

**CITY OF COSTA MESA
AGREEMENT
WITH
MERCY HOUSE LIVING CENTERS
FOR THE USE OF EMERGENCY SOLUTIONS GRANT
MATCHING FUNDS**

GENERAL PROVISIONS

THIS AGREEMENT ("Agreement") is made and entered into this 1st day of January, 2017 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and Mercy House Living Centers, a California nonprofit organization ("Mercy House").

RECITALS:

- A. WHEREAS, On September 27, 2016, Mercy House Living Centers (Mercy House) was notified by the County of Orange – OC Community Resources Department that it had been awarded an Emergency Solutions Program Grant ("ESG") in the amount of \$97,000. This award is specifically for continued Rapid Re-Housing efforts in Costa Mesa. This grant was made pursuant to Subtitle B of Title IV of the Stewart B. McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11371-11387, as amended, and the Rules and Regulations promulgated by Department of Housing and Urban Development ("HUD") governing the conduct of ESG programs, found at Title 24 of the Code of Federal Regulations ("CFR") Part 576, as amended by Interim Rule 76 FR 75954 and 7595524 (collectively, the "Rules and Regulations").
- B. In a letter to the Executive Director of Mercy House dated August 8, 2016, the City Manager agreed to provide the required matching contribution in furtherance of Rapid Re-Housing efforts in our community. The match has to be an amount equal to or greater than the grant, and as such, the City ultimately agreed to provide a \$45,000 cash match from the Costa Mesa Housing Authority's (as housing successor) Low to Moderate Income Housing Asset Fund ("Cash Match") and \$19,500 in CDBG funds; \$11,800 in Costa Mesa Outreach funds from the Costa Mesa Housing Authority and \$20,700 in Costa Mesa Outreach in-kind services (collectively, "Matching Contributions");
- C. On June 6, 2016, the City Council approved the allocation of Cash Match contribution of \$45,000 as a portion of the FY2016-2017 Housing Authority Budget.
- D. As provided in the Rules and Regulations, 24 C.F.R. § 576.201, the City is authorized to provide matching funds to Mercy House;
- E. The use of the Matching Contributions is subject to the terms of this Agreement; provided, however, that because all but the Cash Match contributions have been provided pursuant to other agreements between the City and Mercy House, this Agreement shall provide for the disbursement of no more than \$45,000 from the Costa Mesa Housing Authority's Low to Moderate Income Housing Asset Fund.

THEREFORE, in consideration of the mutual promises, payments and other provisions hereof, the City and Mercy House agree as follows:

1. **Content of this Agreement.** This Agreement consists of this Part "General Provisions", and the following listed exhibits:

Exhibit A – Scope of Work

Exhibit B – Costa Mesa Homeless Resident Definition

Exhibit C – Budget

Exhibit D – Disbursement Schedule

Exhibit E – Insurance

Exhibit F – Council Policy

Exhibit G – Sample Invoice

Exhibit H – Sample Progress Report

2. **Project Responsibility.** The City Manager's Office ("City Manager") is hereby designated as the representative of the City regarding the use of the Emergency Solutions Matching funds and shall be responsible for the overall administration and management of the project and the manner in which the activities or projects described herein are conducted. The City will monitor the performance of Mercy House against goals and performance standards required in Exhibit A - Scope of Work. Substandard performance as determined by the City will constitute non-compliance with the Agreement. If, within a reasonable period of time after being notified by the City, Mercy House does not take action to correct such substandard performance, City may initiate termination or suspension of the Agreement, which may result in withdrawal or termination of funding, as set forth in Paragraphs 14 and 15 respectively.

3. **Project(s) or Activities.** The activities or projects to be conducted hereunder are generally described as follows and referred to hereinafter as the "Project":

To place fifteen (15) homeless households into permanent housing using Emergency Solutions Grant (ESG) funds and Matching Contributions, and to provide outreach, housing search and placement services and supportive services necessary to help client's transition from homelessness to housing and increase their ability to maintain housing once assistance has ended.

4. **Scope of Work.** Mercy House shall perform or cause to be performed all work required for the Project described generally in Paragraph 3 above and, in that performance, shall be responsible for conducting all personnel staffing and contracting, providing all services, and furnishing all related real and personal property required. The Project shall be performed in a manner satisfactory to the City Manager and in accordance with the provisions of this Agreement. The more detailed statement of work contained in Exhibit A is not intended to limit the scope of that work.

