

**MEMORANDUM OF UNDERSTANDING RE:
COORDINATION OF RESPONSIBILITIES RELATED TO ESTABLISHMENT OF
HOMELESS SHELTER, PERMANENT SUPPORTIVE/TRANSITIONAL HOUSING and,
TEMPORARY WARMING SHELTER IN SALINAS, CALIFORNIA
(1220 Natividad Road and 855 East Laurel Drive, Salinas and 111 W Alisal Street,
Salinas)**

This Memorandum of Understanding ("MOU") is entered into as of this _____ day of September 2018 (the "Effective Date"), by and between the City of Salinas, a California charter city and municipal corporation (the "City") and County of Monterey (the "County") for the properties located at 855 East Laurel Drive ("Site 1"), and at 1220 Natividad Road ("Site 2") Salinas, California 93906 (together referred to as "the Property"), both presently owned by the County, and 111 W Alisal Street, Salinas, California 93901 ("Warming Shelter") with reference to the following facts:

RECITALS

- A. WHEREAS, in 2017, the City and County began discussions on planning for the future construction and operation of a year-round Homeless Shelter ("Shelter") and Permanent Supportive/Transitional Housing ("Housing") on Site 2; and
- B. WHEREAS, on September 26, 2017 the Salinas City Council ("Council") and County Board of Supervisors ("BOS") executed a Memorandum of Understanding ("MOU") authorizing the opening of the Salinas Winter Warming Shelter ("Warming Shelter") and agreed to work collaboratively toward the future construction and operation of a Shelter on the Property; and
- C. WHEREAS, as part of the MOU executed on September 26, 2017 by the Council and BOS, the City and County agreed to work together to identify a developer and operator for the Shelter on Site 2 and to proceed with environmental review; and
- D. WHEREAS, on March 20, 2018 the Council and BOS provided direction to staff to begin developing an agreement to identify a developer and operator for the future construction and operation of a Shelter and Housing on Site 2; and
- E. WHEREAS, subsequently, Senate Bill (SB) 850, signed into law by Governor Brown in June 2018, funded the Homeless Emergency Aid Program ("HEAP"), a \$500 million block grant program designed to provide direct assistance to cities and counties to address the homelessness crisis throughout California; and
- F. WHEREAS, the counties of Monterey and San Benito, through the Continuum of Care ("CoC") are expected to receive approximately \$12.5 million in HEAP funds;
- G. WHEREAS, the City and the County desire to utilize HEAP and will submit a proposal to the Continuum of Care to request funding, as well as other sources of funding to develop the Shelter on Site 1 and Housing Site 2 in the City of Salinas to provide emergency shelter while focusing on providing housing to homeless constituents in need;

- H. WHEREAS, the City and the County have determined and agreed that close collaboration and coordination between their respective staff to design, fund, entitle, construct, and operate ("administration of") a Shelter and Housing at the Property will maximize the available staff resources of each agency toward expediting construction of said facilities;
- I. WHEREAS, the City and County agree that the target date completion of the Shelter at Site 1 is April 30, 2020 based deadline to expend HEAP funds;
- J. WHEREAS, the City and County agree to extend the use of the Warming Shelter at 111 W Alisal Street, Salinas, California, or other mutually agreeable location until the Shelter at Site 1 is constructed and can be occupied.

NOW, THEREFORE BE IT RESOLVED, the purpose of this MOU is to identify roles and responsibilities between the City and the County for administration of developing a Shelter and Housing on the Property respectively and, for the overall selection of, and negotiating of agreements with, a potential future developer and operator of a Shelter and Housing on the Property. The cost for construction and operation of the Shelter and related services and development of the Housing not covered by HEAP or other private funding will be shared by the City and County, with a final distribution of the costs to be determined at a later date.

