

CITY OF HAYWARD
MEMORANDUM OF UNDERSTANDING REGARDING PROVISION OF EMERGENCY SHELTER

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into between the City of Hayward, a California municipal corporation (“City”) and the facility owner identified below (“Owner”).

PARTIES AND FACILITY
(This Section Must Be Filled Out Completely)

Owner:

Legal Name: _____

Address for Legal Notices: _____

24- Hour Point of Contact:

Name: _____
Title: _____
Work phone:(____) _____ Cell Phone/pager: (____) _____

City:

Legal Name: City of Hayward, a California municipal corporation

Address for Legal Notices: 777 “B” Street
Hayward, CA 94541-5007
Attn: Fire Chief
With copy to: City Attorney’s Office

24- Hour Point of Contact:

Name: _____
Title: _____
Work phone:(____) _____ Cell Phone/pager: (____) _____

Shelter Facility:

(Insert name and complete street address of building or, if multiple buildings, write: “See attached Facility List” and attach a Facility List including complete street address of each building that is part of this Agreement.)

Facility Name: _____

Street Address: _____

RECITALS

A. WHEREAS, the City is has developed a Comprehensive Emergency Management Plan (CEMP) to provide for the preparation and execution of plans for the protection of persons and property within the City of Hayward in the event of a disaster and to provide for the coordination of the Emergency Services and Disaster functions of the City with all other public agencies, affected private persons, corporations, and organizations;

B. WHEREAS, a disaster may lead to the temporary or permanent destruction of homes, buildings, and other structures or render such structures uninhabitable for a period of time;

C. WHEREAS, displaced people will need shelter to protect them from the elements;

D. WHEREAS, the Owner has space ("Shelter Facility") that the Owner is graciously willing to volunteer to shelter displaced members of our community;

E. WHEREAS, the City and Owner wish to establish a framework for a collaborative effort to provide emergency shelter for displaced members of our community in the event of a disaster;

NOW, THEREFORE, the City and Owner agree as follows:

1. Use of Facility

Upon request and if feasible, the Owner will permit the City to use the Shelter Facility(s) on a temporary basis as an emergency public shelter.

2. Shelter Management

The City will have primary responsibility for the operation of the shelter and will designate a City official, the Shelter Manager, to manage the sheltering activities. The Owner will designate a Facility Coordinator to coordinate with the Shelter Manager regarding the use of the Facility by the City.

3. Condition of Facility

The Facility Coordinator and Shelter Manager (or designee) will jointly conduct a pre-occupancy survey of the Facility(s) before it is turned over to the City for use as a shelter. They will use the first page of the "Shelter Facility Opening/Closing Form" attached as Attachment "A" to this MOU to record any existing damage or conditions. The Facility Coordinator will identify, in writing, and secure all equipment that the City should not use while using the Facility as a shelter. The City will exercise reasonable care while using the Facility as a shelter and will make no modifications to the Facility without the express written approval of the Owner.

4. Food Services

Upon request by the City, and if such resources exist and are available, the Owner will make the food service resources of the Facility, including food, supplies, equipment and food service

workers, available to feed the shelter occupants. The Facility Coordinator will designate a Food Service Manager to coordinate the provision of meals at the direction of and in cooperation with the Shelter Manager. The Food Service Manager will establish a feeding schedule, determine food service inventory and needs, and supervise meal planning and preparation. The Food Service Manager and Shelter Manager will jointly conduct a pre-occupancy inventory of the food and food service supplies in the Facility before it is turned over to the City.

5. Custodial Services

Upon request by the City and if such resources exist and are available, the Owner will make its custodial resources, including supplies and custodial workers, available to provide cleaning and sanitation services at the shelter. The Facility Coordinator will designate a Facility Custodian to coordinate the provision of cleaning and sanitation services at the direction of and in cooperation with the Shelter Manager.

6. Security

In coordination with the Facility Coordinator; the Shelter Manager, as he or she deems necessary and appropriate, will coordinate with law enforcement regarding any public safety issues at the Shelter.

7. Signage and Publicity

The City may post signs identifying the shelter as a City shelter in locations approved by the Facility Coordinator and will remove such signs when the shelter is closed. The Owner will not issue press releases or other publicity concerning the shelter without the express written consent of the Shelter Manager. The Owner will refer all media questions about the shelter to the Shelter Manager.

8. Closing of Shelter

The City will notify the Owner or Facility Coordinator of the closing date for the shelter. Before the City vacates the Facility, the Shelter Manager and Facility Coordinator will jointly conduct a post-occupancy survey, using the second page of the "Shelter Facility Opening/Closing Form" to record any damage or conditions. The Shelter Manager and Facility Coordinator or Food Service manager will conduct a post-occupancy inventory of the food and supplies used during the shelter operation.

