

ASSIGNMENT AND ASSUMPTION AGREEMENT OF AIRSPACE GROUND SUBLEASE

This Assignment and Assumption Agreement (the "**Agreement**") is entered into as of August 9, 2023, by and between Stockton Shelter for the Homeless, a California non-profit corporation ("**Assignor**"), St. Mary's Dining Room, a California non-profit corporation ("**Assignee**"), and the City of Stockton, a municipal corporation (the "**City**"), with reference to the following facts:

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

B. City, as sublessor, has subleased certain premises (the "**Premises**") under the Caltrans Lease to Assignor, as sublessee, pursuant to and as particularly described in that certain Airspace Ground Sublease entered into between City and Assignor, dated July 23, 2003 (the "**Sublease Agreement**," attached hereto as **Exhibit A** and incorporated by this reference). The Sublease Agreement was twice extended by the City and Assignor, 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. Assignor has utilized the Premises for the purpose of providing housing to homeless persons within the community, and in furtherance thereof has made various improvements to the Premises including, but not limited to, the installation and/or construction of permanent buildings and manufactured facilities currently referred to or described as the (1) "Administration Building," (2) "Women's Overflow Building," (3) "Family Shelter Building," (4) Men's Overnight Shelter Building," (5) "Maintenance Building," (6) "Navigation Center" (a 3-story building, currently under construction, that has been planned to include office space, community services, and additional beds), and (7) five single trailers (collectively the "**Improvements**"). Subject to the City forgiving the Community Development Block Grant Notes to Assignor, and the San Joaquin County Community Development Department forgiving the May 5, 2017, \$270,000 Note ("**County Note**") the Improvements are currently owned by Assignor and, to Assignor's knowledge, will be free and clear of any monetary liens when these debts are forgiven. Also situated upon the Premises are various fixtures, furniture, and equipment owned by Assignor which, to Assignor's knowledge, following the City forgiving the Community Development Block Grant Notes to Assignor, will be free and clear of any monetary liens (collectively the "**Personal Property**"). Assignor agrees to cooperate with the City in requesting that the County Note be forgiven by San Joaquin County along with requesting a reconveyance of the deed of trust, dated May 5, 2017 securing the County Note ("**Deed of Trust**"). The City may also request that the County restructure the terms of the County Note. Should the County of San Joaquin proceed to collect on the County Note, the City agrees to be responsible to pay off the County Note. Assignee acknowledges that there is a Deed of Trust against the leasehold estate that is the subject of the Sublease Agreement. By agreeing to accept the Sublease Agreement, Assignee is not agreeing to assume any liability under the County Note.

D. Pursuant to California Corporations Code § 5913, Assignor must give written notice to the Attorney General for the State of California twenty (20) days before it sells, leases,

conveys, exchanges, transfers or otherwise disposes of all or substantially all of its assets, unless the Attorney General for the State of California has given Assignor a written waiver to the proposed transaction.

E. To minimize or eliminate the risk of interruption to the vital services provided by Assignor to the community, the parties hereto are entering into this Agreement. Specifically, pursuant to the terms and conditions set forth below, Assignor desires to transfer its interest in the Sublease Agreement, the Improvements, and the Personal Property (collectively, the "Assets") to Assignee so that Assignee may continue with such services; Assignee desires to assume all of Assignor's rights, title, interests and obligations under the Sublease Agreement which arise on and after the Effective Date; and the City desires to consent to the assignment and assumption of the Sublease Agreement from Assignor to Assignee and to provide the releases contained herein.

F. The parties acknowledge that Caltrans has provided written approval for the assignment of the Sublease 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. Contingency. Except for City's obligation to provide funding to Assignor under Section 12 of this Agreement, the terms of this Agreement are expressly conditioned on the office of the Attorney General for the State of California not notifying Assignor that it objects to this Agreement within twenty (20) days following Assignor's delivery of the Attorney General Notice attached hereto as **Exhibit B** (Cal. Code Regs. tit. 11, § 999.1-999.2 and Cal. Corp. § 5913). If the Attorney General for the State of California objects to this Agreement, in whole or in part, then Assignor, Assignee, or the City, upon notice to the other parties, may elect to terminate this Agreement ("**AG Approval**"). Upon termination, all parties shall be relieved from all obligations and liability under this Agreement.