ARTICLE 1. ROLES AND RESPONSIBILITIES

The City and County agree to the following terms and conditions, in order to coordinate their staff to effectively expedite facilitation of development of a Shelter and Housing at the Property, and conduct an RFP process for the selection of, and negotiation of agreements with a future operator for the Shelter and developer of the Housing on the Property. The cost for construction and operation of the Shelter and related services and development of the Housing not covered by HEAP or other private funding will be shared by the City and County, with a final distribution of the costs to be determined at a later date.

Section 1.1 Roles and Responsibilities.

A. County:

- a. Subject to funding, the County shall provide staff resources to design, survey, entitle, and construct the Shelter not administered by third party developers;
- b. Subject to funding, the County shall be the Lead Agency in conducting an environmental review of the Property and the City shall be the Responsible Agency;
- c. County shall maintain ownership of the Property;
- d. Any future conveyance of the Property must be authorized by the County;
- e. County shall devote personnel and other resources as may be reasonably

required during the RFP process for selection of a future developer and operator for the Property and final approval of the RFP.

B. City of Salinas

- a. Subject to funding, the City shall provide staff resources to assist and expedite in the permitting of facilities at the Property;
- b. Subject to funding, the City shall provide staff resources and shall act as the lead project manager and facilitator during the RFP process for the selection of a Shelter Operator at Site 1 and future Housing Developer at Site 2;
- c. City shall devote personnel and other resources as may be reasonably required;
 1. City will draft an RFP for Shelter Operator at Site 1 and Housing Developer at Site 2 subject to County approval;
 2. City will manage the RFP process;
 3. City will publish and distribute the RFP for a Shelter Operator and Housing Developer at the Property;
 4. City will receive RFP bids and determine adequacy and completeness of RFP process;
 5. City will document and maintain records associated with the RFP process;
 6. City will work collaboratively with County to respond to any RFP questions, comments or appeals.

C. City and County

- a. City and County shall each designate staff who shall regularly meet and coordinate in identifying and applying for funding for the Shelter, Housing, and Warming Shelter and jointly overseeing administering the implementation of the MOU.
- b. City and County will work collaboratively to rate and rank RFPs submitted;
- c. City and County shall ensure that all RFPs are reviewed in a fair and open process. The selection process will be outlined in detail in the RFP and will include input by County;
- d. City and County will make a recommendation for the selection of a Shelter Operator and Housing Developer to be forwarded to BOS and Council for final approval;
- e. Final distribution of related costs will be shared between the City and County and will be determined at a later date based on HEAP and other private funding available for the Shelter, Housing, and Warming Shelter.
- f. Property and environmental records, reports and studies shall be shared

between the County and City as they become available;

- g. Project goals will be jointly determined by the City and the County;
 - h. A community engagement strategy will be determined by the City with concurrence from the County;
 - i. After the approval of the selected operator by the BOS and Council, City and County staff will work together in drafting a contract for Shelter Operations;
 - j. After the approval of the selected developer for Housing by the BOS and Council, the City shall take the lead, but continue to work with County, as owner of the property, in negotiating and drafting an Exclusive Negotiating Agreement ("ENA") and Ground Lease ("Ground Lease");
 - k. The ENA and Ground Lease must be approved by the BOS prior to entry into those agreements with the selected developer, and;
- l. The City and County will work together through the Lead Me Home Leadership Council in discussions on the Shelter and Housing development and operations, coordination of HEAP funding, and establishment of a multi-jurisdictional, philanthropic effort to implementation of the MOU and initiate similar efforts throughout Monterey County.

Section 1.2 Right of Entry.

The City and its consultants shall have full rights to enter upon the identified property during normal business hours to conduct inspections and investigations in accordance with this MOU. In connection with such entry and investigation, the City shall:

- a. repair and restore any damage it may cause;
- b. indemnify, defend and hold the County and the BOS, officers, employees and agents harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs), with the exception of any injury or death to City staff or its consultants which may proximately arise out of the County's or its consultants' entry upon the Property or the investigation(s) and test(s) which the City may conduct; arising out of the negligent or intentional acts of the County or dangerous conditions on the Property for which the County should know or have known to exist, provided, however, that this indemnity shall not apply to matters arising from the results of the City's investigations, tests and inspections (e.g., this indemnity shall not apply to any diminution in value or remediation costs incurred by the City if the County's investigations were to discover an environmental condition that required remediation).

