

MEMORANDA OF UNDERSTANDING

BETWEEN

THE COUNTY OF ORANGE

AND

THE CITY OF DANA POINT

FOR PERMANENT LOCAL HOUSING ALLOCATION (PLHA) PROGRAM

This Memoranda of Understanding (MOU) is entered into by and between the County of Orange, hereinafter referred to as "COUNTY," and the City of Dana Point, hereinafter referred to as "City." This MOU establishes program content and purpose, along with specific guidelines, for the implementation and administration of the Permanent Local Housing Allocation (PLHA) Program funds to assist persons who are experiencing or at-risk of homelessness, and the procedures for invoicing and payment from the City to the COUNTY of PLHA Program funds.

COUNTY and City may be referred to individually as "Party" and collectively as "the Parties." The relationship between COUNTY and City, with regards to this MOU, is based upon the following:

- 1) This MOU sets forth the procedures authorized by both the COUNTY's Office of Care Coordination, Director and the City, for their respective employees to follow in providing services.
- 2) This is a financial MOU and is a legally binding agreement based on the promises of the Parties.
- 3) This MOU is authorized and provided for pursuant to the PLHA Program created in order to distribute funds collected under the Building Homes and Jobs Act (SB 2, 2017), which established a \$75 recording fee on real estate documents to increase the supply of affordable homes in California. The COUNTY is responsible for administering the PLHA Program in accordance with California Department of Housing and Community Development (State) guidelines.
- 4) The City, through staffing and/or subcontracted provider(s), is to provide the services and activities described in this MOU that benefits persons who are experiencing homelessness or at risk of homelessness pursuant to the guidelines set forth in this MOU. References to the City throughout this MOU will include any services and activities provided through the subcontracted provider(s).

1. TERM

The term of this MOU shall commence on July 1, 2020, and end on June 30, 2026, unless earlier terminated pursuant to the provisions of Paragraph 25 of this MOU; however, the Parties shall be obligated to perform such duties as would normally extend beyond this term, including, but not limited to, obligations with respect to indemnification, reporting and confidentiality. COUNTY and City may mutually agree in writing to extend the term of this MOU for up to twelve (12) additional months upon the same terms and conditions, and the City Manager is authorized to execute any documents on behalf of City necessary to extend the term hereof.

2. PURPOSE

The purpose of this MOU is to establish the procedure for the COUNTY and City to provide services to individuals who meet the criteria under Section 4 of this MOU.

3. DEFINITIONS

3.1 Annual Progress Report (APR): The Housing Element APR required by GC Section 65400 on the prior year's activities that is due to HCD April 1 of each year.

3.2 Annual Report: A form issued by HCD and completed by a local government awarded PLHA funds on which the local government documents the uses and expenditures of any allocated funds and outcomes achieved, due by July 31 annually.

3.3 Area Median Income: The most recent applicable median income for Orange County adjusted by household size as published by HCD.

3.4 At Risk of Homelessness: Any household receiving rental assistance funded by the California Emergency Solutions and Housing (CESH) program or:

3.4.1 An individual or family who:

3.4.1.1 Has an annual income below 30 percent of median family income for the area, as determined by the U.S. Department of Housing and Urban Development (HUD)

3.4.1.2 Does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the Homeless definition in this section;

3.4.1.3. Meets one of the following conditions:

3.4.1.3.1 Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

3.4.1.3.2 Is living in the home of another because of economic hardship;

3.4.1.3.3 Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

3.4.1.3.4 Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by state or local government programs for low-income individuals;

3.4.1.3.5. Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

3.4.1.3.6 Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

3.4.1.3.7 Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

3.4.2 A child or youth who does not qualify as homeless under this section, but qualifies as homeless under section 387(3) of the Runaway and Homeless Youth Act (42

U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

- 3.4.3 A child or youth who does not qualify as homeless under this section, but qualifies as homeless under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.
- 3.5 Case Management: A process of identification, assessment of need, planning, coordination and linking, monitoring and continuous evaluation of participants and of available resources in order to achieve and maintain housing stability.
- 3.6 Eligible Participant: A family or individual experiencing homelessness or at risk of homelessness in Orange County with income at or below 60% of Area Median Income adjusted by household size.
- 3.7 Grantee Performance Report (GPR): The Grantee Performance Report provides a performance profile on each grantee's funding allocation, including expenditures, accomplishments achieved during the performance year and a summary of the beneficiaries/participants for the performance year.
- 3.8 HCD: The State of California Department of Housing and Community Development that oversees the PLHA program.
- 3.9 Homeless:
- 3.9.1 An individual or family who lacks a fixed, regular, and adequate nighttime residence.
- 3.9.2 An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping

accommodation for human beings, including, but not limited to, a car, park, abandoned building, bus station, train station, airport, or camping ground.

