

**CITY COUNCIL OF THE CITY OF SONORA
STAFF REPORT**

MEETING DATE: AUGUST 19, 2019

TO: SONORA CITY COUNCIL

FROM: DOUGLAS L. WHITE, CITY ATTORNEY

SUBJECT: AGREEMENT TO DONATE FUNDS TO PROVIDE PORTABLE
TOILETS AT A HOMELESS CAMP

RECOMMENDATION:

Adopt a resolution authorizing the City Administrator to execute an agreement to donate funds to provide portable toilets at a homeless camp in the City of Sonora ("City").

BACKGROUND:

A homeless camp currently exists on property in the County of Tuolumne ("County"), just outside the City limits. Some of the City's homeless population resides at the camp. During its July 15, 2019 meeting, the City Council ("Council"), in order to protect and promote the health, safety and general welfare of the City's homeless population, considered donating funds to provide portable toilets at the camp. To fund the portable toilets, the Council will consider authorizing a donation to Give Someone A Chance, a non-profit charitable organization, organized as a 501(c)(3), that will provide portable toilets at the camp, if there are other funding partners. The donation will fund one third (1/3) of the costs of the portable toilets, not to exceed one thousand six hundred dollars (\$1,600).

DISCUSSION:

The City has broad power to spend its funds. It can spend its funds if it benefits the public welfare and is not forbidden by state law.¹ In this case, the only applicable state law that could prohibit the City from providing funding for the portable toilets is the California Constitution's prohibition on the gift of public funds, because the homeless camp is located outside of City limits. California's Constitution prohibits the City from making a "gift" of "public money."² The City makes a "gift" of "public money" when it spends funds in a manner that does not benefit the City's residents.³ The City, therefore, cannot fund portable toilets at the camp unless it can demonstrate that funding them will benefit the City's residents.

The City residents will directly benefit from the City's expenditure of funds to provide portable toilets at the camp. At least some of the City's homeless population resides at the camp. The living conditions of the camp, therefore, directly affect the City's homeless population. Providing portable toilets at the camp will improve the camp's living conditions and improve the

¹*Albright v. City of S. San Francisco* (1975) 44 Cal.App.3d 866, 869.

² Cal. Const. art. XVI, § 6; *Am. Co. v. City of Lakeport* (1934) 220 Cal. 548, 556.

³ *Sturgeon v. City of Los Angeles* (2008) 167 Cal.App.4th 630; *Golden Gate Bridge etc. Dist. v. Luehring* (1970) 4 Cal.App.3d 204, 208.

health, safety and welfare of the City's homeless population. Improving the health, safety and welfare of the City's homeless population directly benefits City residents. The City, therefore, can demonstrate that funding portable toilets at the homeless camp on County property will benefit the City's residents. By funding the portable toilets at the camp, the City will not be making a "gift" of "public money." Consequently, California's Constitution permits the City to fund portable toilets at the camp.

The proposed resolution will authorize the City Administrator to execute an agreement with Give Someone A Chance to fund one third (1/3) of the costs of providing portable toilets at the homeless camp, not to exceed one thousand six hundred dollars (\$1,600). Under the agreement, Give Someone A Chance will use the donation to provide portable toilets on the camp for use by the camp's residents. The City will only provide donation for the portable toilets, however, if other organizations agree, in addition to the City, to fund the portable toilets. Attachment B to the staff report is the proposed draft agreement.

FISCAL IMPACT:

The fiscal impact associated with funding portable toilets for the homeless camp depends on the costs of the portable toilets and the amount the City would like to donate to fund the portable toilets. At most, the fiscal impact to the City is one thousand six hundred dollars (\$1,600), the highest amount the City will donate to fund the portable toilets.

OPTIONS:

1. The Council may adopt the proposed resolution, authorizing the City Administrator to execute an agreement to donate funds to provide portable toilets on the homeless camp.
2. The Council may choose to reject the proposed resolution.
3. The Council may continue the item and request additional information and analysis from staff.

ATTACHMENTS:

Attachment A: Resolution of the City Council of the City of Sonora approving an agreement with Give Someone A Chance for the donation of funds to provide portable toilets at the homeless camp located on Stockton Road.

Attachment B: Agreement between the City of Sonora and Give Someone A Chance for the donation of funds to provide portable toilets at the homeless camp.

RESOLUTION NO. 08-19-2019-A

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONORA
APPROVING AN AGREEMENT WITH GIVE SOMEONE A CHANCE FOR A
DONATION OF FUNDS TO PROVIDE PORTABLE TOILETS AT THE HOMELESS
CAMP LOCATED ON STOCKTON ROAD**

WHEREAS, many of the City of Sonora’s (“City”) homeless population resides at a camp located on Stockton Road which is located in the County of Tuolumne, just outside the City limits (“Camp”); and

WHEREAS, the City Council (“Council”) seeks to protect and promote the health, safety and general welfare of its homeless population; and

WHEREAS, funding portable toilets at the Camp will protect and promote the health, safety and general welfare of its homeless population; and

WHEREAS, Give Someone A Chance (“Charity”) is a non-profit organization organized as a 501(c)(3) that works to improve the lives of the City’s homeless population; and

WHEREAS, the Council, wishes to donate funds to Charity to provide portable toilets on the Camp in partnership with other organizations.

