

[DRAFT] Agreement for Administration and Distribution of CARES Act Funds

This Agreement for the Administration and Distribution of Coronavirus Aid, Relief, and Economic Security (“CARES”) Act Funds (the “Agreement”) is between the County of San Mateo, a political subdivision of the State of California (the “County”), and SMCU Community Fund, an independent legal entity and non-profit public benefit corporation (the “Community Fund”), and is dated as of September 15, 2020 (the “Effective Date”).

By signing this Agreement, the County and the Community Fund (together, the “Parties”) agree to the following terms and conditions regarding the administration and distribution of Two Million Dollars (\$2,000,000) in CARES Act Funds allocated by the San Mateo County Board of Supervisors (the “Board of Supervisors”) to establish the San Mateo County Small Residential Rental Property Owner Assistance Program (the “Fund”), plus any additional amount(s) allocated by the Board of Supervisors to the Fund.

1. Fund Purpose & Disbursement

- a. **Fund Purpose.** The public purpose of the Fund is to ensure the health, welfare, protection, diversity, and long-term sustainability of communities throughout the County by supporting small residential rental property owners who have been adversely impacted by nonpayment of rent due to COVID-19, as authorized and directed by the Board of Supervisors at its meeting of August 4, 2020 (the “Fund Purpose”).
- b. **Disbursement of Fund.** Pursuant to the Fund Purpose, upon execution of this Agreement by each of the Parties, the County will transmit to and deposit with the Community Fund Two Million Dollars (\$2,000,000) in Fund proceeds.
 - i. For the purposes of this Agreement, the term “**Small Residential Rental Property Owner**” means a property owner who meets all of the following criteria:
 - Resides in the County and leases/rents residential rental properties in the County; and
 - Relies on rental property income as his or her primary source of income; and
 - Owns 10 or fewer rental units; and
 - Earned less than \$400,000 in annual gross rental income from his or her rental units in both tax years 2018 and 2019.
 - ii. For the purposes of this Agreement, the term “**Qualifying Rental Unit**” means a rental unit that meets all of the following criteria:
 - Located in the County; and
 - Currently occupied by residential tenant(s) leasing/renting the unit for 30 days or more (short-term and vacation rental properties are not eligible); and
 - A unit for which the Small Residential Rental Property Owner can demonstrate or attest to lost rental income due to non-payment of rent during the period of April 1, 2020 through August 31, 2020 as a result of COVID-19; and

- Qualifies as “naturally affordable,” which is defined as having monthly rent levels below the 2020 San Mateo County Income Limits HUD Fair Market Rent threshold, adjusted for unit size; and
 - Located on real property free from code violations and unaddressed public liens.
- iii. The Fund shall be disbursed by the Community Fund pursuant to the terms of this Agreement as individual grants to Small Residential Rental Property Owners of no more than six thousand dollars (\$6,000) per Qualifying Rental Unit based on demonstrated lost rental income from April 1, 2020 through August 31, 2020.

Specifically, grants from the Fund shall be in an amount equal to the lesser of either (a) six thousand dollars (\$6,000) per Qualifying Rental Unit or (b) the amount of demonstrated (or attested to) lost rental income suffered by the Small Residential Rental Property Owner for such Qualifying Rental Unit during the period April 1, 2020 through August 31, 2020, minus 20%.

In exchange for receipt of a grant from the Fund, a recipient Small Residential Rental Property Owner must agree to waive unpaid back rent owed by the residential tenant(s) of the Qualifying Rental Unit(s) for the period April 1, 2020 through August 31, 2020 in an amount equal to the demonstrated (or attested to) rental loss, up to a maximum of \$7,500 in bank-rent forgiveness ($\$7,500 - 20\% = \$6,000$).

The County will also develop priority criteria for grants from the Fund, including a preference for Qualifying Rental Unit(s) located in zip codes within the County with the highest poverty levels and COVID-19 infection rates and Small Residential Rental Property Owners with the highest losses relative to income.

The Parties further acknowledge and agree that the Parties may from time to time, by written amendment to this Agreement, adjust the qualification and priority criteria for grants from the Fund.

