

**FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF FAIRFIELD AND SHELTER, SOLANO, INC.
TO SUPPORT THE KITCHEN BUILD-OUT COMPLETION PROJECT AT 310 BECK
AVENUE IN FAIRFIELD**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into as of this 14 day of November 2022, (“Effective Date”) between the **City of Fairfield (“CITY”)**, a municipal corporation and **SHELTER Solano, Inc.**, a California nonprofit public benefit corporation (“PROVIDER”). Unless specifically identified, each may be referred to individually as “Party” or collectively as “Parties”, as the context may require.

RECITALS

WHEREAS, since 2017, the Fairfield City Council has adopted, implemented, and followed comprehensive policies and procedures in line with the City’s formal Homeless Strategy in order to permanently reduce homelessness and increase permanent supportive housing; and

WHEREAS, on September 4, 2018, the Fairfield City Council adopted Resolution No. 2018-223 declaring a shelter crisis pursuant to SB 850 (Chapter 48, Statutes of 2018) and authorizing the City to participate in the State Homeless Emergency Aid Program; and

WHEREAS, permanently reducing homelessness continues to be a top priority for City Council. As such, City staff continues to identify opportunities that provide safe and secure temporary shelter and transitional housing, while also limiting impacts to the surrounding community; and

WHEREAS, according to the 2019 Solano County Homeless Point-In-Time Count, at any point in time, 1,151 individuals within Solano County are experiencing homelessness. This population includes veterans, women, children, individuals with disabilities, senior citizens, and other vulnerable groups; and

WHEREAS, like many other cities in California, the City of Fairfield has seen a rapid and troubling growth in chronic and newly homeless over the past several years, a condition that has been difficult to address given the high cost of housing and property in the area, and the shortage of emergency, transitional, and affordable housing available in the county to serve this population; and

WHEREAS, as a result, local jurisdictions throughout the region have experienced increased incidents of unlawful camping and loitering activities in and upon portions of the public rights-of-way, parks, and other public facilities (“Public Property”) in violation of local anti-camping, anti-loitering, and/or park closure ordinances and regulations (“Anti-Camping Ordinances”); and

WHEREAS, the use of Public Property in this manner creates health and safety risks to homeless persons due to traffic hazards, exposure to weather, inadequate sanitation, and other conditions detrimental to their well-being, and negatively impacts the health, safety, and general welfare of

the community by degrading the environmental and physical condition of such Public Property, increasing risks associated with the spread of illnesses, and frustrating the public purpose for which such Public Property is dedicated; and

WHEREAS, the Fairfield City Council has heard extensive testimony and been provided wide-ranging data on the deleterious impacts of homelessness on individuals that lack shelter and the community at large, and many homeless camps are unsanitary and vulnerable to theft, crime, and extreme weather conditions, threatening the physical and mental health of the individuals living in these camps; and

WHEREAS, the CITY, through its efforts to increase availability and access to emergency shelter on an overnight basis, in order to provide a place for homeless persons to take shelter who might otherwise spend the night on the streets, sidewalks and parks of the city without shelter; and

WHEREAS, the CITY desires to partner with local organizations to provide shelter for individuals experiencing homelessness within the city in order to permanently reduce homelessness, and PROVIDER operates SHELTER Solano located at 310 Beck Avenue, Fairfield, CA 94533-6836 ("Property") that can provide such shelter and other supportive resources; and

WHEREAS, part of the supportive services at SHELTER Solano includes the healthy food that both the body and the mind need to operate at its best. And while the current site has always provided meals, the leadership of PROVIDER aspire to do better – and the dining hall and kitchen envisioned as part of the original site plan is the first step; and

WHEREAS, the purpose of this MOU is to support SHELTER Solano in bringing the dining hall and kitchen to completion (collectively, the "Construction Work"), which will help SHELTER Solano to be able to maximize its impact in serving capacity; and

WHEREAS, the added facility will also be able to become a training program through which the homeless and low-income residents of Solano County can increase their economic mobility through an envisioned Culinary Arts job skills program, the very foundation of stable housing; and

WHEREAS, the PROVIDER intends to build out social enterprise programs that will provide ongoing funding for the operations of this project and support community groups who look to partner with the services of the shelter Culinary Arts program; and

WHEREAS, each Party has caused this MOU to be duly approved by its respective governing body, and by so doing, has found and determined that this MOU furthers the health, safety, and general welfare of their respective residents; and

WHEREAS, with the support and input of Assembly Member Lori Wilson (11th District), AB 178 (Budget Act of 2022) includes a provision instructing the California Department of Housing and

Community Development (“HCD”) to allocate \$1,200,000 (the “HCD Funds”) to the CITY for the Construction Work; and

WHEREAS, the CITY intends that any payments made by the CITY pursuant to the terms and conditions of this MOU shall constitute an advance of funds for which the CITY shall later be reimbursed using HCD Funds; and

WHEREAS, HCD shall send the HCD Funds directly to the CITY to reimburse any payments made by the CITY pursuant to the terms and conditions of this MOU.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

Part I Roles and Responsibilities

A. CITY's Role and Responsibilities.

1. CITY, through the City Manager or Designee, shall designate a primary point of contact for all matters related to the performance of this Agreement ("City Liaison").
2. CITY's role is to provide administrative oversight and monitoring of the Agreement.

