

Agreement for Administration and Distribution of Measure K Funds

This Agreement for the Administration and Distribution of Measure K Funds (the “Agreement”) is between the County of San Mateo (“County”), a political subdivision of the State of California, and SMCU Community Fund, an independent legal entity and non-profit public benefit corporation formed by the San Mateo Credit Union for the purpose, among others, of discharging the services set forth in this Agreement, and it is dated as of April 22, 2020 (the “Effective Date”).

By signing this Agreement, the County and SMCU Community Fund (together, the “Parties”) agree to the following terms and conditions regarding the ONE MILLION DOLLARS AND ZERO CENTS (\$1,000,000.00) in Measure K Funds (the “Measure K Funds”) that SMCU Community Fund will assist the County to administer and distribute for the benefit of small businesses located in San Mateo County that have been adversely impacted by COVID-19.

1. Funds Purpose & Disbursement

a. Funds Purpose. The public purpose of the Measure K Funds is to ensure the health, welfare, diversity, and long-term sustainability of communities throughout the County by supporting the continued existence, health and vibrancy of San Mateo County small businesses that have been adversely impacted by COVID-19 to assist those businesses to survive the devastating economic impacts of COVID-19, as authorized by the San Mateo County Board of Supervisors at its meeting on April 21, 2020 (the “Funds Purpose”).

b. Disbursement of Funds. Pursuant to the Funds Purpose, the Measure K Funds shall be disbursed as individual grants to San Mateo County small businesses in amounts of no more than TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00) to each selected Qualifying Small Business. For purposes of this Agreement, a Qualifying Small Business is one that meets all of the following criteria:

- i. The business is a for-profit company with at least two employees;
- ii. The business has a primary office, storefront, or business space that is open to the public and located within the geographical boundaries of the County;
- iii. The business has had, since March 31, 2019, and continues to have, all applicable and required business license(s), permit(s) or other government-issued registration document(s);
- iv. The business has been open for business for at least one year at the time of its application for a grant;
- v. The business has either (A) the equivalent of 10 or fewer full time equivalent employees, as of February 15, 2020 or (B) less than \$2,500,000 in annual gross revenue over the 12-month period beginning March 1, 2019; and
- vi. The business has suffered a demonstrated reduction in gross revenue due to COVID-19 of at least twenty five percent (25%).

The Parties acknowledge and agree that SMCU Community Fund is seeking tax exempt status under Section 501(c)(3) of the Internal Revenue Code. Any additional amounts contributed to SMCU Community Fund beyond the \$1,000,000 in Measure K Funds for the Funds Purpose, including amounts donated through the San Mateo County Strong Portal on the County’s webpage,

SMCU Credit Union Community Fund’s webpage, San Mateo Credit Union’s webpage, or Silicon Valley Community Foundation’s webpage, shall also be disbursed according to the terms of this Agreement, and as directed by the County. Thus, for the purposes of this Agreement, the term “Funds” shall mean both the Measure K Funds and any/all additional funds contributed to SMCU Community Fund for the Funds Purpose.

The amount of an individual grant awarded to a Qualifying Small Business shall be equal to the equivalent of two months operating expenses (which shall be determined by taking an average of the Qualifying Small Business’s last 12 months of operations as of March 1, 2020), not to exceed \$10,000, and subject to availability of Funds.

The Parties further acknowledge and agree that the County may from time to time adjust the definition of Qualifying Small Business as used this Agreement, and will do so by written notice to SMCU Community Fund.

2. Term of Agreement

The Term of this Agreement shall commence on April 22, 2020 and shall terminate on July 31, 2020, unless earlier terminated by either Party or unless all Funds have been earlier disbursed by SMCU Community Fund, as set forth in this Agreement (“Term”).

3. Services Provided by SMCU Community Fund

SMCU Community Fund shall perform the following services for the County under this Agreement:

- a. Arrange to receive online applications from small businesses seeking individual grants from the Funds according to the application process, format, supporting documentation, and other requirements established by the County;
- b. Review all applications received to determine whether applicants are Qualifying Small Businesses within the meaning set forth above in Section 1.b;
- c. Communicate with the County regarding grant eligibility for each application submitted and calculate recommended grant amounts for each Qualifying Small Business in a timely manner such that each applicant will be notified of a decision within seven (7) days of submitting their application;
- d. Disburse individual grants to Qualifying Small Businesses, as directed by the County; and
- e. Provide written reports to the County, as set forth below in Section 6 of this Agreement.

Notwithstanding anything to the contrary in this Agreement, the County shall make all final decisions regarding disbursement of individual grants to Qualifying Small Businesses and the amounts of such disbursements.

4. Administrative Fee

SMCU Community Fund is providing its services under this Agreement without charge and, thus, an administrative fee will not be paid under this Agreement. However, the Parties hereby agree and acknowledge that SMCU Community Fund shall derive significant benefits under this

Agreement, including, without limitation, positive press/business reputation and marketing opportunities arising from its collaboration with the County in assisting local small businesses. Moreover, San Mateo Credit Union is dedicating staffing and significant resources to the services provided by SMCU Community Fund under the Agreement and, therefore, the Parties further agree that the County will work with the San Mateo Credit Union on joint marketing efforts related to the Funds, as deemed reasonable and in their mutual interests.

