

**EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT  
(1081 Buckhorn Dr., Salinas)**

This Exclusive Negotiating Rights Agreement (this “Agreement”) is entered into as of this \_\_\_\_ day of August, 2017 (the “Effective Date”), by and between the City of Salinas, a California charter city and municipal corporation (the “City”) and Alisal Union School District, a California public school district (“District”) for the vacant land located at 1081 Buckhorn Drive, Salinas, California 93905 and presently owned by the City on the basis of the following facts:

**RECITALS**

A. The U.S. Department of Housing and Urban Development (“HUD”) provided a \$350,000 Economic Development Initiative Special Project Grant (“EDI”) to the City of Salinas for the development of an Early Childhood Education and Childcare facility in Salinas.

B. As part of the Falcon Ridge subdivision developed by COMMUNITY HOUSING IMPROVEMENT SYSTEMS AND PLANNING ASSOCIATION, Inc. (“CHISPA”), a parcel of land approximately eight tenths of an acre, located at 1081 Buckhorn Drive, in the City of Salinas, County of Monterey (“Property”), was set aside for the future development of an Early Childhood Education and Childcare facility to serve area residents (“Facility”).

C. On September 25, 2006, the Salinas City Council (“City Council”) approved Resolution No. 19079 approving the purchase by the City of the Property from CHISPA using the EDI funds in order to facilitate the development of the Facility, and said Property was subsequently acquired by the City.

D. In late 2015, the District Superintendent began discussions with the City about the District’s proposed plans for the potential purchase of the Property and the construction and operation of the Facility on the Property.

E. In the time since commencement of its discussions with the City, the District has been securing additional partners for the construction and operation of the Facility on the Property.

F. The District states that having control of the Property would allow them to seek additional State funding for the construction and operation of Facility.

G. The City intends to the sell the Property to the District so that the Facility may be constructed on the Property. The City represents that CHISPA supports the City’s sale of the Property to the District for this purpose.

H. The City represents that CHISPA understands and acknowledges the City’s intent to transfer the Property to the District for the purpose of constructing and operating the Facility. Therefore, the Property will not be subject to a leaseback from the City as contemplated in Section 9 of the Purchase Agreement (“Purchase Agreement”) between CHISPA and City attached as Exhibit D.

I. As required by Section 9 of the Purchase Agreement, the City hereby approves of CHISPA’s withdrawal of the Purchase Price Funds less CHISPA holding costs for the sole purpose of transferring such funds to the District for purposes of constructing and operating the Facility on the Property.

J. The purpose of this Agreement is to establish terms and conditions for the negotiation by the City and the District of a Land Disposition Agreement (a “LDA”) pursuant to which, among other matters:

- (1) if specified preconditions are satisfied, the City would convey the Property to the District at a purchase price to be negotiated that would enable a financially feasible construction and operation of the Facility by District; and
- (2) CHISPA would provide financial assistance to the District for certain predevelopment costs of the Facility (the “City/CHISPA Assistance”) pursuant to the terms of a memorandum of understanding

between CHISPA and District; and

- (3) the District would construct and operate the Facility on the Property. As more fully set forth in Section 3.1, the District and City acknowledge and agree that this Agreement in itself does not obligate any party to acquire or convey any property, does not grant the District the right to develop the Property, and does not obligate the District or the City to any activities or costs to construct the Facility, except for the preliminary analysis and negotiations contemplated by this Agreement.

Specifically, the City/CHISPA Assistance funds shall be used for the following predevelopment costs ("Predevelopment Costs"): architectural, engineering, development impact fees and other pre-construction costs not to exceed Three Hundred and Twenty-Five Thousand dollars (\$324,324.54). CHISPA shall reimburse Predevelopment Costs to the District following the City's review and written approval, which approval shall not be unreasonably withheld, for reimbursement of such requests for reimbursement received from the District as set forth in the final fully executed Memorandum of Understanding (MOU) between CHISPA and the District.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

### **ARTICLE 1. EXCLUSIVE NEGOTIATIONS; PREDEVELOPMENT EXPENSES**

Section 1.1 Good Faith Negotiations. The City and the District shall negotiate diligently and in good faith, during the Negotiating Period described in Section 1.2, to finalize the terms of a LDA for the financing, construction and operation of the Facility on the Property. During the Negotiating Period, the parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2 to facilitate the negotiation of a mutually satisfactory LDA.

The City and the District shall each devote such personnel and other resources as may be reasonably required to complete negotiations of the terms in the LDA during the Negotiating Period. Among the issues to be addressed in the negotiations are:

- (i). the terms of the conveyance of the Property to the District;
- (ii). the physical conditions and suitability of the Property for construction and operation of the Facility;
- (iii). the adequacy of title to the Property as set forth in the preliminary title report referenced herein;
- (iv). the type of entitlements if any necessary for the construction and operation of the Facility;
- (v). the design of the Facility;
- (vi). the construction schedule for the Facility; and
- (vii). financing of the construction and operation of the Facility (including the terms of the financing, if any).

Section 1.2 Negotiating Period. The initial negotiating period (the "Negotiating Period") under this Agreement shall be nine (9) months commencing on the Effective Date. The Negotiating Period may be extended for two additional three (3) month periods (each an "Extension Period") by the written mutual agreement of the parties at least thirty (30) days prior to the expiration of the initial Negotiating Period or of the first Extension Period, as applicable. The City Manager is authorized to enter into extensions of this Agreement on behalf of the City. The Negotiating Period shall be automatically extended beyond any period described above in this section as reasonably needed for preparation of supplemental environmental documentation pursuant to the California Environmental Quality Act ("CEQA") or the National Environmental Policy Act ("NEPA") that may be required prior to approval of the LDA. The District understands that the City will condition such an extension on the District's agreement to pay for the

environmental review process required by CEQA and/or NEPA. The District also understands that such an extension in no way obligates the City to approve the LDA or other agreement at the end of the environmental review process.

