

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SAN MATEO COUNTY HISTORICAL ASSOCIATION

This Agreement is entered into this 10th day of December, 2019, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and San Mateo County Historical Association, hereinafter called "SMCHA."

* * *

Whereas, the SMCHA has applied to the County seeking funding for the matters described in Exhibit A;

Whereas, the County has approved the provision of certain funds to SMCHA pursuant the terms set forth in this Agreement;

Whereas, it is necessary and desirable that funding be provided to SMCHA for the purpose of conducting pre-construction work (including but not limited to permitting, architectural design, geotechnical exploration, project management and surveying) associated with the SMCHA's Carriage House project (located at the corner of Marshall St. and Middlefield Road in Redwood City, California), which the SMCHA will operate for the benefit of the County's residents and visitors.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Work Description
- Exhibit B—Reporting

2. Benefits to be provided by SMCHA

In consideration of the funding provided by the County through this Agreement, SMCHA shall provide the County 15 days exclusive usage of the Carriage House facility at no cost other than incidentals, which is separate from any other County right to utilize the facility pursuant to other agreements between SMCHA and the County. The County shall provide at least 10 calendar days notice of its desire to utilize the facility, and such request will be subject to facility availability given previously scheduled usage.

3. Payments

County hereby agrees to provide to SMCHA a sum not to exceed FOUR HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$475,000) in consideration of and on the condition that the sum be expended for the sole purpose of carrying out the work identified in Exhibit A, and in no event shall the County's total fiscal obligation under this Agreement exceed this amount. SMCHA agrees that it will be responsible for any additional funds that may be necessary to carry out the work identified in Exhibit A and to complete the Carriage House project.

Funds provided under this Agreement shall not be disbursed until execution of this Agreement by County and SMCHA.

County shall disburse funds to SMCHA upon receipt of a request for payment. Requests for payment should be accompanied by back-up documentation (e.g., invoices, receipts for professional services rendered, hourly rates, etc.). Back up documentation must include detailed invoicing regarding the

services rendered and proof of payment of each invoice. The invoices may be for services provided prior to the execution of this agreement and for services provided at any point during the term of this agreement, so long as the services reimbursed are consistent with the description here and in Exhibit A. The County reserves the right to change the disbursement method during the term of this Agreement.

INVOICES: Requests for payment should be (1) on the organization's official letterhead, (2) include date of request, amount requested, and Agreement number, and (3) submitted to the attention of:

Rosalinda Jen
400 County Center, 1st Floor
Redwood City, CA 94063
650-363-4122
Email: rjen@smcgov.org

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from December 10, 2019, through December 31, 2021. This Agreement will not automatically renew, nor shall it create any reliance on the possibility of future funding.

County may terminate this Agreement based upon the unavailability of Federal, State, or County funds by providing written notice to SMCHA within a reasonable time after County learns of said unavailability of funding. SMCHA acknowledges that this Agreement is subject to approval of the Board of Supervisors, and assumes all risk of possible non-appropriation and non-approval of funds.

County may suspend and/or terminate this Agreement if SMCHA fails to comply with the terms of this Agreement and may, in its sole discretion, withhold or cancel pending and future disbursements of grant funds and/or require SMCHA to return some or all funds disbursed under this Agreement.

5. Relationship of Parties

SMCHA agrees and understands that the obligations performed under this Agreement are not performed as an independent contractor or as an employee of County and that neither SMCHA nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

6. Hold Harmless

a. General Hold Harmless

SMCHA shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including SMCHA or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from SMCHA's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, SMCHA's duty to indemnify and save harmless under this Section shall not apply to injuries or

damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of SMCHA to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

7. Assignability and Subcontracting

SMCHA shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to meet SMCHA's obligations under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

8. Insurance

a. General Requirements

Prior to its receipt of any funds pursuant to this Agreement, SMCHA shall obtain all insurance required under this Section and such insurance shall be subject to the approval by County's Risk Management, and SMCHA shall use diligence to obtain such insurance and to obtain such approval. SMCHA shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending SMCHA's coverage to include the contractual liability assumed by SMCHA pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

SMCHA shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, SMCHA certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing or continuing the performance of project work for which it would receive funds.

c. Liability Insurance

SMCHA shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect SMCHA and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from SMCHA's operations under this Agreement, whether such operations be by SMCHA, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

d. Comprehensive General Liability... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend any further payment pursuant to this Agreement.

9. Compliance With Laws

All services to be performed by SMCHA in connection with the Project shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including, but not limited to, any laws related to payment of prevailing wages pursuant to the California Labor Code. In connection with the Carriage House project, SMCHA bears responsibility to obtain, at SMCHA's expense, any license, permit, or approval required from any agency.

10. Retention of Records; Right to Monitor and Audit

(a) SMCHA shall maintain all required records relating to services eligible for reimbursement under this Agreement for three (3) years after County makes final payment, and SMCHA shall be subject to the examination and/or audit by County, a Federal agency, or the State of California.

(b) SMCHA shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) SMCHA agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, and to determine compliance with this Agreement

11. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document or other fully executed agreements between the County and SMCHA are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

12. Controlling Law; Venue

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.

13. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed

below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Rosalinda Jen
Address: 400 County Center, Redwood City, CA 94063
Telephone: 650-363-4122
Facsimile: 650-363-1916
Email: Rjen@smcgov.org

In the case of Contractor, to:

Name/Title: Mitch Postel/President
Address: 2200 Broadway, Redwood City, CA 94063
Telephone: 650-299-0104
Facsimile: 650-299-0141
Email: mitch@historysmc.org

14. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: San Mateo County Historical Association

Contractor Signature

Date

Contractor Name (please print)

COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

Exhibit A

The County and SMCHA agree that the funds provided under this Agreement shall only be used to reimburse the cost of the work described below:

SMCHA's pre-construction work, including but not limited to permitting, architectural design, geotechnical exploration, project management and surveying, necessary for the SMCHA's Carriage House project (located at the corner of Marshall St. and Middlefield Road in Redwood City, California). Any travel, lodging, meal or incidental costs are only reimbursable at CONUS rates and any other applicable rates set by the federal General Services Agency.

Exhibit B

SMCHA agrees to provide descriptive information about the Carriage House project upon reasonable request of the County, including, but not limited to, the County Manager's Office, the County Communications Officer, or a Supervisorial District Office.

Further, SMCHA will endeavor to complete the Carriage House project related to the work detailed in Exhibit A and will report back to the County regarding various performance measures, including but not limited to those noted below. Such reporting data shall be delivered to the County no later than the expiration of this Agreement, subject to any extensions of this Agreement via amendment.

<u>Performance Measure</u>	<u>Target</u>
Build the Carriage House in support of SMCHA's mission to promote understanding of the County of San Mateo's cultural and natural history.	Complete