

COUNTY OF MONTEREY

EMERGENCY OCCUPANCY AGREEMENT

Knights Inn Carmel Hill 1374 Munras Avenue Monterey, California 93940
<u>OWNER'S FED. TAX. I.D., NO. : 560-06-9923</u>

Preamble

THIS EMERGENCY OCCUPANCY AGREEMENT ("Agreement"), made for reference purposes only as of **May 2, 2020**, is by and between Rameshbhai V. Patel, dba Knights Inn Carmel Hill ("**Owner**"), and the COUNTY OF MONTEREY, a political subdivision of the State of California (the "**County**"). Owner and County are sometimes referred to herein as "Party" or collectively as "Parties."

This Agreement is entered into in connection with the County's need to provide emergency shelter during the COVID-19 epidemic.

WITNESSETH

Description

The thirty (**36**) rooms located at **Knights Inn Carmel Hill, 1374 Munras Avenue, Monterey, California** as detailed on the attached **Exhibit "A"** aerial site plan, consisting of one (1) page, said **Exhibit "A"**, hereby being incorporated into this Agreement, and including all parking spaces contiguous to the subject hotel building, and unlimited use of the building's common facilities ("**Premises**"). The County shall have access to and use of the Premises set forth in this Occupancy Agreement twenty-four (24) hours per day, seven (7) days per week with no exceptions.

Notwithstanding anything to the contrary above, the County acknowledges that Owner will continue to use and have access the Premises to (i) conduct certain services for the County's use of the Premises as set forth below, and (ii) to continue to use the excluded portions of the property identified above to conduct administrative work related to its business.

Term

2. The term of this Agreement shall commence on **May 2, 2020** and shall continue until **August 30, 2020**, thereafter on a week-to-week basis until terminated by the County.

Early Termination

3. The County may terminate this Agreement at any time by giving written notice to the Owner at least **forty-eight (48)** hours prior to the date when such termination shall become effective. If the County fails to complete its move out within the early termination notice period and remains in possession of the Premises, additional rent shall be paid and prorated on a thirty (30) day month, based on the actual number of days the County occupies the Premises following the effective date of termination.

Permitted Use

4. The County may use the Premises as a temporary residence for persons identified by the County as needing shelter during the Covid-19 crisis and for any other lawful use ("**Permitted Use**"). Subject to the terms of this Agreement and any additional rules agreed to by the Parties, Owner will operate the Premises as a hotel/motel. The County will coordinate with Owner

regarding the registration of the County's occupants. The County may, at its discretion, provide various on-site support services for the occupants and provide security services for the Premises.

Rent

5. Rental payments shall be paid by County to Owner in arrears on the last day of each month during said term as follows:

Seventy-Five Dollars (\$75.00) per day, per room, and on an "as needed" basis. Housekeeping included. Rooms shall be subject to availability.

Three (3) meals a day can be included for and additional cost of Twenty (\$20.00) per person.

Rental payable hereunder for any period of time less than one month shall be determined by prorating the monthly rental herein specified based on the actual number of days in the month. Rental shall be paid to Owner at the address specified in Paragraph 6 or to such other address as the Owner may designate by a notice in writing. County also reserves the right to pay rent to Owner with County Procurement Credit Card.

Notices

6. All notices and correspondence herein provided to be given, or which may be given by either party to the other, shall be in writing and deemed to have been fully given (i) within three (3) days after being deposited in the United States Mail, certified and postage prepaid; (ii) within one (1) business day after being deposited with a commercial overnight delivery service (i.e. FedEx or similar) with receiver's signature required, or (iii) on the date of actual person delivery; and addressed as follows:

To the Owner: Knights Inn Carmel Hill
1374 Munrus Avenue
Monterey, California 93940
Phone: 831-869-0114
Email: arpatel88@gmail.com

To the County: County of Monterey
Contracts Purchasing Officer
1448 Schilling Place
Salinas, California 93901
Phone: 755-4992
Email: derrm@co.monterey.ca.us

**ALL NOTICES AND CORRESPONDENCE MUST REFERENCE
PREMISES ADDRESS**

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices and correspondence shall be mailed to either Party may be changed by giving written notice to the other Party.

