MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") dated as of the _____ day of ________________, 2019 is between the City of Buena Park, a municipal corporation; the City of Placentia, a municipal corporation; (the aforementioned cities are sometimes referred herein individually as "City" and collectively as "Cities"; references to "Cities" shall include both Cities and each individual City); and County of Orange, a political subdivision of the State of California ("County"). The Cities and County are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

A. The Cities and County have been working cooperatively to assist and address issues related to homeless individuals and individuals at risk of homelessness. To that end, the City of Buena Park has selected a homeless shelter site ("Buena Park Site"), identified in Exhibit "1" attached herein and incorporated by reference, to assist with the temporary housing of homeless individuals and individuals at risk of homelessness. The City of Placentia is in the process of selecting a homeless shelter site ("Placentia Site"), identified in Exhibit "1" attached herein and incorporated by reference, to assist with the temporary housing of homeless individuals and individuals at risk of homelessness individuals. The Buena Park Site and the Placentia Site, individually are referred to as "Site", and collectively will be referred to in this Memorandum as "Sites."

B. The Parties believe that in order to address the issues related to homelessness, it is important that each Party express its commitment to the operation of their respective Site as identified in Exhibit "1" attached hereto and incorporated herein by reference. As such, the County wishes to provide funding to the Cities to support their operation of their Sites in connection with providing for the social needs of the County population including, but not limited to, the areas of health, public safety, welfare and the needs of physically, mentally, and financially handicapped persons and aged persons.

C. In furtherance of this commitment, the County has agreed to provide up to Six Hundred Thousand dollars ($600,000) to each City per year ("Funds") for a maximum of 10 years to support the Cities with their operation of the Sites. The Funds will be distributed by the County to each City per the requirements set forth in this Memorandum.

D. The Cities have agreed to operate their respective Site as an emergency homeless shelter for a minimum of 10 years from the Effective Date of this Memorandum as defined below. The Cities have agreed to operate the Sites pursuant to the requirements set forth herein.

E. The purpose of this Memorandum is to provide the basic understanding between the Parties with respect to the Funds and to set forth basic provisions that the Parties contemplate, including minimum requirements regarding the operation of the Sites by the Cities.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises herein contained, the Parties hereto agree as follows:
EXHIBITS

This Memorandum is comprised of this document and the following exhibits, which are attached hereto and incorporated by reference into this Memorandum:

Exhibit 1 – List of Sites
Exhibit 2 – Drug Free Workplace Certification

I. Term, Termination, and Recapture:

A. Term: This Memorandum shall be effective as of the date the last of the Parties has executed the same, or the date on which the County Board of Supervisors’ approves the Memorandum, whichever occurs later (“Effective Date”). This Memorandum shall remain in full force and effect for 10 years (“Term”) subsequent to the Effective Date, unless terminated pursuant to the provisions of paragraphs B and C below.

B. Termination: In addition to any other remedies or rights it may have by law, the County has the right to immediately terminate this Memorandum with either or both Cities, without penalty for cause or after 30 days’ written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of any provision of this Memorandum by either of the Cities, or any misrepresentation or fraud on the part of either of the Cities. The County may exercise its right to terminate the Memorandum, for cause or without cause, without liability, fee, cost, expense, penalty, or charge of any kind and the County’s termination of the Memorandum shall relieve the County of all further obligations. If the County exercises its right to terminate this Memorandum, for cause or without cause, with only one of the Cities, all requirements set forth in this Memorandum shall remain in full force and effect between the County and the non-terminated City. County reserves the right to terminate this Memorandum as to both Cities pursuant to this provision.

C. Recapture of Funds: If this Memorandum is terminated, the terminated City shall return to the County one-twelfth (1/12) of Six Hundred Thousand dollars received by the terminated City for each month remaining in the County’s fiscal year the Funds were intended for, from the date of termination or the date of default, if any, for County to choose at its sole discretion. If the City fails to operate their Site as required under this Memorandum, materially breaches any provision of this Memorandum, or fails to comply with requirements set forth in this Memorandum (“Defaulting City”), the Defaulting City shall return to the County one-twelfth (1/12) of Six Hundred Thousand dollars received by the Defaulting City for each month remaining in the County’s fiscal year Funds were intended for, from the date (1) that the Defaulting City failed to operate its respective Site as required under this Memorandum, (2) that the Defaulting City failed to comply with requirements set forth in this Memorandum, or (3) of the termination letter if any, to be chosen by the County at its sole discretion. Upon receipt of a notice of termination or demand to recapture Funds, the City or Cities have 60 days to return all or portions of the Funds identified in this section to the County. All references to the fiscal year in this memorandum shall be the County’s fiscal year starting July 1 of each year and ending June 30 of the next year.
II. CITY’S RESPONSIBILITIES:

A. At least ninety (90) days prior to the initial opening of the Sites to operate as an emergency homeless shelter, each City must provide the County a notice in writing (“Notice of Start Date”) which states the estimated operation start date of each City’s Site.

