

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE CITY OF SALINAS AND COMMUNITY HOMELESS SOLUTIONS FOR SALINAS WARMING SHELTER**

This Agreement for Professional Services (the "Agreement") is made and entered into this 13th day of August, 2019, by and between the **City of Salinas**, a California charter city and municipal (hereinafter "City"), and **Community Homeless Solutions**, (hereinafter "Consultant")

RECITALS

WHEREAS, Consultant represents that it is specially trained, experienced, and competent to perform the special services which will be required by this Agreement; and

WHEREAS, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, City and Consultant agree as follows:

TERMS

1. **Scope of Service.** The project contemplated and the scope of Consultant's services are described in **Exhibit A**, attached hereto and incorporated herein by reference.

2. **Term.** This Agreement shall commence on August 13, 2019 ("Commencement Date") and shall remain in effect until June 30, 2020 unless this Agreement is terminated early as provided herein or unless either party provides written notice to the other at least sixty (60) days prior to the end of the term of this Agreement.

3. **Compensation.** City hereby agrees to pay Consultant for services rendered the City pursuant to this Agreement in a total amount not to exceed Two Hundred Thousand Dollars (\$200,000) based on the budget set forth in **Exhibit A**.

4. **Billing.** Consultant shall submit to City an itemized invoice, prepared in a form satisfactory to City, describing its services and costs for the period covered by the invoice. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Consultant's bills shall include the following information to which such services cost or pertain:

- a. A brief description of services performed;
- b. The date the services were performed;
- c. The number of hours spent and by whom;
- d. A brief description of any costs incurred; and
- e. The Consultant's signature.

Any such invoices shall be in full accord with any and all applicable provisions of this Agreement.

City shall make payment on each such invoice within thirty (30) days of receipt; provided, however, that if Consultant submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement, City shall not be obligated to process any payment to Consultant until thirty

(30) days after a correct and complying invoice has been submitted by Consultant. The City shall process undisputed portion immediately.

5. Additional Copies. If City requires additional copies of reports, or any other material which Consultant is required to furnish as part of the services under this Agreement, Consultant shall provide such additional copies as are requested, and City shall compensate Consultant for the actual costs related to the production of such copies by Consultant.

6. Responsibility of Consultant.

a. By executing this Agreement, Consultant agrees that the services to be provided and work to be performed under this Agreement shall be performed in a fully competent manner. By executing this Agreement, Consultant further agrees and represents to City that the Consultant possesses, or shall arrange to secure from others, all of the necessary professional capabilities, experience, resources, and facilities necessary to provide the City the services contemplated under this Agreement and that City relies upon the professional skills of Consultant to do and perform Consultant's work. Consultant further agrees and represents that Consultant shall follow the current, generally accepted practices in this area to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the projects for which the services are rendered under this Agreement.

b. Consultant shall assign a single Project Director to have overall responsibility for the execution of this Agreement for Consultant. Reyes Bonilla, Executive Director, is hereby designated as the Project Director for Consultant. Any changes in the Project Director designee shall be subject to the prior written acceptance and approval of the City Manager.

7. Responsibility of City. To the extent appropriate to the projects to be completed by Consultant pursuant to this Agreement, City shall:

a. Assist Consultant by placing at her disposal all available information pertinent to the projects, including but not limited to, previous reports and any other data relative to the projects. Nothing contained herein shall obligate City to incur any expense in connection with completion of studies or acquisition of information not otherwise in the possession of City.

b. Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents presented by Consultant, and render verbally or in writing as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the services of Consultant.

c. The Planning Manager of the Housing Division of the Department of Community Development, shall act as City's representative with respect to the work to be performed under this Agreement. Such person shall have the complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements, and systems pertinent to Consultant's services. City may unilaterally change its representative upon notice to the Consultant.

d. Give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in a project.

8. **Acceptance of Work Not a Release.** Acceptance by the City of the work to be performed under this Agreement does not operate as a release of Consultant from professional responsibility for the work performed.

9. **Indemnification and Hold Harmless.** Consultant shall indemnify, defend, and hold City and its officers, employees, and agents harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to any property, or violation of any relevant federal, state or municipal law or ordinance, or other cause in connection with the negligent, recklessness or intentional acts or omission of Consultant, its employees, subConsultants or agents, or on account of the performance or character of the work, except for any such claim arising from the negligence or willful misconduct of the City, its officers, employees or agents. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

Consultant shall reimburse the City for all costs and expenses including, but not limited to court costs, incurred by the City in enforcing the provisions of this section.

10. **Insurance.**

a. Consultant shall, throughout the duration of this Agreement, maintain comprehensive general liability and property insurance covering all operations of the Consultant, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

b. Consultant shall maintain the following limits:

General Liability - Consultant shall at all times during the term of this Agreement maintain in effect a policy or policies having an A.M Best rating of A-Class VIII or better for bodily injury liability, personal injury, advertising injury and property damage, including product liability insurance with limits on the Declarations Page but not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000) in the general aggregate and products/completed operations aggregate insuring against any and all liability of the insured with respect to premises and products/completed operations. Liability coverage shall also include coverage for underground work and/or construction performed (if applicable). The coverage afforded to the additional insureds under the Consultant's policy shall be primary insurance and non-contributory. If coverage is on a claims-made basis, the Consultant shall maintain "tail coverage" no less than ten (10) years after the expiration date of the policy or policies. Any policy or policies carrying a deductible of more than \$25,000.00 may be subject to review by the City of the Consultant's financials.

Umbrella or Excess - Consultant shall provide limits on the Declarations Page but not less than Two Million and 00/100 Dollars (\$2,000,000) per occurrence and Two Million and 00/100 (\$2,000,000) in the aggregate on a follow - form basis having an A.M Best rating of A-Class VIII or better.

Auto Liability - Consultant shall provide limits on the Declarations Page but not less than One Million and 00/100 (\$1,000,000.00) combined single limit for bodily injury and property

damage having an A.M Best rating of A - Class VIII or better. Automobile Liability Symbol 1 (any auto), if the Company owns automobiles. An entity without autos shall have "Non - owned and Hired" coverage (Auto Symbols 8 & 9). The City and its elected and appointed officers, boards, commissions, agents and employees shall be named as Additional Insureds.

Workers' Compensation – Consultant shall provide Workers' Compensation Insurance sufficient to meet its statutory obligation and to provide benefits for employees with claims of bodily injury or occupational disease (including resulting death) as required by the State of California and Employer's Liability Insurance for One Million and 00/100 Dollars (\$1,000,000). Waiver of Subrogation for Workers' Compensation in favor of the City of Salinas is required.

Professional Liability - Consultant shall provide limits on the Declarations Page but not less than One Million and 00/100 Dollars (\$1,000,000) per occurrence and One Million and 00/100 Dollars (\$1,000,000) in the aggregate having an A.M Best rating of A-Class VIII or better.

c. All insurance companies with the exception of "Worker's Compensation" and "professional errors and omissions" affording coverage to the Consultant shall be required to add the City of Salinas, its officers, and, agents as additional "insured" by endorsement under the insurance policy and shall stipulate that this insurance policy will operate as primary insured for the work performed under this Agreement and that no other insurance affected by the City or other named insured will be called upon to contribute to a loss covered thereunder. The policy shall contain no special limitations on the scope of protection afforded to City, its officers, employees or agents.

d. All insurance companies affording coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner to transact the business of insurance in the State of California.

e. All insurance companies affording coverage shall provide thirty (30) days written notice by certified mail to the City of Salinas should the policy be canceled or reduced in coverage before the expiration date. For the purpose of this notice requirement, any material change prior to expiration shall be considered cancellation.

f. Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City's Risk and Benefits Analyst, concurrently with the submittal of this Agreement. A statement on the insurance certificate which states that the insurance company "will endeavor" to notify the certificate holder, "but failure to mail such notice shall impose no obligation or liability of any kind upon the Consultant, its agents or representatives" does not satisfy the requirements of this subsection. The Consultant shall ensure that the authorized representative of the insurance company strikes the above quoted language from the certificate.

g. Consultant shall provide a substitute certificate of insurance no later than ten (10) days prior to the policy expiration date. Failure by the Consultant to provide such a substitution and extend the policy expiration date shall be considered default by Consultant. In the event Consultant is unable to provide a substitute certificate of insurance within the time prescribed in this subsection, Consultant shall provide written confirmation of renewal, in a form satisfactory to the City, to act as proof of insurance only until such time as a certificate of insurance has been received by the City.

h. Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatever and the Consultant may carry, at its own expense, such additional insurance as it deems necessary.

11. Access to Records. Consultant shall maintain all preparatory books, records, documents, accounting ledgers, and similar materials including but not limited to calculation and survey notes relating to work performed for the City under this Agreement on file for at least three (3) years following the date of final payment to Consultant by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit, and copying at reasonable times during Consultant's usual and customary business hours. Consultant shall provide proper facilities to City's representative(s) for such access and inspection.

12. Assignment. It is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Consultant. This Agreement is personal to Consultant and shall not be assigned by it without express written approval of the City.

13. Changes to Scope of Work. City may at any time, and upon a minimum of ten (10) days written notice, seek to modify the scope of services to be provided for any project to be completed under this Agreement. Consultant shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify City in writing. Rate of compensation shall be based upon the Consultant's compensation as shown in **Exhibit A** of this Agreement. Upon agreement between City and Consultant as to the extent of said impacts to time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by City and Consultant shall constitute the Consultant's notice to proceed with the changed scope.

14. Ownership of Documents. Title to all final documents, including drawings, specifications, data, reports, summaries, correspondence, photographs, computer software (if purchased on the City's behalf), video and audio tapes, software output, and any other materials with respect to work performed under this Agreement shall vest with City at such time as City has compensated Consultant, as provided herein, for the services rendered by Consultant in connection with which they were prepared. City agrees to hold harmless and indemnify the Consultant against all damages, claims, lawsuits, and losses of any kind including defense costs arising out of any use of said documents, drawings, and/or specifications on any other project without written authorization of the Consultant.

15. Termination.

a. City shall have the authority to terminate this Agreement, upon written notice to Consultant, as follows:

(1) If in the City's opinion the conduct of the Consultant is such that the interest of the City may be impaired or prejudiced, or

(2) For any reason whatsoever.

b. Upon termination, Consultant shall be entitled to payment of such amount as fairly compensates Consultant for all work satisfactorily performed up to the date of based upon the compensation shown in **Exhibit A**, except that:

(1) In the event of termination by the City for Consultant's default, City shall deduct from the amount due Consultant the total amount of additional expenses incurred by City as a result of such default. Such deduction from amounts due Consultant are made to compensate City for its actual additional costs incurred in securing satisfactory performance of the terms of this Agreement, including but not limited to, costs of engaging another consultant(s) for such purposes. In the event that such additional expenses shall exceed amounts otherwise due and payable to Consultant hereunder, Consultant shall pay City the full amount of such expense.

c. In the event that this Agreement is terminated by City for any reason, Consultant shall:

(1) Upon receipt of written notice of such termination promptly cease all services on this project, unless otherwise directed by City; and

(2) Deliver to City all documents, data, reports, summaries, correspondence, photographs, computer software output, video and audio tapes, and any other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. Such material is to be delivered to City in completed form; however, notwithstanding the provisions of Section 15 herein, City may condition payment for services rendered to the date of termination upon Consultant's delivery to the City of such material.

d. In the event that this Agreement is terminated by City for any reason, City is hereby expressly permitted to assume the projects and complete them by any means, including but not limited to, an agreement with another party.

e. The rights and remedy of the City and Consultant provided under this Section are not exclusive and are in addition to any other rights and remedies provided by law or appearing in any other section of this Agreement.

16. Compliance with Laws, Rules, and Regulations. Services performed by Consultant pursuant to this Agreement shall be performed in accordance and full compliance with all applicable federal, state, and City laws and any rules or regulations promulgated thereunder.

17. Exhibits Incorporated. All exhibits referred to in this Agreement and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Agreement and any of the terms of any exhibit to the Agreement, the terms of the Agreement shall control the respective duties and liabilities of the parties.

18. Independent Consultant. It is expressly understood and agreed by both parties that Consultant, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent Consultant and not an employee of the City. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee or servant of the City.

19. Integration and Agreement. This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained herein. This Agreement may not be modified or altered except by amendment in writing signed by both parties.

20. Jurisdiction. This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in the State of California, in the County of Monterey.

21. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

22. Notices.

a. Written notices to the City hereunder shall, until further notice by City, be addressed to:

Director of Department of Community Development
City of Salinas
65 West Alisal Street, 2nd floor
Salinas, California 93901

With a Copy to:

City Attorney
City of Salinas
200 Lincoln Avenue
Salinas, California 93901

b. Written notices to the Consultant shall, until further notice by the Consultant, be addressed to:

Executive Director
Community Homeless Solutions
3087 Wittenmyer Court
Marina, California 93933

c. The execution of any such notices by the Community Development Director of the City shall be effective as to Consultant as if it were by resolution or order of the City Council, and Consultant shall not question the authority of the Community Development Director to execute any such notice.

d. All such notices shall either be delivered personally to the other party's designee named above, or shall be deposited in the United States Mail, properly addressed as aforesaid, postage fully prepaid, and shall be effective the day following such deposit in the mail.

23. Nondiscrimination. During the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability.

24. Conflict of Interest. Consultant warrants and declares that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the services required under the provisions of this Agreement a violation of any applicable local, state or federal law. Consultant further declares that, in the performance of this Agreement, no subConsultant or person having such an interest shall be employed. In the event that any conflict of interest should nevertheless hereinafter arise, Consultant shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this Agreement. Consultant further warrants its compliance with the Political Reform Act (Government Code section 81000 et seq.) and Salinas City Code Chapter 2A that apply to Consultant as the result of Consultant's performance of the work or services pursuant to the terms of this Agreement.