Parking

7. Parking spaces on the Premises shall be unobstructed and completely accessible for County's use.

Services, Utilities, and Supplies; Additional Rent

8. During the Term Owner shall furnish the following services, utilities, and supplies to Premises in connection with the County's use of the Premises **in accordance with Isolation (if applicable) and Non-Isolation Protocols set forth in Exhibit C** attached to this Agreement. The costs of which are included in the Daily Rate:

- A. Sewer, trash disposal, and water service, including both hot and cold water to the lavatories.
- B. Elevator (if any) service.
- C. Electricity and/or gas as necessary to provide power for heating, ventilating, and air conditioning, and electrical or gas service as needed for County's operations.
- D. Pool, pool area, and pool equipment, if any, to maintain aesthetics and upkeep of the pool even when no pool use is allowed.
- E. Landscaping service.
- F. Deep cleaning of the Premises at the end of the Term.
- G. Provide front desk attendant to coordinate services, utilities and supplies for Permitted Use.
- H. Food service (three meals per day) with room delivery, **if paid for by County pursuant to Paragraph 5 above.**
- I. Daily in-room house keeping (including guest toiletries and towel and linen laundry service).
- J. In-room maintenance (e.g., repair of plumbing, HVAC, and televisions).
- K. Prior to commencement of this Occupancy Agreement, Owner, at the Owner's sole expense or cost, shall remove vending machines and ice machines.

Owner shall fully communicate with its staff regarding the nature of the services being provided under this Agreement, the populations being served, and the Protocols agreed to by Owner and the County.

In the event of failure by the Owner to furnish any of the above services or utilities in a satisfactory manner, the County may furnish the same at its own cost; and, in addition to any other remedy the County may have, may deduct the amount thereof, including County's administrative costs, from the rent that may then be, or thereafter become due hereunder. Repair and Maintenance.

9. During the term of this Agreement, the Owner shall maintain the Premises in good repair.

Assignment and Subletting

10. The County shall have the ability to assign this Agreement to other governmental agencies and may also allow County's service providers and contractors to work in the Premises in connection with the Permitted Use.

Quiet Possession

11. The Owner agrees that the County, while keeping and performing the covenants herein contained, shall at all times during the existence of this Agreement, peaceably and quietly have, hold, and enjoy the Premises without suit, trouble, or hindrance from the Owner or any person claiming under Owner.

Destruction

12. If the Premises are totally destroyed by fire or other casualty, this Agreement shall terminate. If such casualty shall render ten percent (10%) or less of the floor space of the Premises unusable for the purpose intended, Owner shall effect restoration of the Premises as quickly as is reasonably possible, but in any event within thirty (30) days.

In the event such casualty shall render more than ten percent (10%) of such floor space unusable but not constitute total destruction, Owner shall forthwith give notice to County of the specific number of days required to repair the same. If Owner under such circumstances shall not give such notice within fifteen (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from date such notice is given, County, in either such event, at its option may terminate this Agreement or, upon notice to Owner, may maintain occupancy and elect to undertake the repairs itself, deducting the cost thereof from the rental due or to become due under this Agreement and any other occupancy agreement between Owner and County.

In the event of any such destruction other than total, where the County has not terminated the Agreement as herein provided, or pursuant to the terms hereof has not elected to make the repairs itself, Owner shall diligently prosecute the repair of said Premises and, in any event, if said repairs are not completed within the period of thirty (30) days for destruction aggregating ten percent (10%) or less of the floor space, or within the period specified in Owner's notice in connection with partial destruction aggregating more than ten percent (10%), the County shall have the option to terminate this occupancy agreement or complete the repairs itself, deducting the cost thereof from the rental due or to become due under this Agreement and any other occupancy agreement between Owner and County.

