

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
CITY OF COSTA MESA AND THE CITY OF
NEWPORT BEACH**

This **MEMORANDUM OF UNDERSTANDING** (“Agreement”) is dated as of _____, 2020 (“Effective Date”), and entered into by and among the City of Costa Mesa, a municipal corporation organized and existing under California law (“Costa Mesa”) and the City of Newport Beach, which is a California charter city (“Newport Beach”), (cumulatively the “Parties,” and at times individually a “Party”), with reference to and in consideration of the following:

WHEREAS, like many other regions in California, the County of Orange (“County”) has seen a rapid growth in the homeless population over the past several years, a condition that has been difficult to address given the high cost of housing and property in the area;

WHEREAS, as a result, local jurisdictions throughout the County have experienced increased incidents of unlawful camping and loitering activities in and upon portions of public property including, but not limited to, public rights-of-way, parks, and other public facilities (“Public Property”) in violation of local ordinances including, but not limited to, anti-camping, anti-loitering, and/or park closure ordinances and regulations (“Anti-Camping Ordinances”);

WHEREAS, the use of Public Property in this manner creates health and safety risks to homeless persons due to traffic hazards, exposure to weather, inadequate sanitation, and other conditions detrimental to their wellbeing, and negatively impacts the health, safety, and general welfare of the community by degrading the environmental and physical condition of such Public Property, increasing risks associated with public health issues, and impacting the public purpose for which such Public Property is dedicated;

WHEREAS, on a broader scale, the County is a complex jurisdiction of interconnected systems, many of which have been impacted by the homeless crisis in the region, including, but not limited to, health care, criminal justice, social services, public transportation, as well as economic, social, legislative and political systems;

WHEREAS, in efforts to address this crisis, the County established an integrated System of Care to guide homeless individuals and families through a comprehensive array of services and housing designed to prevent and end homelessness;

WHEREAS, to better coordinate access points, assessments, resources, and programs serving persons experiencing homelessness, the System of Care divided the County into three (3) geographic “Service Planning Areas” (or “SPAs”), with the “Central Service Planning Area” (“Central SPA”) including the cities of Costa Mesa, Garden Grove, Fountain Valley, Santa Ana, Seal Beach, Westminster, Newport Beach, Huntington Beach, and Tustin;

WHEREAS, on September 4, 2018, the United States Court of Appeals for the Ninth Circuit issued its decision in *Martin v. City of Boise* (“Boise Decision”), holding “[t]hat . . . as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.”;

WHEREAS, on January 29, 2018, a legal action captioned *Orange County Catholic Worker et al. v. Orange County et al.*, was filed in United States District Court, Central District of California as Case No. 8:18-cv-00155 (the “Action”), against the County, the City of Anaheim, Costa Mesa, and the City of Orange (cumulatively “Defendants”), alleging that, pursuant to the Boise Decision, Defendants’ enforcement of their local Anti-Camping Ordinances against homeless persons was unconstitutional given the lack of accessible overnight shelter beds available to serve the homeless population within their respective jurisdictions;

WHEREAS, on March 4, 2019, Costa Mesa entered into a settlement agreement in the Action by which it committed to create 62 shelter beds in the City of Costa Mesa (“Settlement Agreement”);

WHEREAS, on April 5, 2019, Costa Mesa opened a temporary shelter at the Lighthouse Church with 50 beds, which combined with 12 crisis stabilization unit beds at College Hospital in the City of Costa Mesa met Costa Mesa’s obligations under the Settlement Agreement;

WHEREAS, on April 9, 2019, Costa Mesa closed escrow on real property at 3175 Airway Avenue, in the City of Costa Mesa (“the Property” as more fully described in section 2.10) for \$6,925,000 for the purpose of developing a permanent shelter in the City of Costa Mesa (“the Shelter”);

WHEREAS, Costa Mesa has allocated \$1.9 million of CDBG funds to the Shelter Capital Improvement Program (“CIP”) Project and has submitted a grant proposal to County of Orange Continuum of Care (“CoC”) in response to a Request for Information in February 2020 for the Homeless Housing Assistance Program (HHAP) State funding - CoC allocation in the amount of \$2,529,126. Costa Mesa anticipates that this application may not be funded at the amount of the full request;

WHEREAS, Costa Mesa has processed the necessary entitlements and permitting, including compliance with the California Environmental Quality Act (“CEQA”), designed and awarded a contract to construct improvements required to redevelop the Property into a permanent 70 bed homeless shelter (“Project”). Day-to-day operations have been contracted out to an experienced third party service provider (“Operator”);

WHEREAS, 12,285 square feet of the structure located on the Property will be used for the Shelter, which is currently under construction;

WHEREAS, Costa Mesa intends for the Shelter to provide temporary shelter and social services assistance with a “housing first” model of operation. The goal is to assist individuals experiencing homelessness by providing them with temporary shelter while working with a client case manager to create and follow through on a housing plan that seeks to find permanent supportive housing as soon as possible;

