

**COOPERATIVE FUNDING AGREEMENT
TO FACILITATE THE ACQUISITION OF REAL PROPERTY LOCATED AT
3535 WEST COMMONWEALTH AVENUE (APN: 030-040-15) IN CONNECTION
WITH THE ESTABLISHMENT OF A YEAR-ROUND 60 BED RECUPERATIVE CARE
FACILITY WITH UP TO 90 BEDS IN A NAVIGATION CENTER**

This COOPERATIVE FUNDING AGREEMENT TO FACILITATE THE ACQUISITION OF REAL PROPERTY LOCATED AT 3535 WEST COMMONWEALTH AVENUE (APN: 030-040-15) IN CONNECTION WITH THE ESTABLISHMENT OF A YEAR- ROUND 60 BED RECUPERATIVE CARE FACILITY WITH UP TO 90 BEDS IN A NAVIGATION CENTER ("Agreement"), dated for purposes of identification only as of _____, is made and entered into by and among the CITY OF FULLERTON ("**Fullerton**"), a California municipal corporation (sometimes referred to herein as the "**City**") and ILLUMINATION FOUNDATION, a 501(c)(3) corporation ("**Foundation**"). The City and the Foundation may individually be referred to herein as a "**Party**" or collectively as the "**Parties.**"

RECITALS

A. There are an estimated 360,000 homeless individuals and families in California. On any given night, approximately 3,961 people are homeless and unsheltered in Orange County. Within the North Orange County area, the thirteen cities (Anaheim, Brea, Buena Park, Cypress, Fullerton, La Habra, La Palma, Los Alamitos, Orange, Placentia, Stanton, Villa Park, and Yorba Linda) which make up the North Service Planning Area (North SPA) report 1,596 unsheltered and 1,169 sheltered individuals as of the 2019 Point-In-Time Count (PIT). Non-profit and faith-based organizations, local governments and the County are concerned about the homelessness in Orange County and are focusing their efforts to end homelessness for these individuals and families. These entities continue to work tirelessly to identify effective solutions that will result in permanent housing. Fullerton has partnered with the County of Orange (the "County") and the North SPA Cities to meet the urgent need for year-round emergency shelters and multi-service centers in Orange County that will meet critical needs for some of the most vulnerable people in our neighborhoods and also address a pressing social issue that deeply impacts local businesses and communities.

B. Many homeless individuals who receive medical care are capable of being discharged from the hospital prior to the time when they are fully recovered. Recuperative care facilities give healthcare providers a safe place to discharge homeless patients when they no longer require hospitalization but still need to heal from an illness or injury. Other individuals experiencing homelessness are resistant to entry in traditional homeless shelters for a wide variety of reasons. A Navigation Center is a program designed to shelter those highly vulnerable and long-term homeless residents who are often fearful of accessing traditional shelter and services. Navigation Centers provide these otherwise unsheltered individuals room and board while case managers work to connect them to income, public benefits, health services, shelter,

and housing. Navigation Centers are different from traditional shelters in that they have few barriers to entry and include intensive case management. Unlike many traditional shelters, people with partners, pets and possessions are welcome at Navigation Centers. The purpose of a Navigation Center is to offer a respite from life on the street and to support people in changing their lives by making lasting social service and housing connections.

C. The Foundation is seeking to establish a 60 bed recuperative care facility which would also provide for up to a 90 bed navigation center (“**Proposed Facility**”). The Foundation is in escrow for a site located in Fullerton at 3535 West Commonwealth Avenue, with an Assessor Parcel Number of 030-040-15 (“**Property**”) to establish the Proposed Facility. The City has been requested by the Foundation to assist in funding the Proposed Facility. The Foundation has entered into escrow for the site and has an agreement with the County of Orange to fund the recuperative care portion of the Proposed Facility. The Foundation requests funding in the amount of \$500,000 from the City, which would go towards tenant improvements as described below for the Proposed Facility.

D. Recuperative Care facilities and Navigation Centers are necessary components to augment the provision of emergency shelter. These services are critical for some of the most vulnerable individuals experiencing homelessness, and reduce the impact a homeless population has on its surrounding environment. These services, when combined with onsite security and a strong partnership with the neighboring police departments, improve safety for and benefit the surrounding community and the homeless clients receiving services. Further, they contribute to the regional social and human services efforts of the Parties.