5. **Project Budget.**

- A. A budget must be prepared for the Projects listed in Paragraph 3 above and submitted to the City Manager for review and approval prior to the execution of this agreement. Budget(s) shall be prepared in a format acceptable to the City Manager and, in general, shall list the major cost elements of the Project and show the estimated cost of each of those elements equaling in sum total the fixed total

project cost to be paid or reimbursed to Mercy House for that Project, as provided in Paragraph 3 above.

- B. All changes within the budget(s) shall be reported in a timely manner for acceptance and approval by the City Manager. All proposed changes in the total amount of any of the budget(s) under this agreement, which would increase or decrease the total amount of funding specified in Paragraph 8.A. below or result in a change in the scope, location or beneficiaries of the Project shall be submitted to the City Manager for prior approval and must be formally authorized by a written amendment to this Agreement in accordance with the provisions of Paragraph 10 below.

6. Period of Performance.

- A. The period of performance of this Agreement shall be 18 months, which period shall begin on December 22, 2016 and end on June 30, 2018. In the event the date on which this Agreement is fully signed is more recent than the above beginning date, then this Agreement shall be considered to be retroactive and to have taken effect on the above beginning date. All costs which are incurred on any of the Project(s) by Mercy House after the effective date of this Agreement and which have been determined by the City Manager to be appropriate and allowable costs of the Project(s) shall be eligible for reimbursement and payment hereunder.
- B. All performance of this Agreement shall be undertaken and completed by Mercy House in an expeditious manner and shall not extend beyond the end of the Period of Performance specified above unless this Agreement is amended authorizing an extension of that period. All amendments of this Agreement, including extensions of time and termination, shall be accomplished in writing and in accordance with all requirements of Paragraph 10.
- C. All adjustments to extensions of time proposed for the performance of this Agreement shall be requested in writing by Mercy House and be submitted to the City Manager for processing. Upon approval by the City Mayor or designee, the City Manager shall add a signed, written endorsement to Mercy House's letter of request granting the adjustment or extension and that letter shall thereupon be appended hereto and shall be numbered and identified as a duly authorized written amendment of this Agreement.

- 7. Matching Funds.** The City shall provide the Matching Funds provided for in this Agreement as set forth in 24 C.F.R. § 576.201, provided that Mercy House ensures the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match ESG funds and the matching contributions must meet all requirements that apply to the ESG funds provided by HUD and/or the California Department of Housing and Community Development, except for the expenditure limits in § 576.100. The use of the Matching Funds shall be subject to review and approval by the City. In the event City determines that Mercy House's use of the Match Funds are not in compliance with HUD regulations, policies, or directives, the City may, in its sole discretion, either: i) suspend this Agreement as provided in Paragraph 15 below; or ii) reduce the total funding amount set forth in Paragraph 8 below in an amount proportionate to the ineligible match funds.

8. Funding Amount (Cash Match).

- A. Subject to the requirements of this Agreement the City will fund to Mercy House for the full performance of this Agreement and the actual conduct of the Project specified herein a total amount of up to Forty-Five Thousand dollars (\$45,000) Cash Match for the Project undertaken by Mercy House. The above stated fixed ceiling amount may be considered as a "not-to-exceed" amount but shall not be considered as an "estimate-of-cost", "percentage-of-cost" or any kind of "cost-plus" sum, price or amount. Also, as used in this Agreement, unless the context indicates otherwise, the words "expend", "expended" and "expenditure" shall include all amounts obligated or committed by Mercy House by written agreement (including unilateral purchase orders) for expenditure on the Project.
- B. Mercy House must make a concerted, good-faith effort to expend the total funding amount specified above within the Period of Performance stated in Paragraph 6. Mercy House's costs and expenditures, however, shall not exceed the total funding amount. The City shall not be liable for or reimburse Mercy House for any extra costs or overruns on the Project, or any additional funding in excess of the total amount stated above, without a prior written amendment of this Agreement in accordance with Paragraph 10 below.
- C. In the event the full funding amount to be paid or reimbursed hereunder by the City is not expended by Mercy House for project costs as specified in Exhibit C, Mercy House shall continue to provide a spread sheet illustrating both CDBG and ESG expenditures for the length of the grant, as well as a log of closed and pending cases. Mercy House agrees to participate in a weekly conference call whereby all clients are discussed and appropriate assistance levels are decided. Under no circumstances shall assistance be offered to a client without City approval. By the end of the Period of Performance hereof, as that period may have been extended or otherwise changed, Mercy House shall refund, release or transfer any unexpended amount back to the City within 30 days after the end of the Period of Performance. Any project funds held by the City at the end of the Period of Performance or refunded, released or transferred to the City shall be reallocated by the City. Mercy House shall be eligible to apply for these funds but shall have no greater priority than any other applicant.
- D. In the event congressional action, HUD rules and regulations, or other lawful directive involves modifying or reducing the funds and/or services obligated under this Agreement, Mercy House shall, upon notice from the City, immediately modify, reduce the scope of, or cease expenditures as directed.
- E. Mercy House further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