If a LDA has not been executed by the City and the District by the expiration of the Negotiating Period (as the Negotiating Period may be extended by operation of the preceding paragraph), then this Agreement shall automatically terminate and neither party shall have any further rights or obligations under this Agreement except to the limited extent otherwise provided in Section 1.5.

If a LDA is executed by the City and the District then, upon such execution, this Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the executed LDA.

Section 1.3 Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended pursuant to Section 1.2), the City shall not negotiate with any entity, other than the District, regarding the disposition or development of the Property, or solicit or entertain bids or proposals to do so. The foregoing shall not prevent the City from providing information, if required by law, regarding the Property and development thereof to persons or entities other than District.

Section 1.4 Identification of District and City Representatives. The District's representative to negotiate the LDA with the City is Jim Koenig or his designee. The City representative to negotiate the LDA is the City's Community Development Director, or her designee.

Section 1.5 Limited Reimbursement for Predevelopment Expenses. During the Negotiating Period the District will incur third party expenses related to the due diligence and predevelopment activities outlined in Article 2 below (the "Predevelopment Costs"), and as estimated on the attached Exhibit B. The District understands that the City is under extreme financial pressure, and agrees that under no circumstance, including without limitation even if the City is in default under this Agreement, will the City reimburse the District for Predevelopment Costs or be liable for any other monetary payment to the District.

## **ARTICLE 2. NEGOTIATION TASKS**

Section 2.1 Overview. To facilitate negotiation of the LDA, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation and execution of a mutually acceptable LDA prior to the expiration of the Negotiating Period or any Extension Period thereof.

Section 2.2 The Development. The Development is proposed to consist of construction of the Facility to be located at 1081 Buckhorn Drive, Salinas CA 93905.

Section 2.3 Financial Plan. During the Negotiating Period, the District shall prepare a detailed financial plan for the Development containing matters typically contained in such plans which will be used to evaluate the financial feasibility of the Development and to assist in the negotiation of the terms of a mutually acceptable LDA.

Section 2.4 Purchase Price for the Property. The City and the District agree that the acquisition price of the Property (the "Acquisition Price") will be One Dollar (\$1). In exchange, the District will construct and operate the Facility with no further commitment of additional subsidies or contributions from the City. Improvements are defined as the development/construction of the Facility.

Section 2.5 Property and Architectural Plans. The District shall prepare and submit to the City a preliminary site plan, floor plan, and architectural rendering ("Preliminary Plans") for review and approval. The District shall work cooperatively with the City to prepare a design for the Facility that will be compatible with the surrounding neighborhood and minimize impacts to adjacent residences. The Preliminary Plans shall form the basis for final construction documents and will be included as an exhibit in any subsequent LDA. The District shall engage in community meetings and solicit input from community

stakeholders on the proposed design and operation of the Facility. District shall not move forward with the final Plans until the City has reviewed any public comments from the public engagement meetings, City reviews proposed plans for compatibility with the surrounding neighborhood and approves the proposed plans.

Section 2.6 Schedule of Performance. Within three (3) months from the Effective Date, the District shall provide the City with a detailed schedule of performance (“Schedule of Performance”) for the Development, including, but not limited to the DSA review process, environmental review, financing commitments, Property acquisition, and the commencement and completion of the Development. The attached Preliminary Schedule of Performance (Exhibit C) to this Agreement will serve as the basis from which the more detailed Schedule for Performance will be developed and may be amended from time to time. The more detailed Schedule of Performance will serve as the Schedule of Performance under the LDA if the LDA is entered into by the City and the District.

Section 2.7 Due Diligence. During the Negotiating Period, the District shall conduct due diligence activities, including but not limited to planning, soils report, hazardous materials report, financial feasibility and title adequacy.

- (a). Physical Adequacy Determination. The District shall conduct physical due diligence activities to determine whether the Property is suitable for construction and operation of the Facility, taking into account the geotechnical and soils conditions, the presence or absence of toxic or other hazardous materials, the massing of the proposed Facility and the parking requirements imposed on developments of this type and the other environmental and regulatory factors that the District deems relevant, together with factors such as financial feasibility, neighborhood acceptance, and prospective marketing of the programs to be offered through the Facility. If, in the District’s judgment, based on such investigations and analyses, the Property is not suitable for construction and operation of the Facility, the District may notify the City in writing prior to the expiration of the Negotiating Period or any Extension Period thereof, of its determination (an “Unsuitability Notice”).

Upon delivery of an Unsuitability Notice by the District, this Agreement shall be terminated without further action of any party, and thereafter no party shall have any further duties, obligations, rights, or liabilities under this Agreement.

- (b). Title Adequacy Determination. Within sixty (60) days following the Effective Date, the City shall cause a reputable title company, reasonably acceptable to District, to issue a Preliminary Title Report (the “Report”) regarding the Property to the District, with a legal description of the Property, together with copies of all underlying documents referenced in the Report. If the District objects to any exception appearing on the Report or should any title exception arise after the date of the Report, the District may object to such exception, provided such objection is made to the City in writing on or before the expiration of the Negotiating Period. If the District objects to any exception to title, the City, within thirty (30) days of receipt of District’s objection shall notify the District in writing whether the City elects to
  - (1) cause the exception to be removed from the Report,
  - (2) obtain a commitment from the title company for an appropriate endorsement to the policy of title insurance to be issued to the District, insuring against the objectionable exception, or
  - (3) terminate this Agreement unless the District elects to take title subject to such exception. If any party elects to terminate this Agreement pursuant to this Section 2.7(b), no party shall thereafter have any obligations to or rights against the others hereunder. The parties acknowledge that any executed LDA shall provide a similar opportunity for the District to determine the title adequacy of the Property.
- (c). Utilities. During the Negotiating Period, the District shall consult with the utility companies

serving the Property to determine if existing utility facilities require expansion, relocation or undergrounding in connection with the construction and operation of the Facility.

