

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into on this 29 day of June, 2021 by and between the City of Lindsay ("City") and the County of Tulare ("County").

RECITALS

WHEREAS, the City entered into a settlement agreement on September 8, 2020 ("Settlement Agreement") with the California Department of Housing and Community Development ("HCD") regarding limits on the City's ability to apply for and receive grant funds under various programs administered by the HCD.

WHEREAS, the Settlement Agreement requires that the City "and an eligible entity jointly apply for such funding and agree to be jointly and severally liable for the performance of all obligations and the satisfaction of all conditions of the grant funding, as set forth in an executed standard agreement with HCD, and the eligible entity agrees to act as the lead agency in the application and administration of such funding."

WHEREAS, the County agrees to enter into the grant funding standard agreement with HCD (the "Standard Agreement") to act as the joint eligible entity for the City in order to apply for or receive funding from any state or federal program operated by HCD and by execution of the Standard Agreement, agrees to abide by all terms and recitals contained therein.

WHEREAS, the County agrees to act as the lead applicant and accepts that it shall have the lead responsibility for administering the Standard Agreement, financial management, and activity reporting.

WHEREAS, the City and the County would like to designate each entities roles and responsibilities for the application, acceptance and disbursement of grant funding.

NOW THEREFORE, the parties agree as follows:

I. Roles and Responsibilities.

A. The County shall be responsible for the following:

1. The County shall deliver to HCD all final invoices pursuant to Exhibit B, Section 3 of the Standard Agreement.
2. The County shall monitor the project and timeliness of draws within the specified dates.
3. The County shall use no more than 5 percent of the total grant amount for costs related to administration of the project.
4. The County shall take such actions, pay such expenses, and do all things necessary to complete the scope of work pursuant to provisions outlined in future Standard Agreements.
5. The County shall maintain records and submit reimbursement documentation pursuant to provisions outlined in future Standard Agreements.

6. The County shall accept all reimbursements from HCD directly for all allowable project costs.
7. The County shall submit, upon request of HCD, a performance report that demonstrates satisfaction of all requirements identified in the Standard Agreement.
8. Upon completion of all objectives and deliverables required, the County shall submit a final close out report pursuant to provisions outlined in future Standard Agreements.
9. The County shall establish and maintain an accounting system pursuant to provisions outlined in future Standard Agreements.
10. The County shall provide a financial audit prepared by a certified accountant at the request of HCD pursuant to provisions outlined in future Standard Agreements.
11. The County shall coordinate the procurement and hiring of any contractors or subcontractors as necessary for the project, shall maintain records of such relationships and shall act as the day-to-day contact for any contractors or subcontractors for the project.
12. The City acknowledges that the County's obligations under this MOU are in addition to its other critical tasks. The City acknowledges that the County may become unavailable to perform all obligations under this MOU due to insufficient resources. "Insufficient Resources" includes, but is not limited to, a lack of staff capacity or manpower, or other event which prevents the County from performing obligations under this MOU. If the County has insufficient resources to perform any of the obligations under this MOU, the County will notify the City in writing of the specific event that prevents County's performance, and also state which obligations that it cannot perform. The City specifically acknowledges that some applications may be denied by the County due to insufficient resources.

B. The City shall be responsible for the following:

1. The City shall cooperate with the County in providing any information or documentation to complete the above requirements under the Standard Agreement.
2. The City shall hold public hearings and any necessary community outreach for the project.

C. Any further work required to be completed and not specifically covered in this Agreement shall be agreed to by the Parties and shall be in writing prior to any further work commencing.

II. Termination. This Agreement may be terminated by either party for cause upon ninety (90) days' written notice of termination to the other party.

III. Indemnification. The City agrees to indemnify, defend and hold harmless the County and its officials, officers, employees, agents and volunteers from and against all claims, demands, actions, injuries, liabilities, losses, costs or damages, direct or indirect, and any and all attorneys' fees and other expenses which County or its officials, officers, employees, agents or volunteers may sustain or incur as a consequence of or are in any way related to the City's or its owners, directors, officers, managers, employees, agents, contractors' and subcontractors' willful or negligent acts or omissions in the performance of the services and the City's responsibilities and obligations to be performed under this agreement or its failure to perform or comply with any of its obligations or responsibilities contained in this agreement; excluding, however, such liability, claims, losses, damages or expenses arising from County's sole or active negligence or willful acts. This duty to indemnify, defend, and hold harmless shall survive the termination of this agreement.

IV. Independent Contractor Status. It is understood and agreed that the County and by extension, its employees, in the performance of the services pursuant to this Agreement, shall not act as employees of the City. The County shall obtain no retirement benefits or other benefits which accrue to City's employees and the County hereby expressly waives any claim it may have to any such rights.

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Nothing in this Agreement shall create or be construed as creating a partnership, joint venture or any other relationship between City and the County.

V. Compliance with Laws. Both parties shall use the proper standard of care in performing under this Agreement and shall comply with all applicable federal, state and local laws, codes, ordinances and regulations in effect at the time the Agreement is executed.

VI. Attorneys' Fees. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which they may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court for the County of Tulare, State of California for any proceeding arising hereunder.

VII. Sole and Only Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promise shall be valid or binding.

VIII. Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

IX. Amendment. No change, amendment or modification of this Agreement shall be valid unless the same be in writing and signed by the parties hereto.

X. Governing Law. This Agreement shall be construed and governed pursuant to the laws of the State of California. Any action to enforce this Agreement is to be brought in Tulare County, California.

XI. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

XII. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

XIII. Authority to Enter Agreement. Each party has all requisite power and authority to conduct its business and to execute, deliver and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

XIV. Notice. Except as otherwise expressly provided herein, any notice, consent, authorization or other communication to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, when transmitted by facsimile or e-mail if receipt is acknowledged by the addressee, one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or three business days after being mailed by first class mail, charges and postage prepaid, property addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed and addressed as follows:

CITY:

Joseph M. Tanner, City Manager
City of Lindsay
251 E. Honolulu St.
Lindsay, CA 93247

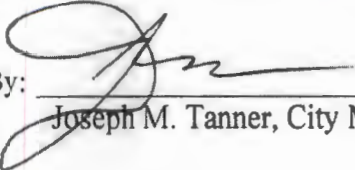
COUNTY:

Amy Shuklian, Chair
County of Tulare
2800 W. Burrell Ave
Visalia, CA 93291

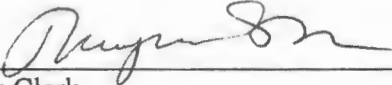
IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

CITY:

Dated: 6-29-2021


By: 
Joseph M. Tanner, City Manager

ATTEST:



City Clerk

COUNTY:

Dated: 6/29/2021

By: 
Amy Shuklian, Chair

ATTEST: Jason T. Britt
County Administrative Officer/
Clerk, Board of Supervisors


County Clerk
Deputy