2. Assignment. Assignor, on the Effective Date, hereby assigns and transfers all of its rights, title, and interest, in and to the Assets, and any and all obligations relating thereto arising on or after the Effective Date, to Assignee. Effective as of the Effective Date, Assignee shall be fully responsible for any and all obligations with respect to the Assets (including, but not limited to, all maintenance and insurance obligations or requirements) which arise on or after the Effective Date.

3. Acceptance of Assignment. Assignee hereby accepts the above assignment and transfer of the Assets, and hereby assumes, agrees, and undertakes to perform all of the obligations, covenants, and agreements of Assignor under the Sublease Agreement which arise on, or after, the Effective Date.

4. Legal Transfer of Trailers. The parties hereto agree to cooperate with each other to transfer the five trailers owned by Assignor to Assignee, including, but not limited to complying with the applicable rules or regulations of the State of California.

5. Termination of Construction Contract. Assignor shall, no less than 10 days prior to the Effective Date, give notice of termination under Section 12 of the contract dated May 2022 with G&G Builders, Inc. for the construction of the Navigation Center ("**Construction Contract**"). To the fullest extent assignable, as of the Effective Date, without cost or liability to Assignee, Assignor hereby assigns to Assignee the indemnification rights under Section 10 of the Construction Contract, but reserving for Assignor any rights Assignor has to indemnification under the Construction Contract, and the warranties under Section 14 of the Construction Contract.

6. "As Is." Assignee accepts the Assets in their "AS IS, WHERE IS," and "WITH ALL FAULTS" condition as they exist as of the Effective Date, and Assignor shall have no obligation to furnish, render or supply any work, labor, materials, or other services to make any of the Assets ready or suitable for Assignee's occupancy. Assignor makes no representations or warranties to Assignee regarding any of the Assets, including the structural condition, and/or the condition of any mechanical, electrical, and other systems, thereof. Assignee acknowledges that Assignor has afforded Assignee the opportunity for full and complete investigation, examination, and inspection of the Premises, and Assets in making and executing this Agreement, Assignee has relied solely on such investigations, examinations, and inspections as Assignee has chosen to make or has made and has not relied on any representation or warranty of Assignor with respect thereto.

7. Naming/Signage Rights. Some or all of the Improvements have been funded through various donations from third parties, and in exchange for those donations Assignor agreed or committed to name such Improvements after such donors and to place signage upon such Improvements reflecting those names. Such agreements are attached as **Exhibit C** ("**Naming Agreements**"). Assignee agrees to assume Assignor's obligations and commitments contained in the Naming Agreements.

8. City Consent to Assignment and Release of Assignor. The City hereby approves of, and consents to, the assignment of the Sublease Agreement and the City hereby fully releases Assignor from any further obligations and/or liability under or relating to the Sublease Agreement and the Premises arising on, or after the Effective Date.

9. Effective Date. This Agreement shall be effective as of 12:00 PM (Noon) PST, on September 1, 2023 (the "**Effective Date**"), unless Assignor advises Assignee and City that Assignor has received an objection from the Attorney General of the State of California in response to the Attorney General Notice ("**Attorney General Objection**"). If an Attorney General Objection is received, the Effective Date shall be continued until five (5) Business Days after any such objection from the Attorney General is resolved, subject to the parties right to terminate this Agreement under Section 1.