- (d). Water Supply. During the Negotiating Period, the District shall consult with the water supply company serving the Property to determine if adequate water supply is available for the construction and operation of the Facility.

Section 2.8 Reports. The District shall provide the City with copies of all reports, studies, analyses, correspondence and similar documents, but excluding confidential or proprietary information, prepared or commissioned by the District with respect to this Agreement, the Property, and the Development. The District makes no representation or warranty as to the accuracy or completeness of any such materials.

The City shall provide the District with copies of all reports, studies, analyses, correspondence and similar documents including but not limited to any unrecorded lease or occupancy agreements, prepared or commissioned by the City with respect to this Agreement, the Property and the Development, promptly following execution of this Agreement with respect to documents then in its possession or under its reasonable control, and promptly upon their completion with respect to any subsequently prepared documents.

Section 2.9 Environmental Review. During the Negotiating Period the City and the District shall review existing environmental documentation to ascertain whether such documentation adequately addresses the proposed Development. Based on that analysis, the District shall prepare or cause to be prepared the appropriate environmental documentation required by CEQA prior to approval of the LDA. Nothing in this Agreement shall be construed to compel the City to approve or make any particular findings with respect to such CEQA and NEPA documentation.

Section 2.10 Progress Reports. Every three (3) months during the Negotiating Period or any Extension period thereof, the District shall submit a written progress report advising the City on studies being made and matters being evaluated by the District with respect to this Agreement and the Development.

### **ARTICLE 3. GENERAL PROVISIONS**

Section 3.1 Limitation on Effect of Agreement. This Agreement shall not obligate either the City or the District to enter into a LDA or to enter into any particular LDA. By execution of this Agreement (and any extension of the Negotiating Period), the City is not committing itself to or agreeing to undertake disposition of any parcels in the Property, agreeing to provide any City assistance, agreeing to approve any land use entitlements, undertake construction or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the City. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the execution of a LDA and all proceedings and decisions in connection therewith. Any LDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such LDA has been considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of the City and the District. Execution of this Agreement by District is an agreement to negotiate diligently and in good faith toward business terms for the LDA according to the terms and conditions hereof, reserving final approval by the governing board and/or authorized officers of District, as applicable, as to such business terms and the final LDA. Until and unless a LDA is signed by the District, approved by the City Council and executed by the City, no agreement drafts, actions, deliverables, term sheets, outlines, memoranda or communications arising from the performance of this Agreement shall impose any legally binding obligation on either party to enter into or support entering into a LDA or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding

document. As such, the City retains the absolute discretion before the execution of any LDA to determine not to proceed with the transfer of the Property or any part thereof and any proposed Development on the Property

Section 3.2 Notices. Formal notices, demands and communications (other than day to day routine communications) between the City and the District 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, 2<sup>nd</sup> 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

District: Alisal Union School District  
Attn: Jim Koenig, AUSD Associate Superintendent  
1205 E. Market St.  
Salinas, CA 93905  
Email: Jim.Koenig@alisal.org

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 3.3 Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 3.4 Right of Entry. The District and its consultants shall have the right to enter upon the Property during normal business hours to conduct investigations in accordance with this Agreement. In connection with such entry and investigation, the District shall:

- (a). give the City or its designee reasonable advance notice;
- (b). repair and restore any damage it may cause;
- (c). deliver to the City, within ten (10) days of receipt thereof, a complete copy of any investigation, test, report or study which the District conducts, or causes to be conducted, with respect to the Property; and
- (d). indemnify, defend and hold the City and its council members, 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 District or its consultants arising out of the negligent or intentional acts of the City or dangerous conditions on the Property for which the City should know or have known to

exist, which may proximately arise out of the District's or its consultants' entry upon the Property or the investigation(s) and test(s) which the District may conduct; provided, however, that this indemnity shall not apply to matters arising from the results of the District'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 District's investigations were to discover an environmental condition that required remediation).

Section 3.5 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 Agreement, and the performance of each party's obligations under this Agreement. The City will keep track of its costs and may consider these costs a "contribution" to the construction and operation of the Facility.

Section 3.6 No Commissions. Each party represents to the other that it has not retained the services of any broker, agent or finder with respect to the Property or in connection with any matters relating to this transaction of the subject discussions, 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. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any LDA that may result from this Agreement, unless the City retains a broker, agent or finder.

Section 3.7 Parties' Discretion to Terminate Agreement. Both parties agree to pursue negotiation of a mutually acceptable LDA with all good faith and diligence; however, if at any time during the Negotiating Period or any Extension Period thereof, either party, in its sole discretion, reasonably determines that negotiation of a LDA is no longer feasible or it is no longer in the party's best interests to pursue such negotiation, that party can exercise its right to provide written notification to the other party of the notifying party's intent to terminate the Agreement, effective upon receipt of such notice. Following such termination, each party shall be free to negotiate with any other party with regard to the nature and scope of the Development described herein, and shall assume responsibility for all of the party's own expenses and costs incurred up to and including the date of termination of this Agreement. .

Further, upon such termination, except as expressly provided in this Agreement, no party shall have any liability to any other party for damages, nor shall any party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.

Section 3.8 Non-Confidentiality of Information. The parties acknowledge that each party will need sufficient, detailed information from the other party about the proposed Development to make informed decisions about the content and approval of the proposed LDA. The parties understand and agree that each party is subject to the California Public Records Act (Government Code Section 6253 *et seq.*) and cannot guaranty that any such information received from the other party can remain confidential.