WHEREAS, in furtherance of the health, safety, and well-being of all their residents, to return and preserve Public Property for its intended purpose, the Parties, located within the Central SPA, have worked together cooperatively and in good-faith towards developing a regional solution to the current homeless crisis;

WHEREAS, Newport Beach is committed to a regional solution to address homelessness and, as such, has expressed a desire to partner with Costa Mesa to provide funding to develop and operate the Shelter and to support Costa Mesa in seeking funding to assist in financing the acquisition, construction, and operation of the Shelter, as provided herein, in exchange for use of up to 20 beds in the Shelter;

WHEREAS, the Parties desire to memorialize the terms and conditions by which Newport Beach will provide funding to support the build out and operation of the Shelter and to agree on how Shelter beds will be accessible for Newport Beach; certain aspects of Shelter governance; how the Parties will share access to the capacity provided by the Shelter; how the Parties will share the costs and responsibilities associated with the acquisition, construction, operation, and maintenance of the Shelter; and other related matters in furtherance of their common purpose;

WHEREAS, in addition to addressing the needs of homeless persons through the provision of overnight shelter, the Parties are committed to increasing the inventory of long-term affordable and supportive housing units, such that homeless persons receiving services under this Agreement may transition from emergency shelter facilities, and into long-term and stable housing solutions; and

WHEREAS, each Party has caused this Agreement to be duly approved by its respective governing body, and by so doing, has found and determined that this Agreement furthers the health, safety, and general welfare of their respective residents.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. PURPOSE

This Agreement establishes a memorandum of understanding for establishing, constructing, developing, maintaining, providing, operating, and facilitating the provision of temporary housing in the Shelter, and the provision of certain services to homeless and chronically homeless adults located within the boundaries of the Parties. This Agreement defines the respective rights and responsibilities of the Parties with respect to the financing, implementing, operating, and the provision of Services, as defined in Section 2.14, at the Shelter.

2. DEFINITIONS

In addition to the other terms and phrases defined elsewhere in this Agreement, the following key capitalized terms and phrases used throughout this Agreement shall have the meaning assigned in this Section.

2.1. “Case Management Plan” shall mean the individual plan for each Shelter Resident that, among other things, sets forth details how the Shelter Resident can reach the goal of obtaining long-term stable housing.

2.2. “FF&E” shall have the meaning ascribed in Section 4.2.

2.3. “Management and Operations Plan” shall mean and refer to the plan approved by Costa Mesa and the Shelter Operator, which details the terms, conditions, and standards by which Services are made available to Shelter Residents at the Shelter and shall require Services to meet or exceed industry standards.

2.4. “Newport Beach Capital Payment” shall have the meaning ascribed in Section 4.1.

2.5. “Newport Beach FF&E Payment” shall have the meaning ascribed in Section 4.2.

2.6. “Operating Agreement” shall mean and refer to the contract between Costa Mesa and the Shelter Operator for the operation of the Shelter.

2.7. “Party Representative” shall mean and refer to the highest-ranking appointed executive official for each of the Parties, or his/or her duly authorized designee.

2.8. “Program” shall mean and refer to the Parties’ cooperative financing and planning for the acquisition, construction, operation and the provision of Services at the Shelter.

2.9. “Program Area” shall mean and refer to the Central Service Planning Area of Orange County, California.

2.10. “Property” shall mean the approximately 29,816 square foot building on a 1.34 acre parcel, located at 3175 Airway Avenue, Costa Mesa, CA (A.P.N. 427-091-12).

2.11. “Project” shall have the meaning ascribed in the Recitals above.

2.12. “Project Commencement” shall mean when the Project is fully operational such that all Services are being offered and available for Residents referred to the Project by both Parties.

2.13. “Resident Transportation” shall mean the means by which each Party shall arrange for its respective Shelter Residents to be transported from and to the Shelter and for appointments related to their Case Management Plan.

2.14. “Services” shall mean and refer to the provision of overnight shelter and other sanitation, nutritional, health, educational, supportive, and/or basic human services at the Shelter, as described in the Management and Operations Plan.

2.15. “Service Commencement Deadline” shall mean December 31, 2021, the deadline for the Shelter to be fully operational.

2.16. “Shelter Advisory Committee” shall mean any committee formed with local

stakeholders to provide review of Shelter operations, enhance community relations, and provide information to the neighborhood surrounding the Shelter, local businesses, the Parties' respective staff or City Council of either Party, and Shelter Operator and service providers.

2.17. "Shelter Operator" shall mean and refer to an experienced and qualified third-party contracted by Costa Mesa to provide comprehensive and "turnkey" day-to-day management and operation of the Shelter.

2.18. "Shelter Residents" shall mean and refer to homeless and chronically homeless adults located within the Program Area who receive services and reside at the Shelter.