9. Methods of Disbursement.

- A. Mercy House may request payment from the City of that part of the funding amount stated in Paragraph 8, relating to a particular Project either on the basis of a lump sum reimbursement of the Project costs upon completion of the Project or on the basis of periodic reimbursement payments during the course of a Project as the funds for that Project are expended.
- B. A request by Mercy House for either a lump sum or for periodic reimbursement payments on a Project shall be in a form and content as set forth in Exhibit "F" as prescribed by the City Manager and shall be submitted to the City Manager for review and for a determination of eligibility for payment. Upon approval by the City Manager, that division will submit the request to the appropriate City offices and divisions for processing and payment. Requests for periodic payments shall be supported and documented as required by the City Manager on the basis of costs actually incurred by Mercy House on a Project during the period for which payment is requested.
- C. Expenditures under this Agreement determined by the City or HUD to be ineligible for reimbursement or which are inadequately documented will be, upon written request, immediately refunded to the City by Mercy House.
- D. No requests for reimbursement or other payments under this Agreement which are due to cost overruns of any kind on the Project(s) shall be approved, allowed or paid by the City unless the amount requested has been approved by a written amendment and authorized in accordance with the provisions of Paragraph 10.

10. Amendments.

- A. Either of the parties hereto may request amendments to any of the provisions of this Agreement at any time but no amendment shall be made or performed until it has been mutually agreed to by the parties. All amendments shall be in writing and executed prior to any work being done pursuant thereto, except that amendments in the Period of Performance may be authorized and given by the City as provided in Paragraph 6.C. above.
- B. The City may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the purpose, the scope of services, the location, or beneficiaries of the Project to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both City and Mercy House.

- 11. ESG Program Compliance.** Mercy House shall become familiar with and agrees to comply with the ESG program regulations set forth at 24 CFR Part 576 and applicable related federal regulations, including but not limited to 24 CFR Part 5, 24 CFR Part 84, and 24 CFR Part 85; Interim Rule 76 FR 75954 and 7595524; and applicable Office of Management and Budget (OMB) Circulars referenced within the regulations. Mercy House also agrees to comply with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this Agreement expressly provided for under this Agreement.

12. **Indemnification and Hold Harmless.** Mercy House agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Mercy House's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of Mercy House, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by Mercy House, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of Mercy House, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by Mercy House, its employees, and/or authorized subcontractors under this Agreement, whether or not Mercy House, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, Mercy House shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or Mercy House's Proposal, which shall be of no force and effect.

13. **Insurance.**

13.1. Minimum Scope and Limits of Insurance. Mercy House shall 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 City:

- (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. Mercy House agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Mercy House for the City 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. Mercy House shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

13.2. Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: “The City of Costa Mesa and its 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 Mercy House pursuant to its contract with the City; products and completed operations of Mercy House; premises owned, occupied or used by Mercy House; automobiles owned, leased, hired, or borrowed by Mercy House.”
- (b) 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 City.”
- (c) Other insurance: “Mercy House’s insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy.”
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Costa Mesa, its officers, officials, agents, employees, and volunteers.
- (e) Mercy House’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.

13.3. 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 City. No policy of insurance issued as to which the City is 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.