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Sonora that the City Administrator is authorized to execute an agreement with Charity to donate funds sufficient to pay for one-third (1/3) of the costs, not to exceed one thousand six hundred dollars (\$1,600), to provide portable toilets at the Camp, so long as other organizations, in addition to the City, also donate funds to provide portable toilets at the Camp

**PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL
OF THE CITY OF SONORA ON THIS 19th DAY OF AUGUST 2019, BY THE
FOLLOWING VOTE:**

**AYES:
NOES:
ABSENT:
ABSTAIN:**

APPROVED:

**James M. Garaventa
Mayor of the City of Sonora**

ATTEST:

**Colette Such
City Clerk Pro-Temp of the City of Sonora**

APPROVED AS TO FORM:

**Douglas L. White
Sonora City Attorney**

MEMORANDUM OF UNDERSTANDING

BETWEEN CITY OF SONORA

AND

GIVE SOMEONE A CHANCE

THIS MEMORANDUM OF UNDERSTANDING (“Agreement”) is made and entered into this 19th day of August, 2019, by and between the City of Sonora, a California municipal corporation (“City”) and Give Someone A Chance, a non-profit organization organized as a 501(c)(3) (“Charity”), (each individually a “Party” and collectively the “Parties”). There are no other parties to this Agreement.

RECITALS

- A. Many of the City’s homeless population reside at a camp located on Stockton Road on property located in the County of Tuolumne, just outside the City limits, as described and depicted on the map attached hereto and incorporated by this reference as “Exhibit A” (“Camp”).
- B. The City seeks to protect and promote the health, safety and general welfare of its homeless population by providing funding for portable toilets at the Camp (“Project”).
- C. Charity is a non-profit organization organized as a 501(c)(3) that works to improve the lives of the City’s homeless population.
- D. In order to improve the lives of the City’s homeless population, Charity seeks to provide portable toilets at the Camp.
- E. The City and Charity seek to cooperate in an effort to provide portable toilets at the Camp through the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and covenants set forth below, the Parties agree as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above (“Recitals”) are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 15 of this Agreement, Sections 1 through 15 shall prevail.

Section 2. Term. The term of this Agreement shall be for a period of one (1) year from the effective date of this Agreement ("Term"), unless the Parties mutually agree in writing to terminate the Agreement earlier or extend the Term pursuant to this Agreement.

Section 3. Effective Date. This Agreement shall become effective once all of the Parties have executed the Agreement (the "Effective Date").

Section 4. Funding by City for the Project. The City shall provide funding in an amount not to exceed one thousand six hundred dollars (\$1,600) to Charity for the Project, provided that Charity contributes matching funds to the Project. The City's funding shall also be contingent upon Charity securing additional funding sources for the Project.

Section 5. Provision of Portable Toilets at the Camp. Upon receiving the City's funding for the Project, Charity shall, at its sole cost and expense, furnish all facilities, equipment, materials, information, personnel and administrative assistance, which may be required for the Project.

Section 6. No Conflict of Interest. Charity represents that no conflict of interest will be created under state or federal law by entering into or in carrying out this Agreement.

Section 7. Conformity with Federal, State and Local Law. Each Party shall comply and shall ensure that its contractors and subcontractors, if any, comply with all federal, state and local laws, regulations, and ordinances, applicable to the work and services to be performed under this Agreement.

Section 8. No Third-Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended to confer on any person or entity other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by virtue of this Agreement.

Section 9. Termination. City shall have the right to terminate this Agreement at any time for its convenience by giving thirty (30) days written notice of such termination to Charity.

Section 10. Indemnification by Charity. Charity shall defend, indemnify and hold harmless the City and its elected and appointed councils, commissions, directors, officers, employees, agents, and representatives from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Charity or its subcontractors), expense and liability of every kind, nature and description that arise out of, pertain to or relate to, acts or omissions of Charity, or any direct or indirect subcontractor, employee, contractor, representative or agent of Charity, or anyone that Charity controls (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify City and its elected and appointed councils, commissions, directors, officers, employees, agents, and representatives, shall not apply to the extent that such Liabilities are caused in whole by the sole negligence, active negligence, or willful misconduct of City or its elected and appointed councils, commissions, directors, officers, employees, agents, and representatives, but shall apply to all other Liabilities. With respect to third party claims against the Charity, Charity waives any and all rights of any type of express or implied indemnity against City and its elected and appointed councils, commissions, directors, officers, employees, agents, and representatives.

and

Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.
Tel: (916) 468-0950
Fax: (916) 468-0951

If to Charity:

Give Someone A Chance
P.O. Box 272
Jamestown, CA 95327
Tel: (209) 588-8377

Section 15. General Provisions.

15.1. Modification. No alteration, amendment, or modification of this Agreement shall be valid unless made in writing and executed by all of the Parties to this Agreement.

15.2 Assignment. No Party to this Agreement shall assign, transfer, or otherwise dispose of this Agreement, in whole or in part, to any individual, firm, or corporation, without the prior written consent of the other Party. Subject to the forgoing provisions, this Agreement shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Parties hereto.

15.3 Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by state or federal law in order to enter into the Agreement have been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

15.4 Drafting and Ambiguities. Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

15.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California.

15.6 Venue. Venue for all legal proceedings shall be in the Superior Court for the County of Tuolumne.

15.7 Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and {CW081178.4}

unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Agreement, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

15.8 Counterparts. This Agreement may be executed simultaneously, and in several counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

15.9 Entire Agreement. This Agreement, together with its specific references, attachments and exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof and supersedes any and all prior negotiations, understanding and agreements with respect hereto, whether oral or written.

15.10 Supersedes Prior Agreement. It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations whether, written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

15.11 Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between City and Charity as of the Effective Date.

CITY:

City of Sonora, a California municipal corporation

By: _____
Timothy A. Miller, City Administrator

Date Signed: _____

CHARITY:

Give Someone A Chance, a non-profit organization organized as a 501(c)(3)

By: _____
Title _____

Date Signed: _____

Resolution No.:

Approved as to Form:

By: _____
Douglas L. White, City Attorney

Attest:

By: _____
Colette Such, City Clerk

EXHIBIT A

Map of Camp

{CW081178.4}

