

Endowment Fund Agreement

This Endowment Fund Agreement ("Agreement") is entered into between the City of San Carlos, a California municipal corporation ("City") and the San Carlos Community Foundation, a California non-profit public benefit corporation ("Foundation"). Capitalized terms have the meaning set forth in Paragraph 1 or as otherwise indicated in this Agreement.

1. Definitions.

- (a) Adjusted Endowment Fund. The amount equal to the contributions made by the City to the Foundation adjusted to reflect distributions from the Endowment Fund to the approved recipient(s) pursuant to the conditions of this Agreement.
- (b) Allowable Costs. The costs of the Foundation allocable to the Endowment Fund, as set forth in Paragraph 7.
- (c) Corpus. Funds provided by the City to the Foundation for its Endowment Fund as set forth in Paragraph 3. This does not include interest earned or additional funds added to the Endowment by other entities.
- (d) Endowment Fund. The amount contributed by City pursuant to Paragraph 3.
- (e) Endowment Fund Balance. The amount equal to the Adjusted Endowment Fund:
 - (i) increased by investment earnings and contributions made by City; and
 - (ii) decreased by investment losses and allowable costs.

2. Purpose. The contributions made to the Foundation by the City pursuant to this Agreement shall serve a public purpose in that they will provide funds for the Foundation to award grants in perpetuity that benefit the San Carlos community. As set forth in this Agreement, the funds will have conditions and limitations to safeguard their use and preservation.

3. Endowment. Subject to the conditions set forth in this Agreement, the City shall contribute to the Foundation an amount to be held as an Endowment Fund in the amount of Two Million Dollars (\$2,000,000). The City may make additional contributions to the Foundation of amounts to be held as additional assets in the Endowment Fund. Notwithstanding the foregoing, nothing in this Agreement shall be construed as a binding pledge for additional funds to the Foundation by the City for the Endowment Fund.

4. Investment Instructions. The Endowment Fund Balance shall be invested with the dual objectives of Capital Appreciation (growth of the capital base over time) and Capital Preservation (to preserve capital and prevent loss of principal). The Foundation shall also seek to meet the grant payout objectives while maintaining the total purchasing power of assets for the future benefit of the San Carlos community. The Foundation shall seek to mitigate credit, market and inflation risks as follows:

- a) Credit Risk. Defined as the risk of loss due to failure of the issuer of a security, which shall be mitigated by investing in investment grade securities and by diversifying the investment portfolio so that the failure of any one issuer does not unduly harm the Foundation's capital base and cash flow.

- b) Market Risk. Defined as market value fluctuations due to overall changes in the general level of security prices, which shall be mitigated by structuring the Endowment Fund Balance as a diversified portfolio. The goal of diversification across various asset classes, sectors, and security types is to minimize market risk while improving performance.
- c) Inflation Risk. Defined as the risk that inflation will undermine and erode an investment's returns through a decline in purchasing power, which shall be mitigated by investing in a diversified portfolio of investment grade securities whose returns exceed the rate of inflation.

The Foundation should target a 30%/70% asset allocation in its first fiscal year with a 30% target allocation to equities and 70% to fixed income investments. In its second fiscal year, the allocation should target 50%/50% equity to fixed income. After such time the Foundation investment committee may adjust the allocation in accordance with best practices and the advice of its investment advisor.

The Foundation will not invest directly in the stock of Pacific Gas & Electric Company ("PG&E") but may invest in mutual funds or other pooled investment vehicles such as exchange-traded funds that could hold such securities. The Foundation will not purchase investments in individual company stock but will seek a diversified portfolio of low-cost funds.

5. Requirements.

- (a) The Foundation's grant program will be funded by investment returns and new contributions to the Foundation. Under no circumstances shall the Endowment Corpus be used for grants or administrative expenses beyond those allowed in Paragraph 7 without the approval of the San Carlos City Council.
- (b) A minimum of 10% of the investment earnings must be added to Endowment Fund annually and not used for other purposes.
- (c) An Annual Report shall be prepared and delivered to the City no later than 90 days following the close of the Foundation's annual accounting period. The report shall include at a minimum the following information: annual goals and objectives; accomplishments; assets and liabilities; revenue and expenditures; operations; grants and projects; fundraising activity; and copies of Board meeting agendas and minutes.
- (d) The Foundation shall make information concerning its activities, including investment activity, its books and records, available to the public at all times in the interest of transparency.
- (e) The City maintains the right to periodically request an audit of the Foundation's immediately prior or upcoming fiscal year-end financial statements. The Foundation will provide the City with a report of such audit as soon as reasonably possible after fiscal year end with a goal of delivery within 90 days. Work under this section will be at the City's expense, including auditor fees and reasonable costs to prepare for such audit. The City reserves the right to request a financial review or specified audit procedures in lieu of an audit.

