

**LIMITED-TERM LICENSE AGREEMENT FOR COUNTY TO USE CITY PROPERTY FOR  
TEMPORARY COLD WEATHER SHELTER  
(2015/16 WINTER SEASON)**

THIS LIMITED-TERM LICENSE AGREEMENT FOR COUNTY TO USE CITY PROPERTY FOR TEMPORARY COLD WEATHER SHELTER ("Agreement") is made and entered into this \_\_\_\_\_, 2015 ("Effective Date") by and between the City of Sunnyvale, a chartered California municipal corporation ("City") and Santa Clara County, a political subdivision of the State of California ("County"). City and County are sometimes hereinafter individually referred to as "Party" and collectively as "Parties."

**RECITALS**

A. County maintains an Office of Supportive Housing that develops policies and coordinates services benefiting the homeless population throughout Santa Clara County, including a Cold Weather Shelter Program (CWSP) that provides emergency shelter to homeless individuals and families during the cold weather months, generally from the first Monday after Thanksgiving through the end of the following March ("the winter season").

B. For many years, County subleased property in the City of Sunnyvale from the National Guard Armory and funded a temporary night-time shelter with capacity for approximately 125 individuals during the winter months (the "Armory Shelter"). In recent years, the County or its contractor leased the armory directly from the City of Sunnyvale. The Armory Shelter closed in 2013. During the 2014/15 winter season, County did not operate one large cold weather shelter in the northern part of the county as in prior years; rather, it implemented several alternative programs to provide winter shelter to homeless individuals and families in north County through the use of motel vouchers and case management services provided by several non-profit agencies, and by expanding shelter capacity at several facilities in Palo Alto, East Palo Alto, and San Jose. County has stated its objective is to establish one or more cold weather shelters in the northern part of the County rather than the alternative programs used last year. County states that it is engaged in a county-wide search for available property to purchase or lease for a permanent cold-weather shelter for the County's homeless population, but that the search has not yet yielded a suitable property. In the meantime, County has identified a time-sensitive and critical need for a temporary cold weather shelter during the 2015/16 winter season, and would like to find a site in Sunnyvale.

C. County has determined that it is possible to shelter homeless individuals in a temporary, moveable modular structure for the upcoming winter season and is seeking feasible sites on which to locate such a structure.

D. City is owner in fee of certain vacant real property located at 1100 Innovation Way, Sunnyvale California, 94085 (the "Licensed Property"), commonly referred to as Parcel A of the former Onizuka Air Force Base.

E. County desires to use the Licensed Property for the purpose of operating a temporary cold weather shelter as part of the County CWSP during the 2015/16 winter season. County acknowledges the Licensed Property is a temporary site and represents that it will continue to search for a permanent site, and will provide City, during the Term of this Agreement, with monthly updates about the shelter operation and the status of the search for a permanent site.

F. Based upon the representations made by County, and in acknowledgment of County's immediate need to find a temporary site for a cold weather shelter, City is willing to allow County to use the Licensed Property for the 2015/16 winter season for temporary shelter purposes, subject to the terms and conditions of this Agreement.

## **TERMS**

1. **General Grant.** Subject to the terms and conditions hereinafter set forth, City hereby grants County a non-possessory, limited-term license to enter onto and use the property depicted in Exhibit A, attached hereto and incorporated herein, for the sole purpose of operating a temporary cold weather shelter at the Licensed Property in order to provide homeless individuals and families shelter during the winter season, and for additional days thereafter, if needed, due to weather conditions (but not beyond the Term), with the opening of the shelter beginning no earlier than November 30, 2015, consistent with the site plan and program description set forth in Exhibit B, attached hereto and incorporated herein. County accepts the Property "as is" and City makes no warranty or guarantee as to the suitability of the site for shelter purposes.

2. **Term.** The term of this Agreement shall commence on the Effective Date and shall expire no later than 5:00 pm on April 30, 2016 (the "Term"), unless amended or sooner terminated as provided herein. The parties anticipate that the cold weather shelter will operate from November 30, 2015 through March 31, 2016, and may extend for additional days depending on weather (but not beyond the Term). County agrees to restore the property and surrender possession, as set forth in Section 9, as soon as practicable after the shelter closes, but in no event later than April 30, 2016.