2.19. "Up-Front Costs" shall mean the Newport Beach Capital Payment and Newport Beach FF&E Payment.

3. TERM

3.1. General Term. This Agreement shall be effective as of the date which the last of the Parties has executed the same, which shall be inserted as the Effective Date in the first paragraph above, and shall remain in full force and effect for five (5) years, until [November 25,] 2025, with two optional extension terms of five (5) years each ("the Term"). Options to extend shall be implemented at least 90 days prior to the then-scheduled expiration date by mutual agreement of the Parties in writing, which extension may be approved by the authority of the City Manager of each Party; provided there is no material change of terms for such extended Term. This Agreement may be earlier terminated in accordance with the provisions of this Agreement.

3.2. Termination by Parties. If either of the following occur: (i) a Judge determines that Newport Beach cannot enforce any Anti-Camping Ordinances in its jurisdiction because providing shelter to persons experiencing homelessness in Costa Mesa, pursuant to the terms of this Agreement, does not provide credit to Newport Beach for the provision of twenty (20) shelter beds, or (ii) the Project Commencement does not occur by the Service Commencement Deadline, except as provided in Section 9.4 hereof, and Costa Mesa has not cured this default after having been provided notice thereof and an opportunity to cure, then Newport Beach may, in its sole discretion, terminate this Agreement by giving ninety (90) days written notice to Costa Mesa of its intent to terminate the Agreement. If the Agreement is terminated during the initial five (5) year term under Subsection 3.2 (i), Newport Beach shall recoup a pro rata share of its Up-Front Costs paid pursuant to Sections 4.1 and 4.2 below. If the Agreement is terminated under Subsection 3.2 (ii) of this provision, Newport Beach shall recoup all of its Up-Front Costs paid pursuant to Sections 4.1 and 4.2 below. If such termination occurs after the initial five (5) year Term, no Up-Front Costs will be refunded to Newport Beach.

3.3. Termination for Default. Upon the occurrence of any default, and following written notice and expiration of the time to cure as provided in Section 7.1 herein, the non-defaulting Party may, at its option declare this Agreement null and void with respect to the defaulting Party, in which case the defaulting party shall not be entitled to the benefits and privileges of this Agreement or the Program following termination. Nothing herein shall be construed as the non-defaulting Party's exclusive remedy for the remediation of default by a Party, and the non-defaulting Party reserves the right to pursue any and all available rights and remedies at law or in equity.

3.4. Liquidated Damages. If the defaulting Party is Newport Beach, Costa Mesa shall retain all of the funds paid by Newport Beach up to the date of Termination for Default as liquidated damages. If the defaulting Party is Costa Mesa, Costa Mesa shall refund to Newport Beach any and all funds contributed by Newport Beach for any time period in which Newport Beach was unable to use its allocation of Shelter beds due to Costa Mesa's default; and, if the Termination for Default occurs in the initial five (5) year Term, Newport Beach will also be entitled to: (i) a pro rata refund for any of its Up-Front Costs paid in connection with this Agreement, if the Shelter is open by the Service Commencement Deadline; or (ii) all Up-Front Costs paid in connection with this Agreement if the Shelter is not open by the Service Commencement Deadline, except as provided in Section 9.4 hereof, and Costa Mesa has not cured this default after having been provided notice thereof and an opportunity to cure. The Parties acknowledge and agree that the retention and refunding of funds provided for in this Section shall constitute liquidated damages and not penalties and are in addition to all other rights of the Parties, including the right to call a default of this Agreement. The Parties further acknowledge that: (i) the amount of loss, costs, or damages likely to be incurred by the Parties resulting from a Party's default which leads to terminating this Agreement before the end of the Term, is incapable or is difficult to precisely estimate; (ii) the funds to be paid to or retained by the non-defaulting Party bears a reasonable relationship to, and is not plainly or grossly disproportionate to, the probable losses or costs likely to be incurred by the other Party by virtue of a Party's default leading to termination of this Agreement before the end of the Term; (iii) one of the reasons for the Parties reaching an agreement as to such amounts is the uncertainty regarding the question of actual losses, costs, or damages to be incurred by the Parties in such event; and (iv) the Parties are sophisticated business parties, have been represented by sophisticated and able legal counsel, and have negotiated this Agreement at arm's length.

3.5. Continuing Enforceability. Following the effective date of termination, the Parties shall have no further obligations or rights with respect to this Agreement, except as expressly provided otherwise herein.

4. NEWPORT BEACH'S OBLIGATIONS.

4.1 Newport Beach Capital Contribution. Newport Beach shall contribute One Million Four Hundred Thousand Dollars (\$1,400,000) ("Newport Beach Capital Payment") in Capital Improvement Costs on a one time basis to support the development of the Project. Newport Beach shall pay to Costa Mesa the Newport Beach Capital Payment within thirty (30) days of the Effective Date. This Newport Beach Capital Payment is not contingent upon the outcome of the Costa Mesa HHAP grant application/award; provided that Costa Mesa shall not be relieved of its obligations under this Agreement if the HHAP grant or any other grant sought by Costa Mesa is delayed, not funded in its entirety or denied.