B. The Cities shall operate the Sites as low barrier year-round emergency homeless shelters for ten years from the Effective Date of this Memorandum. In the event that any of the Cities procure an operator to operate the Sites, the Cities shall provide the County with the name of the operator and the Cities must procure the operator, pursuant to requirements as set forth in the applicable local, state and federal statutes and regulations including but not limited to requirements set forth pursuant to and related to the source of the Funds identified by the County. The County may modify or change the source of Funds at any time with 30 days prior notice to the Cities and will communicate the source of the Funds and identify any changes that may be required of the Cities regarding the operation of the Sites to comply with the new funding source. The Cities shall comply with all applicable local, state and federal statutes and regulations, and other requirements related to the source of the Funds within 30 days after the County identifies the source of the Funds or any change or modification to the source of the Funds and shall continue the compliance throughout the term of this Memorandum.

C. The Cities warrant, represent, and covenant that the Funds must be used for the operation of the Sites and cannot be used for costs associated with activities in violation of any law or for any activity inconsistent with the requirements and purposes set forth in this Memorandum. The Cities hereby warrant, represent, and covenant that the Cities must comply with all applicable local, state or federal guidelines, regulations, requirements and statutes and/or as required under the laws or regulations relating to the source of the Funds to be transferred by the County to the Cities pursuant to this Memorandum.

D. In operating the Sites, the Cities shall be responsible for acquiring and complying with all necessary land use approvals, permits and licenses required for the acquisition, renovation, and/or operation of the Sites. The Cities shall provide the County with the copies of all approvals, permits and licenses within 30 days of a written request by the County.

E. The Cities must coordinate with County agencies engaged with individuals experiencing homelessness and individuals at risk of homelessness, including, but not limited to, Health Care Agency, Orange County Sheriff-Coroner Department, Social Services Agency, and OC Community Resources, and shall also engage local agencies, social services programs and volunteers to assist with the shelter program.

F. The Cities must maintain records related to the operation and finance of the Sites for five (5) years and agree to provide the records to the County within 30 days of the County’s request.

III. COUNTY’S RESPONSIBILITY:
A. **First Payment**: Pursuant to requirements set forth in Section II, Subsection A of this Memorandum, each City is required to submit to the County a Notice of Start Date and provide the County with the estimated operation start date. Provided that the City submitting the Notice Of Start Date is otherwise in full compliance with the requirements of this Memorandum, within 30 days after the receipt of each Notice of Start Date from the City, the County will provide that City with one-twelfth (1/12) of Six Hundred Thousand dollars, for each month remaining in the fiscal year from the date of the estimated operation start date provided by the City in their Notice of Start Date (the “First Payment”).

B. **Subsequent Payments**: Subsequent to the First Payment, and on an annual basis, and prior to the start of each County’s fiscal year during the Term of this Memorandum, the County will provide, subject to paragraphs C. and D. below, each City that remains in full compliance with the requirements of this Memorandum, with one annual payment of Six Hundred Thousand dollars. Cities acknowledge and understand that they shall remain in full compliance throughout the Term of this Memorandum.

C. Parties hereby acknowledge that the County may provide the Funds solely pursuant to the requirements set forth in this Memorandum to the Cities.

D. Parties acknowledge and agree that County is only obligated to provide the Funds each year, subsequent to, and contingent upon, annual approval of the County’s budget by the Orange County Board of Supervisors. Cities acknowledge and agree that funding or portions of funding for this Memorandum may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by the state of California or Federal Government to the County; and/or inclusion of sufficient funding for this Memorandum in the budget approved by County’s Board of Supervisors for each fiscal year covered by this Memorandum. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Memorandum without any liability, fee, cost, expense, penalty, or charge of any kind.