3.9.3 An individual or family living in a supervised publicly or privately-operated shelter designated to provide temporary living arrangements, including hotels or motels paid for by state or local government programs for low-income individuals or by charitable organizations, congregate shelters, or transitional housing.

3.9.4 An individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided.

3.9.5 An individual or family who will imminently lose their housing, including, but not limited to, housing they own, rent, or live in without paying rent, are sharing with others, or rooms in hotels or motels not paid for by state or local government programs for low-income individuals or by charitable organizations, as evidenced by any of the following:

3.9.5.1 A court order resulting from an eviction action that notifies the individual or family that they must leave within fourteen (14) days.

3.9.5.2 The individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than fourteen (14) days.

3.9.5.3 Credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than fourteen (14) days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause.

3.9.6 An individual or family who has no subsequent residence identified.

3.9.7 An individual or family who lacks the resources or support networks needed to obtain other permanent housing.

- 3.9.8 Unaccompanied youth and homeless participants with children and youth defined as homeless under any other state statute, as of the effective date of this program, who meet all of the following:
- 3.9.8.1 Have experienced a long-term period without living independently in permanent housing.
 - 3.9.8.2 Have experienced persistent instability as measured by frequent moves over that long-term period.
 - 3.9.8.3 Can be expected to continue in that status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.
- 3.10 Homeless Management Information System (HMIS): The HUD mandated database used to collect client-level data on the provision of housing and services to homeless individuals and families, as well as persons at risk of homelessness.
- 3.11 Housing Element: A required document that provides an analysis of a community's housing need for all income levels, and strategies to respond to provide those housing needs. Each jurisdiction that receives PLHA funds must have a compliant Housing Element, as required by State law.
- 3.12 Housing Navigation: A community-based, solution-focused strategy that assists individuals and families with complex and frequently occurring issues that prevent them from accessing and maintaining stable housing.
- 3.13 HUD: U.S. Department of Housing and Urban Development (HUD) has oversight responsibilities for the use of federal funds provided to entitlement communities.
- 3.14 Office of Care Coordination: The Division in the Orange County, County Executive Office (CEO) that coordinates homeless services programs for participants who are homeless or at risk of homelessness.

- 3.15 Operating Costs/Start Up Costs: The costs incurred for the start-up and ongoing operation of homeless services, including initial purchases of vital supplies needed and supportive services.
- 3.16 Outreach: The linkage of potential participants to appropriate supportive services, which may include activities that involve educating the community about services offered and requirements for participation in programs.
- 3.17 Permanent Local Housing Allocation Program, (Program) or (PLHA): The program developed to annually allocate 70 percent of the moneys deposited into the Building Homes and Jobs Act Fund pursuant to HSC Section 50470(b)(2)(B)(i).
- 3.18 PLHA Plan: The document submitted by local governments as part of a complete application in which the local government proposes to use allocated PLHA funds for at least one eligible Activity. The Plan shall have a term of five years. In succeeding years, the Local government is required to obtain the approval of the Department for any amendments made to the Plan, as set forth in Section 302(c)(5).
4. POPULATION TO BE SERVED
- 4.1 City shall provide services to individuals and families experiencing homelessness or at risk of homelessness in the City of Data Point that have income at or below 60 percent of the area median income, adjusted for household size in Orange County.
5. CITY RESPONSIBILITIES
- 5.1 PLHA Program Activities.
- 5.1.1 City shall contract directly with, make payments for, and collect applicable back-up documentation of all PLHA homeless services as provided by City staff or subrecipient(s) providing direct homeless services to participants and provide oversight of those homeless service activities, contracts, service components, eligible costs and program requirements set forth in the PLHA Guidelines, that assist persons who are experiencing homelessness or at risk of homelessness, including, but not limited to:

5.1.1.1 Street outreach

5.1.1.2 Supportive/case management services that allow people to obtain and retain housing

5.1.1.3 Payment of initial startup costs, including essential services and activities on a reimbursement basis

5.1.2 City shall assist the following number of persons who are experiencing homelessness or at risk of homelessness, as detailed in the table below.

Client Income Level	Number of Clients Proposed – Year 1	Number of Clients Proposed – Year 2	Number of Clients Proposed – Year 3	Number of Clients Proposed – Year 4	Number of Clients Proposed – Year 5	Total
At or below 30% AMI	110	110	110	110	110	550
31% AMI to 50% AMI	25	25	25	25	25	125
51% AMI to 60% AMI	25	25	25	25	25	125
TOTAL	160	160	160	160	160	800

5.2 PLHA Administrative Responsibilities. City shall:

5.2.1 Provide demographic and income information about the persons who benefit from funded activities to COUNTY utilizing APR comma-separated values (CSV) files and HMIS reports.

5.2.2 Evaluate quality of activities and services being provided by the PLHA funds on a quarterly basis. Maintain accurate and complete financial records as a separate ledger for all PLHA Activity costs related to services provided under the terms of this MOU, including payment processing and budget/cost tracking, invoices, purchase orders, sources and uses of funds for PLHA Activities, terms & conditions of financings, all supporting documentation submitted by subrecipient for reimbursement and change orders (as appropriate).

- 5.2.3 Timely process requests for reimbursement payments and claims to COUNTY for reimbursement for services provided under this MOU, in accordance with HCD requirements and deadlines. These include:
 - 5.2.3.1 Quarterly processing of reimbursement payments and claims
 - 5.2.3.2 Tracking reimbursement payments and claims
 - 5.2.3.3 Annual End of Year Report/Project Accomplishments to COUNTY by June 1st
 - 5.2.3.4 Project Close-outs
- 5.2.4 Provide information deemed necessary by COUNTY to assist in the completion of any PLHA required reports including providing CSV and HMIS reports related to the services provided under the MOU.
- 5.2.5 Provide to COUNTY, by the fifteenth (15th) calendar day quarterly, a quarterly report for the preceding quarter, in a format approved by COUNTY in order to be reimbursed for payment. Quarters under this MOU are defined in Paragraph 10. Data elements shall include, but are not limited to, the following:
 - 5.2.5.1 Caseload movement
 - 5.2.5.2 Financial assistance expenditures
 - 5.2.5.3 Total number of housing services provided
 - 5.2.5.4 Number of participants assisted with services including but not limited to:
 - 5.2.5.4.1 Household income
 - 5.2.5.4.2 Demographics
 - 5.2.5.4.3 Type of Services utilized
 - 5.2.5.4.4 Total number of housing services provided
 - 5.2.5.4.5 Number of participants exited from Program and their disposition upon exit from the Program.

5.2.6 Provide to COUNTY, by the tenth (10th) calendar day of June a GPR end of year close out, in a format approved by COUNTY.

5.2.7 Conduct onsite inspection/monitoring to ensure minimum habitability standards are met at all facilities funded with PLHA funding, if any.

5.2.8 Conduct quality control inspection of participant records in HMIS.

5.2.9 Assist COUNTY with any Audits deemed necessary by HCD.

5.2.10 Attend COUNTY trainings and conferences that will include, but not be limited to, new HCD regulations impacting PLHA funding and documentation of procedures and dissemination of data changes to staff.

6. COUNTY RESPONSIBILITIES.

6.1 COUNTY will act as a pass-through agency for PLHA funds. Except for COUNTY's responsibility related to the PLHA Program as set forth in this MOU, City is responsible for PLHA program homeless activities per PLHA Program requirements as reasonably requested by or set by COUNTY.

7. MUTUAL RESPONSIBILITIES

7.1 COUNTY and City are mutually responsible for:

7.1.1 Participating in meetings to address service delivery issues on a quarterly basis or as requested by either Party.

8. PERFORMANCE MONITORING AND REVIEWS

8.1 City's performance shall be monitored and reviewed by COUNTY bi-annually, at the beginning of the fiscal year and middle of the year, or more frequently, as needed. City shall cooperate and assist COUNTY staff in monitoring performance. COUNTY staff will conduct case reviews as part of an on-going evaluation of City's performance.

8.2 COUNTY may use a variety of inspection methods to evaluate City's performance, including but not limited to:

8.2.1 Random sampling of program activities including a review of case files biannually, or as needed;

- 8.2.2 Activity checklists and random observations;
 - 8.2.3 Inspect output items on a periodic basis as deemed necessary;
 - 8.2.4 Monthly statistical reports;
 - 8.2.5 Complaints made by participants and/or participant questionnaires; and
 - 8.2.6 Service provider complaints or reports.
- 8.3 COUNTY may require corrective action plans when it is determined by COUNTY that services are performed unsatisfactorily during the review period. City shall remedy the performance defects within the time period specified in the corrective action plan.
- 8.4 Performance evaluation meetings will be conducted by COUNTY staff as necessary.
- 8.5 City shall cooperate with COUNTY in providing the information necessary for monitoring this MOU, and with authorized State representatives who may audit PLHA Program services.

9. BUDGET

- 9.1 The amount of PLHA Funds allocated to the City available under this MOU for a six-year term is an amount not to exceed \$509,418, which shall be used for eligible homeless services activities as described herein.