In the event the County remains in possession of said Premises though partially damaged, the rental as herein provided shall be reduced by the same ratio as the net square feet the County is thus precluded from occupying bears to the total net square feet in the Premises. "Net square feet" shall mean actual inside dimensions and shall not include public corridors, stairwells, elevators, and restrooms.

It is understood and agreed that the County or its agent has the right to enter its destroyed or partially destroyed occupied facilities no matter what the condition. At the County's request, the Owner shall immediately identify an appropriate route through the building to access the County occupied space. If the Owner cannot identify an appropriate access route, it is agreed that the County may use any and all means of access at its discretion in order to enter its occupied space.

**Subrogation
Waived**

13. To the extent authorized by any fire and extended coverage insurance policy issued to Owner on the herein Premises, Owner hereby waives the subrogation rights of the insurer, and releases the County from liability for any loss or damage covered by said insurance.

**Prevailing
Wage
Provision**

14. For those projects defined as "public works" pursuant to Labor Code §1720.2, the following shall apply:

- A. Owner/contractor shall comply with prevailing wage requirements and be subject to restrictions and penalties in accordance with §1770 et seq. of the Labor Code which requires prevailing wages be paid to appropriate work classifications in all bid specifications and subcontracts.
- B. The Owner/contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates which Owner will post at the job site. All prevailing wage rates shall be obtained by the Owner/contractor from:

Department of Industrial Relations
Division of Labor Statistics and Research
455 Golden Gate Avenue, 8th Floor
San Francisco, California 94102
Phone: (415) 703-4774
Fax: (415) 703-4771

For further information on prevailing wage: http://www.dir.ca.gov/dlsr/statistics_research.html

- C. Owner/contractor shall comply with the payroll record keeping and availability requirement of §1776 of the Labor Code.
- D. Owner/contractor shall make travel and subsistence payments to workers needed for performance of work in accordance with the Labor Code.
- E. Prior to commencement of work, Owner/contractor shall contact the Division of Apprenticeship Standards and comply with §1777.5, §1777.6, and §1777.7 of the Labor Code and Applicable Regulations.

**Fair
Employment
Practices**

15. Owner shall not discriminate against any subcontractor, employee, or applicant for employment, because of age, race, color, national origin, ancestry, religion, sex, gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status with respect to recruitment, selection for training including apprenticeship, hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Owner shall not discriminate in the provision of services under this Agreement because of age, race, color, national origin, ancestry, religion, sex, gender, sexual orientation, marital status, mental disability, physical disability, medical condition, political beliefs, organizational affiliations.

Owner shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the Term; (4) upon the County's request, provide the County reasonable access, through representatives of the Owner, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

Owner shall comply with all applicable federal, state, and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County. If Owner is found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hours laws, in the five years prior to or during the term of the Agreement, such violation will be considered a material breach of this Agreement and may serve as a basis for County to immediately terminate this Agreement.

Holding Over

16. In the event the County remains in possession of the Premises after the expiration of the Agreement term, or any extension or renewal thereof, this Agreement shall be automatically continue on a month to month basis and otherwise on the terms and conditions herein specified, so far as applicable.

**Surrender of
Possession**

17. Upon termination or expiration of this Agreement, the County will peacefully surrender to the Owner the Premises in as good order and condition as when received, except for reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which County has no control or for which Owner is responsible pursuant to this Agreement.

**Time of
Essence,
Binding upon
Successors
No Oral
Agreements**

18. Time is of the essence of this Agreement, and the terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the respective Parties hereto.

19. It is mutually understood and agreed that no alterations or variations of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the Parties hereto.

Insurance

20. County, at County's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the County's and its agents, representatives, employees or subcontractors use of the Premises.

