standing Committee at the time of approval of the project. The approval to retain Program Income will be for a time period not to exceed the three year HUD approved Urban County funding cycle. The term may be extended for additional three year periods that correspond to the HUD funding cycles by the Standing Committee upon request.

d. Eligible activities may be funded only through loans, which, in turn, generate payments to the fund for use in carrying out the same activities.

e. Any Program Income generated by revolving loan funds shall be maintained and used for the activity which generated the Program Income and must meet all existing and subsequent HUD regulations and requirements.

f. The City or County must retain Revolving Loan Fund Program Income in a separate fund from other Urban County Program Income. The City's or County's Revolving Loan Fund cash balance must be held in an interest bearing account and the interest must be remitted to the County annually. The County, in turn, remits the interest to HUD.

g. Regardless of the ability to retain Program Income, one hundred twenty (120) days before the end of any fiscal year, Cities or the County must return any Revolving Loan Fund balance to the County which is in excess of 125% of the City's or County's annual allocation.

h. Revolving Program Income returned to the County will be added to the fund balance as cited in Section 13 above.

15) Records.

City and County shall maintain appropriate books, records, files, and accounts relating to the receipt and disbursement of the grant funds, including records in accordance with 24 CFR Sec. 570.503 as they relate to the application, acceptance, and use of federal funds for this federally assisted program and any other records imposed by County's contract with HUD. All such books, records, files and accounts shall be made available for inspection at reasonable times and places by authorized representatives of City, County, and Department of Housing and Urban Development or any other person authorized by the Act or the Regulations.

16) County Disbursement of Funds.

The Treasurer-Tax Collector of the County shall receive and have custody of all funds until disbursement of such funds to be made in a manner designated by the County. County shall, by a date no later than fourteen days after receipt of the current year funding money, notify City of the manner of disbursement of such funds.

17) Contractual Obligations.

It is expressly understood and agreed that, as the applicant to HUD, County must take the full responsibility and assume all obligations of an applicant under the Act and that HUD will look only to the County in this regard. However, County assumes no responsibility nor liability towards City for any failure to include City in the application as a result of City's failure to supply County with information necessary to prepare and file the application, or as a result of City's failure to supply County with such information, upon designated dates, or as a result of City's failure to comply with the Act and the Regulations.

18) Indemnification.

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the County and City agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any performance of obligations required by this Agreement, the Act, Application, Regulations or other applicable laws relating to this Agreement delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other parties hereto, their officer, board members,

employees or agents, under or in connection with or arising out of any performance of obligations required by this Agreement, the Act, Application, Regulations or other applicable laws relating to this Agreement delegated to such other parties under this Agreement.

19) Discretionary Actions.

Nothing herein contained shall be construed to prohibit the City or County from exercising its discretion on any legislative quasi-judicial and/or administrative matter (including but not limited to any action involving zoning of General Plan amendments). Nothing herein shall compel the City or County to take any action on any matter save and except as expressly required in this Agreement. It is understood and agreed that, by this Agreement, neither City nor County commits or delegates the exercise of any of its police powers in any matter whatsoever save and except as expressly set forth in this Agreement.

20) Timeliness.

When any action is required hereunder upon request for action on a document or material furnished by either the County to the City or the City to the County, said request for action on a document or material shall be furnished at least seven days prior to the date said action is required in order to allow sufficient time for the County or City to review and act on said document or material.

Time is of the essence in this Agreement.

21) Severability.

Should any part, term, provision of this Agreement be judicially determined to be illegal or in conflict with any law of the State of California or any law of the United States, or should any part, term, or provision of this Agreement be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

22) Section Headings.

All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

23) Notices.

Any notice, demand, or communication under, or in connection with, this Agreement between the parties may be served by personal service; by electronic transmission; by facsimile; by mailing the same by certified mail, postage prepaid, return receipt requested; or delivered by express delivery service, return receipt requested; or delivered personally to the principal office of the parties as follows:

If to the County: County of Monterey
168 W. Alisal Street, Third Floor
Salinas, CA 93901
Attention: Director, Economic Development Department

If to the City: City of Sand City
1 Sylvan Park

Sand City, CA 93955
Attention: City Manager

Notice shall be deemed satisfied within one (1) business day if provided by personal service, by electronic transmission, or by facsimile. Notice shall be deemed satisfied within three (3) business days if provided by certified mail or by express delivery. Either party may change such address by notifying the other party in writing as to such new address as the party may desire used and which address shall constitute the new address for notice, until further written notice.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

CITY OF SAND CITY

COUNTY OF MONTEREY

By: _____
City Manager

By: _____
Economic Development Director

Approved as to form and legality:

Approved as to form and legality:

By: _____
City Attorney

By: _____
Deputy County Counsel

Date: _____

Date: _____