

DRAFT

**CITY OF TACOMA AND TACOMA RESCUE MISSION EMERGENCY SHELTER
FUNDING AND OPERATIONS AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2019, by and between the **CITY OF TACOMA**, Washington, a municipal corporation operating as a first class charter city under the laws of the State of Washington ("City") and the **TACOMA RESCUE MISSION**, a Washington nonprofit corporation ("TRM").

RECITALS

WHEREAS there are currently 400 shelter beds available in the City for single adults, families, youth, young adults, and survivors of domestic violence experiencing homelessness, and

WHEREAS the City's emergency shelters turn away 60-70 individuals and families each night due to limited availability of bed space, and

WHEREAS, in May 2017, the City declared a state of emergency in response to the growing number of people living in homeless encampments in Tacoma, and

WHEREAS, in order to address the emergency, the City developed an emergency response plan, which includes the provision of additional publicly available emergency shelter space, and

WHEREAS, pursuant to this Agreement, the parties intend to provide for the development and operation by TRM of a new publicly available emergency shelter to serve fifty (50) individuals, or more, year round by December, 2019, and

WHEREAS this project will transition an existing warehouse and storage facility located within the current Tacoma Rescue Mission main campus to a permanent shelter, and

WHEREAS the total cost for the new shelter project is \$2,650,000, to be funded as follows: (1) the City of Tacoma, in the amount of \$1,600,000; (2) two private donors, in the amount of \$600,000, conditioned upon securing City funding; and (3) the Rescue Mission, in the amount of \$450,000, and

NOW, THEREFORE, in consideration of the recitals set forth above, the terms and conditions contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

AGREEMENT:

1. Emergency Sheltering Capacity Increase and Shelter Conversion

a. Schedule

Following full execution of this Agreement by all parties, TRM will increase its capacity to provide basic emergency shelter and services for additional persons experiencing homelessness by temporarily expanding capacity in the primary shelter space in TRM's main campus, using overflow space. TRM will promptly post new positions to hire and train new staff to handle the increased shelter use, and expand capacity to serve a total of forty (40) persons served, prior to conversion of its existing storage space into a new emergency shelter.

Promptly upon issuance of permits by the City, which is anticipated in June 2019, TRM will commence conversion of the existing storage facility to a permanent shelter with a six (6) month development schedule. The conversion has a required outcome of a publicly available shelter facility capable, in combination with the existing supportive services already available within the campus, of serving the needs of at least fifty (50) homeless individuals, or more, year-round.

b. Responsibility for Emergency Shelter Conversion

Subject to the requirements of this Agreement, and the requirements associated the funding sources, TRM is solely responsible for contracting and managing the conversion of its storage facility to an emergency shelter facility. The conversion is a private project on private property. TRM will comply with all requirements of the public funding sources, including, but not limited to, payment of prevailing wage.

2. Emergency Shelter Conversion Funding

Following full execution of this Agreement by all parties, Tacoma will promptly commence transfer to TRM of the City's \$1,600,000 million dollar portion of the funding for the shelter conversion through the City's ordinary processes, including any special processes required by specific funding sources. The sources of funding provided by the City bear certain requirements and restrictions, The City will provide information and technical assistance to TRM to ensure full compliance with all City funding requirements and restrictions by TRM.

The shelter conversion funds provided to TRM shall be only used for costs of conversion of TRM's existing main campus to a publicly available shelter facility capable, in combination with the existing supportive services already available within the campus, of serving the needs of at least fifty (50) homeless individuals, or more,

year-round. The specific funding sources comprising the City funding may require a more particular allocation with the project. TRM in consultation with the City shall comply with all allocation and expenditure requirements.

In addition to all other applicable restrictions, none of the funds provided under this Agreement shall be used in the performance of this Agreement for any partisan political activity or to further the election or defeat of any candidate for public office. None of the funds provided under this contract shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the Tacoma City Council, the Washington State Legislature, the United States Congress, or any other legislative body.

3. Emergency Shelter Operations and Funding

a. Emergency shelter operation

Upon completion of the conversion of TRM's existing storage facility into a publicly available shelter facility capable, in combination with the existing supportive services already available within the campus, of serving the needs of at least fifty (50) homeless individuals, or more, operation of the new shelter shall solely the responsibility of TRM.

As consideration for the City funding, TRM agrees to indemnify and hold harmless the City, its officials, officers, agents, employees, and volunteers, from any and all claims, causes of action, judgments or liens occasioned by or arising out of the sheltering services provided by TRM, or other sheltering operations, and to defend for and on behalf of the City, at its own expense, any such claim or cause of action, and in the event of recovery thereon, to pay any judgment or lien arising therefrom, including any and all costs as a part thereof.

b. Emergency shelter operational funding

The parties agree that the City anticipates providing \$200,000.00 per year to TRM in operational funding for the converted new shelter. Such operational funding will be addressed in a separate agreement, which will establish the scope of and duration of such funding.