The County shall maintain or cause to be maintained the following coverage: (i) comprehensive general and automobile liability with limits of liability not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate; (ii) workers' compensation providing statutory coverage; (iii) employer's liability with liability limits of \$1,000,000; and (iv) and such other insurance or self-insurance as shall be necessary to insure it against any claim or claims for damages arising under the Agreement. The requirements of this section maybe satisfied through a self-insurance program, and the County shall furnish City with a certificate of coverage evidencing a program of self-insurance.

Owner, at Owner's sole cost and expense, shall, during the Term, keep the Premises and any structural improvements on the Premises insured in sufficient amounts against loss or damage by fire and other casualty commonly covered by standard fire and all risk coverage insurance including flood coverage. Valuation shall be on a replacement cost basis. Owner does hereby release and waive on behalf of itself and its insurer by subrogation or otherwise, all claims against the County on account of any fire or other casualty insured against whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of the County.

Hazardous Substances

21. County agrees that it will comply with all applicable laws existing during the term of this Agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. In the event Owner or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the County's illegal or alleged illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the County shall indemnify, defend, and hold harmless any of these individuals against such liability. Where the County is found to be in breach of this provision due to the issuance or a government order directing the County to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the County or any person acting under County's direct control and authority, County shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by Owner in connection with or in response to such government order. In the event a government order is issued naming the County or the County incurs any liability during or after the term of the Agreement in connection with contamination which pre-existed the County's obligations and occupancy under this Agreement or which were not caused by the County, Owner shall hold harmless, indemnify, and defend the County in connection therewith and shall be solely responsible as between County and Owner for all efforts and expenses thereto.

Restoration of Premises

22. Upon termination of this Agreement, Owner agrees that any equipment installed by the County shall be and remain the property of the County, and County shall remove such property when vacating the Premises. County shall restore all surfaces, including floors and walls, to the condition existing prior to its installation, including repair of damaged floor tile and patching and repainting damaged wall surfaces to match adjacent existing surfaces. County shall clean the Premises per the current health and safety protocols established by public health officials, immediately prior to vacating the Premises, if needed.

Except for County's gross negligence or willful misconduct, the Parties mutually agree that in no event shall County be liable to damage to the Premises in an amount greater than \$200,000 for its use of the Premises during the term of this Agreement. Furthermore, prior to filing any claim for such damage against the County, or instituting any suit in equity or law against the County related to this Agreement, Owner shall make demand on the County, and County shall

thereafter have the right to self-perform any necessary repairs, or to take any other remedial action, to the Premises.

Owner agrees that in no event shall County be liable to Owner for any alleged damages to business reputation due to the use of Premises by County under this Agreement.

Access

23. Owner shall allow County or its agents to enter the Premises as of April 18, 2020 to stage and prepare the property for the Permitted Use.

**Hotel Staff
Compensation**

24. Owner warrants that this Agreement will not impact the employment status of any hotel staff for the duration of this Agreement which are not needed at the Premises due to the differing staff needs required under this Agreement. Owner and/or its agents shall ensure that all hotel staff will receive the same compensation as they would otherwise have received absent any County occupancy, whether they are reassigned to another hotel or relieved of duty for the duration of the Agreement. The costs to Owner of the foregoing has been reflected in the Daily Rate.

(i) On-Site Manager duties shall include: providing assistance with any maintenance issues that arise including, but not limited to plumbing, air conditioning, and garbage. Coordinating with County representatives on timing for food delivery and related issues that arise. If applicable, coordinating with County's linen service to arrange clean and soiled linen delivery. Coordinating with County to develop and implement policies and procedures to facilitate County's use of the Premises for the purposes outlined in this Agreement.

(ii) Owner shall provide a list to County identifying all personnel Owner will use to provide services to County under the term of this Agreement, and shall not substitute or change those personnel without written consent of County.