E. The City is willing to contribute the funds set forth below towards the Foundation’s necessary tenant improvements to the Property, if acquired by the Foundation, and further commits to seek additional funding through available State Homeless Housing, Assistance, and Prevention Program Funding up to the projected full tenant improvement amount of \$1.9 million.

G. The City of Fullerton City Council declared a Shelter Crisis on July 2, 2019 per California Government Code Section 8698, under which provisions of any state or local regulatory statute, regulation, or ordinance prescribing standards of housing, health, or safety shall be suspended to the extent that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis.

H. Illumination Foundation has proposed 3535 W. Commonwealth Avenue as the location for its recuperative care and navigational center. While this property is not within the current Emergency Shelter Overlay Zone, it is zoned as Commercial-Manufacturing (C-M) and therefore a recuperative care and navigational center is allowable by Conditional Use Permit (CUP) under the definition of Human Service Agency. The Fullerton Municipal Code defines a Human Service Agency as any office or facility on privately held property operated and/or funded by a governmental, quasi-government or nonprofit entity other than the City which

provides human services such as counseling, training, rehabilitation, shelter, medication and/or food assistance.

Additionally, through the triennial adoption of the California Building Code, the City will adopt Appendix O – Emergency Housing, which is applicable to emergency housing and emergency housing facilities, during the declaration of a shelter crisis.

The Illumination Foundation has begun preparation of a CUP application package for the proposed recuperative care and navigational center that will be subject to review and approval by the Planning Commission early next year.

I. The Parties reviewed this Agreement pursuant to the California Environmental Quality Act ("CEQA"), and find that this Agreement is exempt from environmental review. This Agreement contemplates funding internal improvements to the Property for potential use as the Proposed Facility. Further, the funding for the improvements to the Property does not require CEQA review because the funding for emergency shelters in cities which have declared a shelter emergency is exempt from environmental review. Cal. Gov. Code § 8698.4(a)(4).

NOW THEREFORE, in consideration of the above recitals and mutual promises contained herein, the Parties hereto agree and covenant as follows:

AGREEMENT

1. Property Acquisition. The Foundation shall solely be responsible for, and shall provide the funding for, the purchase of the Property required for establishment of the Proposed Facility. The City retains sole discretion regarding any necessary project approvals, but agrees to cooperate with Foundation to facilitate the necessary consideration of such project approvals in an expedited timeframe. The Parties understand that the tentative plan would be to open a 60-bed recuperative care center at the Property as the first phase of tenant improvements and 90-bed navigation center as the second phase of tenant improvements.

2. City Contribution. The "**City Contribution**" consists of the Potential Tenant Improvement Contributions defined below.

a. Improvements Deposit. Within fifteen (15) days of the date the Foundation gives written notice to the City that it has satisfied applicable zoning requirements, Fullerton shall deposit \$50,000 with the Foundation for use by the Foundation to begin construction of the Tenant Improvements for the Property acquired for the Proposed Facility. Foundation shall maintain an accounting of the deposit and use of the Tenant Improvement Contributions at its own cost and such accounting shall be open to inspection by the City. The Contributions are made subject to the following conditions:

(i) The City has reviewed and approved permits for the proposed Tenant Improvements for the Proposed Facility to ensure that the improvements are appropriate and adequate to serve the intended number of homeless individuals.

(ii) The City has verified that the Contractor selected by Foundation to perform the Tenant Improvements is qualified, licensed and insured.

b. Remaining Improvements Contributions. Promptly upon notification from the Foundation that the approved Tenant Improvements have commenced, City shall either create a separate fund for the remaining amount of \$450,000 or deposit this sum into an escrow account to be used solely for reimbursement of tenant improvement costs. These funds shall be disbursed as follows:

- Reimbursement to the Foundation for progress payments made to its contractor will require written request by Foundation representative, approval from City designated representative, and invoices and any permit inspection approvals, if applicable to the progress payment. Foundation General Contractor shall provide necessary documentation to include unconditional lien releases, copies of all executed subcontracts, evidence of required insurance, and copies of all permits signed by appropriate City department.
- Foundation and City will work together with General Contractor and obtain an approved set of construction plans, a line item narrative scope of work and specifications, and ensure that construction improvements are built per plans and scope of work.
- Foundation will make Tenant Improvements to the property ("**Tenant Improvements**") in line with the proposed use and as agreed to by City, of which approval shall not be unreasonably withheld. Approved progress payments will be paid from escrow account as set forth above. Any funds remaining in escrow account after completion of Tenant Improvements shall be returned to City.
- Foundation will be responsible for hiring and paying all contractors.
- Foundation shall hire a licensed General Contractor in good standing and with required insurance.

Funds in the escrow account are to be used by the Foundation solely to install approved Tenant Improvements at the Proposed Facility. The Foundation shall maintain an accounting of the deposit and use of the Tenant Improvement Contributions at its own cost and such accounting shall be open to inspection by the City. City shall be entitled to reimbursement of all Tenant Improvement Contributions within sixty (60) days of the Foundation's decision to sell the Property or terminate its use as a Recuperative Care and Navigation Center as provided herein within ten (10) years of the initial purchase date.

In the event that the Property is purchased and the Proposed Facility established thereon, the Foundation shall create an accounting of (a) any and all City Contributions and (b) any and all costs for site preparation, facility design, construction plans (including engineering and architectural consultant fees), and building upgrades and rehabilitation necessary to use the Property as the Proposed Facility ("**Facility Costs**") and provide such Facility Costs to the City.

The City reserves the right to audit files, records, and expenditures relating to the City Contributions and Facility Costs written notice to the Foundation.

3. Additional Funding Needs. City and Foundation agree to cooperate in efforts to secure additional funding in the amount of \$1.5 million to fund the anticipated Tenant Improvements for the Property, including seeking funding through the HHAPP program, the County of Orange, CalOptima, or any other source of funding, to include available City funds, which may be available to fund remaining Tenant Improvements and operations of the Proposed Facility.

4. Effect of this Agreement. It is agreed by the Parties that this Agreement does not represent a commitment by any of the Parties to a definite course of action to actually acquire the Property or establish or operate the Proposed Facility thereon, and such acquisition, establishment and operation is conditioned upon the development of final operational plans and compliance with any and all applicable legal requirements. By their execution of this Agreement, the Parties are not committing themselves to or agreeing to undertake any acts or activities requiring the subsequent independent exercise of discretion by the Parties, their governing boards or any commission, committee, agency or department thereof. The Parties recognize that one or more of the conditions to the Foundation's proposal set forth herein may fail to be met as a result of inability to acquire the Property, and/or other reviews and proceedings involving the exercise of discretion by the Foundation, the County, the City, its governing board, or any commission, committee, agency or department thereof.

5. Operational Issues. The Parties may subsequently enter into a more detailed agreement relating to the operation of the Proposed Facility. Notwithstanding the foregoing, the Parties agree to the following specific terms relating to Operations.

i. Allow Orange County Healthcare Agency to refer homeless clients to the 60-bed recuperative care center. The City understands that clients referred to the recuperative care center may not be residents of the City. Depending on funding, the Parties may reasonably anticipate that priority for recuperative care beds will be provided to Fullerton residents and residents of the North Orange County Service Planning Area ("North SPA").

ii. The 90-bed navigation center will give priority to residents of the City and referrals to the navigation center will be coordinated with the City. Residents of the North SPA shall have priority for navigation center beds jointly funded by members of the North SPA, if such funding is provided. Residents from other Service Planning Areas may be referred for use of beds subject to payment of operational fees to include any additional transportation or host city fees.

iii. The Parties will work closely in establishing policies and procedures appropriate for the operations of the Property.

6. Indemnification: Cooperation in the Event of Legal Challenge.

i. The Foundation agrees to and shall, at Foundation's sole cost and expense, defend, indemnify and hold harmless the City, and any council members, officers, officials, employees, agents, and representatives of the City ("**City Representatives**") from and against any and all actions, suits, proceedings, claims, demands, losses, damages, judgments and costs and expenses (including without limitation any expenses, settlement costs, legal costs and attorneys' fees) resulting from any legal action or proceeding initiated by any individual or entity ("**Third Party Challenge**") arising out of or seeking to challenge, modify or invalidate (a) the purchase of the Property, (b) the establishment of the Proposed Facility, (c) Project Approvals, and/or (d) actions taken by the Foundation in connection with considering, establishing and operating the Proposed Facility including, without limitation, the Foundation's approval of or performance under this Agreement and/or any CEQA documentation prepared, action taken, or findings made by any jurisdiction, including the City. The City shall notify the Foundation of any Third Party Challenge as soon as practicable after receiving notice thereof. The City shall cooperate in any defense; however, the Foundation shall be liable for all legal expenses and costs incurred in defending any Third Party Challenge on behalf of the Foundation and/or the City. In the event that the City choose to defend itself in any such proceedings, the City shall be responsible for its own costs for such defense. This section shall survive any judgment invalidating all or any part of this Agreement. The Foundation shall be entitled to any award of attorneys' fees arising out of any such legal action, except to the extent the City chooses to defend itself.