10. STATEMENT OF COSTS

- 10.1 City shall submit an invoice to COUNTY quarterly by the tenth (10th) day of the month for the costs of services rendered under this MOU for reimbursement for an amount not to exceed the allowable costs for PLHA funds used.
- 10.2 Quarters under this MOU are defined as April through June, July through September, October through December and January through March.
- 10.3 COUNTY shall process quarterly invoices by the fifteenth (15th) calendar day of the month following the end of each quarter, for the actual allowable costs incurred for staffing and supplies needed to provide the services herein.
- 10.4 City shall provide the June estimated costs by June 1st and follow up of actual cost

reconciliation due no later than July 10th.

10.5 City shall provide timely budgetary information upon request from COUNTY, for inclusion in the Annual Report, and any other required state reports and/or audits.

10.6 City shall comply with any and all state programmatic guidelines developed for the use of funds, including state subrecipient monitoring, reporting requirements, and audits.

11. FACILITIES:

11.1 It is mutually understood that City will provide services at the following facilities:

Dana Point Community Center

34052 Del Obispo

Dana Point, California, CA 92629

11.2 City may also deliver PHLA services within CITY boundaries to benefit the target population.

11.3 City and COUNTY may mutually agree in writing to add, change, modify, or delete facility location(s) as necessary to best serve the needs of COUNTY and clients to be served under this MOU.

12. NON-DISCRIMINATION

12.1 In the performance of this MOU, City agrees that it shall not engage nor employ any unlawful discriminatory practices in the admission of clients, provision of services or benefits, assignment of accommodations, treatment, evaluation, employment of personnel, or in any other respect, on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, or any other protected group, in accordance with the requirements of all applicable federal or State laws.

12.2 City shall furnish any and all information requested by COUNTY and shall permit COUNTY access, during business hours, to books, records, and accounts in order to ascertain City's compliance.

12.3 Non-Discrimination in Service Delivery

12.3.1 City shall comply with Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; the Food Stamp Act of 1977, as amended, and in particular 7 Code of Federal Regulations (CFR) section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code (CGC) Sections 11135-11139.5, as amended; CGC Section 12940 (c), (h), (i), and (j); CGC Section 4450; Title 22, California Code of Regulations (CCR) Sections 98000-98413; the Dymally-Alatorre Bilingual Services Act (CGC Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and State laws, as well as their implementing regulations (including Title 45 CFR Parts 80, 84, and 91; Title 7 CFR Part 15; and Title 28 CFR Part 42), and any other law pertaining to Equal Employment Opportunity, Affirmative Action, and Nondiscrimination, as each may now exist or be hereafter amended.

13. SUBCONTRACTS

13.1 City shall not subcontract for services under this MOU without the prior written consent of COUNTY. If COUNTY consents in writing to a subcontract, in no event shall the subcontract alter, in any way, any legal responsibility of City to COUNTY. All subcontracts must be in writing and copies of same shall be provided to COUNTY, City shall include in each subcontract any provision COUNTY may require.

13.2 Subcontracts of \$50,000 or less

City shall develop a standard form Purchase Order, subject to prior written approval of COUNTY, to be utilized for the purchase of services by City when the cumulative total cost of the services to be provided by any organization is anticipated to be fifty thousand dollars (\$50,000) or less during the term of this MOU. The basis for costs incurred by

any such Purchase Order(s) shall be the actual cost of providing services or the usual and customary charges established by the organization(s) providing the services.

13.3 Subcontracts in excess of \$50,000

City shall develop and submit for approval to COUNTY a system for the procurement of subcontracts with any organization in which the total cumulative cost of services provided by any single organization is anticipated to exceed fifty thousand dollars (\$50,000) during the term of this MOU. City's proposed procurement system shall take into consideration such factors as: degree of price competition; pricing policies and techniques; experience and quality of service; methods of evaluating subcontractor responsibility; relationship of subcontractor to City planning, award, and post-award management of subcontracts, including internal audit procedures and monitoring of subcontractor's performance until completion of services.

13.4 Upon COUNTY's approval of City's proposed procurement system, City shall comply with such procurement system in obtaining subcontracts with a total cost in excess of fifty thousand dollars (\$50,000) during the term of this MOU.

13.5 City and its subcontractor(s) shall establish and maintain accurate and complete financial records related to services provided under the terms of this MOU. Such records may be subject to the satisfaction of COUNTY, and to the examination and audit by COUNTY or designee, for a period of five (5) years or until any pending audit is completed.

14. CONFIDENTIALITY

14.1 All records and information concerning any and all persons referred to City by COUNTY or COUNTY's designee shall be considered and kept confidential by City, City's employees, agents, subcontractors, and all other individuals performing services under this MOU. City shall require all of its employees, agents, subcontractors, and all other individuals performing services under this MOU to sign an agreement with City before commencing the provision of any such services, agreeing to maintain confidentiality

pursuant to this MOU.

14.2 City shall inform all of its employees, agents, subcontractors, and all other individuals performing services under this MOU of this provision and that any person violating the provisions of said California state law may be guilty of a crime.

14.3 City agrees that any and all subcontracts entered into shall be subject to the confidentiality requirements of this MOU.

15. PUBLICITY, LITERATURE, ADVERTISEMENTS AND SOCIAL MEDIA

15.1 COUNTY owns all rights to the name, logos, and symbols of COUNTY. The use and/or reproduction of COUNTY's name, logos, or symbols for any purpose, including commercial advertisement, promotional purposes, announcements, displays, or press releases, without COUNTY's prior written consent is expressly prohibited.

15.2 City may develop and publish information related to this MOU where all of the following conditions are satisfied:

15.2.1 COUNTY provides its written approval of the content and publication of the information at least 30 days prior to City publishing the information, unless a different timeframe for approval is agreed upon by COUNTY;

15.2.2 Unless directed otherwise by COUNTY, the information includes a statement that the program, wholly or in part, is funded through County, State and Federal Government funds;

15.2.3 The information does not give the appearance that the COUNTY, its officers, employees, or agencies endorse:

15.2.3.1 any commercial product or service; and,

15.2.3.2 any product or service provided by CITY, unless approved in writing by COUNTY; and

15.2.4 If City uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) to publish information related to this MOU, City shall develop social media policies and procedures and have them available to

the COUNTY. City shall comply with COUNTY Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this MOU. The policy is available on the Internet at <http://www.ocgov.com/gov/ceo/cio/govpolicies>.

16. INDEMNIFICATION

16.1 City agrees to indemnify, defend with counsel approved in writing by COUNTY (approval not to be unreasonably withheld), and hold U.S. Department of Health and Human Services, the State, COUNTY, and their elected and appointed officials, officers, employees, agents, and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ('COUNTY INDEMNITEES') harmless from any claims, demands, or liability of any kind or nature, including, but not limited to, personal injury or property damage, arising from or related to the services, products, or other performance provided by City pursuant to this MOU. If judgment is entered against City and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, City and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

17. INSURANCE

17.1 Prior to the provision of services under this MOU, City agrees to purchase all required insurance at City's expense, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this MOU have been complied with. City agrees to keep such insurance coverage, Certificates of Insurance and endorsements on deposit with COUNTY during the entire term of this MOU. In addition, all subcontractors performing work on behalf of City pursuant to this MOU shall obtain insurance subject to the same terms and conditions as set forth herein for City. City may comply with its insurance obligations hereunder by its participation in a risk sharing

pool that provides coverage which is the equivalent of its insurance obligations.

- 17.2 City shall ensure that all subcontractors performing work on behalf of City pursuant to this MOU shall be covered under City's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for City. City shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from City under this MOU. It is the obligation of City to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by City through the entirety of this MOU for inspection by COUNTY representative(s) at any reasonable time.
- 17.3 All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of fifty thousand dollars (\$50,000), shall specifically be approved by the County of Orange Risk Manager, or designee, upon review of City's current audited financial report. If City's SIR is approved, City, in addition to, and without limitation of, any other indemnity provision(s) in the MOU, agrees to all of the following:
- 17.3.1 In addition to the duty to indemnify and hold COUNTY harmless against any and all liability, claim, demand or suit resulting from City's agents, employees or subcontractor's performance of this MOU, City shall defend COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 17.3.2 City's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 17.3.3 The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and City's SIR provisions shall be interpreted as though City was an insurer and COUNTY was the insured.

- 17.4 If City fails to maintain insurance acceptable to COUNTY for the full term of this MOU, COUNTY may terminate this MOU.
- 17.5 Qualified Insurer:
- 17.5.1 The policy or policies of insurance required herein must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).
- 17.6 If the Insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial rating.
- 17.7 The policy or policies of insurance maintained by City shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Professional Liability Insurance	\$1,000,000 per claims made \$1,000,000 aggregate

17.8 Required Coverage Forms

- 17.8.1 Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01 or a substitute form providing liability coverage at least as broad.
- 17.8.2 Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00

05, CA 0012, CA 00 20 or a substitute form providing coverage at least as broad.

17.9 Required Endorsements

17.9.1 Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

17.9.1.1 An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad, naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insured or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

17.9.1.2 A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad, evidencing that City's insurance is primary, and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

17.9.2 The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance.

17.9.2.1 An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insured for its vicarious liability.

17.9.2.2 A primary and non-contributing endorsement evidencing that the City's insurance is primary, and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

17.10 The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

17.11 All insurance policies required by this MOU shall waive all rights of subrogation against

the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

- 17.12 City shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the contract, upon which the COUNTY may suspend or terminate this MOU.
- 17.13 If City's Professional Liability and/or Network Security and Privacy Liability policies are a "claims made" policy, City shall agree to maintain coverage for two (2) years following completion of this MOU.
- 17.14 The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insured" clause (standard in the ISO CG 0001 policy).
- 17.15 Insurance certificates should be mailed to COUNTY at the address indicated in Paragraph 22 of this MOU.
- 17.16 Failure of City to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/County Procurement Office or COUNTY, will result in a breach of this MOU.
- 17.17 COUNTY expressly retains the right to require City to increase or decrease insurance of any of the above insurance types throughout the term of this MOU. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.
- 17.18 COUNTY shall notify City in writing of changes in the insurance requirements. If City does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this MOU may be in breach without further notice to City, and COUNTY shall be entitled to all legal remedies.
- 17.19 The procuring of such required policy or policies of insurance shall not be construed to limit City's liability hereunder nor to fulfill the indemnification provisions and

requirements of this MOU, nor act in any way to reduce the policy coverage and limits available from the insurer.

18. SECURITY

18.1 Security Requirements

18.1.1 CITY agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exists or exists at any time during the term of this MOU. City represents and warrants that it has implemented and will maintain during the term of this MOU administrative, physical, and technical safeguards to reasonably protect private and confidential client information, to protect against anticipated threats to the security or integrity of COUNTY data, and to protect against unauthorized physical or electronic access to or use of COUNTY data. Such safeguards and controls shall include at a minimum:

18.1.1.1 Storage of confidential paper files that ensures records are secured, handled, transported, and destroyed in a manner that prevents unauthorized access.

18.1.1.2 Control of access to physical and electronic records to ensure COUNTY data is accessed only by individuals with a need to know for the delivery of MOU services.

18.1.1.3 Control to prevent unauthorized access and to prevent City employees from providing COUNTY data to unauthorized individuals.

18.1.1.4 Firewall protection.

18.1.1.5 Use of encryption methods of electronic COUNTY data while in transit from CITY networks to external networks, when applicable.

18.1.1.6 Measures to securely store all COUNTY data, including, but not be limited to, encryption at rest and multiple levels of authentication

and measures to ensure COUNTY data shall not be altered or corrupted without COUNTY's prior written consent. City further represents and warrants that it has implemented and will maintain during the term of this MOU administrative, technical, and physical safeguards and controls consistent with State and federal security requirements.

18.2 Security Breach Notification

18.2.1 City shall have policies and procedures in place for the effective management of Security Breaches, as defined below. In the event of any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance City experiences or learns of that either compromises or could reasonably be expected to comprise COUNTY data through unauthorized use, disclosure, or acquisition of COUNTY data ("Security Breach"), City shall immediately notify COUNTY of its discovery. After such notification, City shall, at its own expense, immediately:

18.2.1.1 Investigate to determine the nature and extent of the Security Breach.

18.2.1.2 Contain the incident by taking necessary action, including, but not limited to, attempting to recover records, revoking access, and/or correcting weaknesses in security.

18.2.1.3 Report to COUNTY the nature of the Security Breach, the COUNTY data used or disclosed, the person who made the unauthorized use or received the unauthorized disclosure, what City has done or will do to mitigate any harmful effect of the unauthorized use or disclosure, and the corrective action City has taken or will take to prevent future similar unauthorized use or disclosure.

18.2.2 The COUNTY, at its sole discretion and on a case-by-case basis, will determine

what actions are necessary in response to the Security Breach and who will perform these actions. Actions may include, but are not limited to: notifications; investigation and remediation costs, including notification of all whose personal information was disclosed; outside investigation; forensics; counsel; crisis management; and credit monitoring. In the event COUNTY determines City will conduct additional action(s), City shall bear the costs. In the event COUNTY conducts additional actions(s) arising out of or in connection with a Security Breach, City shall reimburse COUNTY for costs associated to legally required actions.

19. NOTIFICATION OF INCIDENTS, CLAIMS, OR SUITS

City shall report to COUNTY, in writing within twenty-four (24) hours of occurrence, the following:

- 19.1 Any accident or incident relating to services performed under this MOU that involves injury or property damage which City determines is likely to result in the filing of a claim or lawsuit against City and/or COUNTY.
- 19.2 Any third-party claim or lawsuit filed against City arising from or relating to services performed by City under this MOU. The COUNTY has no obligation or responsibility for any claims or lawsuit filed against the City arising from or related to services performed by City under this MOU, other than as expressly set forth herein.
- 19.3 Any injury to an employee of City providing services hereunder that occurs on COUNTY property.
- 19.4 Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of COUNTY property, monies, or securities entrusted to City under the term of this MOU.

20. RECORDS

20.1 Client Records

- 20.1.1 City shall prepare and maintain accurate and complete records of clients served and dates and type of services provided under the terms of this MOU in a form

acceptable to COUNTY.

20.1.2 City shall keep all COUNTY data provided to City during the term(s) of this for a minimum of five (5) years from the date of final payment under this MOU or until all pending COUNTY, State, and federal audits are completed, whichever is later. These records shall be stored in Orange County, unless City requests and COUNTY provides written approval for the right to store the records in another county. Notwithstanding anything to the contrary, upon termination of this MOU, City shall relinquish control with respect to COUNTY data to COUNTY.

20.2 Public Records

To the extent permissible or required under the law, all records, including, but not limited to, reports, audits, notices, claims, statements, and correspondence, required by this MOU may be subject to public disclosure.

21. PERSONNEL DISCLOSURE

21.1 This Paragraph 21 applies to all of City's personnel providing services through this MOU, paid and unpaid (herein referred to as "Personnel").

21.2 City shall make available to COUNTY a current list of all Personnel providing services hereunder, including résumés and job applications. Changes to the list will be immediately provided to COUNTY in writing, along with a copy of a résumé and/or job application. The list shall include:

21.2.1 Names and dates of birth of all Personnel by title, whose direct services are required to provide the programs described herein;

21.2.2 A brief description of the functions of each position and the hours each person works each week, or for part-time Personnel, each day or month, as appropriate;

21.2.3 The professional degree, if applicable, and experience required for each position; and

- 21.2.4 The language skill, if applicable, for all Personnel.
- 21.3 Where authorized by law, and in a manner consistent with California Government Code §12952, City shall require prospective Personnel to provide detailed information regarding the conviction of a crime, by any court, for offenses other than minor traffic offenses. Information discovered subsequent to the hiring or promotion of any prospective Personnel shall be cause for termination from the performance of services under this MOU.
- 21.4 Where authorized by law, City shall conduct, at no cost to COUNTY, a criminal record background check on all Personnel who will have direct, interactive contact with clients served through this MOU. Background checks conducted through the California Department of Justice shall include a check of the California Central Child Abuse Index, when applicable. Candidates will satisfy background checks consistent with this Paragraph and their performance of services under this MOU.
- 21.5 City shall ensure that clearances and background checks described in Subparagraphs 21.3 and 21.4 are completed prior to City's Personnel providing services under this MOU.
- 21.6 In the event a record is revealed through the processes described in Subparagraphs 21.1 and 21.2, COUNTY will be available to consult with City on appropriateness of Personnel providing services through this MOU.
- 21.7 City warrants that all Personnel assigned by City to provide services under this MOU have satisfactory past work records and/or reference checks indicating their ability to perform the required duties and accept the kind of responsibility anticipated under this MOU. City shall maintain records of background investigations and reference checks undertaken and coordinated by City for Personnel assigned to provide services under this MOU, for a minimum of five (5) years from the date of final payment under this MOU, or until all pending COUNTY, State, and federal audits are completed, whichever is later, in compliance with all applicable laws.

21.8 City shall immediately notify COUNTY concerning the arrest and/or subsequent conviction, for offenses, other than minor traffic offenses, of any Personnel performing services under this MOU, when such information becomes known to City. COUNTY, in its sole discretion, may determine whether such Personnel may continue to provide services under this MOU and shall provide notice of such determination to City in writing. City's failure to comply with COUNTY's decision shall be deemed a material breach of this MOU.

21.9 City shall notify COUNTY immediately when Personnel is terminated for cause from working on this MOU.

21.10 Disqualification, if any, of City Personnel, pursuant to this Paragraph 21, shall not relieve City of its obligation to complete all work in accordance with the terms and conditions of this MOU.

22. NOTICES

All notices, requests, claims correspondence, reports, statements authorized or required by this MOU, and/or other communications shall be addressed as follows:

COUNTY: County of Orange

County Procurement Office

400 West Civic Center Drive

5th Floor

Santa Ana, CA 92701

CITY: City of Dana Point

Attn: Homeless Outreach

33282 Golden Lantern, Suite 203

Dana Point. CA 92629

All notices shall be deemed effective when in writing and deposited in the United States mail, first class, postage prepaid and addressed as above. Any communications, including notices, requests, claims, correspondence, reports, and/or statements authorized or required by this

MOU, addressed in any other fashion shall be deemed not given. The Parties each may designate by written notice from time to time, in the manner aforesaid, any change in the address to which notices must be sent.

23. CONFLICT OF INTEREST

City shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to City; the City's employees, agents, and subcontractors associated with accomplishing work and services hereunder. City's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence COUNTY staff or elected officers from acting in the best interests of the COUNTY.

24. POLITICAL ACTIVITY

City agrees that the funds provided herein will not be used to promote, directly or indirectly, any political party, political candidate, or political activity, except as permitted by law.

25. TERMINATION

25.1 Either Party may terminate this MOU without penalty, immediately with cause or after thirty (30) calendar days' written notice without cause, unless otherwise specified. Notice shall be deemed served on the date of mailing. Cause shall include, but not limited to, any breach of this MOU, any partial misrepresentation whether negligent or willful, fraud on the part of City, discontinuance of the services for reasons within City's reasonable control, and repeated or continued violations of County ordinances unrelated to performance under this MOU that, in the reasonable opinion of COUNTY, indicate a willful or reckless disregard for County laws and regulations. Exercise by COUNTY of the right to terminate this MOU shall relieve COUNTY of all further obligations under this MOU.

25.2 For ninety (90) calendar days prior to the expiration date of this MOU, or upon notice of termination of this MOU ("Transition Period"), City agrees to cooperate with COUNTY

in the orderly transfer of service responsibilities, case records, and pertinent documents. The Transition Period may be modified as agreed upon in writing by the Parties. During the Transition Period, services and data access shall continue to be made available to COUNTY without alteration. City also shall assist COUNTY in extracting and/or transitioning all data in the format determined by COUNTY.

25.3 In the event of termination of this MOU, cessation of business by City, or any other event preventing City from continuing to provide services, City shall not withhold the COUNTY data or refuse for any reason, to promptly provide to COUNTY the COUNTY data if requested to do so on such media as reasonably requested by COUNTY, even if COUNTY is then or is alleged to be in breach of this MOU.

25.4 The obligations under this MOU utilize COUNTY resources, for which funding, or portions of funding, may be contingent upon the State and/or federal budget; receipt of funds from and/or obligation of funds by the State and/or Federal Government; and inclusion of sufficient funding for the services hereunder in the budget approved by the COUNTY's Board of Supervisors for each fiscal year covered by this MOU. If such approval, funding, or appropriations are not forthcoming, or are otherwise limited, COUNTY may terminate, reduce, or modify this MOU without penalty.

25.5 If any term, covenant, condition, or provision of this MOU or the application thereof is held invalid, void, or unenforceable, the remainder of the provisions in this MOU shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

26. SIGNATURE IN COUNTERPARTS

The Parties agree that separate copies of this MOU may be signed by each of the Parties, and this MOU will have the same force and effect as if the original had been signed by all Parties. City represents and warrants that the person executing this MOU on behalf of and for City is an authorized agent who has actual authority to bind City to each and every term, condition and

obligation of this MOU and that all requirements of City have been fulfilled to provide such actual authority.

27. GENERAL PROVISIONS

27.1 Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and any participant participating in this program, or any of City's agents or employees.

27.2 This MOU represents the entire understanding of the Parties with respect to the subject matter. No change, modification, extension, termination or waiver of this MOU, or any of the understandings herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the Parties hereto.

27.3 This MOU 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 MOU, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do 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.

27.4 City warrants that it and its Personnel, described in Paragraph 21 of this MOU, who are subject to individual registration and/or licensing requirements, have all necessary licenses and permits required by the laws of the United States, State of California, County of Orange, and all other appropriate governmental agencies to perform the services described in this MOU, and agrees to maintain, and require its Personnel to maintain, these licenses and permits in effect for the duration of this MOU. City must notify COUNTY within one (1) business day of any change in license or permit status (e.g., becoming expired, inactive, etc.).

27.5 In the performance of this MOU, City and COUNTY shall comply with all applicable laws and regulations of the United States, State of California, County of Orange, and all

administrative regulations, rules, and policies adopted thereunder, as each and all may now exist or be hereafter amended.

27.6 In the performance of this MOU, City may neither delegate its duties or obligations nor assign its rights, either in whole or in part, without the prior written consent of COUNTY. Any attempted delegation or assignment without prior written consent shall be void.

27.7 The various headings, numbers, and organization herein are for the purpose of convenience only and shall not limit or otherwise affect the meaning of this MOU.

WHEREFORE, the Parties hereto have executed the Memoranda of Understanding in the County of Orange, California.

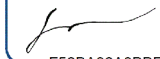
By: _____

Douglas Becht

Office of Care Coordination, Director

County of Orange, County Executive Office

Dated: _____

DocuSigned by:

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By: _____

Michael Killebrew

City Manager


City of Dana Point

Dated: 8/15/2022

Approved As To Form

Counsel

County of Orange, California

DocuSigned by:

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By: _____

Deputy

Dated: 8/15/2022