2. Term of Agreement

The Term of this Agreement shall commence on September 15, 2020 and shall terminate on December 30, 2020, unless terminated earlier by either Party or unless the entirety of the Fund has been disbursed earlier by the Community Fund, as set forth in this Agreement (“Term”).

3. Services Provided by Community Fund

- a. The Community Fund will provide the following services for the County under this Agreement:
 - i. Provide underwriting services for all grant applications received to determine the eligibility of each applicant and total grant amount(s) for each eligible applicant;

- ii. Provide the County a list identifying all eligible and ineligible applicants;
 - iii. Notify successful applicants selected by the County and disburse grants to such applicants via check sent to their preferred mailing address;
 - iv. Receive all W-9 information for successful applicants and issue Form 1099s to grant recipients, as required; and
 - v. Provide written reports to the County on the Fund status and grants disbursed, as set forth below in Section 6 of this Agreement.
- b. Notwithstanding anything to the contrary in this Agreement, the Community Fund shall not be required to disburse funds as determined by the County if, in the good faith exercise of discretion, the Community Fund determines that it would be inappropriate to do so. In the event that the Community Fund exercises this right, it shall promptly provide the County with written notice, along with a detailed description of the basis for this determination.

4. Administrative Fee

As consideration for the above-described services, the Community Fund shall receive from the County an administrative fee of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), 50% of which will be paid upon the Effective Date and the remaining 50% paid at the end of the Term.

5. Use of Fund, Restricted Purposes

The Parties acknowledge that this Agreement is a contract with the County for the public purposes stated herein. The Parties shall use the Fund only as stated herein unless prior written permission is received from the County and memorialized in a written amendment to this Agreement.

6. Reporting Requirements

The Community Fund will provide the County with weekly summaries of all grants disbursed, including a breakdown of amounts disbursed to Small Residential Rental Property Owners by geographic location within the County (i.e., city/town or unincorporated area), as well as the status of the Fund (including, but not limited to, the receipt, use, and disbursement of all amounts from the Fund and the amounts remaining in the Fund).

7. Emergency Agreement Requirements

As this Agreement involves the administration and distribution of CARES Act Funds, the Community Fund agrees to the provisions of the County's Emergency Agreement Requirements which are set forth in **Attachment E**, which is attached to this Agreement and incorporated by this reference.

8. Recordkeeping & Audit

The Community Fund shall treat all amounts in the Fund as restricted assets, place all amounts in the Fund into a separate account/fund, and maintain books to show the Fund separately. All expenditures made in furtherance of the Fund Purpose shall be charged against the Fund and shall appear on the Community Fund's books. The Community Fund shall keep adequate records to substantiate its expenditures of all amounts from the Fund and compliance with the terms of this Agreement. The Community Fund shall comply with all record retention, monitoring, and audit requirements set forth in Attachment E.

9. Prohibited Activities

The Community Fund may not use the Fund (a) for any purpose other than the Fund 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).

10. Compliance with Laws

All services to be performed by the 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 laws, 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, ordinance or regulation, the requirements of the applicable law, ordinance or regulation will take precedence over the requirements set forth in this Agreement.

11. 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

The 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. The

Community Fund's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

The Community Fund shall each 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

The 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 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 the 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

The Community Fund certifies that no finding of discrimination has been issued in the past 365 days against the 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 the 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, the Community Fund shall provide the 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

The 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 the 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 the applicable Party 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 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 the Community Fund, as the case may be, under this Agreement or any other agreement between the Community Fund and the County.

12. Termination

See Attachment E.

13. 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 a Party to indemnify and hold harmless another Party shall not apply to injuries or damage for which such other Party has been found 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.

14. Assignment

This Agreement is not assignable by a Party, either in whole or in part, without the express consent of each other Party in the form of a formal written amendment to this Agreement.

15. 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 San Mateo County Superior Court or in the United States District Court for the Northern District of California.

16. 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).

17. 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.

18. 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.

[CONTINUED ON NEXT 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
By:
Name: Mike Callagy
Title: County Manager
Date:

SMCU COMMUNITY FUND
By:
Name:
Title:
Date: