

License and Use Agreement Between the City of Placerville and Housing El Dorado

This License and Use Agreement, which shall also be referred to as a Memorandum of Understanding (MOU), executed at Placerville, El Dorado County, California, is made on December 23, 2021, between the City of Placerville, a municipal corporation, hereinafter referred to as “City,” and, a Housing El Dorado, 501c(3) Non-Profit Organization, hereinafter referred to as “Housing El Dorado.”

Article I

A. City hereby grants to Housing El Dorado, on and subject to all of the terms, covenants and conditions hereinafter set forth, a license to use that certain real property described as: 525 Main Street, Placerville, California, (the Premises).

B. As consideration for Housing El Dorado to provide temporary shelter to transient residents in the City, the City shall allow Housing El Dorado to use of the Premises for a temporary Overnight Warming Center in accordance with the conditions defined herein.

Article II

A. The initial term of this MOU shall be for the period of nineteen (19) days from December 26, 2021 through January 13, 2022. Following the initial 19 day period, City grants to Housing El Dorado a license to use the Premises for a Nomadic Shelter on Tuesday, Wednesday and Thursday Nights. This use shall commence on January 18, 2022 and terminate on March 31, 2022.

B. It is agreed that Housing El Dorado may only operate the Overnight Warming Shelter from 4:00 pm to 7:30 a.m. It is agreed that no individuals will be on the premises or within 100 feet of the premises, outside of these hours.

C. City reserves the right to terminate this MOU at any time during the term of this MOU with) five (5) days’ notice to Housing El Dorado.

Article III

A. Housing El Dorado agrees to operate the Overnight Warming Center and the Nomadic Shelter in accordance with the “Pathways Project, 2021-2022 Winter Lodging Program Guidelines incorporated herein by reference. Housing El Dorado further agrees that use of the Premises shall be non-exclusive, except as provided in Article II. The City retains the right to rent out any portion of the Premises to any person or entity, with or without Housing El Dorado's consent.

B. In addition to the guideline’s set out in the Pathways Project, Housing El Dorado agrees to the following guidelines for the Premises:

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1. All individuals using the assistance of the Overnight Warming Center (the "clients") of the facility shall enter and exit the premises only from the back of the property. No clients shall enter or exit through the front door of the premises except in an emergency.
2. No clients shall be allowed to leave or approach the premises on foot. All clients shall be bussed to the premises from predetermined sites. All clients shall be bussed to the predetermined sites following the end of the overnight shift.
3. No clients shall be allowed to loiter outside the building, except for the purpose of smoking, which shall only be allowed at the back of the building, and subject to State laws. Housing El Dorado will be responsible for enforcing this rule and making sure it is done in a safe manner and that all debris is cleaned up immediately, such as cigarette butts.
4. The facility shall be supervised at all times by a minimum of two (2) responsible persons, over the age of twenty-one.
5. The Premises shall not be used or permitted to be used by El Dorado Housing in violation of any applicable federal, state, or local law, statute, ordinance, rule, or regulation.

Article IV

A. Housing El Dorado agrees to and shall, within ten (10) days from the date hereof, secure from a good and responsible company or companies doing insurance business in the state of California, and maintain during the entire term of this MOU the following insurance coverage: Public liability insurance in the minimum amount of \$1,000,000 each occurrence (Bodily Injury & Property Damage) and \$2,000,000 Aggregate Limit (Bodily Injury & Property Damage).

Housing El Dorado agrees that City, its officers, employees and agents shall be named as an additional insured on the aforementioned policies of insurance, and shall seek and supply the City with endorsements. Housing El Dorado shall provide such policies as to insure the liability of City and such policies are to be placed with the City, and Housing El Dorado is to obtain a written obligation on the part of the insurance carrier to notify City in writing of any cancellation thereof, and Housing El Dorado agrees, if Housing El Dorado does not keep such insurance in force and effect, the City may take out the necessary insurance with a domestic company, and otherwise with such company as may write such insurance, and pay the premium, and the repayment thereof shall be deemed to be part of the rental, without termination. The City may at any time thereafter elect to terminate this MOU for such previous breach. Should City at any time terminate this MOU for any such breach, in addition to any other remedies he may have, he may recover from Housing El Dorado all damages and costs, including but not limited to attorneys' fees and costs, it may incur by reason of such breach. All policies of insurance procured and maintained by Housing El Dorado here under shall be issued by companies having not less than Best's A: Class X rating or self-insured program, which are not rated and either shall be issued in the name of the City and Housing

El Dorado for the mutual and joint benefit and protection of the parties. Executed copies of all insurance policies or a certificate thereof shall contain a provision that not less than ten (10) days' written notice shall be given to City prior to the cancellation, reduction of coverage, expiration or any material change in any such policy.

Article V

A. The Premises shall be used only for the purposes set forth herein and in accordance with Housing El Dorado's rules and regulations for operating a Nomadic Shelter.

B. Housing El Dorado shall not commit or suffer to be committed any waste on the Premises, nor shall Housing El Dorado maintain, commit or permit the maintenance or commission of any nuisance on the Premises or use the Premises for any unlawful purpose.

C. Housing El Dorado shall not commit or permit any act or acts in or on the Premises or use the Premises or suffer them to be used in any manner which will increase the existing fire, liability or other insurance rates on the Premises or the building in which the Premises are situated or which will cause any cancellation of any insurance policy covering said Premises or building or any part thereof. Housing El Dorado shall not keep, hold, store, use or sell in or on the Premises any product or article prohibited by the standard form of fire insurance policy, as it now exists or may hereafter provide, covering the said Premises or building and its contents, or permit or suffer any such product or article to be kept, held, stored, used or sold in or on the Premises, and Housing El Dorado shall, at Housing El Dorado's sole expense, comply with any and all requirements of City's insurance carriers pertaining to the Premises necessary for the continued maintenance of reasonable fire and liability insurance for said Premises or building, its contents and appurtenances.

Article VI

A. Housing El Dorado shall, at Housing El Dorado's sole cost and expense, comply with all requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the said Premises, and shall observe in the use of the Premises all municipal ordinances and state and federal statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction or the admission of Housing El Dorado in any action or proceeding against Housing El Dorado, whether City be a party thereto or not, that Housing El Dorado has violated any such ordinance or statute in the use of the Premises shall be conclusive of that fact as between City and Housing El Dorado.

Article VII

A. Housing El Dorado represents that Housing El Dorado has inspected the Premises and by entry hereunder, Housing El Dorado accepts the Premises in an "as is" condition and repair, and agrees on the last day of said term or sooner termination of this MOU to surrender to City all and singular said Premises with said appurtenances in the same condition or better as when

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received, reasonable use and wear and tear thereof and damage by fire, act of God or by the elements excepted. City makes no warranties or representations that the Premises are fit for Housing El Dorado's intended use or as to the condition of the Premises. Subject to Article X, in the event that the Premises become uninhabitable for any reason other than through the fault of Housing El Dorado, either party may terminate this MOU.

Article VIII

A. Housing El Dorado shall at all times keep the Premises in a clean, orderly and sanitary condition, and shall not cause, or permit any unusual or objectionable noises or odors to emanate therefrom.

B. Housing El Dorado shall, at Housing El Dorado's sole cost, keep and maintain the interior of the Premises, in good and sanitary order, condition and repair as set forth herein, hereby waiving all right to make repairs at the expense of City as provided in Section 1942 of the Civil Code of the State of California and all rights provided for by Sections 1941 and 1941.1 of said Civil Code. Housing El Dorado shall maintain the Premises and appurtenances and every part thereof in a state of good repair equal to or better than the condition of the Premises at the commencement of this MOU. If improvements are made by City as set forth in Article III E, Housing El Dorado shall be responsible to maintain those improvements in good repair. City shall be responsible for maintaining the storefront of the Premises and the sidewalk adjacent to the Premises, and for repairs and maintenance to exterior walls and roof. City will have the HVAC system inspected and in good working order.

Article IX

A. In the event of a total destruction of the Premises, this MOU shall terminate and the parties hereto shall thereafter be released from all obligations thereafter accruing hereunder; provided, however, that Housing El Dorado shall be liable to City for all damages resulting from such destruction caused by Housing El Dorado's want of ordinary care or the want of ordinary care of agents, servants or employees. As used herein, "total destruction" means any of the following: (1) any destruction requiring more than the available insurance proceeds to repair or (2) any destruction requiring more than one hundred twenty days to repair.

B. City agrees to and shall, to the extent of available insurance proceeds, forthwith upon receiving written notice from Housing El Dorado to do so, rebuild or restore to their present condition the Premises destroyed in part by fire or other casualty, and in such case Housing El Dorado hereby waives the provisions of Section 1932, Subdivision 2, of the California civil Code. As used herein, "destroyed in part" is any destruction other than a total destruction as hereinbefore defined. Housing El Dorado shall not be liable for any rent hereunder from the time of such destruction until the Premises are restored by City as herein provided and rent accruing during such period shall be deducted from the total rental herein reserved. In the event that Housing El Dorado should continue to use the Premises after such destruction during the period of restoration

by City, rent shall be abated based on the proportion of the Premises that Housing El Dorado is unable to occupy.

Article X

A. Housing El Dorado shall make no installation, additions or improvements in or to the Premises except as otherwise authorized in this MOU, or structural alterations either to the interior or exterior of the building initially constructed on the Premises, or on the bearing walls, supports, beams or foundations without the written consent of the City. Housing El Dorado shall cause the necessary plans and specifications to be prepared for any proposed improvement/work. All plans and specifications shall be prepared and signed by a licensed architect and/or engineer as applicable.

B. Plans and specifications showing such proposed installations, additions or improvements and alterations and changes shall be submitted to City for approval upon application for such consent.

C. All installations, additions, improvements and alterations and changes made with the written consent of the City shall be made at the sole cost and expense of the Housing El Dorado, under the supervision of an architect or engineer satisfactory to City. All installations, additions, improvements, alterations and changes shall be performed by a California licensed contractor. Prior to the installation of any additions, improvements, alterations or changes, Housing El Dorado shall provide City with appropriate waiver of lien rights and lien release from any contractor or subcontractor or materialman. All work done on the premises shall be subject to California Prevailing Wage Law, Labor Code 1770 et seq.

D. If, during the term of this MOU, any additions, alterations or improvements in or to the Premises as distinguished from repairs are required by any governmental regulation because of the use to which the Premises are put by Housing El Dorado and not by reason of the character or structure of the building, they shall be made and paid for by Housing El Dorado.

E. All alterations, additions or improvements which are made in or to the Premises shall be surrendered with the Premises upon termination of this MOU, unless prior to such termination City give Housing El Dorado written notice to remove some or all thereof, in which case, Housing El Dorado shall cause the item so designated to be removed and the Premises restored to their original condition, all at the expense of Housing El Dorado.

F. It is understood and agreed between the parties that all installations, additions and improvements erected or installed at any time upon the Premises during the term of this MOU, except furniture, fixtures and equipment installed and belonging to Housing El Dorado, shall immediately become the property of and belong to City on such erection or installation.

G. Housing El Dorado may install in and affix to the Premises such fixtures and equipment as Housing El Dorado deems desirable.

H. Not later than the expiration of the time under which any provision of this MOU, Housing El Dorado is required to surrender the Premises to City. Housing El Dorado may, and if prior to the expiration of such time City gives written notice requiring Housing El Dorado to do so, Housing El Dorado shall remove all trade fixtures installed in the Premises by Housing El Dorado. All trade fixtures not removed within such time shall become and remain the property of City. The removal of such trade fixtures shall be affected solely at the expense of the Housing El Dorado and in a manner satisfactory to City and without injury or damage to the Premises or the building, and Housing El Dorado covenants to repair immediately, at Housing El Dorado's expense, any injury or damage caused by such removal.

I. Any signage placed on the Premises shall be in compliance with the City of Placerville's sign regulations. Window signage (such as listings) shall not cover more than twenty-five percent (25%) of any window. Housing El Dorado may, at Housing El Dorado's expense, erect on the Premises such signs and provide such exterior lighting as shall be provided for in the plans and specifications for the improvements and mutually approved, but Housing El Dorado shall not thereafter erect or maintain any other additional signs or any other exterior lighting on the Premises without the prior written approval and consent of City.

Article XI

A. This MOU is made on the express condition that except due to City's gross negligence or intentional acts, City is to be free from all liability or loss by reason of injury to person or property, from whatever cause, while in or on the Premises, or in any way connected with the Premises or with the improvements or personal property therein or property of Housing El Dorado, Housing El Dorado's agents, officers and employees. Housing El Dorado hereby covenants and agrees to and shall indemnify and defend City, its officers, employees and agents from any and all liability, loss or obligations on account of, expenses, claims causes of action, including without limitation, attorneys' fees, arising out of Housing El Dorado's use of the Premises.

Article XII

A. Housing El Dorado shall not assign this MOU, or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege thereto, or suffer any other person to occupy or use the Premises, or any portion thereof, without the written consent of City first had and obtained, and a consent to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without City's consent shall be void and shall, at City's option, terminate this MOU. The MOU shall not, nor shall any interest therein, be assignable, so as to the interest of Housing El Dorado, by operation of law, without the written

consent of City. Notwithstanding the above, Housing El Dorado shall have the right to assign this MOU to an affiliate of Housing El Dorado, without City's consent, provided successor entity's business is the same or similar to Housing El Dorado.

Article XIII

A. Should Housing El Dorado be guilty of a default and breach of this MOU, City, in addition to any other remedies given City by law or equity, may:

1. Continue this MOU in effect by not terminating Housing El Dorado's right to possession of said Premises and thereby be entitled to enforce all City's rights and remedies under this MOU, including the right to recover the rent specified in this MOU as it becomes due under this MOU; or

2. Terminate Housing El Dorado's right of possession of said Premises thereby terminating this MOU; or

3. In lieu of, or in addition to, bringing an action for any or all of the recoveries described Subparagraph 2 of this paragraph, bring an action to recover and regain possession of said Premises in the manner provided by law of unlawful detainer of the State of California then in effect.

Article XIV

A. In the event that either party hereto shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant or condition of this MOU by him to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover, in addition to his court costs, a reasonable attorney's fee to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal, if any. As used herein, "the party prevailing" means the party in whose favor final judgment is rendered.

Article XV

A. City shall have the right throughout the MOU term to enter the Premises at reasonable hours to show the same to other persons who may be interested in buying or leasing the Premises and for the purpose of inspecting the Premises, and make such repairs as City may deem necessary for the protection and preservation of the Premises; but City shall not be bound to make any repairs whatsoever, except as provided in this MOU. In the event of an emergency or electrical malfunction, City shall have the right, but not the obligation, to enter the Premises at any time.

Article XVI

A. Except as otherwise provided in this MOU, all notices and demands herein required to be given by City to Housing El Dorado or by Housing El Dorado to City shall be in writing and delivered in person or by registered or certified mail.

B. Notice and demands delivered to Housing El Dorado by mail shall be addressed to Housing El Dorado at: 1390 Broadway, B-216, Placerville, CA 95667.

C. Notice and demands delivered to City by mail shall be addressed to City at: 3101 Center Street, Placerville, California 95667.

D. Any such notice or demand shall be deemed served at the time of delivery if delivered in person, or following deposit thereof in the United States mail where sent by registered or certified mail.

Article XVII

A. The terms, covenants and conditions of this MOU shall apply to and bind the heirs, executors, administrators and assigns of the parties hereto.

Article XVIII

A. Time is hereby expressly declared to be of the essence of this MOU and all the covenants, agreements and conditions and obligations herein contained.

Article XIX

IN WITNESS WHEREOF the parties have executed this MOU on the date and year first above written.

City of Placerville

By: _____
M. Cleve Morris, City Manager

Housing El Dorado:

By: _____
Maureen Dion Perry

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