

MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF SAN BENITO
AND
COMMUNITY FOUNDATION FOR SAN BENITO COUNTY

This Memorandum of Understanding (MOU) between the Community Foundation for San Benito County the “FOUNDATION”) and the County of San Benito (the “COUNTY”) establishes the rights and responsibilities of the parties for the allocation of a COVID-19 Non-profit recovery assistance grant program. To mitigate the impact of COVID-19 on San Benito County organizations and their employees, the County has committed up to \$500,000 in one-time funds to create a non-profit assistance Grant Program. The objective of this program is to offer immediate financial assistance and small non-profit organizations located in San Benito County to aid in maintaining their Organizations and workforce.

WHEREAS

1. The COUNTY is a public entity;
2. The COUNTY is a political subdivision of the State of California;
3. The COUNTY Board of Supervisors assigned a sum of \$500,000.00 to non-profit organizations to provide funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency within San Benito County;
4. The FOUNDATION is a 501(c)(3) non-profit organization that has been instrumental in providing grants and assistance to develop and strengthen local non-profit organizations in San Benito County;
5. The FOUNDATION provides meeting space for local non-profits in San Benito County;
6. The parties recognize the need for and the advantages of collaborating to assist local non-profits that support the most venerable members of the community and were financially impacted and supporting families impacted by the COVID-19 public health emergency.
7. The parties realize the potential for non-profit assistance needed in San Benito County due to mitigating or responding to the COVID-19 public health emergency.

GOAL

The FOUNDATION will administer the COVID-19 Non-Profit Recovery Assistance Grant Program, which will provide grants to qualifying San Benito County Non-Profits. The federal funds are provided locally through the CARES Act the Catalog of Federal Domestic Assistance (CFDA) number is 21.019, allocated through the State of California Department of Finance. The FOUNDATION is committed follow CARES ACT statute.

TERMS AND CONDITIONS ARE INCLUDED IN ATTACHMENT A

1. **Funding:** The COUNTY will provide the \$500,000.00, to the FOUNDATION to be distributed in accordance with the determination.
2. **Report/Monitoring:** The FOUNDATION'S Chief Executive Officer (CEO) present application to an advisory committee consisting of two (2) COUNTY's Board of Supervisors, one (1) County Staff member, and the existing FOUNDATION'S advisory committee. The FOUNDATION will track and provide the COUNTY a list of the applicants awarded the \$500,000.00 of Federal Funding.
3. **Subrecipient.** The FOUNDATION is a nonfederal entity that receives a subaward from the COUNTY to carry out part of a federal program will not include an individual who will become a beneficiary of such program. Nothing in this MOU shall create any of the rights, powers, privileges or immunities of any officer or employee of the COUNTY. The FOUNDATION shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this MOU. The FOUNDATION further represents to the COUNTY that the FOUNDATION has no expectation of receiving any benefits incidental to employment. The FOUNDATION will determine who is eligible to receive what federal assistance;
 - a. Ensures that performance measured in relation to whether objectives of a federal program were met;
 - b. Is responsible for programmatic decision making;
 - c. is responsible for adherence to applicable federal program requirements specified in the federal award;
4. **Post-award Audit:** The FOUNDATION will require applicants to report-out how the funding was spent 60 days after funding is received. The FOUNDATION will provide the provide the COUNTY a list of all organization receiving CARES Act funding and the allocation amount within 30-days of organization distribution.
5. **Fund payments may be considered federal financial assistance for purposes of the Single Audit Act:** Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements. The Fund payments to subrecipients would count toward the threshold of the Single Audit Act and 2 C.F.R. part 200, subpart F re: audit requirements. Subrecipients are subject to a single audit or program specific audit pursuant to 2 C.F.R. §

200.501(a) when the subrecipients spend \$750,000 or more in federal awards during their fiscal year.

6. **Hold Harmless:** The FOUNDATION agrees to indemnify, defend with counsel approved by COUNTY, and hold harmless the COUNTY, its officers, officials, employees, and agents from and against any and all liability, loss, damage, expense, and cost arising out of or in connection with its negligence, recklessness, or willful misconduct in carrying out these activities. In addition, the FOUNDATION agrees to indemnify the COUNTY from any financial or tax liability arising from its status as an independent contractor.
7. **General Insurance Requirements:** Without limiting the FOUNDATION's duty to indemnify the COUNTY, the FOUNDATION shall comply with the insurance coverage requirements set forth in this MOU and shall satisfy the following requirements:
 - a. Each policy shall be issued by a company authorized by law to transact Organizations in the State of California.
 - b. Each policy shall provide that the COUNTY shall be given notice in writing at least thirty (30) days in advance of any cancellation thereof.
 - c. The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
 - d. The required coverage shall be maintained in effect throughout the term of this MOU.

The FOUNDATION shall require all subcontractors performing work under this MOU to obtain substantially the identical insurance coverage required of the FOUNDATION pursuant to this MOU.