10. Hold Harmless and Indemnification.

a. Assignor shall indemnify and hold Assignee harmless from and against any and all liability, loss, damage, expense, and costs (including without limitation reasonable attorneys' fees and costs) of every nature arising out of or in connection with the Sublease Agreement, the Premises, the Improvements, and/or Personal Property arising before the Effective Date, except such loss or damage caused primarily by the negligence or willful misconduct of Assignee.

b. Assignee shall indemnify and hold Assignor harmless from and against any and all liability, loss, damage, expense, and costs (including without limitation reasonable attorneys' fees and costs) of every nature arising out of or in connection with the Sublease Agreement, the Premises, the Improvements, and/or Personal Property arising after the Effective Date, except such loss or damage caused primarily by the negligence or willful misconduct of Assignor.

c. Without limiting Assignor's liability under Section 10a and if Assignor does not satisfy Assignor's obligation under Section 10a, City shall defend (with City's choice of counsel), indemnify, and hold Assignee 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 Effective Date, except such claims caused primarily by the negligence or willful misconduct of Assignee. City's obligation to indemnify and hold Assignee harmless shall include any and all claims related to the County Note and Deed of Trust. The parties intend this provision to be liberally interpreted to prevent Assignee from being liable or responsible for any inchoate or ripened claims, known or unknown, that existed before the 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 Effective Date that were not caused primarily by the negligence or willful misconduct of Assignee.

11. Insurance. As of the Effective Date, Assignee shall have in effect insurance in satisfaction of Section 9.2 and 9.3 of the Sublease Agreement.

12. Premises Operating Expenses. City agrees to provide funding to Assignor relating to the continued operation of the Premises beginning on August 16, 2023, and ending on the earlier of: (a) the date this Agreement is terminated, or (b) the Effective Date. Assignor shall supply City with the following within three (3) Business Days of this Agreement's execution: (a) a list of all payroll expenses related to the Premises for the period of July 16 – July 31, 2023, (the "**July Payroll Charges**") and (b) statements for all water, sewage, storm drain, solid waste, water, and electrical charges related to the Premises for the period of July 16 – July 31, 2023 (the "**July Utility Charges**"). City shall provide funding equal to the July Payroll Charges and July Utility Charges to Assignor within two (2) Business Days prior to the end of each payroll period. City's agreement to provide funding to Assignor to be used for Assignor's payroll expense shall not create an employee/employer relationship between City and Assignor's employees. Assignor shall remain the employer of the Assignor's employees and Assignor shall solely determine the time, place and manner of any services provided by Assignor's employees.

13. 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. Counterparts. This Agreement may consist of and be executed in one or more counterparts. If so executed, all such counterparts shall collectively constitute one document. The exchange of copies of this Agreement and of executed signature pages by facsimile transmission or by electronic mail in "portable document format" (".pdf"), or by a combination of such means, will constitute effective execution and delivery of this written Certificate as to the parties and may be used in lieu of an original Certificate for all purposes. Without limitation, "electronic signature" shall include DocuSign signature, faxed or emailed versions of an original signature or electronically scanned and transmitted versions of an original signature.
- d. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein and supersedes all prior and contemporaneous negotiations, agreements, representations, and understandings of the parties. No modification or amendment of this Agreement shall be binding, unless executed in writing by the parties.
- e. Good Faith. Each of the parties hereto agrees that it shall act in good faith to cause all of the conditions precedent to its respective obligations herein to be satisfied.
- f. Further Acts. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments, and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.
- g. Business Day. As used herein, the term "Business Day" means any day other than Saturday, Sunday and any day which is a legal holiday in the State of California.
- h. Incorporation of Recitals. The Recitals are hereby incorporated into and made a part of this Agreement, as if fully set forth herein.

[Signature page follows]

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

ASSIGNEE:

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

By: Petra Linden
Petra Linden
Executive Director

ASSIGNOR:

STOCKTON SHELTER FOR THE HOMELESS,
a California nonprofit public benefit corporation

By: Jennifer Held
Name: Jennifer Held
Title: President, Board of Directors

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CITY:

CITY OF STOCKTON,
a municipal corporation

By: _____

for Harry Black,
City Manager

APPROVED AS TO FORM:
Lori M. Asuncion
City Attorney

By: _____

ATTEST:

for CLERK OF THE CITY OF STOCKTON

By: _____