13.4. Certificates of Insurance. Mercy House shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any

services under this Agreement. The certificates of insurance shall be attached hereto as Exhibit "E" and incorporated herein by this reference.

- 13.5. 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 Mercy House may be held responsible for payments of damages to persons or property.
14. **Termination.** Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial terminations of the Project(s) described in Paragraph 3 above may only be undertaken with the prior approval of the City. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by Mercy House under this Agreement shall, at the option of the City, become the property of the City, and Mercy House shall be entitled to receive just and equitable compensations for any satisfactory work completed on such documents or materials prior to the termination.
15. **Suspension.** The City may suspend this Agreement, in whole or in part, if Mercy House materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the City may declare Mercy House ineligible for any further participation in the City's contracts, in addition to other remedies as provided by law.
16. **Records.** Mercy House shall maintain accurate financial and service delivery records pertinent to the activities to be funded under this Agreement. Records shall be maintained for a period of four (4) years as required by 76 FR 75954 and 7595524.
17. **Client Data.** Mercy House shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City for monitoring purposes upon request.
18. **Confidentiality.** Mercy House understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Mercy House's responsibilities with respect to services provided under this Agreement, is prohibited without lawful court order unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian. Mercy House shall ensure the confidentiality of client data pertaining to the provision of family violence prevention or treatment services as required by the Rules and Regulations, including but not limited to 76 FR 75954 and 7595524.
19. **Participation of Homeless Persons in Policy-making and Operations.** Mercy House understands they are required to involve not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the agency in the operation of the services provided under this Agreement. Mercy House also agrees that to the maximum extent practicable, they will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this Agreement and in

providing services for occupants of facilities assisted under this Agreement in accordance with 42 U.S.C. 11375(d) and 42 U.S.C. 11375(c)(7) and 76 FR 75954 and 7595524.

20. **Close-Outs.** Mercy House's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records.
21. **Audits & Inspections.** All Mercy House records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees or the federal government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Mercy House within a time period as agreed upon by the City and Mercy House after receipt by Mercy House. Failure of Mercy House to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments or refunding of payments to the City. Mercy House hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Mercy House audits; and, as applicable, OMB Circular A-133.
22. **Progress Reports.** During the actual conduct of the Project, Mercy House shall prepare and regularly submit a detailed project status report on the Project to the City Manager. The report format shall be substantially as set forth in Exhibit G, as approved by the City Manager but must show, at a minimum, the current performance status of the Project being reported, the costs and contractual commitments incurred to date that have been charged to that project, and the beneficiaries of the project, up to the date of each report. Mercy House shall continue to provide a spread sheet illustrating both CDBG and ESG expenditures for the length of the grant as well as a log of closed and pending cases. Mercy House agrees to participate in a weekly conference call whereby all clients are discussed and appropriate assistance amounts are decided. Under no circumstances shall assistance be offered to a client without City approval.
23. **Non-discrimination and Equal Opportunity.** Mercy House, and all persons acting on its behalf, agree that they shall comply with the non-discrimination and equal opportunity requirements set forth in 24 CFR § 5.105 and with all federal, state and county laws governing discrimination, and they shall not discriminate in the application, screening, employment, participation, or any other involvement of any person in relation to any phase of the Project(s).
24. **Other Restrictions.**
 - A. Prohibited Activities. Mercy House is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities, sectarian or religious activities, lobbying, political patronage, and nepotism.
 - B. Section 3 Compliance. Mercy House, and any of Mercy House's subrecipients and subcontractors, shall comply with the provisions of Section 3 of the Housing and Urban Development Act, as set forth in 24 CFR Part 135. Mercy

House certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. Mercy House will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. Mercy House will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- C. Hatch Act. Mercy House agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
- D. Lobbying. Mercy House hereby certifies that:
- i. No federally appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement;
 - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
 - iii. It will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subawards shall certify and disclose accordingly; and
 - iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- E. Primarily Religious Organization. If Mercy House is a primarily religious organization, funds provided under this Agreement are subject to the provisions of 24 CFR § 576.23 as amended by 76 FR 75954 and 7595524.