25. Headings. The section headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

26. Attorney's Fees. In case suit shall be brought to interpret or to enforce this Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover their reasonable attorneys' fees in addition to such costs as may be allowed by the Court. City's attorneys' fees, if awarded, shall be calculated at the market rate.

27. Non-Exclusive Agreement. This Agreement is non-exclusive and both City and Consultant expressly reserves the right to contract with other entities for the same or similar services.

28. Rights and Obligations Under Agreement. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

29. Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of Consultant, its representatives, agents or subConsultants by federal, state or local law, Consultant warrants that such license has been obtained, is valid and in good standing, and that any applicable bond posted in accordance with applicable laws and regulations.

30. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

31. Legal Representation. Each party affirms that it has been represented by legal counsel of its own choosing regarding the preparation and the negotiation of this Agreement and the matters and claims set forth herein, and that each of them has read this Agreement and is fully aware of its contents and its legal effect. Neither party is relying on any statement of the other party outside the terms set forth in this Agreement as an inducement to enter into this Agreement.

32. Joint Representation. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any party. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Agreement, or any part thereof, shall be applicable or invoked.

33. Warranty of Authority. Each party represents and warrants that it has the right, power, and authority to enter into this Agreement. Each party further represents and warrants that it has given any

and all notices, and obtained any and all consents, powers, and authorities, necessary to permit it, and the persons entering into this Agreement for it, to enter into this Agreement.

34. No Waiver of Rights. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement. The failure to provide notice of any breach of this Agreement or failure to comply with any of the terms of this Agreement shall not constitute a waiver thereof. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. A waiver by the City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first written above.

CITY OF SALINAS

Joe Gunter, Mayor

Date

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney

Date

Consultant: Community Homeless Solutions

By: Reyes Bonilla, Executive Director

Date

EXHIBIT A
SCOPE OF SERVICE AND BUDGET

SCOPE OF SERVICE

CONSULTANT shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1. Staff and operate the 2019-20 Year-Round Warming Shelter ("Shelter") from July 1, 2019 to June 30, 2020 at 111 W. Alisal Street;
2. Ensure Shelter services are Americans with Disabilities Act (ADA) compliant;
3. Operate the Shelter seven days a week, including holidays, from July 1, 2019 to June 30, 2020, from 4:00 PM to 8:00 AM unless otherwise extended as agreed upon in writing by all parties. CONSULTANT shall enforce a check-in cutoff time and guests will not have in and out privileges;
4. Provide security on-site sixteen hours (16) seven (7) days a week including weekends and holidays and develop a protocol to ensure the safety of staff and guests and minimize the impact of the Shelter on the neighboring community;
5. Be responsible for implementing and enforcing a mandatory twenty-four (24) hour seven (7) days a week no-loitering policy on Shelter property;
6. Prepare to open the Shelter doors each night at 4:00 PM and prepare the room for homeless guests to eat and sleep;
7. Not permit disruptive guests in the Shelter who adversely impact the peace and quiet for others;
8. Not allow smoking, illegal drug use or non-supervised use of prescription drugs in the facility or on the property;
9. Provide clear and concise guest use guidelines and behavioral expectations to each guest prior to entry;
10. Provide weekly reports including counts and general feedback. CONSULTANT shall notify the City immediately if the Shelter fills to capacity;
11. Serve approximately 70 individuals and/or family members in the Shelter on any given night;
12. Coordinate the provision of nightly food for overnight guests. Food may be obtained through donations from faith-based organizations or other organizations. All dishes and flatware shall be cleaned each night or otherwise (if appropriate) be properly disposed of;
13. Organize the sleeping arrangement into four groups: men, women, male led families with children, and female led families with children. All Salinas Fire Department regulations will be adhered to;
14. Facilitate guests vacating the building and property with all their personal belongings each morning no later than 8:00 AM. Anything left at the premises, at the discretion of CONSULTANT, will be considered trash and disposed of;
15. Clean the interior floors each day as needed and inspect the perimeter of the Shelter and ensure that all trash is collected;
16. Engage with the Coalition of Homeless Services Providers to gain access to the Homeless Management Information Services (HMIS) and the Coordinated Assessment and Referral System (CARS) to collect and enter the data elements to adhere to Monterey and San Benito Counties Continuum of Care Collaborative (CA-506) policies; and
17. Employ a Shelter Manager with at least two (2) years of shelter management experience.

BUDGET

Expense Description	Dollar Amount	Funding Source
Warming Shelter Staff (Shelter Manager, Program Coordinator and Shelter Support Staff), Payroll Taxes and Benefits, Security, Program Supplies, Liability Insurance, Food (meals for shelter guest) and Indirect Costs (10% max)	\$200,000	Measure G (CIP #9187)
Total	\$200,000	