The parties agree that each party may share information provided by the other party of a financial and potential proprietary nature with third party consultants who have been contractually engaged to advise the respective parties concerning matters related to this Agreement and with each party's officers, agents, and employees to the extent necessary for the negotiation and decision making process. If this Agreement is terminated without the execution of a LDA, each party shall return to the other party any confidential information submitted by the other party under this Agreement. If any litigation is filed seeking to make public any information either party submitted to the other party in confidence, the City and District shall cooperate in defending the litigation. Each party shall pay the party's own costs of defending such litigation and shall indemnify the other party against all costs and attorneys' fees awarded to the plaintiff in any such litigation.

Section 3.9 Governing Law; Venue. This Agreement 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 Agreement shall be in the Superior Court of the County of Monterey, subject to any motion for transfer of venue.

Section 3.10 Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

Section 3.11 Counterparts. This Agreement 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 3.12 Assignment. The District may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the City, which consent shall be granted or withheld in the City's reasonable discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void. Notwithstanding the foregoing, District shall have the right to assign its rights and obligations under this Agreement to an affiliated nonprofit public benefit corporation or a limited partnership or limited liability company of which the District or an affiliated entity is a general partner or managing member pursuant to a form of assignment agreement approved by the City. If and when approved, the LDA would be between the City and the District or such assignee.

Section 3.13 Non-Recourse Agreement. No member, official, employee, agent, or consultant of any party to this Agreement 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 Agreement.

Section 3.14 No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and the District and no other person shall have any right of action under or by reason of this Agreement.

Section 3.15 Actions by the City. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the City, the approval, consent, authorization, or waiver of the City Manager of the City shall constitute the approval, consent, authorization or waiver of the City without further action of the City Council, including amendments to the Schedule within the time frame of the Negotiating Period and any extensions thereto as set forth in Section 1.2.

*SIGNATURES ON FOLLOWING PAGE*



IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date first above written.

**CITY:**

CITY OF SALINAS, a municipal corporation

By: \_\_\_\_\_  
Ray E. Corpuz, Jr, City Manager

**DISTRICT:**

Alisal Union School District

By: \_\_\_\_\_  
Hector Rico, Ed.D. District Superintendent

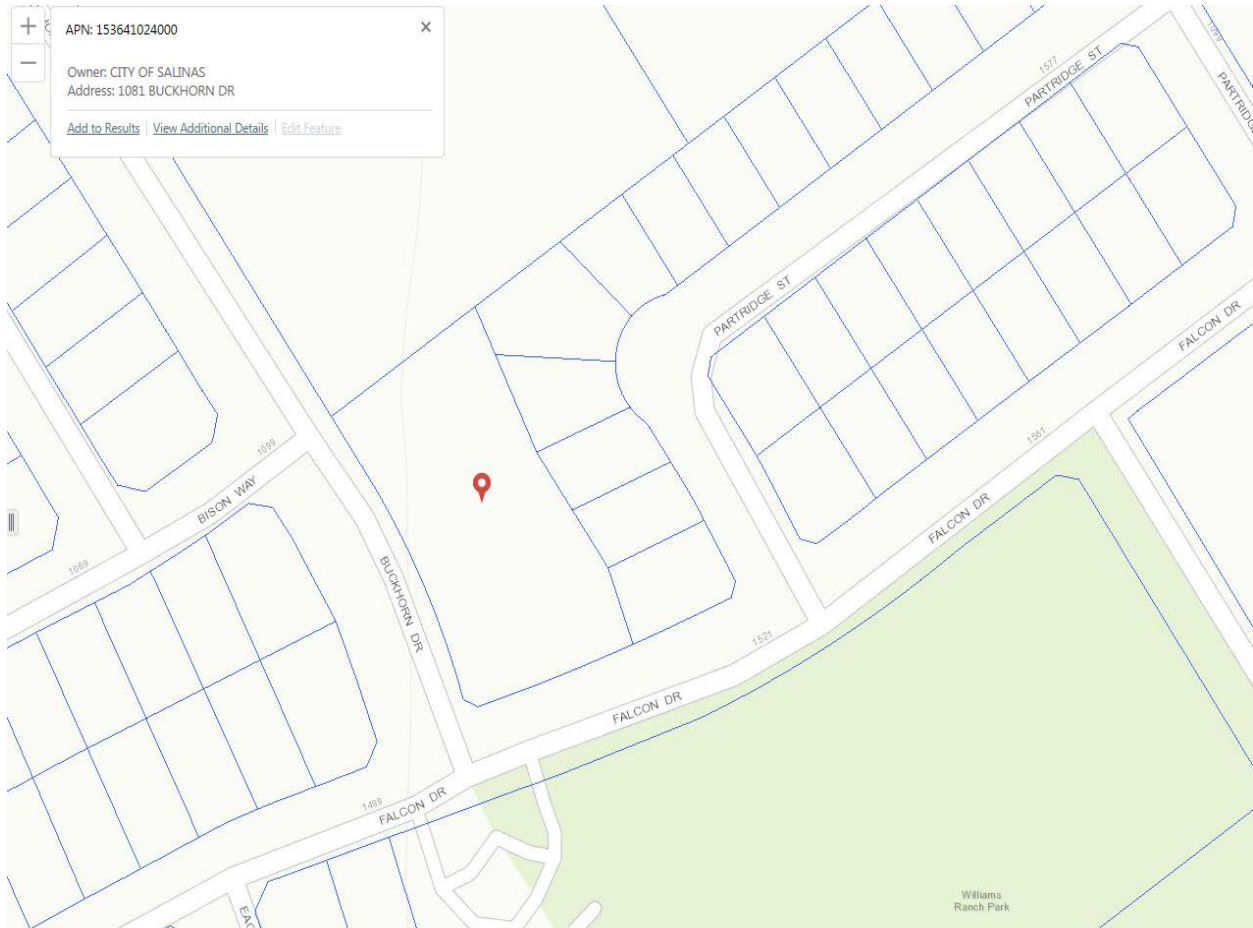
APPROVED AS TO FORM:

By: \_\_\_\_\_  
Christopher A. Callihan, Esq. City Attorney

**EXHIBIT A**

**PROPERTY MAP**

**1081 Buckhorn Dr.**



**EXHIBIT B**  
**ESTIMATED PREDEVELOPMENT COSTS**

Phase 1/Title 5/Geohazard Report	\$ 7,150
Preparation of Mitigated Negative Declaration (CEQA)	\$ 65,000
Preparation of Bid-Ready Architectural Plans	\$500,000
Legal Services	\$ 15,000
Blueprints	\$ 1,000
DSA Fees	\$ 60,549
<u>Contingency</u>	<u>\$ 64,869</u>
TOTAL	\$713,568

**EXHIBIT C****PRELIMINARY SCHEDULE OF PERFORMANCE**

	<b>Task</b>	<b>Time for Performance</b>
1.	Public Engagement plan/ process	September 2017 to Execution of LDA
2.	Building and operational Funding commitments	September 2017 to Execution of LDA
3.	District submits Preliminary Plans to City for review	March 2018
4.	City Completeness review of Preliminary Plans	May 2018
5.	District finalizes Plans	After Execution of the Land Disposition Agreement
6.	District begins CEQA Environmental Assessment	August 2017
7.	District completes environmental assessment of Property.	May 2018
8.	Division of the State Architect (“DSA”)	Six Months after Execution of the Land Disposition Agreement.
9.	CEQA Publication and Public Review Period	April 2018
10.	City Council hearing for consideration of LDA, including funding sources	Prior to end of Negotiating Period (or any extensions thereto)
11	Execute LDA	November 2018 (or any extensions thereto)

## EXHIBIT D

### PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made this 27th day of September, 2006 (the "Effective Date"), by and between the City of Salinas, a municipal corporation (the "City" or the "Buyer"), and Community Housing Improvement Systems and Housing Association, Inc., a California nonprofit public benefit corporation ("CHISPA" or the "Owner"), with reference to the following:

A. The Owner is fee owner of that certain parcel of real property located in Salinas, California, including all improvements located thereon, commonly known as 1081 Buckhorn Drive, Salinas, California (APN # 153-641-024), more particularly described in Exhibit A (the "Property").

B. With federal financing received from the Department of Housing and Urban Development ("HUD") the City desires to assist in the development of a child care center on the Property (the "Project").

C. The City desires to acquire the Property described above in order to construct the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the City and Owner (collectively, the "Parties") agree as follows:

#### SECTION 1. CONVEYANCE OF THE PROPERTY.

Subject to the terms and conditions set forth below, the Owner shall convey the Property to the City by grant deed in the form attached as Exhibit B.

#### SECTION 2. PURCHASE PRICE.

The purchase price shall be Three Hundred and Fifty Thousand Dollars (\$350,000), less the costs of Closing (as defined below), paid by the City pursuant to Section 8 below (the "Purchase Price"). The Purchase Price shall include all costs associated with the Closing, including but not limited to, a CLTA title insurance policy.

#### SECTION 3. PAYMENT OF PURCHASE PRICE.

The Purchase Price shall be paid in cash at the Closing.

#### SECTION 4. OPENING ESCROW.

Promptly following execution of this Agreement, the Parties shall open an escrow with the Salinas office of First American Title Company (the "Title Company") for conveyance of the Property to the City. The Parties shall provide escrow instructions to the Title Company consistent with this Agreement.

## SECTION 5. CLOSE OF ESCROW AND CONDITIONS TO CLOSE OF ESCROW.

The escrow for the conveyance of the Property (the "Escrow"), shall close by September 29, 2006 (the "Closing"), provided the conditions set forth below have been satisfied. At the Closing, the Owner shall convey the Property to the City and the City shall pay the Purchase Price to the Owner. At the Closing, the Property shall be conveyed to the City by grant deed.

The following are conditions to the closing which conditions may be waived solely by the City:

- (a) Title to the Property is in the condition described in Section 6 below.
- (b) The Agency has not terminated this Agreement pursuant to Section 7 below within the time permitted pursuant to Section 7.
- (c) The representations and warranties of the Owner set forth in Section 12 below remain true and correct.

## SECTION 6. STATUS OF TITLE.

Owner shall cause the title to the Property to be such that at the Closing, the Title Company is prepared to deliver to the City through escrow, a standard coverage CLTA policy of title insurance in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000) insuring fee title to the Property vested in the City free and clear of any liens, encumbrances and interests except the following ("Approved Exceptions"):

- (a) Non-delinquent general, special and supplemental taxes (including, without limitation, any community facilities district assessments), bonds and assessments.
- (b) Any liens or encumbrances created by or at the request of the City with Owner's prior written consent.
- (c) Items 1, 2, 3, 4, 5, 6, 7, 10, 11, and 12 of that Preliminary Title Report, dated September 8, 2006, issued by First American Title Company (Escrow No. 2701-2538290)
- (d) Any other matter approved by the City in writing.

## SECTION 7. CONDITION REGARDING HUD FUNDING.

If the City does not receive HUD funding for the Project in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000), on or before September 29, 2006, or such later date to which the Closing is extended, the City shall have the right to terminate this Agreement by giving written notice to the Owner of termination. Upon such termination, no Party shall have any further rights or obligations under this Agreement.

## SECTION 8. ESCROW; COSTS AND PRORATIONS.

(a) Prior to the Closing, the Owner and the City shall make the deliveries into Escrow set forth in this Section 8.