5. Use of Funds, Restricted Purposes

SMCU Community Fund acknowledges that this Agreement is a contract with the County for the public purposes stated herein. SMCU Community Fund shall use the Funds only as stated herein unless SMCU Community Fund receives prior written permission from the County. SMCU Community Fund shall return to the County all Funds that are not used for the purposes set forth in this Agreement.

6. Reporting Requirements

SMCU Community Fund will provide the County weekly summaries, in a format reasonably designated by the County, detailing (a) all applications received, processed, approved, and denied and (b) all amounts disbursed to Qualifying Small Businesses, including a breakdown of amounts disbursed to Qualifying Small Business by geographic location within the County (i.e., city/town or unincorporated area). In addition, the County reserves the right to require written reports from SMCU Community Fund, at reasonable intervals during the Term and for twelve (12) months thereafter, and in a format reasonably designated by the County, detailing, among other information, the receipt, use, and disbursement of all Funds.

7. Recordkeeping & Audit

SMCU Community Fund shall treat all Funds as restricted assets, place all Funds into a separate account/fund, and maintain books to show Funds separately. All expenditures made in furtherance of the Funds Purpose shall be charged against the Funds and shall appear on SMCU Community Fund's books. SMCU Community Fund shall keep adequate records to substantiate its expenditures of Funds and compliance with the terms of this Agreement. SMCU Community Fund shall make these books and records available to the County at reasonable times for review and audit, and shall comply with all reasonable requests of the County for information and interviews regarding use of the Funds. SMCU Community Fund shall keep copies of all relevant books and records and all reports to the County for at least three (3) years after full expenditure of the Funds, and such books and records shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

8. Prohibited Activities

SMCU Community Fund may not use the Funds (a) for any purpose other than the Funds Purpose; (b) to carry on propaganda, or otherwise attempt to influence any legislation (within the meaning of Section 4945(d)(1) of the United States Internal Revenue Code); and/or (c) to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the United States Internal Revenue Code).

9. Compliance with Laws

All services to be performed by SMCU Community Fund pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

10. Non-Discrimination & Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

SMCU Community Fund shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. SMCU Community Fund's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

SMCU Community Fund shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

SMCU Community Fund shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the SMCU Community Fund's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and SMCU Community Fund shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

SMCU Community Fund certifies that no finding of discrimination has been issued in the past 365 days against it by the Equal Employment Opportunity Commission, the California Department of

Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against SMCU Community Fund within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, SMCU Community Fund shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting; Violation of Non-discrimination Provisions

SMCU Community Fund shall report to the County Manager (identified below) the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this section of the Agreement or the Section titled “Compliance with Laws”. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified SMCU Community Fund that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject SMCU Community Fund to penalties, to be determined by the County Manager, including but not limited to the following: (1) immediate termination of this Agreement; (2) disqualification of the SMCU Community Fund from being considered for or being awarded a County contract for a period of up to 3 years; (3) liquidated damages of \$2,500 per violation; and/or (4) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to offset all or any portion of the amount described in this section against amounts due to SMCU Community Fund under this Agreement or any other agreement between SMCU Community Fund and County.

11. Termination

Except as otherwise specifically provided herein, this Agreement may be terminated by either Party at any time without a requirement of good cause upon 30 days’ advance written notice. If the Agreement is terminated by SMCU Community Fund before the all Funds have been disbursed, SMCU Community Fund shall, with five (5) business days of providing written notice of termination, return to the County all remaining Funds and comply with the reporting requirements set forth above in Section 6.

12. Indemnification

Each Party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, representatives, insurers, employees, and servants from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys’ fees

and costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying Party or its agents, representatives, employees, servants, contractors, subcontractors, or invitees. The duty of the County to indemnify and hold harmless SMCU Community Fund shall not apply to injuries or damage for which SMCU Community Fund has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct, nor does the duty of SMCU Community Fund to indemnify and hold harmless County apply to injuries or damage for which County has been bound in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct. The duty to indemnify and hold harmless set forth in this Section shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts, and shall include the duty to defend as set forth in Section 2778 of the California Civil Code. This indemnity/hold harmless provision survives the Agreement.

13. Assignment

This Agreement is not assignable by SMCU Community Fund, either in whole or in part, without the express consent of the County in the form of a formal written amendment.

14. Governing Law & Jurisdiction

The validity of this Agreement and of its terms, the rights and duties of the Parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

15. Integration & Modification

This Agreement supersedes any and all prior or contemporaneous agreements, representation, and understandings of or between the Parties, and the Parties warrant that they are not relying on any such prior representations. The Parties understand and agree that the terms of this Agreement may not be altered, amended, modified or otherwise changed in any respect or particular except by a writing duly executed by the Parties, or their respective authorized representative(s).

16. Severability

In the event that, at any time subsequent to the execution of this Agreement, any portion or provision of it is found to be illegal, invalid, unenforceable, non-binding or otherwise without legal force or effect, the remaining portion(s) will remain in force and be fully binding.

17. Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute a complete agreement. Moreover, this Agreement may be signed by electronic signature and copies of original signatures shall be treated the same as the originals.

[Signature of the parties appear on the following page.]

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have signed Agreement as of the Effective Date set forth above.

COUNTY OF SAN MATEO	SMCU COMMUNITY FUND
By:	By:
Name: Mike Callagy	Name:
Title: County Manager	Title:
Date:	Date: