

AMENDMENT TO AIRSPACE GROUND SUBLEASE

This amendment agreement (the "Amendment") is entered into as of August 10, 2023, by and between St. Mary's Dining Room, a California non-profit corporation ("Sublessee" or "SMDR"), and the City of Stockton, a municipal corporation (the "Sublessor" or "City"), with reference to the following facts:

A. City has leased from the State of California, Department of Transportation ("Caltrans") certain ground airspace as described in Airspace Ground Lease No. 10-SJX005-0100 (the "Caltrans Lease").

B. City, as sublessor, had subleased certain premises under the Caltrans Lease to Stockton Shelter for the Homeless ("SSH"), as sublessee, pursuant to that certain Airspace Ground Sublease entered into between City and SSH, dated July 23, 2003 (the "Sublease Agreement," which is incorporated by this reference). The Sublease Agreement was twice extended by the City and SSH, with the term of the Sublease Agreement's current renewal period to run until December 31, 2027. There are no additional renewal periods under the Sublease Agreement.

C. On August 9, 2023, City, SMDR, and SSH entered into that certain Assignment and Assumption Agreement (the "Assignment Agreement," which is incorporated by this reference) which assigned certain rights, interests, and obligations of SSH to SMDR. The effective date of the Assignment Agreement (the "Assignment Effective Date") is set out in the Assignment Agreement.

D. City and SMDR now desire to amend the Sublease Agreement.

E. City desires to make a payment of Two Hundred Fifty Thousand dollars (\$250,000.00) (the "City Funds") to SMDR to assist in operating the homeless shelter located on the Premises.

F. For purposes of clarity and understanding, the provision of the City Funds is intended by City staff and SMDR to be short term or "bridge" funding until City and Assignee negotiate and potentially enter into a new agreement for additional funding. While no terms or conditions have yet been agreed upon by the parties, City staff has indicated to SMDR that City may make a substantial economic commitment to SMDR as consideration for operating the shelter facilities and services on the Premises for a prolonged period. SMDR understands and acknowledges that the Stockton City Council retains full and unfettered discretion whether to approve such a new agreement, the relevant terms and conditions of such a new agreement, and whether or not any economic commitments will be made to SMDR in such an agreement.

WHEREAS, any capitalized term used, but not defined, in this Agreement shall have the meaning set forth in the Sublease Agreement.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Amendments to Sublease Agreement. Effective upon the Assignment Effective Date, the Sublease Agreement is hereby amended as follows:

a. The address for notice to Sublessee in Article 1 shall be stricken and replaced by the following:

"St. Mary's Dining Room
545 West Sonora Street
Stockton, CA 95203"

b. There shall be a new Section 5.11, which shall read as follows:

"5.11 Service Obligations"

As specified in Section 5.1, the Premises may only be used and occupied by SUBLESSEE for the purpose of providing temporary shelter to adults and families (the "Shelter Services"). During the term of this Sublease, SUBLESSEE shall provide Shelter Services subject to the following:

a. Shelter Services shall be provided in accordance with all applicable law, and in a competent and professional manner that meets or exceeds prevailing industry standards; and

b. Each day, the Premises shall be made available to a number of adults and families that is no less than thirty percent (30%) of the maximum sheltering capacity of the Premises (the "Minimum Availability Obligation"). Maximum sheltering capacity may periodically decrease where SUBLESSEE is actively performing approved maintenance or improvements on the Premises which impact capacity. SUBLESSEE's failure to satisfy the Minimum Availability Obligation for a sustained period of five (5) days shall constitute a default under this Sublease by SUBLESSEE. Such a default shall, at SUBLESSOR's sole discretion, not be afforded a cure period. SUBLESSEE shall notify SUBLESSOR within one (1) business day each day the Minimum Availability Obligation was not satisfied."

c. The final sentence of Section 7.1 shall be stricken and replaced by the following:

"If no removal notice is issued by SUBLESSOR under this Section 7.1 within ten (10) days after expiration or earlier termination of this Sublease, or upon written notice from SUBLESSOR that it will not issue a removal notice, then all improvements (including, but not limited to, permanent buildings, manufactured facilities, and trailers) located on the Premises shall, at the expiration or termination of this Sublease, vest in SUBLESSOR. SUBLESSEE shall not remove any of these improvements from the Premises nor waste, destroy, or modify them in any way. SUBLESSEE shall deliver these improvements to SUBLESSOR in good condition and

repair, reasonable wear and tear excepted, without compensation to SUBLESSEE, free and clear of all claims to or against them by SUBLESSEE, and SUBLESSEE shall defend and hold SUBLESSOR harmless from all liability arising from such claims or from the exercise by SUBLESSOR of its rights under this section. SUBLESSOR and SUBLESSEE covenant for themselves and all persons claiming under or through them that the improvements are real property."

- d. Section 19.18 shall be stricken and replaced by the following:

"19.18 Termination by One Party

This Sublease may be terminated at any time by SUBLESSEE upon providing SUBLESSOR with one hundred fifty (150) days prior notice, in writing, and by SUBLESSOR upon providing SUBLESSEE with one hundred fifty (150) days prior notice, in writing. Notice shall be served by certified mail to the address listed in Article 1. Notwithstanding the foregoing, if St. Mary's Dining Room as SUBLESSEE issues written notice to SUBLESSOR to terminate on or before November 15, 2023, the prior notice period shall instead be fourteen (14) days."

2. **Funding.** Sublessor shall, within thirty (30) days of this Amendment's execution, but no sooner than the Assignment Effective Date, deposit with Sublessee the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "City Funds"). The following terms and conditions apply to the City Funds:

a. The City Funds may only be used towards costs directly attributable to operating the homeless shelter that is located on the Premises including, but not limited to, materials and personnel costs (but only for such time as those personnel are working on the Premises). Notwithstanding the foregoing, City Funds may not go towards general administrative costs.

b. The City Funds must be fully expended prior to the termination or expiration of the Sublease Agreement. Any unexpended funds shall be immediately returned to Sublessor.

c. Sublessee shall maintain supporting documentation sufficient to substantiate all expended City Funds and shall retain such records for a minimum period of five (5) years after the funds are fully expended. Sublessor, and its designees, upon written and reasonable notice, shall have the right to review, obtain, and copy all such records.

d. Sublessee shall submit to Sublessor an annual financial and performance report by January 15 of each year, until the City Funds are fully expended, in a form which shall be reasonably acceptable to the City. Sublessee shall submit a final report, in a form which shall be reasonably acceptable to the City, within thirty (30) days of fully expending

the City Funds. Submission of such a final report shall be in lieu of any further annual reports.

e. Sublessee's failure to satisfy any provision of section 2, if not cured within thirty (30) days of receiving written notice of an event of default shall constitute a default. In the event of such a default, Sublessor may, at its sole discretion:

- i. Require the return of any unexpended City Funds.
- ii. Require repayment of any City Funds already disbursed and expended under this agreement without sufficient documentary support.
- iii. Require the return or transfer of all funds and/or property derived from the use of the City Funds.
- iv. Any other remedy available at law or equity.

All remedies available to Sublessor are cumulative and not exclusive.

3. Indemnification. City shall defend (with City's choice of counsel), indemnify and hold Sublessee harmless for any and all claims relating to the Sublease Agreement or Premises that are existing or based partially or totally on facts existing on or before the Assignment Effective Date, except such claims caused primarily by the negligence or willful misconduct of Sublessee. The parties intend this provision to be liberally interpreted to prevent Sublessee from being liable or responsible for any inchoate or ripened claims, known or unknown, that existed before the Assignment Effective Date. Notwithstanding the forgoing, City's defense, indemnification, and hold harmless obligations herein shall not extend to any claim relating primarily to premises liability, except for third party claims that ripened no later than 90 days after the Assignment Effective Date that were not caused primarily by the negligence or willful misconduct of Sublessee.

4. Contingency. If the Assignment Agreement is terminated without the Sublease being assigned to Sublessee, then this agreement shall be terminated and both parties are relieved from all obligations and liability under this agreement.

5. Miscellaneous Provisions

a. Governing Law. This Agreement shall be governed by the laws of the State of California.

b. Headings. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of this Agreement.

c. Governing Law. This Agreement shall be governed by the laws of the State of California.

d. Counterparts. This Agreement may be executed in counterparts by the parties hereto, each of which shall be deemed to be an original, and all such counterparts shall constitute but one and the same instrument.

e. Navigation Center Construction. Sublessee shall not be responsible for completing construction of the Navigation Center. Sublessee shall provide City, and its designees, access to the Premises reasonably sufficient to complete construction. Upon completion of construction, and during the term of the sublease, the Navigation Center shall become a part of the Sublease Agreement and, like other improvements on the Premises, be subject to its terms, conditions, and obligations.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

SUBLESSEE:

ST. MARY'S DINING ROOM,
a California nonprofit public benefit corporation

By: Petra Linden
Petra Linden
Executive Director

SUBLESSOR:

CITY OF STOCKTON,
a municipal corporation

By: Harry Black
For Harry Black,
City Manager

APPROVED AS TO FORM:
Lori M. Asuncion
City Attorney

By: Lori M. Asuncion

ATTEST:

CLERK OF THE CITY OF STOCKTON

By: Lori M. Asuncion