Taxes

25. Owner is solely responsible for all tax liabilities, including property taxes.

HIPAA

26. Notice of Health Insurance Portability and Accountability (HIPAA) and Patient Privacy Law Compliance.

Owner acknowledges that it may have direct or incidental access to "Protected Health Information" or "PHI" or contact with occupants of the Premises. For purposes of this section of the Agreement, "Protected Health Information" or "PHI" shall have the meaning provided by the Standard for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164 (the "Privacy Standards") as promulgated by the Department of Health and Human Services ("HHS") pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (42 U.S.C. Section 1320d, et seq.), California Civil Code Section 56.20 et seq. and other applicable California laws (each and collectively, the "HIPAA Laws").

The County will endeavor to implement reasonable safeguards to protect the PHI from any intentional or unintentional disclosure to third parties in violation of the Privacy Standards by implementing appropriate administrative, technical, and physical safeguards to protect the privacy of PHI, and will endeavor to implement appropriate administrative, technical and physical safeguards to limit incidental disclosures of PHI, including disclosures to Owner and Owner's representative and staff. The parties agree that neither Owner nor its staff shall need access to, nor shall they use or disclose, any PHI of Tenant. In the event, however, PHI is disclosed to Owner or its staff, either directly or indirectly and regardless of whether the disclosure is inadvertent or otherwise, Owner agrees to take reasonable steps to maintain, and to require its staff to maintain, the privacy and confidentiality of such PHI, including that no PHI will be removed from the Premises by Owner or its staff, and no PHI will be discussed with or otherwise disclosed to any other person or entity. Owner agrees to immediately notify the County upon learning of any

disclosure of PHI to Owner or its staff. The Parties agree that the foregoing does not create, and is not intended to create, a “business associate” relationship between the parties as that term is defined by the Privacy Standards. The County may terminate this occupancy agreement without penalty if Owner violates this provision.

Miscellaneous

27. This Agreement constitutes the full and complete agreement and understanding by and between the Parties relative to the subject matter of the Agreement and shall supersede all prior communications, representations, understandings or agreements, if any, whether oral or written, concerning the same subject matter. Any prior or contemporaneous oral or written representations relating to the same subject matter is hereby revoked and extinguished by this Agreement

28. This Agreement may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided all of the Parties have fully executed this Agreement. Unless otherwise prohibited by law or County policy, the Parties agree that an electronic copy of this Agreement, or an electronically signed Agreement, has the same force and legal effect as the Agreement executed with an original ink signature. The term “electronic copy of this Agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed Agreement in a portable document format. The term “electronically signed Agreement” means the Agreement that is executed by applying an electronic signature using technology approved by the County.

29. This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the Parties.

30. This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Monterey. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN MONTEREY COUNTY, CALIFORNIA.

31. Owner agrees to execute the required Federal Emergency Management Agency (FEMA) provisions attached as **Exhibit D** to this Agreement.

32. Owner agrees to allow County to occupy and operated within the Property in a similar fashion as detailed in the draft Alameda County Emergency Hotel Shelter Handbook if County so chooses to do so. Copy of front page of said handbook is attached to this Agreement as **Exhibit E**. County may substitute its own emergency hotel shelter handbook later.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as of the dates written below

OWNER:

Knights Inn Carmel Hill

By: Rameshbhai V. Patel
Name: Rameshbhai V. Patel
Title: Owner

Date: 05/02/2020

COUNTY:

COUNTY OF MONTEREY,
a political subdivision of the County of California

DocuSigned by:
By: Michael R. Derr 5/3/2020
Name: Michael R. Derr
Title: Contracts-Purchasing Officer

Date: _____

APPROVED AS TO RISK:

DocuSigned by:
By: Leslie Girard 5/3/2020
Leslie J. Girard, County Counsel

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
By: Marina Pantchenko 5/2/2020
Marina S. Pantchenko, Deputy County Counsel

EXHIBIT A
SITE PLAN

EXHIBIT B

Intentionally left blank.