B. PROVIDER's Role and Responsibilities.

1. PROVIDER shall designate a primary point of contact for all matters related to the performance of this Agreement ("Provider Liaison").
2. PROVIDER shall use funds, subject to the requirements of the SHELTER, Solano, Inc. Program Budget as attached in Exhibit "A", and Insurance Requirements as attached in Exhibit "B".
3. PROVIDER will ensure that the Property will meet Health and Safety Requirements and comply with local codes, as appropriate, have appropriate security personnel, be accessible to participants, and have a sufficient staff and funds to complete the Kitchen Build-out Project.
4. PROVIDER shall make available construction reporting data for the length of this Agreement, including all construction related expenses set forth in Exhibit "A" for the prior month with the proper back-up documentation (i.e., invoices with receipts, timesheets, general ledger or payroll register or payroll stubs, occupancy data etc.). Any expense not authorized by this Agreement as set forth in Exhibit "A" and/or submitted without proper back-up documentation will be disallowed and must be reimbursed to the CITY.
5. PROVIDER shall provide the CITY within five (5) business days such reports and information as the CITY may reasonably request.
6. PROVIDER, at its own expense, shall procure and maintain for the duration of this Agreement policies of insurance, the requirements for which are set forth in Exhibit "B".

C. Mutual Roles and Responsibilities

1. It is the intent of the Parties to be collaborative in all matters to ensure the health and safety of the residents of the City of Fairfield.
2. Parties agree that the Kitchen Build-out Project under this MOU will be completed at the following address (Property):

SHELTER, Solano, Inc.
310 Beck Avenue, Fairfield, CA 94533-6836

3. The Parties shall comply with the Health Insurance Portability and Accountability Act (HIPAA) and all applicable state laws, regulations, and policies relating to client rights and confidentiality.
4. The PROVIDER and/or Contractor agrees to comply with all state and federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the grant, the Contractor, its Subrecipients, and any other grant activity.

Part II
General Terms and Conditions

A. Term of Agreement.

The term of this Agreement shall begin on the Effective Date and shall remain in effect until June 30, 2023, unless earlier terminated in writing by the Parties.

B. Payment.

In consideration for the costs incurred for the services to be provided under this MOU, CITY shall pay to PROVIDER \$300,000.00 within thirty (30) days of the Effective Date, and PROVIDER may request additional funds up to \$900,000.00 on a reimbursement basis every thirty (30) days thereafter until the expiration or termination of this MOU. The payments made by CITY to PROVIDER under this MOU shall collectively be referred to as the "City Funds." The total amount of the City Funds shall not exceed \$1,200,000.00. City Funds must be spent in accordance with this MOU, and any expenses incurred prior to May 1, 2022 will not be considered eligible for reimbursement. Any City Funds remaining that are not expended or legally obligated for the services required to be provided by PROVIDER upon expiration or termination of this Agreement shall be returned to CITY within thirty (30) days. PROVIDER shall maintain invoices with receipts, or other documentation (i.e., invoices with receipts, timesheets, general ledger or payroll register or pay stubs, occupancy data etc.) supporting expenditures made pursuant to this Agreement and shall submit such documentation to CITY within thirty (30) days following receipt of initial payment of City Funds and by the 15th of every month thereafter. Any tangible property purchased with City Funds during the duration of this Agreement is considered the property of the CITY.

C. Indemnification.

Each Party shall indemnify, defend, protect, hold harmless, and release the other Party and its elected bodies, officers, agents, and employees, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any negligent act or omission or willful misconduct of such indemnifying Party. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts.

D. No Waiver.

The waiver by any Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

E. Notices.

All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that a Party desires to give to the other Parties shall be addressed to the other Parties at the addresses

set forth below. A Party may change its address by notifying the other Parties of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

PROVIDER
John Eckstrom, CEO
SHELTER Solano, Inc.
P.O. Box 5368
Concord, CA 94524-0368

CITY OF FAIRFIELD
David Gassaway, Interim City Manager
City of Fairfield
1000 Webster Street
Fairfield, CA 94533-4836

F. Amendment/Modification.

This Agreement may be modified or amended only in writing and with the prior written consent of the Parties.

G. Termination.

1. Termination for Convenience: Either Party may terminate this Agreement for any reason by notifying the other party in writing thirty (30) days prior to the effective date of termination.
2. Termination for Cause: If PROVIDER fails to perform any of responsibilities under this Agreement or if PROVIDER fails to comply with any other provisions of this Agreement, the CITY may terminate this Agreement for cause. Termination shall be effected by serving written notice of termination on the PROVIDER setting forth the manner by which PROVIDER is in default.