(b) Owner hereby covenants and agrees to deliver or cause to be delivered to the Title Company on or prior to the Closing, the following instruments and documents:

(i) a good and sufficient grant deed, in a form reasonably acceptable to the City, properly executed and acknowledged by Owner in favor of City, the delivery and recordation of which shall vest in City fee title in and to the Property;

(ii) FIRPTA certificate, duly and validly executed by Owner in favor of City, certifying that Owner is not a "foreign person", as that term is defined in Section 1445(f) of the Internal Revenue Code of 1986, as amended;

(iii) a certificate duly and validly executed by Owner in favor of City as required under California Revenue and Taxation Code Sections 18662, which certifies that the Owner is a California nonprofit public benefit corporation; and

(iv) such proof of Owner's authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Owner to act for and bind Owner as may be reasonably required by the Title Company.

(c) The City hereby covenants and agrees to deliver or cause to be delivered to the Title Company on or prior to the Closing, the following instruments and documents:

(i) such proof of City's authority and authorization to enter into this Agreement and the transaction contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of City to act for, bind City and accept conveyance of the Property as may be reasonably required by the Title Company;.

(ii) the City has deposited into Escrow the Purchase Price, which shall include the amount sufficient to pay for the Closing costs the City is required to pay pursuant to this Section 8; and

(d) Unless the parties otherwise mutually agree in writing to an extension, subject to the fulfillment of all conditions precedent set forth in Section 5 and title being in the condition specified in Section 6 above, the Closing shall occur on the date determined pursuant to Section 5 above but in no event shall the Closing occur later than September 28, 2006, provided, however, that the Parties may extend the date for the Closing.

(e) The following costs and expenses shall be paid for by the City, except where stated otherwise:

(i) Property taxes shall be prorated at the Closing based on the most current real property tax bill available, including any escaped property taxes which may be assessed after the Closing pertaining to the period prior to transfer of title to City, regardless of when notice thereof is delivered or who receives such notice.

(ii) Owner shall pay to the City all tenant security deposits that it holds.

(iii) All installments of any bond or assessment that is a lien (determined as of the Closing) which installments become due before Closing shall be paid by Owner on or before Closing. In no event will Owner be required to prepay any bonds or assessments on the Property.

(iv) City shall pay all title insurance costs and premiums charged in connection with the issuance of the title policy referred to in Section 6 above.

(v) All property transfer taxes, if any, shall be paid by the City.

(vi) All escrow fees shall be paid by City.

(vii) City shall pay all reasonable legal fees and expenses incurred in connection with the transaction contemplated herein.

#### SECTION 9. USE OF SALES PROCEEDS.

The Parties shall instruct the Title Company to pay the Purchase Price into a bank account with Rabobank to be established by the City and CHISPA (the "Bank Account"). City and CHISPA contemplate that CHISPA will lease the Property back from City to facilitate predevelopment work related to the Project. CHISPA may withdraw funds from the Bank Account with the approval of the City. Funds may be withdrawn to pay for the predevelopment and the development costs of the Project or to reimburse CHISPA for reasonable carrying costs the Owner incurs after the conveyance of Property to City while the lease is in effect. Such carrying costs include, for example, weed abatement and temporary fencing. CHISPA may withdraw up to \$17,500 to reimburse CHISPA for its administrative and overhead costs incurred by CHISPA on the Project both prior to and after conveyance of the Property.

#### SECTION 10. POSSESSION.

Owner shall deliver possession of the Property to the City at the Closing.

#### SECTION 11. CONDITION OF PARCEL.

Except as otherwise expressly stated in Section 12 of this Agreement, the City is acquiring the Property "AS IS", in its present state and condition as of the date of this Agreement, without representation by Owner or its representatives as to any matter.



## SECTION 12. OWNER'S WARRANTIES.

(a) Notwithstanding any other provision contained herein, Owner hereby warrants that, as of the Effective Date and as of the Closing, that to the best of Owner's knowledge, there are no Hazardous Materials on the Property. For the purposes of this Agreement, the term "Hazardous Materials" shall include, without limitation any hazardous or toxic materials, substances or wastes, such as (i) substances defined as "hazardous substances", "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC Section 9601, et seq.) and/or the Hazardous Materials Transportation Act (49 USC Section 1801, et seq.), as either of such acts are amended from time to time; (ii) those materials identified in Sections 66680 through 66685 and Sections 66693 through 66740 of Title 22 of the California Administrative Code, Division 4, Chapter 30, as amended from time to time; (iii) those materials defined in Section 25501(j) of the California Health and Safety Code, as amended from time to time, (iv) any materials, substances or wastes which are toxic, ignitable, corrosive or reactive and which are regulated by any local governmental authority, any City of the State of California or any City of the United States Government; (v) asbestos, petroleum and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls (PCBs), and freon and other chlorofluorocarbons; and (vi) those substances defined as any of the foregoing in the regulations adopted and publications promulgated pursuant to each of the aforesaid laws.

(b) Owner warrants that as of the Effective Date, and as of the date of the Closing, no person or entity, other than the Owner, has a right to occupy or possess the Property.

## SECTION 13. MISCELLANEOUS PROVISIONS.

(a) This Agreement contains the entire agreement of the Parties; any previous understandings of the Parties regarding the subject matter hereof are expressly declared null and void and are superseded hereby.

(b) If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

(c) No waiver or any breach of any covenant or provision herein contained shall be deemed a waiver of any other covenant or provision herein contained, and no waiver shall be valid unless in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(d) Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of and shall not be used to interpret this Agreement, the singular form shall include plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared the same. Unless otherwise indicated, all references to paragraphs are to this Agreement. All exhibits referred to in this Agreement are attached hereto and incorporated herein by this reference.