E. Each of the Cities will be in material breach of this Memorandum, if prior to transfer of any portion of the Funds – First Payment or Subsequent Payments – or throughout the Term of this Memorandum, any of the Cities, among other things: (1) cease to operate their respective Site as an emergency homeless shelter; (2) refuse to accept or refuse to allow the County to place homeless individuals and individuals at risk of homelessness individuals found in the County’s unincorporated areas within the North Service Planning Area at their Site when adequate space is available at the Site; or (3) fail to comply with any of the requirements set forth in this Memorandum. If any of the Cities materially breach this Memorandum, the Defaulting City shall return all or a prorated amount of Funds received by the Defaulting City, pursuant to Termination and Recapture provisions of this Memorandum.

F. The obligations and participation of the County under this Memorandum shall be limited solely to the discretionary issuance of the Funds to the Cities in accordance with the requirements of this Memorandum or the terms/legal requirements of the source of the Funds. The Parties agree the County’s (inclusive of the County’s affiliates, subcontractors, employees, officers, directors, elected and appointed officials, and those special districts and agencies which
County’s Board of Supervisors acts as the governing Board) liability arising under or related to the Sites and this Memorandum is limited and disclaimed in full and/or to the maximum extent allowed by law, whichever is more limiting. In no event shall the County (inclusive of the County’s affiliates, subcontractors, employees, officers, directors, elected and appointed officials, and those special districts and agencies which County’s Board of Supervisors acts as the governing Board) be liable or responsible for any type of claim, damage (including but not limited to exemplary, punitive, indirect incidental, and consequential damages), or liability regardless of the form of the action or the theory of recovery, whether in contract or in tort or otherwise, except in circumstances related to claims, damage, or liability arising from the conduct of homeless individuals and individuals at risk of homelessness found in the County’s unincorporated areas within the North Service Planning Area and placed at the Site, or the actions or failure to act by County or County affiliates, subcontractors, or employees.

IV. MISCELLANEOUS

A. The City of Buena Park agrees to indemnify, defend with counsel approved in writing by the County, and hold the County, its 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 Indemnites”) harmless from any claims, demands, liability of any kind or nature, including but not limited to personal injury or property damage, misuse of Funds, anything arising from or related to the services, capital improvements/renovations, and operation of the Sites, or other performance provided by the Cities, its agents, affiliates, contractors and subcontractors pursuant to this Memorandum. If judgment is entered against the City of Buena Park and the County by a court of competent jurisdiction because of the concurrent active negligence of the County or the County Indemnites, the City of Buena Park and the County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

B. The City of Placentia agrees to indemnify, defend with counsel approved in writing by the County, and hold the County, its 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 Indemnites”) harmless from any claims, demands, liability of any kind or nature, including but not limited to personal injury or property damage, misuse of Funds, anything arising from or related to the services, capital improvements/renovations, and operation of the Sites, or other performance provided by the Cities, its agents, affiliates, contractors and subcontractors pursuant to this Memorandum. If judgment is entered against the City of Placentia and the County by a court of competent jurisdiction because of the concurrent active or passive negligence of the County or the County Indemnites, the City of Placentia and the County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

C. Cities shall have no right to assign this Memorandum without the express written approval of the County. This Memorandum shall be binding upon and inure to the benefit of the Parties and their permitted successors, assigns and legal representatives.

D. This Memorandum (including for the purpose of clarity, the recitals, to this Memorandum) and the exhibits (which are specifically incorporated by referenced herein), collectively contain the entire agreement between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or
referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental agreements or contracts by any County employee or agents, shall not be valid or binding on County unless accepted in writing by County Executive Officer or his designee.

E. No alteration or variation of the terms of this Memorandum shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on any of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

F. The Cities warrant, represent, and covenant that performance required of the Cities individually and collectively under this Memorandum shall fully comply, at each of the City’s expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to each of the City’s performance at the time of the said performance. The Cities acknowledge that the County is relying on the Cities to ensure such compliance, and pursuant to the requirements of paragraphs A and B of Section IV above, each City agrees that it shall defend, indemnify and hold the County and the County Indemnities harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

G. The Cities hereby certify compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace as set forth in Exhibit 2, attached hereto and incorporated herein by reference.

H. In the event the Cities either individually, or collectively default in the performance of any of their obligations under this Memorandum or materially breach any of the provisions of this Memorandum, the County may enforce this Memorandum through specific performance or may exercise any other available remedies.