4. Books and Records

The City, or its authorized representative, shall have reasonable access upon 24 hours' prior written notice, to the books and records of THA, to conduct a confirmatory examination of THA's books and records. Said examination shall be at the City's expense unless THA's statements are found to contain significant errors, in which case the confirmatory examination will be at THA's expense.

5. Compliance with Laws

THA agrees that it will comply with applicable laws and regulations, and any agreements or documents related to the THA and Tacoma Housing Authority Agreement for \$1 million to build the CRC. THA agrees to provide proper

documentation and establish, maintain, and provide to the City, upon request, such records as may be required by the City to comply or show compliance with such applicable laws, regulations and requirements herein. THA shall continuously maintain all required business licenses and registrations.

6. Nondiscrimination

THA shall comply with applicable nondiscrimination, equal opportunity, and fair labor standards requirements, and all other applicable City of Tacoma, State of Washington, and federal laws and regulations, and shall continue to comply with all such laws and regulations throughout the construction of the new facility. THA shall not discriminate in any employment action because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, or the presence of any sensory, mental or physical handicap.

7. No City of Tacoma Liability

THA expressly acknowledges and agrees that neither the THA, nor any other person or entity shall have any recourse to the assets, credit or services of the City of Tacoma because of any debts, obligations, or liabilities of the City, whether created hereunder or otherwise. No member, official, or employee of the City, shall be personally liable to the THA, or any successor thereto, because of any obligations or debts arising hereunder.

8. Hold Harmless

THA hereby agrees to indemnify and hold harmless the City, its officials, officers, agents, employees, and volunteers, from any and all claims, causes of action, judgments or liens occasioned by or arising out of the performance by THA of any activity covered hereunder, and to defend for and on behalf of the City, at its own expense, any such claim or cause of action, and in the event of recovery thereon, to pay any judgment or lien arising therefrom, including any and all costs as a part thereof.

9. Independent Contractor Status

The services and deliverables shall be furnished by the THA as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the City with respect to payments to THA. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. Because of THA's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the City on account of THA. THA may be required to provide the City proof of payment of these said taxes and benefits. If the City is assessed or deemed liable in any manner for those charges or taxes, the THA agrees to hold the City harmless from those costs, including attorney's fees.

10. Public Works

For any work performed with the City funds which qualifies as a “public work” under applicable State law, THA hereby agrees to comply with all requirements of State law for said work; including payment of prevailing wages; requirement of a payment and performance bond for said work; and requirement of retainage.

11. Miscellaneous

a. This agreement may not be modified or amended, except in writing executed by both of the parties hereto.

b. This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

c. All notices, demands, or other communications which are required or permitted to be given pursuant to this agreement, shall be given in writing to the party entitled thereto at its last known address, by personal delivery, or by United States certified mail, postage prepaid, return receipt requested to:

Tacoma Rescue Mission

City of Tacoma

Linda Stewart
Director, Neighborhood and Community Services Department
747 Market Street, Room 836
Tacoma WA 98402-3767

d. With regard to any decisions required of the City under this Agreement, the term "city" shall be interpreted as the City Manager or designee.

e. All matters pertaining to the validity, construction and effect of this agreement shall be governed by the laws of the State of Washington. Any action arising out of or relating to this agreement or the breach thereof, shall be brought in the Superior Court of the State of Washington in and for Pierce County.

f. In the event that any provision of this agreement shall be held invalid, illegal or unenforceable, in whole or in part, the validity of the remaining part of such provision, and/or the validity of any other provision of this Agreement shall in no way be affected thereby.

g. Time is of the essence of this Agreement.

h. In the event any action or appeal therefrom is brought by any party under this agreement to enforce any of the provisions hereof or to enforce any obligation of any party related hereto, each party shall bear its own attorney's fees and costs to be fixed by the court, including any expenses of appeal.

i. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

j. No provision of this Agreement is made or shall be construed for the benefit of any third party.

k. Oral agreements or oral commitments to lend money, extend credit, or to forbear from enforcing payment of a debt are not enforceable under Washington law.

l. A waiver or failure by either party to enforce any provision of this Agreement shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Agreement.

m. The THA shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Agreement or for any of the funding due hereunder without the prior written consent of the City.

n. This Agreement contains the entire agreement between the parties. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Agreement are superseded hereby.

TACOMA RESCUE MISSION

President and CEO

Date: _____

Date: _____

CITY OF TACOMA

Elizabeth Pauli
City Manager

Linda Stewart, Director
Neighborhood and Community Services Department

Andy Cherullo, Director
Finance Department

Approved as to form:

Deputy City Attorney