EXHIBIT C

ISOLATION & NON-ISOLATION USE PROTOCOL

ISOLATION Procedure Purpose: The County recognizes that the optimal response to prevent the spread of COVID-19 is to provide immediate housing options and protect vulnerable residents by safely moving them into shelters, inns, motels, and hotels. These procedures are meant to provide public health guidance to hotel/motel/inn providers about isolation protocols for people with COVID-19.

Procedures: Motel/Hotel/Inn Staff Providing Accommodations for Guests with Active COVID-19 (Isolation)

1. *Motel/hotel/inn staff will devise protocols to minimize contact with guests at all times, including check in (see check in procedure). If contact is unavoidable, staff will wear surgical masks, gloves, and eye protection if they are less than six (6) feet from guests and perform hand hygiene after checking in each guest. Staff and guests will stay six (6) feet apart during any interactions. Pens, counters, and anything touched by guests will be sanitized.*
2. *Guests will remain in their rooms except to attend medical appointments. While outside their room, they must wear a mask.*
3. *Housekeeping activities by motel/hotel/inn staff will be suspended.*
 - a. *Guests will be provided cleaning supplies and directed to maintain their own room and bathroom.*
 - b. *Bathroom supplies including soap, shampoo, toilet paper and tissues will be provided and can be left outside the room door for pickup by the guest.*
 - c. *Guests will set out their linens, towels, and clothing once a week. The County will provide laundry service.*
4. *The Owner will provide meal delivery services three (3) times per day for guests; meals will be left outside the rooms and guests are advised to pick them up after the vendor has left.*
5. *If emergency maintenance must be performed in the room, guests will leave the room and go outside. Guests must remain six (6) feet away from other people and always be masked.*
6. *Maintenance staff will wear mask, gown, eye protection, and gloves to perform maintenance. All equipment used to perform maintenance will be sanitized. Cleaning supplies will include detergent or soap and water.*
7. *Guests will leave their garbage outside of their room daily. Staff will wear gloves and an apron or gown when removing garbage bags. Staff will perform hand hygiene after removing garbage. Staff will leave clean garbage bags outside of the room door daily.*
8. *When guests are ready to check-out, room is left vacant for at least 24 hours prior to cleaning. Cleaning will be conducted in accordance with CDC recommendations. Upon cleaning, all outside doors and windows will be opened to increase air circulation. Cleaning will be provided by regular cleaning staff wearing gown and gloves. Staff will perform hand hygiene after cleaning.*

NON-ISOLATION Procedure Purpose: The County recognizes that the optimal response to prevent the spread of COVID-19 is to provide immediate housing options and protect vulnerable residents by safely moving them into shelter, inns, motels, and hotels. These procedures are meant to provide public health guidance to hotel/motel/inn providers about non-isolation for people with no symptoms.

Procedures: Motel/Hotel/Inn Staff Providing Accommodations for Guests who are Not in Isolation

1. *Motel/hotel/inn staff will follow routine procedure as set by motel/hotel/inn staff, include practicing social distancing and promoting hand hygiene.*
2. *Guests will remain in their rooms according to Monterey County Public Health guidance (see attached) until the Shelter in Place Order is lifted.*
3. *Housekeeping activities by motel/hotel/inn staff will follow routine procedure as set by motel/hotel/inn staff.*
4. *The Owner will be providing meal and delivery services for guests; meals will be left outside the rooms and guests are advised to pick them up after the vendor has left.*

EXHIBIT D

REQUIRED FEDERAL PROVISIONS (FEMA)

I. CONTROLLING LANGUAGE

It is the intent of the Parties that this Exhibit "D" and the Occupancy Agreement should be read in a manner so as to give them both legal effect. However, in case of any conflict between the terms of this Exhibit "D" and the terms of the Occupancy Agreement, the terms of Exhibit "C" shall prevail.

II. DEFINITIONS

- A. **Government** means the United States of America and any executive department or agency thereof.
- B. **FEMA** means the Federal Emergency Management Agency.
- C. **Third Party Subcontract** means a subcontract at any tier entered into by Owner or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

III. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance may or will be used to fund all or part of the Occupancy Agreement. The Owner will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

IV. ACCESS TO RECORDS

- A. The Owner agrees to provide the County, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Owner which are directly pertinent to this Occupancy Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Owner agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Owner agrees to maintain all books, records, accounts, and reports required under this Occupancy Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Occupancy Agreement or (b) the date County makes final payment under this Occupancy Agreement, except in the event of litigation or settlement of claims arising from the performance of this Occupancy Agreement, in which case, Owner agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D. In compliance with the Disaster Recovery Act of 2018, the County and the Owner acknowledge and agree that no language in this contract is intended to prohibit audits or

internal reviews by the FEMA Administrator or the Comptroller General of the United States

V. DEBARMENT AND SUSPENSION

- A.** This Occupancy Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the Owner, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B.** The Owner must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C.** This certification is a material representation of fact relied upon by County. If it is later determined that the Owner did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D.** The Owner agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Owner further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- E.** This certification is a material representation of fact relied upon by County. If it is later determined that the Owner did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

VI. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- A.** The Parties acknowledge and agree that the Federal Government is not a party to this Occupancy Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Occupancy Agreement.

VII. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

NOT APPLICABLE TO THIS OCCUPANCY AGREEMENT – NOT CONSTRUCTION

VIII. ANTI-KICKBACK ACT COMPLIANCE

NOT APPLICABLE TO THIS OCCUPANCY AGREEMENT – NOT CONSTRUCTION

IX. DAVIS-BACON ACT COMPLIANCE

NOT APPLICABLE TO THIS OCCUPANCY AGREEMENT – NOT CONSTRUCTION

X. COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(applicable to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

- A. Compliance:** Owner agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.
- B. Overtime:** No contractor or subcontractor contracting for any part of the work under this Occupancy Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- C. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Owner and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Owner and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Owner or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

NOT APPLICABLE TO THIS OCCUPANCY AGREEMENT

XII. PATENT RIGHTS

NOT APPLICABLE TO THIS OCCUPANCY AGREEMENT

XIII. ENERGY CONSERVATION REQUIREMENTS

- A.** The Owner agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).
- B.** The Owner agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XIV. CLEAN AIR ACT COMPLIANCE

- A.** The Owner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- B.** The Owner agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the County, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C.** The Owner agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

XV. FEDERAL WATER POLLUTION CONTROL ACT

- A.** The Owner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- B.** The Owner agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- C.** The Owner agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

XVI. TERMINATION FOR CONVENIENCE OF COUNTY

(applicable to all contracts in excess of \$10,000)

See Paragraph 3 of the Agreement.

XVII. TERMINATION FOR DEFAULT

(applicable to all contracts in excess of \$10,000)

See Paragraphs 3 and 7 of the Occupancy Agreement.

XVIII. CHANGES.

See Paragraph 31 of the Occupancy Agreement.

XIX. LOBBYING (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).)

- A.** Owner shall not use or pay any funds received under this Occupancy Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B.** Owner agrees to the provisions of Attachment D2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).
- C.** Owner agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XX. MBE / WBE REQUIREMENTS

NOT APPLICABLE TO OCCUPANCY AGREEMENT

XXI. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322)

- A.** In the performance of this Occupancy Agreement, the Owner shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- B.** Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C.** The Owner also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

The Owner acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Owner's actions pertaining to this Occupancy Agreement.