8. **Insurance Requirements:** The FOUNDATION shall maintain the following insurance policies in full force and effect during the term of this MOU:
 - a. Comprehensive general liability insurance. The FOUNDATION shall maintain comprehensive general liability insurance, covering all of the FOUNDATION's operations with a combined single limit of \$1,000,000.00.
 - b. Professional liability insurance. The FOUNDATION shall maintain professional liability insurance with liability limits of not less than \$1,000,000.00.
 - c. Comprehensive motor vehicle liability insurance. The FOUNDATION shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this MOU, with a combined single limit of not less than \$1,000,000.00.
 - d. Workers' compensation insurance. The FOUNDATION shall maintain a workers' compensation plan covering all of its employees as required by

California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If the FOUNDATION elects to be self-insured, the certificate of insurance otherwise required by this MOU shall be replaced with consent to self-insure issued by the State Director of Industrial Relations.

9. **Certificate of Insurance:** Prior to the commencement of performance of services by the FOUNDATION and prior to any obligations of the COUNTY, the FOUNDATION shall file certificates of insurance with the COUNTY, showing that the FOUNDATION has in effect the insurance required by this MOU. The FOUNDATION shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, the FOUNDATION may provide proof of self-insurance meeting requirements equivalent to those imposed herein. The FOUNDATION warrants that its self-insurance provides substantially the same protection to the COUNTY as the insurance required herein. The FOUNDATION further agrees to notify the COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this MOU within thirty (30) days of such change.
10. **Taxes:** The FOUNDATION agrees that as a non-profit corporation, the FOUNDATION is solely responsible for reporting all revenues received, expenditures, and payment of all federal and state taxes and social security obligations to employees retained pursuant to this MOU. The FOUNDATION also agrees that the COUNTY will not withhold any payments for federal or state taxes or social security (FICA) or Medicare benefits. In addition, the COUNTY will not provide the FOUNDATION with coverage for worker's compensation, long or short-term disability, or unemployment insurance.
11. **MOU Administrators:** All matters concerning this MOU which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective MOU administrators or to the party's employee specified, in writing, by the MOU administrator. A party may, in its sole discretion, change its designation of its MOU administrator and shall promptly give written notice to the other party of any such change. The parties' MOU administrators are:

COUNTY's MOU Administrator:

Ray Espinosa, CAO
481 Fourth Street
Hollister, CA 95023
Email: respinosa@cosb.us
Telephone No.: (831) 636-4000
Facsimile No.: (831) 636-4010

FOUNDATION's MOU Administrator:

Gary Byrne, President/CEO
829 San Benito Street, Suite 200
Hollister, CA 95023
Email: GByrne@givesanbenito.org
Telephone No.: (831) 630-1924

12. **Notices:** Notices to the parties in connection with the administration of this MOU shall be given to the parties' MOU administrator personally, by regular mail, by email, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:
- a. The day the notice is personally delivered to the MOU administrator or the office of the party's MOU administrator; or
 - b. Five days after the date the notice is deposited in the United States mail, addressed to a party's MOU administrator as indicated in this MOU, with first-class postage fully prepaid; or
 - c. On the day that the notice is transmitted by email or facsimile to a party's email address or facsimile number, provided that an original of such notice is deposited in the United States mail, addressed to a party's MOU administrator, on the same day as the email or facsimile transmission is made.
13. **Termination:** The provisions of this MOU may be terminated upon sixty (30) days written notice by either Party.
14. **Non-appropriation of Funds:** This agreement is subject for funding to be appropriated during the annual budget cycle and approved by the Board of Supervisors. If funding for any fiscal year is reduced or deleted for purposes of this program, the COUNTY has the option to either cancel this MOU with no liability occurring to the COUNTY, or offer to amend the MOU to reflect the reduced amount. The COUNTY will provide at least sixty (30) days advance written notice of such determinations.
15. **Amendment:** This MOU may be amended at any time with the mutual consent of all parties involved, effective in writing with signatures from each authorized party representative.
16. **Prohibition Against Assignment and Delegation of Duties:** Except as specifically authorized herein, no rights under this MOU may be assigned and no duties under this MOU may be delegated by the FOUNDATION without the prior written consent of the COUNTY, and any attempted assignment or delegation without such consent shall be void.
17. **Compliance With Applicable Laws; Nondiscrimination:** The FOUNDATION shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this MOU. The FOUNDATION shall not discriminate in the employment of persons necessary to perform this MOU on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.
18. **Conflict of Interest:** The FOUNDATION covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or

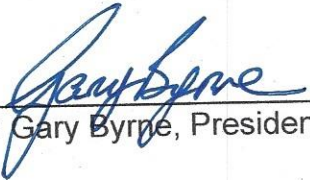
otherwise, which would conflict in any manner or degree with the performance of the services hereunder. The FOUNDATION further covenants that, in the performance of this MOU, no subcontractor or person having such an interest shall be used or employed. The FOUNDATION certifies that no one who has or will have any financial interest under this MOU is an officer or employee of the COUNTY.

