

## ATTACHMENT B

### AMENDMENT NO. ONE TO MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF COSTA MESA AND THE CITY OF NEWPORT BEACH

This AMENDMENT NO. ONE TO MEMORANDUM OF UNDERSTANDING ("Amendment No. One") is dated as of July 1, 2023 ("Effective Date of Amendment No. One"), 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:

#### RECITALS

- A. On December 15, 2020, Newport Beach and Costa Mesa entered into a Memorandum of Understanding ("Agreement") for the provision of temporary housing, and the provision of certain services to individuals experiencing homelessness located within the boundaries of the Parties at the property located at 3175 Airway Avenue, in the City of Costa Mesa ("Property");
- B. Newport Beach is currently allocated twenty (20) beds and Costa Mesa is allocated forty-nine (49) beds for use by individuals experiencing homelessness in Newport Beach and Costa Mesa, respectively;
- C. Costa Mesa intends to add sixteen (16) beds to increase the total number of beds available to the Parties from sixty-nine (69) to eighty-five (85), of which, eleven (11) beds are allocated for exclusive use by Costa Mesa, five (5) beds are allocated for exclusive use by Newport Beach, with up to five (5) of Costa Mesa's allocated beds optionally available for use by Newport Beach as provided for herein;
- D. The Parties desire to enter into this Amendment No. One to increase Newport Beach's allocation from twenty (20) to twenty-five (25) beds, memorialize availability and cost of up to five (5) Costa Mesa beds for use by Newport Beach and, accordingly, increase Newport Beach FF&E Payment and Newport Beach Operations Payment to cover the associated costs.

#### AGREEMENT

Section 4.2 of the Agreement shall be amended in its entirety and replaced with the following:

**"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"). Additionally, within thirty (30) days of the Effective Date of Amendment No. One, Newport Beach shall make a one-time Newport Beach FF&E Payment of Fifty Thousand Dollars (\$50,000) towards the five (5) additional beds allocated to Newport Beach. 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."

Section 4.3 of the Agreement shall be amended in its entirety and replaced with the following:

**“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 for the twenty (20) beds originally provided in the Agreement, 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. Additionally, on the Effective Date of Amendment No. One, Newport Beach shall be obligated to pay an additional annual operational cost of Two Hundred Seventy-Five Thousand Dollars (\$275,000) (“Newport Beach Additional Operations Payment”), with the Newport Beach Additional 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-Five Thousand Dollars (\$55,000) per bed for the five (5) additional beds allocated to Newport Beach. Lastly, on the Effective Date of Amendment No. One, as provided for in Section 4.7 hereof, Newport Beach shall pay a cost of One Hundred Fifty-Five Dollars (\$155) per bed, per day for the actual use of each of the five (5) Costa Mesa beds which may be made available, in Costa Mesa’s sole discretion, for use by a Newport Beach referral. Billing for Newport Beach’s use of these Costa Mesa beds shall coincide with Newport Beach Operations Payment schedule outlined above. 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.”

Section 4.4 of the Agreement shall be amended in its entirety and replaced with the following:

**“4.4 CPI Increase.** Commencing one year following the approval date of this Agreement and at the sole discretion of the Costa Mesa City Manager, there shall be an option to increase the Newport Beach Operations Payment 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, any increase to the annual contribution shall be a minimum of 2% and a maximum of 4%.”

Section 4.7 of the Agreement shall be amended in its entirety and replaced with the following:

**“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 sixty (60) beds for Costa Mesa’s exclusive use and twenty-five (25) beds for Newport Beach’s exclusive use for its referrals. However, at Costa Mesa’s sole discretion, and only after exhausting the Wait List for Costa Mesa interested parties, up to five (5) of Costa Mesa’s beds may be made available to person(s) referred by Newport Beach. 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.”



Section 4.8 of the Agreement shall be amended in its entirety and replaced with the following:

**“4.8 No Subletting.** Subletting of Beds will not be allowed. Newport Beach shall be allocated use of twenty-five (25) 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.”

#### **INTEGRATED CONTRACT**

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

**[SIGNATURE PAGE(S) TO FOLLOW]**

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

Dated: June \_\_, 2023

CITY OF COSTA MESA

By: Lori Ann Farrell Harrison  
Lori Ann Farrell Harrison  
City Manager

APPROVED AS TO FORM

ACA  
Kimberly Hall Barlow  
City Attorney

ATTEST:

Brenda Green  
Brenda Green  
City Clerk



Dated: July 19, 2023

CITY OF NEWPORT BEACH

By: Grace Leung  
Grace Leung  
City Manager

APPROVED AS TO FORM.

Aaron C. Harp  
Aaron C. Harp  
City Attorney

06.21.23  
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ATTEST:

Leilani I. Brown  
Leilani I. Brown  
City Clerk

6.29.2023