3. **Termination.** This Agreement may be immediately terminated by the City Manager or her designee, for cause, by notifying the County in writing of City's intent to terminate the Agreement. County's failure to comply with any of the material terms of this Agreement shall constitute cause. This Agreement may be immediately terminated by County, with or without cause, if County notifies the City Manager in writing of County's desire to terminate this Agreement. Whether the Agreement is terminated by the City or County under this Section, the County shall have 30 days from the date of notification to surrender the Licensed Property in the same condition as received, clear of all structures, facilities, equipment and property of the County.

4. **Responsibility for Installation and Maintenance of Temporary Facilities.** County has, at its own cost, all responsibilities for the installation of all temporary facilities proposed by the County, including responsibility over its contractors and costs associated with construction, operation and maintenance. All facilities installed by County (or its contractors) at the site pursuant to this Agreement are subject to and must be made in compliance with all codes, ordinances and laws applicable to County. By virtue of the license granted by this Agreement, County, acting through itself or its authorized agents or contractors, is exempt from the City's local building and zoning requirements. County is the governmental authority responsible for compliance with applicable laws and codes. The right to access and use of the Property during planning, construction and installation is a right granted not only to County but also to its contractors.

5. **Utilities; Encroachments.** County shall, at its own cost, apply for and obtain from City any necessary permits for utility hook-ups and right-of-way encroachments. County shall pay for any and all utility charges that may apply to the Licensed Property, including but not limited to water utilities,

waste water and stormwater charges, sanitation, electric and gas. County shall place any such utility accounts in its name.

6. Operation and Maintenance of Cold Weather Shelter. County shall be responsible for the operation of the cold weather shelter at the Licensed Property, but may provide on-site management through non-profit organizations. County shall at all times maintain the Licensed Property and the area immediately surrounding the Licensed Property free of litter, trash and other debris, except to the extent the same are present at the commencement of this Agreement or caused by anyone other than County, County agents or shelter occupants or shelter visitors. County shall conduct its cold weather shelter operations in a safe and reasonable manner so as not to cause injury to persons or property.

7. Security. County shall provide security for the cold weather shelter at the Licensed Property by employing (or contracting) at least one uniformed security officer with a current and valid security guard card or utilizing County law enforcement personnel. The security officer shall be at the Licensed Property at least one hour before the shelter opens and remain until one hour after the shelter closes the following morning. The security officer shall have access to a telephone (or other communication device), provided by the on-site management, for calling the appropriate law enforcement agency, should it be necessary. Security personnel and shelter staff shall have a communication device which allows them to communicate instantly with each other during all operating hours. Prior to leaving the Licensed Property, the security officer shall advise on-site management of his or her departure. A documented safety and security plan shall be presented for review and approval by the Sunnyvale Department of Public Safety prior to opening of the shelter, which review and approval shall not be unreasonably denied and such approval shall be deemed granted if such approval or denial is not provided at least ten (10) days before shelter opening. If it is determined that additional security personnel are needed at any point during the operation of the cold weather shelter, County and City staff shall meet to identify additional security staffing needs. All costs related to security shall be borne by the County.

8. Loitering Outside Dates and Times of Use. County shall take whatever steps are necessary to ensure that cold weather shelter clients are not at the Licensed Property or in the immediate vicinity of the Licensed Property outside the dates and times specified in Exhibit B. If at any time the City has reason to believe the efforts of County in this regard are less than what is necessary, County shall meet with City to explore additional steps to comply with this condition. County shall provide a contact name and phone number where community members may call to report any concerns with how the program is being operated. The contact person shall be part of and familiar with the operation, and shall respond to phone calls within 24-48 hours.

9. Surrender of Possession; Removal of Property; Restoration. Upon the expiration or termination of this Agreement, County's right to occupy the Licensed Property and exercise the privileges and rights granted under this Agreement shall cease, and County shall surrender and leave the Licensed Property in the same condition as received, clear of all structures, facilities, equipment and property of the County. Unless the date is extended by mutual agreement evidenced in writing between the parties, if County fails to remove any structures, facilities, equipment or property by 5:00 pm on April 30, 2016, City reserves the right to dispose of, or remove and store, at County's expense, anything remaining on the site. County agrees to pay any costs incurred by City for such removal, disposal, and storage. County's obligations under this Section shall survive the cancellation, expiration, or termination of this License Agreement.

10. Insurance. County is self-insured. County will maintain self-insurance in an amount of not less than \$2,000,000 per occurrence covering potential claims for personal injury, bodily injury or death, and in amount of not less than \$1,000,000 for property damage during the Term. County shall provide City with evidence of self-insurance.