25. **Assignments and Contracting.** The responsibility for the performance of this Agreement shall not be assigned, transferred or contracted out by Mercy House without the prior written consent of the City. Contracts or purchase orders by Mercy House for the acquisition of equipment, materials, supplies or services for the Project do not require the consent of the City but shall be done in accordance with the competitive bidding requirements of this Agreement and any applicable state laws and local government ordinances.
26. **Subcontracts.** Mercy House shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the consent of the City prior to the execution of such subcontract. Mercy House will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. Mercy House shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement. Mercy House shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.
27. **Survival of Provisions.** The parties to this Agreement specifically agree that all the paragraphs, terms, conditions and other provisions of this Agreement that requires some action to be taken by either or both of the parties upon or after the expiration or termination hereof shall survive the expiration or termination of this Agreement and shall be completed, taken or performed as provided herein or as may be required under the circumstances at that time.
28. **Independent Contractor.** Mercy House is and shall be acting at all times as an independent contractor and not as an employee of City. Mercy House shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Mercy House or any of Mercy House's employees, except as set forth in this Agreement. Mercy House shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Mercy House shall secure, at its sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Mercy House and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Mercy House shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Mercy House further agrees to indemnify and hold City harmless from any failure of Mercy House to comply with the applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Mercy House under this Agreement any amount due to City from Mercy House as a result of Mercy House's failure to promptly pay to City any reimbursement or indemnification arising under this paragraph.

29. **PERS Eligibility Indemnification.** In the event that Mercy House or any employee, agent, or subcontractor of Mercy House providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Mercy House shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Mercy House or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Mercy House and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

30. **Cooperation.** In the event any claim or action is brought against City relating to Mercy House's performance or services rendered under this Agreement, Mercy House shall render any reasonable assistance and cooperation which City might require.

31. **Ownership of Documents.** All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Mercy House or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Mercy House agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Mercy House. City shall indemnify and hold harmless Mercy House from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Mercy House. Mercy House shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

32. **Public Records Act Disclosure.** Mercy House has been advised and is aware that this Agreement and all reports, documents, information and data, including, but not limited to, computer tapes, discs or files furnished or prepared by Mercy House, or any of its subcontractors, pursuant to this Agreement and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 *et seq.*). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Mercy House informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

33. **Conflict of Interest.** Mercy House and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Mercy House's services under this Agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Mercy House and its officers, employees, associates and subcontractors shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Mercy House is not currently performing work that would require Mercy House or one of its officers, employees, associates or subcontractors to cause Mercy Houses to abstain from a decision under this Agreement pursuant to a conflict of interest statute.
34. **Responsibility for Errors.** Mercy House shall be responsible for its work and results under this Agreement. Mercy House, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Mercy House occurs, then Mercy House shall, at no cost to City, provide all necessary design drawings, estimates and other Mercy House professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.
35. **Prohibited Employment.** Mercy House will not employ any regular employee of City while this Agreement is in effect.
36. **Order of Precedence.** In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.
37. **Costs.** Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.
38. **No Third Party Beneficiary Rights.** This Agreement is entered into for the sole benefit of City and Mercy House and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.
39. **Headings.** Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.
40. **Construction.** The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

41. **Amendments.** Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.
42. **Waiver.** The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.
43. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.
44. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.
45. **Corporate Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

MERCY HOUSE

[Signature]
Signature

Date: May 11, 2017

Larry Haynes, Executive Director
Name and Title

[Redacted]

Social Security or Taxpayer ID Number

CITY OF COSTA MESA, a municipal corporation

[Signature] Date: 6/2/17
Thomas R. Hatch
City Manager *Acting City Mgr.*

ATTEST:

[Signature]
City Clerk



APPROVED AS TO FORM:

[Signature] ACA
City Attorney

Date: 5/31/17

APPROVED AS TO INSURANCE:

[Signature]
Risk Management


Date: 6/1/17

APPROVED AS TO CONTENT:

[Signature]
Project Manager

Date: 5/31/17

DEPARTMENTAL APPROVAL:



Richard Francis
Assistant City Manager

Date: 5/31/17

APPROVED AS TO PURCHASING:



Interim Finance Director

Date: 6-02-17

EXHIBIT A

MERCY HOUSE'S SCOPE OF WORK

To place fifteen (15) homeless households into permanent housing using Emergency Solutions Grant (ESG) funds and Matching Contributions, and to provide outreach, housing search and placement services and supportive services necessary to help client's transition from homelessness to housing and increase their ability to maintain housing once assistance has ended.