ARTICLE 2. GENERAL CONDITIONS

Section 2.1 General Compliance.

4 of 10

City and County agree to comply with all applicable federal, State and local laws and regulations governing public agencies. Documentation of such compliance shall be made available for review by the City and County upon request.

Section 2.2 Administrative Amendments.

This MOU may be amended by a written administrative amendment executed by the City Manager on behalf of the City and, County Administrative Officer or Assistant County Administrative Officer on behalf of the County, subject to any required State or federal approval, provided that such administrative amendments do not substantively change the overall purpose of this MOU.

Section 2.3 Term.

The term of this MOU (the "Term") shall start as of the Effective Date and shall terminate when the Ground Lease is entered into between the County and a selected developer or when the Shelter and Housing are deemed by the County and the City to be complete unless extended by a written amendment approved by the Council and BOS.

Section 2.4 Termination.

This MOU may be terminated by either the City and County upon a written notice given thirty (30) days in advance.

Section 2.5 Warming Shelter.

- a. During the Term of this MOU, City and County will continue to work together on overseeing operations at the Warming Shelter, located at 111 W Alisal Street, Salinas, California, or other mutually agreed upon location, until the Shelter is developed and under operation (open for business).
- b. The parties agree to execute a new Warming Shelter MOU with the same provisions of the terminated MOU dated September 26, 2017 except the following: 1) the timeline to operate the Warming Shelter will be extended to April 30, 2020 2) the Shelter site will be changed to reflect Site 1, and 3) the operations of the Warming Shelter will be shared between the County and City with costs to be determined at a later date..

**ARTICLE 3.
ADMINISTRATIVE REQUIREMENTS**

Section 3.1 Documentation and Record-Keeping.

- a. Records to be Maintained. The City and County shall maintain all records and such records shall include but not be limited to:
 - (i) Records providing a full description of each activity undertaken;

- (ii) Records required to document the solicitation and selection of a developer and operator.
 - (iii) Records required by funding agencies related to implementation of this MOU.
- b. Retention. The City and County shall retain all records pertinent to services performed and expenditures incurred under this MOU for a period of one (1) year after the termination of all activities under this MOU.
- c. Property Records. The County shall supply the City with any Property related documents for City review.

ARTICLE 4. PERSONNEL AND PARTICIPANT CONDITIONS

Section 4.1 Conduct.

- a. Assignability. Neither party shall assign or transfer any interest in this MOU without the prior written consent of the other party, at its sole discretion.
- b. Hatch Act. The City and County agree that no funds be provided, nor personnel employed under this MOU, shall be in any way or to any extent engaged in the conduct of political activities in violation of 5 U.S.C. 15.
- c. Conflict of Interest. The City and County each agree to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and each covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this MOU. The City and County each further agrees that in the performance of this MOU that no person having such a financial interest shall be employed or retained by the City and County. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City and County, or of any designated public agencies or entities.

ARTICLE 5. ENVIRONMENTAL CONDITIONS

Section 5.1 Environmental Responsibilities Generally.

The County (Lead Agency) with the City's (Responsible Agency) oversight, will carry out the Phase I and Phase II (if needed) environmental assessments of the Property in compliance with all federal and State laws and regulations, including any necessary environmental reviews such as NEPA and/or CEQA analysis not otherwise specifically set forth below.

Section 5.2 Applicable Laws and Regulations.

The County and City agree to comply with the following laws and regulations insofar as they apply to the performance of this MOU:

- a. Clean Air Act, 42 U.S.C. 7401 through 7414
- b. Federal Water Pollution Control Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and seq.).
- c. Flood Disaster Protection Act of 1973 (P.L. 93-234) in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this MOU, as it may apply to the provisions of this MOU.
- d. Environmental Protection Agency Lead-Based Paint Regulations.
- e. Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR 800, et seq.. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that are included on a federal, State, or local historic property list.

ARTICLE 6. OTHER PROVISIONS

Section 6.1 Entire Agreement.

This MOU contains all the terms and conditions agreed upon by the parties.

No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the parties hereto.

Section 6.2 Notices.

Formal notices, demands and communications (other than day to day routine communications) between the City and the County shall be sufficiently given if, and shall not be deemed given unless: (i) dispatched by certified mail, postage prepaid, return receipt requested, (ii) sent by express delivery or overnight courier service with a delivery receipt, (iii) personally delivered with a delivery receipt, or (iv) sent by electronic mail with a copy delivered by one of the previous three methods, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

CITY:
City of Salinas
Attn: Megan Hunter
65 W. Alisal Street, 2nd Floor
Salinas, CA 93901
Email: meganh@ci.salinas.ca.us

With a copy to: City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, CA 93901
Email: chrisc@ci.salinas.ca.us

COUNTY:
Nicholas Chiulos
Assistant County Administrative Officer
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 6.3 Conformance with Federal and State Regulations.

Should federal or State regulations touching upon this MOU be adopted, amended or revised during the term hereof, this MOU is subject to modification to assure conformance with such federal or State requirements.

Section 6.4 Severability.

If any term of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect.

Section 6.5 Headings and Captions.

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this MOU or any provision thereof.

Section 6.6 No Third-Party Beneficiaries.

There are no intended third-party beneficiaries to this MOU.

Section 6.7 Amendments.

This MOU may not be modified, supplemented, or amended unless in writing by the parties. Any modification, supplementation, amendment, or waiver must be signed by both parties.

Section 6.8 Costs and Expenses.

Each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this MOU, and the performance

of each party's obligations under this MOU. The City and County will keep track of any costs and may consider these costs a "contribution" to the construction and operation of the Property.

Section 6.9 No Commissions.

Each party represents to the other that it has not retained, and shall not retain, the services of any broker, agent or finder with respect to the Property or in connection with any matters relating to this MOU, and agrees to hold the other party harmless from and against any claim for commission, fee, or other remuneration by any broker, agent, or finder under any claimed retainer for services with respect thereto.

Section 6.10 Governing Law; Venue.

This MOU shall be governed by and construed in accordance with the laws of the State of California without reference to choice-of-law principles, and venue for any action under this MOU shall be in the Superior Court of the County of Monterey, subject to any motion for transfer of venue.

Section 6.11 Counterparts.

This MOU may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 6.12 Non-Recourse Agreement.

No member, official, employee, agent, or consultant of any party to this MOU shall be personally liable to any other party, or any successor in interest or person claiming by, through or under any party, in the event of any default or breach, or for or on account of any amount which may be or become due, or in any claim, cause or obligation whatsoever under the terms of this MOU.

Section 6.13 Actions by the City and County.

Whenever this MOU calls for or permits the approval, consent, authorization or waiver of the City or County, the approval, consent, authorization, or waiver of the City Manager of the City, or the Assistant County Administrative Officer of the County, shall constitute the approval, consent, authorization or waiver of the City/County without further action of the City Council or Board of Supervisors, including amendments to the MOU, subject to any required State or federal approval, provided that such administrative amendments do not substantively change the overall purpose of this MOU.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the Effective Date.

CITY:

CITY OF SALINAS, a municipal corporation

By: _____
Ray E. Corpuz, Jr, City Manager

APPROVED AS TO FORM:

By: _____
Christopher A. Callihan, Esq. City Attorney

COUNTY:

By: _____
Nicholas Chiulos, Assistant County Administrative Officer

APPROVED AS TO FORM:

By: _____
Anne K. Brereton, Deputy County Counsel

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