(e) Each and every representation, warranty, covenant and obligation of Owner shall not merge with transfer of title, but shall survive the Closing.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective, only upon the complete execution of this Agreement by Owner and City.

(g) Time is of the essence of each and every condition herein, and of each term and provision herein.

(h) In any litigation arising under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees from the other party.

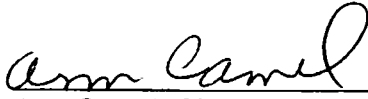
(i) This Agreement shall be governed and construed in accordance with California law.

(j) If the day for performance under any time period specified in this Agreement shall fall on a Saturday, Sunday or holiday observed by the federal government or the State of California, then the time for performance under such time period shall automatically be extended to the next business day; provided, however, that the term "days" as used to compute time periods in this Agreement shall not be construed to mean "business days." Further, if either Party so requests after the complete execution of this Agreement, the Parties shall reduce to writing those dates related to performance under this Agreement capable of being ascertained upon such execution.

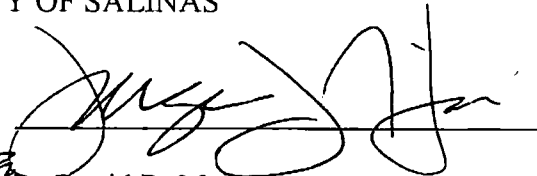
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WHEREFORE, the parties have executed this Agreement on the date written above.

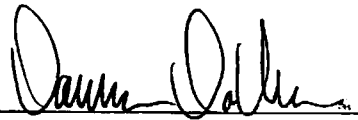
ATTEST:

  
Ann Camel, City Clerk

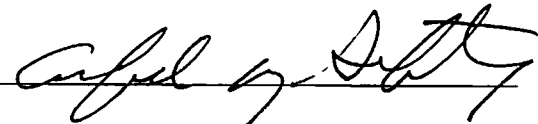
CITY OF SALINAS

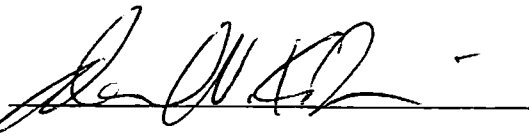
By:   
Name: David R. Mora  
Title: City Manager

APPROVED AS TO FORM:

  
Vanessa W. Vallarta, City Attorney

COMMUNITY HOUSING IMPROVEMENT  
SYSTEMS AND PLANNING ASSOCIATION, INC..  
a California nonprofit public benefit corporation

By:   
Name: Alfred Diaz-Infante  
Title: President and CEO

By:   
Name: Normond V. Kolpin  
Title: Chief Financial Officer

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

Real property in the City of Salinas, County of Monterey, State of California, described as follows:

PARCEL "A", AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT NO. 1375 FALCON RIDGE" FILED FOR RECORD JANUARY 29, 2002, IN VOLUME 22 "CITIES AND TOWNS", AT PAGE 11, FILED IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF MONTEREY, STATE OF CALIFORNIA.

APN: 153-641-024

**EXHIBIT B**

**GRANT DEED**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of Salinas  
Development & Engineering Services  
Attn: Greg Knowles  
200 Lincoln Avenue  
Salinas, CA 93901  
NO FEE FOR RECORDING PURSUANT  
TO GOVERNMENT CODE SECTION 27383

---

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is acknowledged, the Community Housing Improvement Systems and Housing Association, Inc., a California nonprofit public benefit corporation (the "Grantor"), grants, by execution and delivery of this Grant Deed, to the City of Salinas, a municipal corporation (the "Grantee"), the real property in the City of Salinas, County of Monterrey, State of California, described on the attached Exhibit A (the "Property").

**GRANTOR:**

COMMUNITY IMPROVEMENT  
SYSTEMS AND HOUSING  
ASSOCIATION, INC.

By: \_\_\_\_\_  
Alfred Diaz-Infante

Its: President and CEO

By: \_\_\_\_\_  
Normond V. Kolpin

Its: Chief Financial Officer

Dated \_\_\_\_\_, 2006

STATE OF CALIFORNIA    )  
  )  
COUNTY OF                    )

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, Notary  
Public, personally appeared \_\_\_\_\_, personally known  
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the  
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA    )  
  )  
COUNTY OF                    )

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, Notary  
Public, personally appeared \_\_\_\_\_, personally known  
to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the  
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT C**

**CERTIFICATE OF ACCEPTANCE AND EXHIBIT**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of Salinas  
Development & Engineering Services  
Attn: Greg Knowles  
200 Lincoln Avenue  
Salinas, CA 93901

NO FEE FOR RECORDING PURSUANT  
TO GOVERNMENT CODE SECTION 27383

(Pursuant to Government Code 27281)

This is to certify that the interest in real property conveyed by the Grant Deed from the Community Housing Improvement Systems and Housing Association, Inc., a California nonprofit public benefit corporation (the "Grantor"), to the City of Salinas, a municipal corporation (the "City"), is hereby accepted on \_\_\_\_\_, 2006, by the undersigned officer or agent on behalf of the City pursuant to authority conferred by resolution of the City Council adopted on September 25, 2006, and the City Council consents to the recordation of said document in the Office of the Recorder of Monterey County, State of California.

Dated: \_\_\_\_\_, 2006

By: \_\_\_\_\_

Its: \_\_\_\_\_

City of Salinas

STATE OF CALIFORNIA    )  
                                      )  
COUNTY OF                    )

On \_\_\_\_\_, 2006 before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



## **EXHIBIT E**

### **MEMORANDUM OF UNDERSTANDING BETWEEN ALISAL UNION SCHOOL DISTRICT AND COMMUNITY HOUSING IMPROVEMENT SYSTEMS AND PLANNING ASSOCIATION**

This Memorandum of Understanding (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 (“Effective Date”), by and between the Alisal Union School District (“District”), a California public school district, and Community Housing Improvement Systems and Planning Association, Inc. (“CHISPA”), a California nonprofit public benefit organization. The District and CHISPA are individually referred to herein as a “Party” and collectively as the “Parties.”