11. Indemnification.

(a) To the fullest extent permitted by law, County shall (1) immediately defend and (2) indemnify City, its City Council, each member thereof, and its directors, officers, and employees (the "Indemnified Party") from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with City's issuance of this Agreement, County's performance of this Agreement, County's failure to comply with any of its obligations contained in this Agreement, or in connection with County's use of the Licensed Property. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. County's obligation to indemnify applies unless and until it is adjudicated that any of the liabilities covered by this Section are the result of the sole negligence or willful misconduct of the Indemnified Party.

(b) The duty to defend is a separate and distinct obligation from County's duty to indemnify. Subject to the limitations or requirements stated in this Agreement, County shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel reasonably approved by the Indemnified Party immediately upon tender to County, which shall be made to County promptly upon it becoming known to the Indemnified Party. An allegation or determination of the sole negligence or willful misconduct by the Indemnified Party shall not relieve County from its separate and distinct obligation to defend the Indemnified Party. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if County asserts that liability is caused in whole or in part by the sole negligence or willful misconduct of the Indemnified Party. If it is finally adjudicated that liability was caused by the sole negligence or willful misconduct of the Indemnified Party, County may submit a claim to City for reimbursement of its reasonable attorneys' fees and defense costs.

(c) This Section shall survive the termination of this License Agreement. The provisions of this Section shall not be restricted by and do not affect the provisions of this License Agreement relating to insurance.

12. Hazardous Materials. County shall not produce, dispose, transport, treat, use or store any hazardous waste or toxic substances upon or about the Licensed Property, in violation of any federal, state or local law pertaining to hazardous waste or toxic substances. County shall indemnify, defend and hold harmless City, its officers, employees, agents or invitees, against any claim, liability, loss, expense or damage, including reasonable attorney's fees and costs, with respect to the presence or remediation of hazardous materials to the extent caused by County, its officers, employees, agents or invitees. This indemnity shall survive the termination or expiration of this Agreement.

13. Notices. All notices required to be given hereunder, or which either party may wish to give, shall be in writing and shall be served either by personal delivery, email, or by certified or registered mail, postage prepaid, addressed as follows:

To City:  
City of Sunnyvale  
Comm. Dev. Dept.  
Attn: Comm. Dev. Director  
456 W. Olive Avenue  
Sunnyvale, CA 94086

To County:  
County of Santa Clara  
Facilities and Fleet Department  
Attn: Real Property Manager  
2310 N 1st St, Suite 200  
San Jose, CA 95131

Or to such other place as either party may designate by written notice.

14. Successors and Assigns. All the covenants and provisions of this Agreement shall be binding upon and inure to the benefit of successors, legal representatives and assigns of City and County to the same extent and effect as the same are binding upon and inure to the benefit of the parties hereto.

15. Assignment. This Agreement and the license granted herein are personal to the County. County shall not assign or transfer (whether voluntary or involuntary) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of City, which may be withheld in City's sole and absolute discretion. Any attempted act in violation of this section shall be void and without effect and give City the right to immediately terminate this Agreement.

16. Amendments and Modification. This Agreement may be amended, modified or supplemented only by a written agreement signed by all of the parties hereto.

17. Compliance with All Laws. The parties shall comply with all applicable federal, State, City or County statutes, laws, ordinances and rules and regulations, which pertain to the County's use of the Licensed Property or any provision of this Agreement.

18. Governing Law. This Agreement shall be governed by the laws of the State of California.

19. Venue. Any dispute between the parties to this Agreement concerning the subject matter of this Agreement shall be submitted to a court of competent jurisdiction in Santa Clara County, California.

20. Attorneys' Fees. In the event of a dispute between the parties with respect to the terms and conditions of this Agreement, the prevailing party shall be entitled to collect from the other its reasonable attorneys' fees as established by the judge presiding over such dispute.

21. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

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22. Entire Agreement This Agreement and the exhibits referenced or attached hereto constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof. This Agreement is not intended to confer upon any person other than the parties hereto any rights and remedies hereunder.