XIX. DHS SEAL, LOGO, AND FLAGS.

The Owner shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

Attachment D1

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

Instruction for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

DocuSigned by:

EC0FCBA7282D415
Contractor Signature

5/2/2020
Date

Attachment D2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5/2/2020

DocuSigned by:

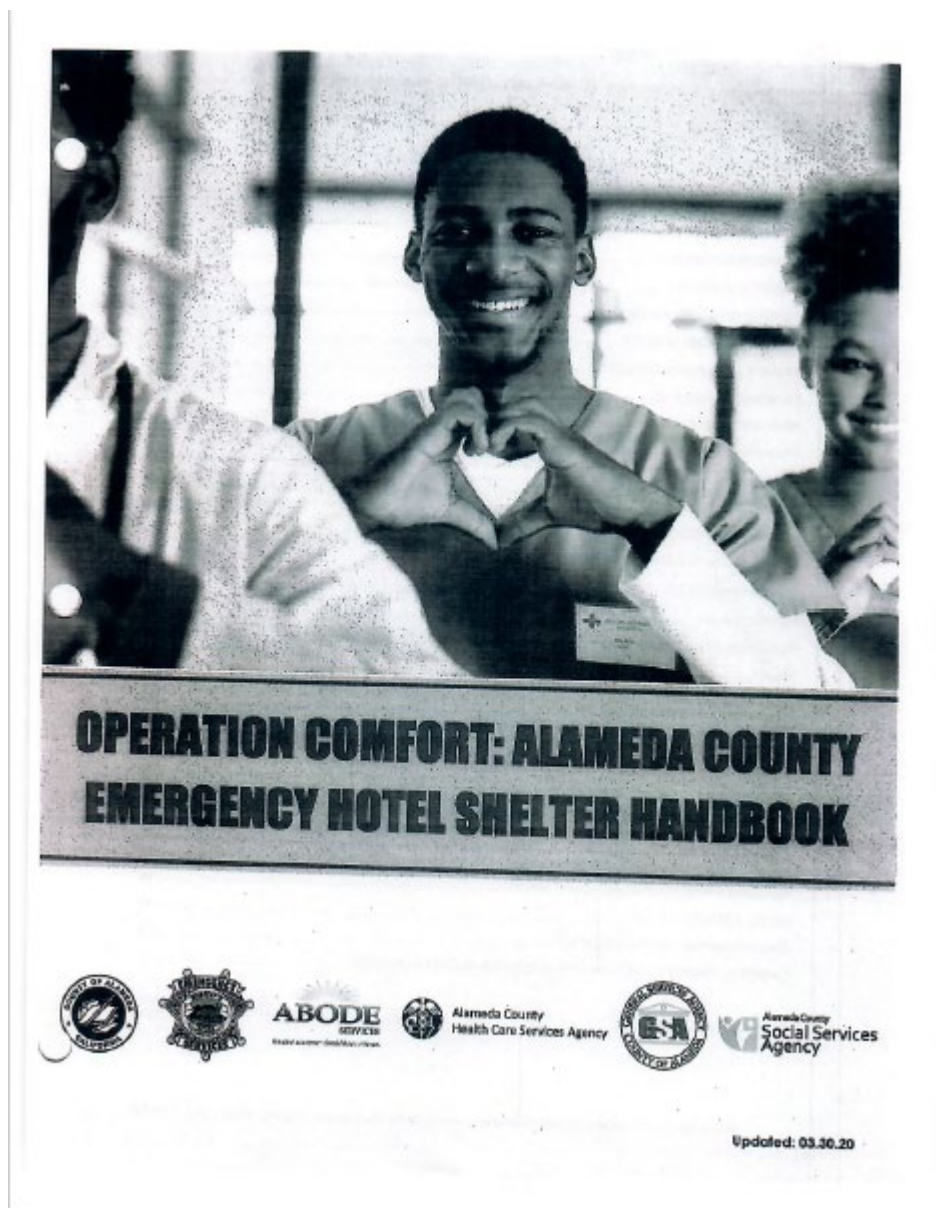
Ramona J. Smith
Contractor Signature

EC3FCBA7262D415...

Date

EXHIBIT E

Alameda County Emergency Hotel Shelter Handbook (Draft) *



*County of Monterey may substitute its own handbook at a later date.