I. Notices or other communications, which may be required or provided under the terms of this Memorandum, shall be given as follows:

Cities: City of Placentia
        401 E. Chapman Ave.
        Placentia, CA
        Attention:

        City of Buena Park
        6650 Beach Blvd.
        Buena Park, CA
        Attention:

County: County of Orange/County Executive Office
        333 W. Santa Ana Blvd., 3rd Floor
        Santa Ana, CA 92701
Attention: Frank Kim, CEO

All notices shall be in writing and deemed effective when delivered in person or deposited in the United States mail, first class, postage prepaid and addressed as above. Notwithstanding the above, the Parties may also provide notices by facsimile transmittal, and any such notice so given shall be deemed to have been given upon receipt during normal business hours or, in the event of receipt after business, on the following business day. Any notices, correspondence, reports and/or statements authorized or required by this Memorandum, addressed in any other fashion shall be deemed not given.

J. In any action or proceeding to enforce or interpret any provision of this Memorandum, or where any provision hereof is validly asserted as a defense, the Parties shall bear their own attorney’s fees, costs and expenses.

K. Each Party warrants, represents, and covenants that the execution, delivery and performance of this Memorandum have been duly authorized by all necessary action of such Party’s governing board, and the person executing this Memorandum on behalf of such Party has been duly authorized and empowered to do so on behalf of such Party.

L. The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Memorandum.

M. Any Party shall be excused from performing its obligations under this Memorandum during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to any incidence of fire or flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material wrongful act or omission by the other Party; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

N. Each Party agrees that the insurance held by the other, whether commercial or self-insurance, is sufficient for the purpose of this Memorandum. The Cities acknowledge and agree that in its performance under this Memorandum, and operation of the Sites, it shall require all of its contractors and subcontractors to carry adequate insurance as specified in any and all applicable local, state and federal laws, and regulations depending the source of the Funds.

O. The Cities warrant, represent, and covenant that they have not, and will not, engage in any activities that would create a conflict of interest between Cities (or any of their employees, agents, or subcontractors) and the best interests of the County. Cities 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 the Cities; the Cities employees, agents, and subcontractors associated with this Memorandum. The Cities 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.
P. The Cities shall remain independent from the County and neither the Cities, their employees, nor anyone working under the Cities shall be considered an agent or an employee of County. Neither the Cities, their employees nor anyone working under the Cities shall qualify for workers’ compensation or other fringe benefits of any kind through the County.

Q. This Memorandum may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute the same agreement.

R. Authority and Signatures: The individuals signing this Memorandum, and its exhibits, which are incorporated herein by reference, have the authority to commit the Party they represent to the terms of this Memorandum, and do so commit by signing.

CITY OF PLACENTIA, CALIFORNIA

By: ________________________________
[ Insert Name]
City Manager

CITY OF BUENA PARK, CALIFORNIA

By: ________________________________
[ Insert Name]
City Manager

COUNTY OF ORANGE

By: ________________________________
Frank Kim
Chief Executive Officer

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ATTACHMENT 1
Exhibit “1”

Below is the list of the Sites that are subject of this Memorandum:
(1). Buena Park Emergency Shelter - 6490 Caballero Boulevard, Buena Park CA 90620
(2). City of Placentia Emergency Shelter - 731 S. Melrose Street, Placentia CA 92870

Should the location of any of these Sites changes, the Cities agrees that they will provide written notice to the County at minimum 60 days prior to change of location. The Cities further agree and acknowledge that each City must operate at least one emergency homeless shelter during the Term of this Memorandum.
Exhibit “2”
Drug Free Workplace Certification
Certification for  
a Drug-Free Workplace

City of Placentia

Applicant Name

Homeless Emergency Aid Program – Agreement # 18-23-0058-HEAP  
Program/Activity Receiving Federal Grant Funding

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

1. I certify that the above named Applicant will or will continue to provide a drug-free workplace by:
   a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant’s workplace and specifying the actions that will be taken against employees for violation of such prohibition.
   b. Establishing an on-going drug-free awareness program to inform employees —
      1) The dangers of drug abuse in the workplace;
      2) The Applicant’s policy of maintaining a drug-free workplace;
      3) Any available drug counseling, rehabilitation, and employee assistance programs; and
      4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
   c. Making it a requirement that each employee be engaged in the performance of the grant be given a copy of the statement required by paragraph a;
   d. Notifying the employee in the statement required by paragraph a, that, as a condition of employment under the grant, the employee will —
      1) Abide by the terms of the statement; and
      2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
      c. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction, Employees of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
   e. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted —
      1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
      2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
   f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above. Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.

Check here ☑ if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompanying herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties.

Name of Authorized Official

[Signature]

Title

[Signature]

Date

form HUD-50070 (2/98)
ref. Handbooks 7417.1, 7475.13, 7485.1 & 3

Exhibit 2