**CITY OF SUNNYVALE**

**COUNTY OF SANTA CLARA**

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Deanna J. Santana  
City Manager

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Jeff Draper, Director,  
Facilities and Fleet Department

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

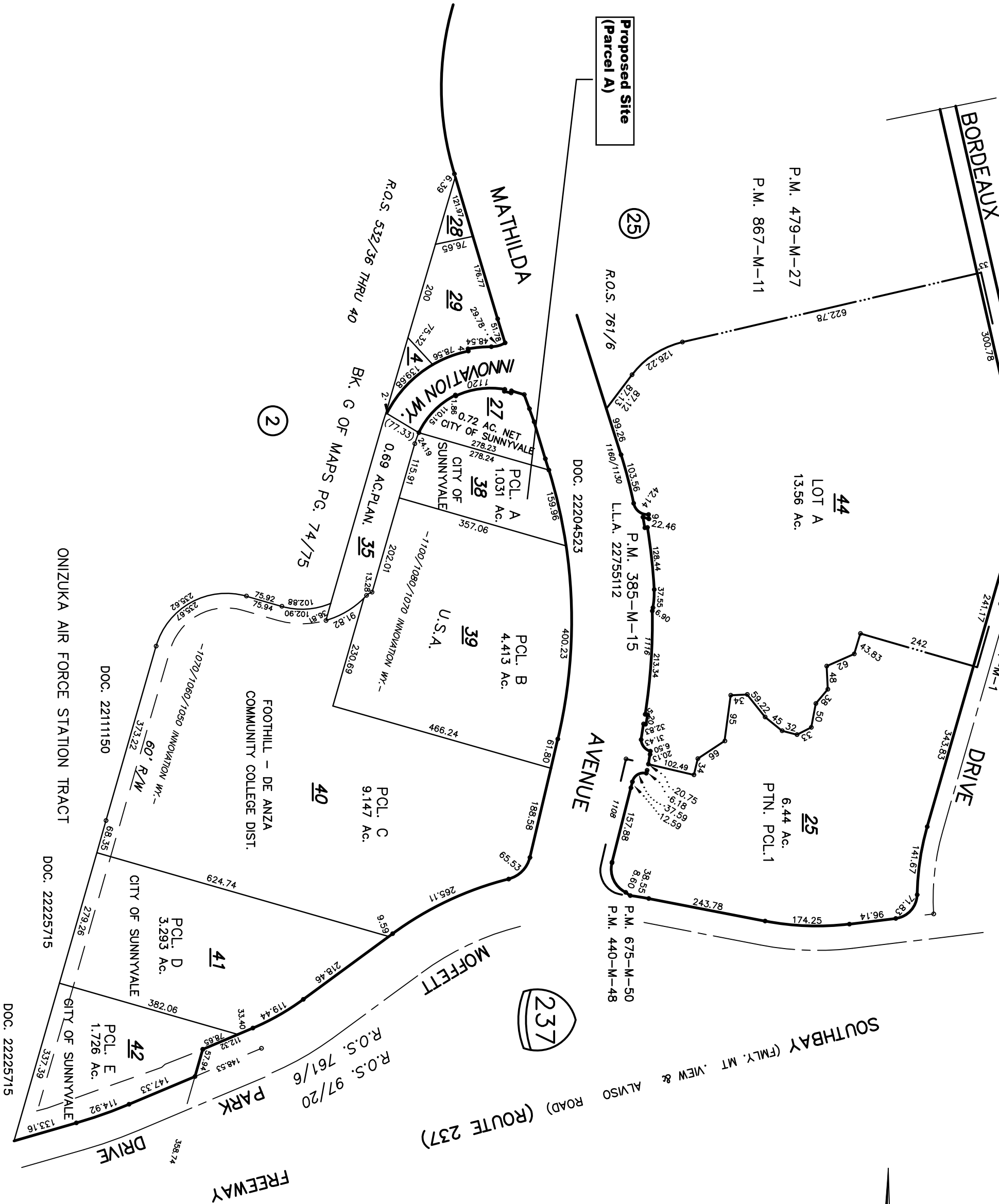
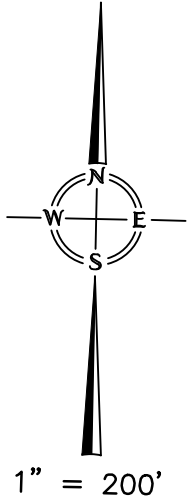
**APPROVED AS TO FORM:**

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Joan A. Borger  
City Attorney

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Shirley R. Edwards, Deputy County Counsel



## **Exhibit B**

### **County of Santa Clara Cold Weather Shelter (CWS) Program Operational Summary: Sunnyvale Temporary Site at Onizuka Parcel A**

The County anticipates operating the Cold Weather Shelter at the Onizuka Parcel A site according to the guidelines and parameters set forth below. The County reserves the right, in its discretion, to modify these guidelines and parameters from time to time to address any operational concerns that might arise while the shelter is in use.