4.2 Newport Beach Contribution for Furniture, Fixtures and Equipment. Newport Beach shall make a one-time contribution of Two Hundred Thousand Dollars (\$200,000) (ten thousand dollars [\$10,000] per bed to which it has use rights as provided for herein) ("Newport Beach FF&E Payment") for the purpose of purchasing furniture, fixtures and equipment including, beds, desks, mattresses, linens, indoor and outdoor storage equipment, office equipment, tables, chairs, kitchen supplies, and the like ("FF&E"). Costa Mesa shall be solely responsible for paying all other costs for any and all FF&E, as may be necessary or desirable for the Project or provision of Services.

4.3 Newport Beach Annual Contribution for Operations Costs. Upon Project Commencement, Newport Beach shall be obligated to pay an annual operational cost of One Million Dollars (\$1,000,000) ("Newport Beach Operations Payment"), with Newport Beach Operations Payment to be made in four quarterly installments, within thirty (30) days of the end of each quarter, prorated for the first operational quarter, which is specifically to provide for operational costs of Fifty Thousand Dollars (\$50,000) per bed to which Newport Beach has use rights as provided for herein, for the initial Term of the Agreement, and optional term extensions, if mutually agreed to by the Parties, subject to annual increases as provided in Section 4.4 hereof. The Parties expressly agree that Newport Beach shall not be liable for any operational costs prior to the date the Shelter is fully operational and open to Newport Beach for the housing of Shelter Residents. Newport Beach shall be obligated to make its annual Newport Beach Operations Payment regardless of the level of use of the beds to which it has use rights.

4.4 CPI Increase. Commencing one year following the approval date of this Agreement, there shall be an annual increase in the Newport Beach Operations Payment. The annual Newport Beach Operations Payment will be increased following the month of the one year anniversary of this Agreement, and each year of the Term thereafter, by the percentage increase in the Consumer Price Index for the preceding twelve month period. For purposes hereof "Consumer Price Index" shall mean the Los Angeles-Long Beach-Anaheim Consumer Price Index for All Urban Consumers (CPI-U); provided, however, the annual contribution shall increase by a minimum of 2% and a maximum of 4%.

4.5 Newport Beach Outreach. Newport Beach shall assign a designated staff member as the main point of contact for all Shelter related items, who will participate in the monthly Homeless Solutions Collaborative meetings. Newport Beach reserves the right to amend the designated staff member; provided Newport Beach shall give Costa Mesa prior written notice of any new designee. Newport Beach outreach providers shall provide potential client referrals to Costa Mesa's Neighborhood Improvement Manager/Shelter Operator to confirm bed availability and acceptance. Newport Beach will coordinate outreach within its jurisdiction and provide transportation to the shelter.

4.6 Resident Transportation. Unless the Parties expressly agree on an alternative plan for the provision of Resident Transportation to Shelter Residents referred by Newport Beach, Newport Beach shall separately provide for all Resident Transportation for Shelter Residents referred by Newport Beach for the duration of their stay at the Shelter and for their departure from the Shelter. Newport Beach shall be responsible for maintaining contact with the Shelter Operator to ensure appropriate transportation for Newport Beach referrals is provided timely to assist in working toward satisfaction of their Case Management Plan.

4.7 Allocation of Beds. Newport Beach will work collaboratively with Costa Mesa to ensure the Central SPA cities are coordinating with the County and that the shelter beds addressed in this Agreement are prioritized to meet the greatest needs of both Parties, with 50 beds for Costa Mesa's use and 20 beds for Newport Beach's exclusive use for its referrals. The Parties expressly agree that it is the Parties' intent to transition Shelter Residents to long-term stable housing and Newport Beach's consent shall be required to continue to house any person referred by Newport Beach at the Shelter for more than six (6) months.

4.8 No Subletting. Subletting of Beds will not be allowed. Newport Beach shall be

allocated use of 20 beds for Newport Beach to refer homeless individuals deemed by Newport Beach to be highest priority persons referred to the Project by Newport Beach over time.

5.0 COSTA MESA OBLIGATIONS

5.1 Acquisition, Construction and Furnishing Shelter. Costa Mesa has or will pay for all costs associated with acquisition of the Property, construction to reconfigure the Property for use, including but not limited to removal of the existing improvements, design/entitlements/permits required and for construction of all improvements, as well as obtaining and installing all FF&E. Notwithstanding any of Newport Beach's contributions or payments as provided for in this Agreement, Costa Mesa shall own the Property, all improvements, the Shelter and all FF&E installed therein. The Shelter itself shall be utilized exclusively for purposes consistent with this Agreement, and/or the terms and conditions of the Community Development Block Grant ("CDBG") or other funding which may be used by Costa Mesa for the Shelter or the Program.

5.2 Operation of Shelter. Costa Mesa shall act as the lead agency with respect to the operation of the Shelter. Costa Mesa shall provide to Newport Beach a copy of the Operating Agreement and Management and Operations Plan, which provides the Standards of Care for the Program, which meet or exceed industry standards. Costa Mesa shall ensure that Shelter Residents referred to the Shelter by either Costa Mesa or Newport Beach shall receive the same level of Services, as provided for in the Operating Agreement and Management and Operations Plan, except where expressly excluded in this Agreement such as the obligation of Newport Beach to provide Resident Transportation to Shelter Residents it refers to the Project.

5.3 Intake. Costa Mesa shall maintain oversight of the Shelter intake clearance process for a reservation at the Shelter, which requires clearance by either Party's Police Department or the Neighborhood Improvement Manager/Designee. Entry will not be approved for individuals with an active felony warrant, who are a registered sex offender and/or have been convicted of any arson offense, as reflected on their background check, as confirmed by Costa Mesa Police Department or Newport Beach Police Department prior to entry.

5.4 Shelter Resident Outcomes. The Parties agree to cooperate to build a system where outcomes related to family unification, employment opportunities, affordable housing placement and services for subpopulations (veterans, domestic violence, seniors and youth) are addressed through connections to the broader Countywide System of Care. The Parties agree that such system shall include provisions to exclude all non-emancipated minors from utilizing any of the Services or being housed at the Shelter.

5.5 Modifications to Shelter. Prior to commencement of construction of any future significant modifications or improvements to the Shelter, Newport Beach will be provided a reasonable opportunity to review and provide input on the proposed design and amenities of the modifications or improvements, and Costa Mesa will, in good faith, consider the input of Newport Beach in finalizing the same; provided that if Newport Beach contributes funding for such future modifications or improvements, Newport Beach shall retain authority to approve the design and amenities of the modification or improvements.

5.6 Service Contracts. Costa Mesa will be the "contracting party" to any written agreements with qualified professional(s), service providers, and/or licensed contractor(s)

("Consultant") necessary for the development or operation of the Shelter consistent with this Agreement.

5.7 Procurement Practices. Costa Mesa shall follow its own procedural formalities and requirements for services, purchases and acquisitions relating to the Property and the Shelter.

5.8 Provision of Documents. Costa Mesa agrees to provide all relevant documents related to the Operating Agreement, Management and Operations Plan, and operating costs of the Shelter, within forty five (45) days of request from Newport Beach. With respect to any additional documents, besides the aforementioned, each request will be evaluated on a case by case basis and may be provided at an additional administrative cost.

6. JOINT OBLIGATIONS

6.1 Grants and other Third Party Funding. The parties shall work together in regional alignment on any applications for local, state, and federal funding. As the permanent Shelter on the Property is owned and operated by Costa Mesa, Costa Mesa will serve as the lead agency, working in concert with Newport Beach, on all applications, requests and solicitations for federal, state and/or county funding and grant opportunities, loans, and subsidies related to all costs associated with the Shelter. Newport Beach agrees to cooperate in the grant application process by providing any data necessary to improve the chances of securing grant funding. The Parties will work together cooperatively to augment shelter operational enhancements whenever advantageous, with Costa Mesa as lead applicant endorsing grant applications and partnerships.

For future Operating Grants and/or Funding Opportunities: If any of the aforementioned jointly solicited grants or funds are received to help reimburse or subsidize annual recurring shelter operational costs, each Party's costs will be reduced by a commensurate pro rata share (71.43% to Costa Mesa and 28.57% to Newport Beach).

For Capital Grants and/or Funding Opportunities: If any of the aforementioned jointly solicited grants or funds are received for payment or reimbursement of property acquisition and/or tenant improvement costs associated with the Shelter, each Party will be reimbursed and participate on a GAAP FIFO accounting basis (First In, First Out), with Newport Beach receiving a proportionate share of reimbursement/funding for the Newport Beach Capital Payment only after all prior capital expenditures incurred by Costa Mesa, as described in the recitals hereof have been fully reimbursed.

Costa Mesa must participate, support and approve grant funding sources applied to Shelter operations or costs associated with this Agreement.

This section shall not apply to funds which are allocated individually to the Parties under Senate Bill No. 2, CDBG or other grants allocated to individual cities or funding commitments secured independently by a Party.

6.2 Security. Costa Mesa shall ensure that adequate security measures and policies are incorporated into the operation of the Project. This includes the requirement that entry to the Shelter is controlled by referral only, with no walk-up admission. Both Parties shall ensure their outreach staff provide clear direction to potential Shelter Residents on requirements for accessing the Shelter

and its services, including the prohibition of walk-ups. Newport Beach will abide by any reasonable intake procedures and protocols established by Costa Mesa.

6.3 Resident Transportation. Unless the Parties expressly agree on a plan for the provision of joint Resident Transportation of Shelter Residents per Section 4.6, each Party shall arrange for Resident Transportation of its respective Shelter Residents. Newport Beach shall be responsible to provide all security with respect to its Resident Transportation.

6.4 Coordination with Central SPA Cities. The Parties agree to work together to engage other Central SPA Cities in coordinated outreach that refers homeless persons to the best resources to meet their needs based on residency. The cities within the Central SPA which have shelters include: Santa Ana, Tustin, Huntington Beach, and Costa Mesa. The County Yale Shelter will also serve the Central SPA Cities.

6.5 Long Term Housing. Consistent with the purposes of this Agreement, Newport Beach agrees to cooperate with Costa Mesa in providing for a regional solution to the unsheltered homeless population within the Program Area, with the goal of transitioning Shelter Residents from the emergency shelter to long-term housing.

6.6 Community Coordination and Communication. The Parties are committed to communication with neighbors on an ongoing basis. During the Term, the Parties and the Shelter Operator will work together cooperatively and in good faith to facilitate the Shelter Advisory Committee, generate educational or outreach materials, and engage in similar activities to promote or further the purposes of the Program. The goal of such efforts will be to provide members of the community with opportunities to ask questions and receive information about the Shelter and the Program. Any printed or published materials relating to the Program shall be subject to approval by the Party Representatives.

a) Complaints / Inquiries. Any community complaints and/or inquiries about the Program should be recorded and forwarded to the appropriate Party, or its designated point of contact, for prompt investigation. The Party Representatives and Shelter Operator shall work together to facilitate appropriate responses to customer service requests and prompt resolution of community complaints.

b) Visitors / Tours. Visits by members of the community and tours of the Shelter should be made reasonably available by Costa Mesa and will be coordinated by and through Costa Mesa outreach staff and the Shelter Operator.

c) Coordination of Government Agencies. The Program will be operated for the public good, and successful implementation will require the partnership of various stakeholders including the Parties, the Shelter Operator, local school districts, and other local political subdivisions and community organizations. The Parties are, and the Shelter Operator shall be, committed to working cooperatively with numerous stakeholders to serve Shelter Residents in the Program Area. The Parties and the Operator will communicate and work collaboratively with local healthcare, housing, social services, and public safety departments through all stages of Program implementation, including but not limited to the implementation of the Management Operations Plan and Operating Agreement, including ensuring compliance with intake and security procedures, implementation of Case Management Plans and placement in long term housing;

however, Newport Beach shall have no obligations related to the Program not specifically addressed in the Operating Agreement, Management and Operations Plan and/or in this Agreement, unless expressly agreed to by Newport Beach.

6.7 Cooperation. The Parties agree to cooperate to the extent necessary in connection with ongoing administrative, grant funding, regulatory, and/or litigation proceedings, other than the Action, and similar matters which affect both Parties to this Agreement.

7. DEFAULTS, AND REMEDIES

7.1 Defaults.

a) Notice and Time to Cure. The failure by any Party to perform any of its obligations set forth in this Agreement shall constitute a default, except as provided in Section 9.4 hereof. Except as required to protect against further damages, the non-defaulting Party may not institute legal proceedings against the Party in default until the non-defaulting Party has provided the defaulting Party notice of the default and the cure period has expired. The cure period for any default shall be thirty (30) calendar days after the defaulting Party's receipt of written notice from the non-defaulting Party that such obligation was not performed. In the case of a default which cannot be cured within the cure periods set forth in this Section, the defaulting Party shall commence efforts to cure within such time periods and shall diligently thereafter pursue to cure the default to completion within a reasonable period of time.

b) Cooperative Resolution. During the cure period set forth in paragraph (a), and prior to pursuing any remedies described in this Section, the Parties will attempt, in good faith, to find a mutually agreeable resolution through communicating with each other and attempting to resolve any substantive problems arising under this Agreement, including challenges arising from funding difficulties, and/or any difficulty with effectively implementing the responsibilities detailed in this Agreement. Communication and attempts to resolve such problems and difficulties prior to pursuing remedies under this Agreement include, but are not limited to, meeting together, amending this Agreement, and/or seeking the assistance of a jointly agreed upon mediator.

7.2 Remedies. Upon the occurrence of any default, and following written notice and expiration of the time to cure, the non-defaulting Party may, at its option: declare this Agreement null and void with respect to the defaulting Party, in which case the defaulting party shall not be entitled to the benefits and privileges of this Agreement or the Program; or pursue damages or specific performance or other legal and equitable remedies the injured Parties may have against the non-defaulting Party in accordance with applicable law. Nothing herein shall be construed as the non-defaulting Party's exclusive remedy for the remediation of default by a Party, and the non-defaulting Party reserves the right to pursue any and all available rights and remedies at law or in equity.

7.3 Non-refund of Contributions. The payments made by all Parties pursuant to this Agreement shall be used for the Program in the manner described herein, and all Parties acknowledge and agree that the development, administration, and operation of the Program, including development of the Shelter, provides an immediate benefit to each Party and that no payments made pursuant to this Agreement shall be refunded for any reason other than as

specifically authorized herein.

8. INDEMNITY AND INSURANCE

8.1. Indemnity / Hold Harmless. Each Party shall hold harmless, indemnify, and defend the other Party, and its officers, employees, and agents, from and against any and all claims, suits, or actions of every kind brought for or on account of injuries to or death of any person or damage to any property of any kind whatsoever and to whomsoever belonging to the extent caused by a Party's failure to fulfill any obligation of such Party arising pursuant to the performance or nonperformance of the Party's covenants and obligations under this Agreement, and/or which result from the negligent or wrongful act of the Party, or its officers, employees, or agents. This provision requiring a Party to hold harmless, indemnify, and defend the other Party shall expressly not apply to claims, losses, liabilities, or damages arising solely from actions or omissions, negligent or otherwise, of any independent contractor providing services pursuant to a contract with any other Party. In the event of concurrent negligence of the Parties, their respective officers, or employees, then the liability for any and all claims for injuries or damages to persons and/or property or any other loss or cost which arises out of the terms, conditions, covenants or responsibilities of this Agreement shall be apportioned in any dispute or litigation according to the California theory of comparative negligence. Costa Mesa, in contracting following the effective date of this Agreement with third parties for design, development, construction, equipping, maintenance and repair of the Property, and operation of any aspect of the Project, shall require full indemnification and hold harmless clauses naming all Parties as provided for herein below. Newport Beach, in contracting following the effective date of this Agreement with any third parties relating to operation of any aspects of the Project, including, but not limited to, street outreach and transportation of Newport Beach referrals to and from the Shelter, shall require full indemnification and hold harmless clauses naming all Parties as provided for hereinbelow.

8.2. Insurance. Costa Mesa shall insure the Property and the Project, and shall require any Consultants, contractors or subcontractors operating or performing work at the Property, or for the Project, to hold policies of insurance with coverage and limits commensurate with industry standards and practices, which shall be agreed to by the Risk Managers of the Parties. Both Parties and their respective officers, employees and agents shall be named insureds on any liability coverage. Each Party shall provide for Workers' Compensation coverage for its own employees. Each party shall obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the other and their respective officers, agents, employees, and volunteers arising from this Agreement and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

8.3. Insurance for Consultants. Each Party shall require any Consultants engaged by them in conjunction with this Agreement to obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class X, or better in the most recent Best's Key Insurance Rating Guide, and approved by each Party's Risk Manager:

a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general

aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.

b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.

c) Workers' compensation insurance as required by the State of California. Consultants shall be required to waive, and to obtain endorsements from their workers' compensation insurer(s) waiving subrogation rights under their workers' compensation insurance policy(ies) against each Party, its officers, agents, employees, and volunteers arising from work performed by Consultant for the Party and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Consultants shall obtain and maintain, said E&O liability insurance during the life of the Agreement and for three years after completion of the work thereunder.

e) In addition, the Shelter Operator shall be required to provide Sexual abuse/molestation coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate and Cyber liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate covering: (i) all acts, errors, omissions, negligence, infringement of intellectual property; (ii) network security and privacy risks including, but not limited to, unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or negligence in the handling of confidential information, privacy perils including coverage for related regulatory defense and penalties; and (iii) data breach expenses payable whether incurred by the Parties or Shelter Operator including, but not limited to, consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services in the performance of services for Costa Mesa and/or Newport Beach.

f) Endorsements. Unless otherwise agreed to by the Parties, all insurance referred to in this section 8.3 shall contain or be endorsed to contain the following provisions:

(i) Additional insureds: "The City of Costa Mesa and the City of Newport Beach and their elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Consultant pursuant to its contract with the respective city; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant." This endorsement requirement does not apply to Professional Errors and Omissions insurance required by subsection (d) of this section 8.3.

(ii) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled,

nor the coverage or limits reduced, until thirty (30) days after written notice is given to the City of Costa Mesa and City of Newport Beach.”

(iii) Other insurance: "The Consultant’s insurance coverage shall be primary insurance as respects the City of Costa Mesa, the City of Newport Beach and their officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa or the City of Newport Beach shall be excess and not contributing with the insurance provided by this policy."

g) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to Costa Mesa, Newport Beach, or their respective officers, officials, agents, employees, and volunteers.

h) The Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

i) Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by the contracting Party. No policy of insurance issued as to which the Parties are an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

8.4. Certificates of Insurance. Consultants shall be required to provide to each Party certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by the Parties, prior to performing any services under the agreement. The certificates of insurance shall be attached to any Consultant agreement.

8.5. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which any Consultants contracted by either Party may be held responsible for payments of damages to persons or property.

9. MISCELLANEOUS

9.1. Approval by Party Representatives. Any term or provision of this Agreement that calls for the direction, approval, or consent of the Parties or Party Representatives, shall mean and refer to the direction, approval, or consent of both of the Party Representatives; provided that, notwithstanding anything contrary in this Agreement, Costa Mesa shall have sole discretion to approve or disprove any such action that: directly relates to the operation, management, capacity, construction, location, design, or scale of the Shelter, so long as Newport Beach’s ability to use its allocated beds is not unreasonably impaired thereby; or any other action that, in Costa Mesa’s reasonable discretion, will have a reasonably foreseeable negative material impact on residents, business, or public facilities in the area surrounding the Shelter, materially increase the intensity of Shelter use or capacity, or materially increase burdens on public services provided to said area. Except as specifically provided herein, all actions reasonably necessary to effectuate the purpose of this Agreement and the Program may be performed by the Party Representatives except as may otherwise be prohibited by state or federal law.

9.2. Notice. Any notice, demand, request, document, consent, approval, or

communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail to the person(s) at the address below. Either Party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

CITY OF COSTA MESA

Lori Ann Farrell Harrison
City Manager
77 Fair Drive
Costa Mesa, CA 92626

CITY OF NEWPORT BEACH

Grace Leung
City Manager
100 Civic Center Drive
Newport Beach, CA 92660

With a copy to:

Kimberly Hall Barlow
City Attorney
3777 N. Harbor Blvd.
Fullerton, CA 92835

Aaron Harp
City Attorney
100 Civic Center Drive
Newport Beach, CA 92660

9.3. Parties as Independent Contractors. Each Party is, and at all times shall be deemed to be, an independent contractor as to the other Party. Nothing herein is intended or shall be construed as creating the relationship of employer and employee, or principal and agent, between any Party, or any Party's agents or employees. Each Party shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of the Program pursuant to this Agreement. Each Party, and its agents and employees, shall not be considered to be employees of any other Party.

9.4. Force Majeure. In no event shall either Party be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond the control of the party obligated, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, epidemic, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Parties shall each use reasonable efforts to resume performance as soon as practicable under the circumstances.

9.5. Survival of Terms at Termination. The provisions of sections 3.4, 7.1-7.3, 8.1, 8.2, 8.5, 9.2, 9.4-9.10, and 9.12 shall survive the termination of this Agreement.

9.6. Governing Law and Venue. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction, located in Orange County, California, and the Parties agree to and hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

9.7. Amendments / Entire Agreement. Amendments to this Agreement must be in writing and approved by the governing body of each Party. This Agreement, and the various Exhibits referenced herein which are incorporated fully by this reference, is the entire agreement among the Parties with respect to the subject matter hereof, and it supersedes any prior written or oral agreements with respect to the subject matter.

9.8. Severability. If any section, subsection, paragraph, term, or provision of this Agreement, or the application thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, such section, subsection, paragraph, term, or provision, to the extent the same is valid and enforceable, and all other remaining provisions hereof, shall remain in full force and effect, to the fullest extent possible, and shall in no way be affected, impaired or invalidated thereby to the extent such are not rendered impractical to perform taking into consideration the purposes of this Agreement.

9.9. Interpretation. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of its own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Agreement by the other Parties, or by any person representing the other Parties, or both. Accordingly, any rule or law (including Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.

9.10. Non-Waiver of Rights and Remedies. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

9.11. Authority. The Parties represent and warrant that this Agreement has been duly authorized by their respective governing boards, and executed by a duly authorized representative thereof, and constitutes the legally binding obligation of their respective Party, enforceable in accordance with its terms.

9.12. Assignment. Except as otherwise expressly provided for herein, no Party shall assign any of its obligations or rights hereunder without the consent of the other Party, and any such assignment without consent shall be null and void.

9.13. Execution in Counterparts. This Agreement may be executed in counterparts, each of which, when the Parties have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties to this Agreement have caused the same to be executed by each of their duly authorized officers as follows:

[SIGNATURE PAGE(S) TO FOLLOW]

Dated: November __, 2020

CITY OF COSTA MESA

By: _____

APPROVED AS TO FORM.

Kimberly Hall Barlow
City Attorney

Dated: November __, 2020

CITY OF NEWPORT BEACH

By: _____

APPROVED AS TO FORM.

AARON HARP
City Attorney

EXHIBIT A.
Legal Description

Parcel 4, in the City of Costa Mesa, County of Orange, State of California, as per map filed in book 34, page 13 of parcel maps, in the office of the county recorder of said county.

Except therefrom the minerals, oil, gas, and other hydrocarbon substances lying below the surface of said land.

APN/Parcel ID(s): 427-091-12

Commonly known as 3175 Airway Ave, Costa Mesa, California

Photographic depiction of the Property



EXHIBIT B.
[Site plan and proposed scope of improvements.]

Total Space (1st floor) \approx 26,710 SF
Total Building \approx 28,848 SF