The program will uphold the regulations of the ESG program wherein referrals to the program will be provided by the Orange County Coordinated Entry System.

It is the intent of the Agreement to give preferences to Costa Mesa Residents who have long term ties to the City of Costa Mesa and who have been assessed via a Vulnerability Service Prioritization Decision Assistance Tool (VISPDAT) and will participate in the Coordinated Entry System (CES). ESG funds will be disbursed through CES based on Costa Mesa Preferences as defined below.

All CES outreach workers will administer a VISPDAT and submit it to CES. CES will analyze and disburse ESG funds subject to the Agreement based on the procedure/criteria:

1. Costa Mesa Resident Definition (Exhibit B) and highest VISPDAT score.
2. If there are no current Costa Mesa Residents which meet criteria established under #1 above, then history of Costa Mesa residency will be considered along with the highest VISPDAT score.
3. If there are no Costa Mesa Residents or residents with a Costa Mesa homeless history which meet this criteria, then CES and/or Mercy Housing Living Centers will attempt to contact the City of Costa Mesa staff to ensure that there are no additional VISPDATs which have been submitted and/or are document ready. If there are none, CES will select homeless residents based on other criteria including the highest VISPDAT scores and length of time homeless.

There are two (2) ways to provide proof of Costa Mesa Residency if Criterion #1 above is not met:

1. Examples of acceptable documentation to confirm recent residency includes:
 - Copy of a **previous lease**
 - Confirmation of **previous utility service**
 - **Confirmation of residency** from a previous landlord, or proof of residency in transitional living facility
 - **School records**¹
2. Proof of strong ties to the community:
 - Proof that the individual and/or their dependent(s) attended K-12 school in Costa Mesa within the past 10 years and have been re-established in the community for at least one year.
 - Knowledge—either first hand or recorded—by the Costa Mesa Police, Fire Department, City Community Outreach Workers and Trellis Volunteers and/or the Costa Mesa Code Enforcement Department.

EXCEPTIONS

¹ Includes primary school through college. School records are only used to support the aforementioned definition of residency.

- Vulnerable² homeless individuals, including those identified by the VI-SPDAT whose well-being will be severely compromised by living on the street. Efforts to assist these individuals will be limited to stabilization and placement in housing or return to their community of origin.
- Homeless individuals identified by City Staff (i.e. CMPD, Fire and Community Outreach Workers) as high users of City resources and services are not Costa Mesa Homeless Residents unless they meet the aforementioned thresholds and conditions. The NHS will determine on a case by case basis the extent of service efforts afforded these individuals, with the final determination by the Chair of the NHS Solutions in consultation with Network members. In most cases, NHS efforts will be limited to reconnecting these individuals to their communities of origin.

² Factors to consider in determining whether a person is vulnerable include mortality risks. For individuals who have been homeless for at least six months, one or more of the following markers place them at heightened risk of mortality:

- a. more than three hospitalizations or emergency room visits in a year;
- b. more than three emergency room visits in the previous three months;
- c. aged 60 or older;
- d. cirrhosis of the liver;
- e. end-stage renal disease;
- f. history of frostbite, or hypothermia;
- g. HIV+/AIDS; and/or
- h. tri-morbidity - co-occurring psychiatric, substance abuse, and chronic medical condition.

EXHIBIT B

Costa Mesa Homeless Resident Definition

A Costa Mesa resident is defined as:

A person who has lived in Costa Mesa for the preceding 36 months at the time they are assessed for residency by city staff or affiliated volunteer organizations, or has been a member of Costa Mesa's workforce for the same duration. Any exceptions to this definition that surface as result of extraordinary circumstances shall be considered on a case by case basis by the Chair of the Network for Homeless Solutions in consultation with Network members.