- (f) Any grant awarded by the Foundation using earnings from the City contributed Endowment must comply with the following conditions:
- i. Grants must provide support to community groups and individuals that contribute to the development and well-being of the San Carlos community.
 - ii. Grant applicant's project/program/service must support a public benefit or purpose and not support religious beliefs, purposes or activities.
 - iii. Grant funds cannot be used to carry on propaganda, or otherwise to attempt to influence legislation.
 - iv. Grant funds cannot be used to influence the outcome of any specific public election of any candidate for public office, or to carry on, directly or indirectly, any voter registration drive.
 - v. Grant funded projects and programs must be open to all ethnicities, races, genders, and sexual orientations as defined by state and federal law.
 - vi. In addition to the above minimum requirements, the Foundation should favorably consider grant applications demonstrating the following attributes: strong organization/management skills; effective plan of project, program and service delivery beneficial to the San Carlos community; and organized funding plan and budgeting management of grant resources.

6. Termination of Agreement. The following events may constitute Termination Events under this Agreement: i) the Foundation failing to maintain its 501(c)3 or similar tax status; ii) the Foundation ceases to exist; iii) the Foundation violates a material term of this Agreement that causes it to be unable to carry out the purpose of this Agreement.

In the event that the City believes a Termination Event has occurred, it shall give notice to the Foundation of such event. The Foundation shall have a 90-day period to cure such event. This period will be extended with approval of the City as long as there is a plan to cure in place that requires more time. During the cure period, the Foundation will not make any new grants without City consent. If the event is not cured, the City may request that the Foundation return the Endowment Fund Balance within 45 days of such request, whereby the Foundation must return the funds to the City.

7. Allowable Costs. No more than 1% of beginning period assets of the Endowment may be used for administrative costs. The costs of investment and fund management fees of professional managers and advisors shall be allowable and netted against investment returns and not classified as administrative costs. The Endowment Fund Balance may be separately managed or co-mingled with an endowment pool containing other funds. If co-mingled, the Endowment Fund Balance shall bear not more than its proportionate share of expenses.

To the extent that City provides any funds to cover expenses outside of this Agreement, the administrative costs charged to the Endowment Fund Balance will be reduced on a dollar for dollar basis.

8. Notice.

- (a) All formal notices to a party shall be in writing and given by delivering the same to such party in person or by sending the same by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, or by overnight courier delivery, to such party's mailing address. The respective mailing addresses of the parties are, until changed as hereinafter provided, the following:

CITY:

City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attention: City Manager

FOUNDATION:

San Carlos Community Foundation
610 Elm Street, Suite 206
San Carlos, CA 94070
Attention: CEO
With an email copy delivered to the President of the Foundation

- (b) Notices and communications with respect to technical matters in the routine performance and administration of this Agreement shall be given by or to the appropriate representative of a party by such means as may be appropriate to ensure adequate communication of the information, including written confirmation of such communication where necessary or appropriate. All formal notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed or sent by courier, on the delivery date or attempted delivery date shown on the return receipt or courier records. Any notice which a party desires to be a formal notice hereunder and binding as such on the other party must be given in writing and served in accordance with this paragraph.
- (c) A party may change its, his or her mailing address at any time by giving formal written notice of such change to the other party in the manner provided in this paragraph at least ten (10) days prior to the date such change is affected.

9. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into between California residents and wholly to be performed in California. This Agreement constitutes the entire agreement between the parties and supersedes any prior agreements between the parties. This Agreement may not be modified, and no provision waived, without the prior written consent of the party against whom enforcement of the amendment or waiver is sought. If any portion of this Agreement is determined by a court of relevant jurisdiction to be invalid, then the remaining portions of this Agreement shall remain in full force and effect.

10. Time. Time is of the essence of this Agreement and of each and every term and condition hereof. "Days" shall mean calendar days. In the event that any period of time to perform

an obligation or notice period under this Agreement ends on a Saturday, Sunday or state or national holiday, the applicable time period shall be extended to the next business day.

[SIGNATURE PAGE TO FOLLOW]

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF SAN CARLOS:

Dated: November 25, 2019

Jeff Maltbie
Jeff Maltbie, City Manager



ATTEST:

Dated: November 25, 2019

Crystal Mui
Crystal Mui, City Clerk

APPROVED AS TO FORM:

Dated: November 25, 2019

Greg Rubens
Gregory J. Rubens, City Attorney

CONSULTANT/CONTRACTOR/VENDOR:

I acknowledge that I have full authority to execute this agreement on behalf of the Consultant/Contractor/Vendor, and have read, understand, and agree to comply with the provisions of this Agreement, including the Insurance and indemnity requirements set forth herein.

Dated: November 19, 2019

Jessica H. Yang
Jessica H. Yang
President
San Carlos Community Foundation