#### **1. Basic Operations:**

The Sunnyvale Temporary CWS facility will provide emergency shelter and related services for up to 100 persons per night (or for up to 125 persons per night during episodes of inclement weather, as defined below). The related services include: hot meals, access to shower and restroom facilities, storage lockers, shelter from the elements, transportation facilitation, and supplemental services, as described below. The shelter structure will be divided into three separate sleep areas, one each for families, single adult males, and single adult females.

Clients will not be charged any fee to stay at the shelter. Individuals or families wishing to stay at the shelter must be homeless and meet the following requirements:

- Be 18 years or older (or accompanied by a parent or legal guardian);
- Reside (or have last resided) in one of the “North County” cities: Cupertino, Los Altos, Los Altos Hills, Milpitas, Mountain View, Palo Alto or Sunnyvale;
- Be willing to abide by basic rules of the shelter; and
- Be referred by one of the service provider agencies listed in the Sunnyvale CWS program description.

All of the shelter beds will be reserved for clients in advance by referrals from local service providers to the shelter operator (HomeFirst). This procedure has been designed both for the convenience of the clients and in order to avoid (to the extent possible) attracting more clients to the site than the available shelter capacity and/or the need for extensive client queuing on-site each night. Clients, once referred and admitted into the shelter, may reserve and occupy a bed at the CWS for the entire winter season (approximately 120 days), provided they abide by the shelter rules and continue to appear nightly to occupy a bed. Clients who fail to appear to occupy their reserved bed for three consecutive nights will lose their reservation for the remainder of the CWS season.

If clients with a reservation do not show up at the CWS by 7:00 p.m. on any given night, the bed(s) reserved for those clients will be filled by first contacting the referring agencies, which shall contact the clients on their waitlists for the Sunnyvale location, to announce that bed(s) are available that night. If no waitlisted clients respond and appear onsite within one hour of receiving notice that a bed is available, the available bed(s) may be offered to any prospective clients without a reservation, on a first-come, first-served basis. Clients accepted into the shelter will be able to keep some of their possessions on site in the designated storage area during the daytime.

#### **Inclement Weather Episodes:**



## **Exhibit B**

### **County of Santa Clara Cold Weather Shelter (CWS) Program**

#### **Operational Summary: Sunnyvale Temporary Site at Onizuka Parcel A**

Inclement weather episodes will be declared by the County Office of Supportive Housing (OSH) and are defined as those days on which:

- There is a forecasted overnight low of 38 degrees or lower with a probability of rain less than 50%; OR
- There is a forecasted overnight low of 42 degrees or lower with a probability of rain of 50% or greater.

These weather conditions are less severe than conditions that would trigger the State to declare a weather-related state of emergency. These conditions may also be less severe than conditions that would warrant the County's Public Health Officer from declaring a "local emergency." However, these conditions present significant risk to unsheltered homeless persons, especially those who are ill or injured. The recommended thresholds are the same conditions that trigger San Mateo County's inclement weather programs. As noted above, during OSH-declared inclement weather episodes, the Sunnyvale CWS facility may be used to shelter up to 125 persons per night.

#### **Daily Schedule:**

4:00 p.m.	Staff, including security staff, arrives at the shelter to set up for the night: 3 Shelter Workers, 1 Manager, and 1 Security Guard.
5:00 p.m.	Shelter opens and begins to admit clients.
6:30 – 7:30 p.m.	Dinner is served.
6:00 – 10:00 p.m.	Showers and donated clothing are available.
10:00 p.m. – 5:30 a.m.	"Lights Out"
5:30 – 7:30 a.m.	Showers are reopened and breakfast is available.
9:00 a.m.	Shelter closes to clients for the day; any cleaning / maintenance activities by staff may continue.
9:00 am – 5:00 p.m.	Additional staff remains on site to ensure security, monitor the neighborhood, and allow ad-hoc client access to the facility (short-term access as needed to access restrooms, at site manager's discretion): 1 Shelter Worker, 1 Security Guard, 2 Outreach Workers, 1 Manager

#### **2. Services Offered:**

The following services are typically provided during the hours when the shelter is open to clients (between 5:00 p.m. and 10:00 p.m. nightly). These services, except the Security/Outreach Work and to some extent Transportation Assistance, will not typically be provided during the daytime hours (approximately 9:00 a.m. to 5:00 p.m.) unless warranted by an emergency, inclement weather episode, or other urgent need to use the facility at such times.