There are two (2) ways to provide proof of Costa Mesa Residency:

1. Examples of acceptable documentation to confirm recent residency includes:
 - Copy of a **previous lease**
 - Confirmation of **previous utility service**
 - **Confirmation of residency** from a previous landlord, or proof of residency in transitional living facility
 - **School records**₁
2. Proof of strong ties to the community:
 - Proof that the **individual and/or their dependent(s) attended** K-12 school in Costa Mesa within the past 10 years and have been re-established in the community for at least one year.
 - Knowledge—either first hand or recorded—by the **Costa Mesa Police, Fire Department, City Community Outreach Workers and Trellis Volunteers** and/or the **Costa Mesa Code Enforcement Department** that the individual has been living on Costa Mesa's streets for the prior 36 months.

EXCEPTIONS

- Vulnerable homeless individuals, including those identified by the VI-SPDAT whose well-being will be severely compromised by living on the street. Efforts to assist these individuals will be limited to stabilization and placement in housing or return to their community of origin.
- Homeless individuals identified by City Staff (i.e. CMPD, Fire and Community Outreach Workers) as high users of City resources and services are not Costa Mesa Homeless Residents unless they meet the aforementioned thresholds and conditions. The NHS will determine on a case by case basis the extent of service efforts afforded these individuals, with the final determination by the Chair of the Network for Homeless Solutions in consultation with Network members. In most cases, NHS efforts will be limited to reconnecting these individuals to their communities of origin.

EXHIBIT C

BUDGET

Costa Mesa Rapid Rehousing Project Budget						
	CA State ESG	Cash Match	CM CDBG	CM Outreach	CM In-Kind	Total Budget
Admin						
Admin Staff	\$2,000	\$3,900	\$2,000			\$7,900
Admin Exps (supplies, phones, mileage)	\$320	\$1,100				\$1,420
HMIS	\$2,662					\$2,662
Total Admin	\$4,982	\$5,000	\$2,000			\$11,982
Operations						
Housing Advocate	\$3,000	\$3,900				\$6,900
Housing Navigator/Case Management	\$28,000	\$10,000	\$5,500		\$1,500	\$45,000
Outreach-Engagement		\$9,000		9,800	\$20,700	\$39,500
Total Operations	\$31,000	\$22,900	\$5,500	\$9,800	\$22,200	\$91,400
Direct Services						
Utility Payments	\$4,000					\$4,000
Utility Deposits	\$1,000	\$1,000				\$2,000
Security Deposits	\$4,000		\$12,500			\$16,500
Short to Medium Term Rental Assistance	\$52,018	\$16,100				\$68,118
Other (Non-Matching Funds)				\$2,000		\$2,000
Total Direct Services	\$61,018	\$17,100	\$12,500	\$2,000		\$92,618
Total Budget	\$97,000	\$45,000	\$20,000	\$11,800	\$22,200	\$196,000

EXHIBIT D
DISBURSEMENT SCHEDULE

Schedule of Performance
(Unduplicated Individuals)

Quarter 1: <i>Dec 22, 2016– March 31, 2017</i>	0 Individuals
Quarter 2: <i>April 1, 2017 – June 30, 2017</i>	<u>5</u> 3 individuals
Quarter 3: <i>July 1, 2017 – September 30, 2017</i>	<u>5</u> 3 individuals
Quarter 4: <i>October 1, 2017 – December 31, 2017</i>	<u>5</u> 3 individuals
Quarter 5: <i>January 1, 2018– March 31, 2018</i>	<u>5</u> 3 individuals
Quarter 6: <i>April 1, 2018 – June 30, 2018</i>	<u>2</u> 3 individuals
Total:	<u>1522</u> individuals

Schedule of Invoicing – CASH MATCH

Quarter 1: <i>Dec 22, 2016– March 31, 2017</i>	\$0.00
Quarter 2: <i>April 1, 2017 – June 30, 2017</i>	<u>\$9,000</u> 10,250.00
Quarter 3: <i>July 1, 2017 – September 30, 2017</i>	<u>\$9,000</u> 10,250.00
Quarter 4: <i>October 1, 2017 – December 31, 2017</i>	<u>\$9,000</u> 10,250.00
Quarter 5: <i>January 1, 2018– March 31, 2018</i>	<u>\$9,000</u> 10,250.00
Quarter 6: <i>April 1, 2018 – June 30, 2018</i>	<u>\$94,000.00</u>
Total:	\$45,000