#### **RECITALS**

- A. **WHEREAS**, the City of Salinas (“City”) owns certain real property located at 1801 Buckhorn Drive, Salinas, California (“Property”); and
- B. **WHEREAS**, the City has stated it will provide the District with an Exclusive Negotiating Agreement (“ENA”), setting forth the intention of the District and the City to negotiate with each other in order to establish the terms and conditions for the sale of the Property to the District for the purpose of constructing and operating an Early Learning Center on said Property; and
- C. **WHEREAS**, CHISPA is a nonprofit Community-based Housing Development Organization providing affordable housing and offering onsite educational and recreational programming for the low-to-moderate income populations of Santa Cruz, San Benito, and Monterey Counties; and
- D. **WHEREAS**, CHISPA recognizes the importance of services that would be made available to community families, particularly low-to-moderate income families, through the operation of the Early Learning Center; and
- E. **WHEREAS**, upon execution of the ENA, and subject to the terms and conditions set forth in this Agreement, CHISPA intends to contribute funds from the City’s purchase of the Property to the District to be used for the purpose of obtaining design services, as defined in this Agreement, in connection with the construction of the Early Learning Center on the Property; and
- F. **WHEREAS**, the Governing Board of the District is authorized, pursuant to Section 41030 *et seq.* of the Education Code to receive gifts of money to be expended for a particular purpose.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Purpose. The Parties agree that the purpose of this Agreement is to set forth the terms and conditions under which CHISPA will contribute funds from the City's purchase of the Property to the District to be expended for design services in connection with the construction of the Early Learning Center ("Center") on the Property.
2. District Acceptance of Funds. The District shall retain sole discretion to accept or reject any funds donated by CHISPA under the terms of this Agreement.
3. Use of Design Funds. CHISPA shall reimburse the District the total amount up to Three Hundred Twenty-Four Thousand Three Hundred Twenty Four Dollars and Fifty Four Cents (\$324,324.54) to be utilized by the District for the purpose of obtaining design services ("Design Services") in connection with construction of the Center on the Property ("Design Funds"). For the purposes of this Agreement, Design Services include, but are not limited to site evaluation, site-planning, architectural and design services, schematic drawings, engineering, and all pre-construction services necessary for construction of the Center.
4. Deposit and Expenditure of Design Funds. Design Funds shall be reimbursed to the District by CHISPA following submission of reimbursement requests to CHISPA, following City of Salinas Planning Department review and written approval of requests for reimbursement. The form for the reimbursement request shall be as at Exhibit A.
5. District Authority/Discretion. The District shall retain the final authority and discretion over any and all decisions, including but not limited to those decisions regarding the design, planning and construction of the Center, including all Design Services funded in whole or in part by CHISPA. Except as otherwise agreed in writing by the Parties, the District shall further retain the final authority and discretion over the services provided at or through the Center. The District may, at its sole discretion enter into a contract with a third party vendor for the operation of the Center. The District shall ensure that any vendor with whom the District contracts for the operation of the Center has obtained, and will maintain, any necessary permits, approvals, and licenses required for the operation of the Center and the provision of all services provided by the Center.
6. Use of District Name. CHISPA shall not utilize the name of the District, or the District's Governing Board members, employees, schools, program, teams and mascots, in any communications with third parties, including but not limited to, press releases and fundraising solicitations, without the District's prior written consent, which consent shall not be unreasonably withheld.
7. Notices. Any notice which is required to be given under this Agreement or which either Party may desire to give to the other, shall be in writing, and may be personally delivered or given by depositing in the United States Postal Service certified mail, postage fully prepaid, to the addresses as stated herein below:

**District:**

Alisal Union School District  
1205 E. Market Street  
Salinas, CA 93905  
Attention: \_\_\_\_\_

**CHISPA:**

CHISPA, Inc.  
295 Main St., Suite 100  
Salinas, CA 93901  
Attention: \_\_\_\_\_

8. Termination. This Agreement and the obligations of the Parties hereunder shall terminate in the event that the District fails to commence Design Services within thirty six (36) months following execution of the ENA, unless the Parties mutually agree to new dates for the District's performance. Upon any such event of termination, the District shall provide CHISPA with an accounting of all funds received under this Agreement, and shall return all unspent or unencumbered funds to CHISPA.

9. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for Monterey County, subject to any transfer of venue as required by law.

10. Severability. If any provision or any part of this Agreement is for any reason held to be invalid and/or unenforceable or contrary to public policy, law, statute, or ordinance by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

11. Assignment. Neither Party may assign, transfer any of its obligations, rights, or duties under this Agreement. Any such purported assignment or transfer shall be void, and shall constitute a breach of this Agreement.

12. Amendment. Each of the Parties acknowledges and agrees that this Agreement may be amended only by a writing signed by both the Parties and approved or ratified by the governing boards of both Parties.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no prior agreement, statement, promise, or representation made by any party, employee, officer, or agent which is not contained herein shall be binding or valid. Any previous agreements between the District and CHISPA regarding the subject matter of this Agreement are hereby terminated.

14. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile signature pages transmitted to either Party to this Agreement shall be deemed equivalent to original signatures on counterparts.

15. Warrant of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party indicated,

and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date and year first written above.

**ALISAL UNION SCHOOL DISTRICT**

By: \_\_\_\_\_

Name: Dr. Hector Rico

Title: Superintendent

**COMMUNITY HOUSING IMPROVEMENT SYSTEMS AND PLANNING ASSOCIATION, INC.**

By: \_\_\_\_\_

Name: Alfred Diaz-Infante

Title: President/CEO