9. Reimbursement

Nothing in this MOU requires the Owner to seek reimbursement for any of the expenses listed below. However, upon presentation of proper documentation, the City will reimburse the Owner for the following:

- a. Documented damage to the Facility or other property of the Owner, reasonable wear and tear excepted, that directly results from the City's shelter operations. Reimbursement for facility damage will be based on replacement at actual cash value. For damage to the facility, the City will select from among at least three reputable contractors to determine value. The City is not responsible for damage caused by the disaster including, but not limited to, storm and earthquake damage;

- b. Reasonable costs associated with custodial and food service personnel which would not have been incurred but for the City's use of the Facility for sheltering. The City will reimburse documented expenses at per-hour, straight-time rates for wages actually incurred but will not reimburse for (i) overtime, or (2) costs of salaried staff;
- c. Reasonable, actual, and documented out-of-pocket operational costs, including the costs of the utilities indicated below, to the extent that such costs would not have been incurred but for the City's use of the Premises(both parties must initial all utilities to be reimbursed by the City):

	Owner Initials	City Initials
Water	_____	_____
Natural Gas	_____	_____
Electricity	_____	_____
Waste Disposal	_____	_____

The Owner will submit any request for reimbursement to the City within 60 days after the shelter closes. Any request for reimbursement for food, supplies, or operational costs must be accompanied by supporting invoices and documentation. Any request for reimbursement for personnel costs must be accompanied by a list of the personnel with the dates and hours worked at the shelter. Nothing in this MOU creates an employee/employer or agency relationship between the Owner, the Owner's staff, and the City. Owner or its employees or contractors shall have no claim under this MOU or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

10. Insurance

Upon activation of a Shelter Facility, the City will have the facility added to its list of insured assets as soon as practicable. Once the Shelter Facility is closed, the facility will be immediately removed from the City's list of insured assets. Owner shall continue its current level of insurance throughout the use of the facility as a shelter regardless of the City's insurance status.

11. Indemnification

The City agrees to indemnify, to save and hold harmless Owner, its officers, agents, and employees from any and all liability and judgments of any kind whatsoever, in addition to any and all losses, claims, actions, lawsuits, damages, expenses, liens, demands, fines or penalties, including costs, attorney's fees, settlements, and causes of action of any kind in law or equity (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time and property damage) caused by the negligent acts or omissions of the City or its employees, agents, subcontractors, or volunteers arising out of the City's use of the Shelter Facility, or otherwise arising out of the City's performance of its obligations relating to the Shelter Facility specified in this Agreement.

Owner agrees to indemnify, defend, and to save and hold harmless the City, its officers, agents, volunteers, and employees from any and all liability and judgments of any kind whatsoever, in

addition to any and all losses, claims, actions, lawsuits, damages, expenses, liens, demands, fines or penalties, including costs, attorney's fees, settlements, and causes of action of any kind in law or equity (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time and property damage) caused by the negligent acts or omissions of Owner or its employees, agents, subcontractors, or volunteers arising out of the Owner's provision of Shelter Facilities, or out of the negligent acts or omissions of those persons supervised Owner, or otherwise arising out of Owner's performance of its obligations at the Shelter Facility as specified in this Agreement.

The parties' respective obligations as set forth in this section shall apply jointly and severally regardless of whether the indemnified party or any of its officers, officials, employees, volunteers, or agents are actively or passively negligent, but shall not apply to any loss of liability, fines, penalties, forfeitures, costs, or damages caused solely by the active negligence or by the willful misconduct of the indemnified party.

If either party should subcontract all or any portion of the work or activities to be performed under this agreement, that party shall require each subcontractor to indemnify, hold harmless, and defend the other party, its officers, officials, employees, volunteers, or agents in accordance with the terms of the proceeding paragraphs.

12. Term

The effective date of this agreement shall be the date that it is fully executed by all parties. The agreement shall begin on the effective date and continue until thirty (30) days after written notice of termination is provided by either party.

13. Dispute Resolution

Should any disagreement arise in the performance of this agreement, the City and Owner shall meet and confer and attempt to negotiate an informal resolution. If additional assistance is needed to resolve a dispute arising under this Agreement, both parties shall submit such disputes to non-binding mediation in Alameda County with an agreed mediator or a mediator selected from a list provided by JAMS by each party alternatively striking one name until one name remains, who will be the mediator. Each party reserves its rights and remedies under law, except that the parties hereby agree that mediation may proceed notwithstanding the pursuit of other legal remedies. The parties will share the cost of any mediation equally.

[Signatures on Next Page]

IN WITNESS WHEREOF, this Memorandum of Understanding is executed on the Effective Date.

CITY OF HAYWARD, A MUNICIPAL CORPORATION:

By: _____
Garrett Contreras, Fire Chief Date

By: _____
Kelly McAdoo, City Manager Date

Approved as to form:

By: _____
Michael S. Lawson, City Attorney Date
Joseph Brick, Assistant City Attorney

Attest: _____
Miriam Lens, City Clerk Date

Owner:

By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

By: _____
[Name and Title of Owner] Date

Attachments:

Ex. A Shelter Facility Opening/Closing Form

Ex. B [Facility List(if applicable)]