If it is later determined by the CITY that the PROVIDER had an excusable reason for not performing, such as an epidemic, fire, or other events which are not the fault of or are beyond the control of the PROVIDER, the CITY, after setting up a new delivery of performance schedule, may allow the PROVIDER to continue work, or treat the termination as a termination for convenience.

3. Opportunity to Cure: The CITY in its sole discretion may, in the case of a termination for breach or default, allow the PROVIDER five (5) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If PROVIDER fails to remedy to CITY's satisfaction and within five (5) days of receipt of the written notice of termination, CITY shall have the right to terminate the Agreement without any further obligation to PROVIDER.

4. Waiver of Remedies: In the event that CITY elects to waive its remedies for any breach by PROVIDER of any covenant, term or condition of this Agreement, such waiver by

CITY shall not limit CITY's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

H. Severability.

If any provision or portion of this Agreement is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

I. Compliance with all Laws. Venue.

The Parties shall observe and comply with all applicable federal, state and local laws, ordinances, and codes. Venue for any legal dispute shall be the Solano County Superior Court or the United States Eastern District of California.

J. Non-Discrimination Clause.

1. During the performance of this Agreement, the Parties and their subcontractors shall not deny any benefits or privileges to any person on the basis of race, religion, color, ethnic group identification, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, sex or sexual orientation, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, ethnic group identification, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, sex or sexual orientation. Each Party shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
2. The Parties shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), regulations promulgated pursuant to it (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time.

K. Access to Records and Retention.

All Parties, acting through their duly authorized representative, as well as any federal or state grantor agency providing all or part of the funding associated with this Agreement, the State Controller, the Comptroller General of the United States, and the duly authorized representatives of any of Parties, shall have access to any books, documents, papers and records of any Party which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, the Parties shall maintain all required records for three years after final payment for any work associated with this Agreement, or after all pending matters are closed, whichever is later.

L. Assignment.

Except as otherwise permitted by this Agreement, no assignment of rights and obligations hereunder shall be valid without prior written consent of the non-assigning Party.

M. Entirety of Agreement.

This Agreement constitutes the entire Agreement between the Parties relating to the subject matter of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter of this Agreement. This agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement was executed by the Parties as of the date first above written.

PROVIDER

By: _____



Digitally signed by John Eckstrom
DN: cn=John Eckstrom,
o=SHELTER, Inc., ou=Chief Executive Officer,
email=John.Eckstrom@ShelterInc.org, c=US
Location: POB 5368 Concord, CA 94524
Date: 2022.11.14 12:22:43 -08'00'

CITY OF FAIRFIELD, a municipal corporation


By: _____



David Gassaway, Interim City Manager

APPROVED AS TO FORM:

By: _____



City Attorney

Profit & Loss: SHELTER Solano New Dining Hall and Kitchen		
Income	Budgeted	Updated Budget
HEAP	\$1,700,000	\$ 1,700,000
HEAP Transfer	\$111,000	\$ 111,000
CDBG (City of FF)	\$397,974	\$ 397,974
HHAP	\$1,000,000	\$ 1,000,000
Solano County	\$300,000	\$ 300,000
City of FF State Funds	\$750,000	\$ 1,200,000
Syar Foundation	\$15,000	\$ 15,000
Valero Refinery Donation	\$50,000	\$ 50,000
Irwin Foundation	\$150,000	\$ 150,000
Total Income:	\$4,473,974	\$ 4,923,974
Expenses	Budgeted	Updated Budget
Building Construction	\$3,650,000	\$ 3,943,528
Kitchen Equipment 400,000	\$400,000	\$ 460,000
Dining Hall Furniture 25,000	\$25,000	\$ 25,000
Security Cameras 10,000	\$10,000	\$ 35,000
ADA Assist Doors 35,000 Included in build	\$35,000	
Parking Lot resurface	\$80,000	\$ 125,000
Landscape	\$35,000	\$ 135,000
5% Contingency	\$211,750	200000
Total Expenses:	\$4,446,750	\$ 4,923,528
Net profit/(loss):	\$27,224	\$446.00

EXHIBIT B

INSURANCE REQUIREMENTS

PROVIDER shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the PROVIDER, its agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the PROVIDER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the PROVIDER; products and completed operations of the PROVIDER; premises owned, occupied or used by the PROVIDER; and automobiles owned, leased, hired or borrowed by the PROVIDER. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the PROVIDER's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or

volunteers shall be excess of the PROVIDER's insurance and shall not contribute with it.

- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- iv) The PROVIDER'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.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the PROVIDER's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. PROVIDER shall furnish the CITY with original endorsements effecting coverage required by this Exhibit. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf; on forms equivalent to CG 20 10 11 85, subject to CITY approval; and submitted electronically through the Exigis insurance system to: certificates-fairfield@riskworks.com. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, PROVIDER shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. PROVIDER shall require all subcontractors to procure and maintain insurance policies subject to the requirements this Exhibit. Failure of PROVIDER to verify existence of sub-contractor's insurance shall not relieve PROVIDER from any claim arising from sub-contractors work on behalf of PROVIDER.