19. **Records to Be Maintained:** The FOUNDATION shall keep and maintain accurate records of all costs incurred and all time expended for work under this MOU. The FOUNDATION shall contractually require that all of its subcontractors performing work called for under this MOU also keep and maintain such records. All such records, whether kept by the FOUNDATION or any subcontractor, shall be made available to the COUNTY or its authorized representative, or officials of the State of California for review or audit during normal Organizations hours, upon reasonable advance notice given by the COUNTY, its authorized representative, or officials of the State of California. The FOUNDATION shall maintain and preserve all records related to this MOU for a period of three years from the close of the fiscal year in which final payment under this MOU is made. The FOUNDATION shall also contractually require the maintenance of such records in the possession of any third party performing work related to this MOU for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to ensure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies the FOUNDATION of the commencement of an audit prior to the expiration of the three year period.
20. **Negotiated Agreement:** This MOU has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this MOU within the meaning of California Civil Code Section 1654.
21. **Independent Advice:** Each party hereby represents and warrants that in executing this MOU it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this MOU and the rights and duties arising out of this MOU, or that such party willingly foregoes any such consultation.
22. **No Reliance on Representations:** Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this MOU may hereafter turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this MOU shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

23. **Severability:** Should any provision herein be found or deemed to be invalid, this MOU shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this MOU are declared to be severable.
24. **Entire Agreement:** This MOU is the entire agreement of the parties. There are no understandings or agreements pertaining to this MOU except as are expressly stated in writing in this MOU or in any document attached hereto or incorporated herein by reference.
25. **Materiality:** The parties consider each and every term, covenant, and provision of this MOU to be material and reasonable.
26. **Waiver:** Waiver by either party of a breach of any covenant of this MOU will not be construed to be a continuing waiver of any subsequent breach. The COUNTY'S receipt of consideration with knowledge of the FOUNDATION's violation of a covenant does not waive its right to enforce any covenant of this MOU. The parties shall not waive any provisions of this MOU unless the waiver is in writing and signed by all parties.
27. **Authority and Capacity:** The FOUNDATION and the FOUNDATION'S signatory each warrant and represent that each has full authority and capacity to enter into this MOU.
28. **Cumulative Remedies:** All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.
29. **Counterparts:** This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one MOU.

2020 MOU Between County of San Benito and Community Foundation for San Benito County

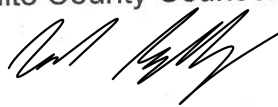
SAN BENITO COUNTY FOUNDATION


By: Gary Byrne, President/CEO

SAN BENITO COUNTY

By: Ray Espinosa, CAO

APPROVED AS TO LEGAL FORM:
San Benito County Counsel's Office



By: Reed Gallogly, Deputy County Counsel

ATTACHMENT A

TERMS AND CONDITIONS

1. The Funds/Grants may only be used to cover costs that—
 - a) Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);
 - b) Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.² The guidance that follows sets forth the Department of the Treasury’s interpretation of these limitations on the permissible use of Fund payments.
2. The FOUNDATION will provide a list of eligible non-profits that have been impacted by the COVID-19 pandemic that have been evaluated and ranked through a neutral, objective criteria. The FOUNDATION and COUNTY will establish the neutral, objective criteria prior to evaluation or viewing of applications. If a non-profit closes permanently before receiving the Non-profit Relief Grant or, if a organization is currently closed and does not open within 30 days of receiving this grant funding (or within 30 days of Governor’s announcement to lift closure orders), the Non-Profit Relief Grant funds must be returned to the County.
3. **Priority:** In making its determination under neutral, objective criteria, the FOUNDATION will prioritize applications of organizations that are supporting the most number of members during the COVID-19 health emergency in the community. The following factors shall be included in the determination:
 - a. Prioritizing organizations that have not received other grants related to COVID-19.
 - b. Prioritizing applicants operating out of a physical location within the County limits of San Benito.
4. **Use of Funds:** The grant funds must be solely used for expenditures that occur between March 1, 2020 and December 30, 2020 and fall under one or more of the following categories:
 - a. Payroll;
 - b. Lease or Rent;
 - c. Telework equipment costs;
 - d. Inventory Acquisition (inventory needed to reopen or maintain open status);
 - e. Personal Protective Equipment (PPE) purchase; and
 - f. Facility Readiness (social distancing preparedness, Organizations modifications, etc.).
 - g. Reimbursement of loss revenue due to non-profit interruption cost (must provide a proof i.e. a final statement, profit from prior year compared to this year).

- h. Basic needs to residents (food & shelter): Providing services that provides maintain crucial services to the most venerable population.
- 5. The FOUNDATION will request Application submission of supplemental form to include the following:
 - a. County Essential Disaster Economic worksheet (Attachment B);
 - b. Supplemental Application questionnaire (Attachment C); and
 - c. W-9 Form for the non-profit \$500,000.00 to issue 1099 (Attachment D).