#### **A. Basic Services (Provided by Shelter Staff/Contractors)**

## Exhibit B

### County of Santa Clara Cold Weather Shelter (CWS) Program Operational Summary: Sunnyvale Temporary Site at Onizuka Parcel A

- **Meal Service:** Two meals per day are served: dinner and breakfast (meals may be donated by community groups).
- **Assessment, Information, and Referrals:** Staff members provide appropriate information and make referrals to other agencies/services as needed.
- **Distribution of Supplies:** Staff distributes donated goods (i.e., toiletries and clothing) to clients.
- **Transportation Assistance:** To help clients get to and from the CWS, staff will assist clients as needed in accessing nearby transit stops (light rail, bus) and will provide limited fixed-route shuttle service for clients with daytime destinations not on regular transit routes, but within the vicinity of the site (i.e., nearby social services agencies, etc.). Staff will also have a limited supply of bus tokens/transit passes available that may be provided to clients/prospective clients in accordance with CWS policies.
- **Security and Outreach Work:** Staff will monitor the clients' comings and goings throughout the adjacent neighborhoods (Moffett Park, Orchard Gardens, and other areas within ½ mile of the site) in order to ensure the safety of both the clients and the surrounding neighborhoods, address any shelter-related community concerns, and to minimize client loitering in the area. A uniformed security officer with a current and valid security guard card shall provide security services at the site during the hours in which the facility is open to clients and during the daytime, as noted in the Daily Schedule, above. Security services for the site and vicinity shall be provided consistent with the terms of the License Agreement, Sections 7 and 8.

#### B. Supplemental Services (Provided by Volunteer Groups or Other Agencies)

- **Medical Care:** Valley Homeless Healthcare and Gardner Health Services provide clients with various health care services including: basic health screening, primary care, dental care, immunizations, TB screening, routine acute care, medication monitoring, referrals and/or follow-up appointments. These agencies may bring a mobile health care unit (medical/dental van) on site up to twice a week to facilitate provision of these services.
- **Additional Services:** Haircuts, tutoring, consultations or special workshops are offered on occasion (when service providers, individuals or community groups volunteer to provide them).

#### 3. Facility Description and Site Improvements:

The temporary CWS facility will consist of a 7,200 sq. ft. modular building to be installed on the site by the County of Santa Clara. The site, known as "Parcel A" of the former Onizuka Air Force Base, now owned by the City of Sunnyvale, is approximately 1 acre in area and is located at 1100 Innovation Way in Sunnyvale. The site consists of a portion of an existing large surface parking lot and is fully paved with asphalt. Please see Site Plan, below.

## **Exhibit B**

### **County of Santa Clara Cold Weather Shelter (CWS) Program**

#### **Operational Summary: Sunnyvale Temporary Site at Onizuka Parcel A**

##### Site Improvements:

Site work will include installation of the following:

- A 60 foot x 120 foot modular building, which is ADA compliant and approximately 15 feet in height. Depending on the height of the foundation (footings) above grade, the top of the building could be up to 20 feet above existing grade. The modular building is HCD rated for R-1 Occupancy (sleeping units primarily transient in nature), but the fire sprinkler system is R-2 capacity or equivalent. The building will contain men's/women's bathrooms and shower rooms and a small kitchen for handling and distributing catered food (no cooking will take place at the facility). The modular building will have exterior lighting to illuminate the associated parking lot areas.
- A 60 kw diesel generator and a second backup generator on-site (for emergency purposes) leased from a certified BAAQMD vendor, to provide electric power to the facility.
- Installation of an above-ground temporary septic tank to serve the restroom and shower facilities.
- Water lines connections to the City water lines available at the street frontage, to provide water supply to the facility.
- A 6-foot tall fence around the perimeter of the shelter site for security.
- A new driveway along Innovation Way to provide vehicle access to the site.
- Parking lot re-striping, signage and other minor site clearing activities as needed.

##### **Construction Activities and Schedule:**

Site improvements will begin in October and be completed by late November to allow the shelter to open by November 30<sup>th</sup>. The work may involve minor site clearing and leveling to provide space for the modular building foundation, ancillary equipment (e.g. generators and septic tank) and parking spaces. The project will be subject to the Sunnyvale Municipal Code requirements for construction noise and designated construction hours (MCS 16.08.030). The building and other site improvements will be installed in October 2015 and will be removed by April 2016.

SITE PLAN ON THE FOLLOWING PAGE

County of Santa Clara Cold Weather Shelter (CWS) Program  
**Operational Summary: Sunnyvale Temporary Site at Onizuka Parcel A**