ii. The City agrees to and shall, at the City's sole cost and expense, defend, indemnify and hold harmless the Foundation, and each of them independently, and any, officers, officials, employees, agents, and representatives of the Foundation ("**Foundation Representatives**") from and against any and all Third Party Challenges arising out of or seeking to challenge, modify or invalidate actions taken by the City in connection with the City's approval of or performance under this Agreement, except as specifically provided in section 6.i. above. The Foundation shall notify the City of any Third Party Challenge as soon as practicable after receiving notice thereof. The Foundation shall cooperate in any defense. In the event that the Foundation chooses to defend itself in any such proceedings, the Foundation shall be responsible for its own costs for such defense. This section shall survive any judgment invalidating all or any part of this Agreement. The City shall be entitled to any award of attorneys' fees arising out of any such legal action.

7. Miscellaneous

a. Benefit of Counsel/Consultant. In entering into this Agreement, each Party represents and warrants that it is not relying on any representations, opinions, conclusions, recommendations, or opinions expressed by, provided by, or inferred from any other Party to this Agreement any attorney for any other Party, or any other Party's experts, consultants, or agents.

Each Party represents and warrants that it has been fully advised by its attorney concerning the effect and finality of this Agreement, and that the Party understands, without reservation or doubt, the effect and finality of this Agreement.

b. Assignment. The Parties shall not assign any of their interests or obligations under this Agreement to any other party or agency, without the prior written authorization of all Parties to this Agreement.

c. Counterparts and Facsimile and Electronic Signatures. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall be binding upon all Parties hereto, notwithstanding that the signatures of the Parties' designated representatives do not appear on the same page. For purposes of this Agreement, facsimile and electronic signatures will be deemed to be original signatures.

d. Representations and Warranties. Each Party warrants that it is fully authorized to enter into this Agreement on behalf of itself and that each Party's signatory is authorized to sign on behalf of the Party.

e. Governing Law. This Agreement is entered into and shall be interpreted in accordance with the laws of the State of California without regard to any doctrine of choice or conflict of law.

f. Costs and Attorneys Fees. The Parties acknowledge and agree that as to each other they are to bear their own costs, expenses, expert and consultant fees, and attorney fees arising out of the matters addressed herein, the negotiation, drafting, and execution of this Agreement, and all matters arising out of or connected therewith.

g. Construction of Agreement. This Agreement is the product of arms-length negotiations between the Parties and their respective attorneys. Each of the Parties hereto expressly acknowledges and agrees that this Agreement shall be deemed to have been mutually prepared so that the rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

h. Modifications. No change, modification or amendment of this Agreement shall be valid unless it is made in writing and signed by the Parties.

i. Notices. All notices and other communications between the Parties required under this Agreement shall be in writing to the contact information provided below, as herein provided. Notices shall be deemed to have been duly given (i) if and when personally served, or (ii) three (3) days after deposit thereof in the United States mail, registered or certified, return receipt requested, postage prepaid, or (iii) one (1) business day after deposit with a nationally recognized overnight courier service, or (iv) via facsimile, effective on receipt of

transmission confirmation if given during normal business hours, or the following business day if not, provided that a hard copy of such facsimile notice is sent on the same day via one of the methods of delivery set forth in subparagraphs (i) to (iii). Any Party to receive notice hereunder may change or add its address for the purpose of receiving notices as herein provided by delivering notice in the manner aforesaid to all other Parties:

If to Fullerton:

City of Fullerton
303 W. Commonwealth Avenue Fullerton,
CA 92832
Attn: City Manager

With copy to:

Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835
Attn: Kimberly Hall Barlow

If to Foundation:

Illumination Foundation
1091 N. Batavia St.
Orange, CA 92867
Attn: Director

With copy to:

j. Severability. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall remain in full force if the legal substance of the settlement that this Agreement contemplates is not affected in any manner adverse to any Party.

k. Integration. This Agreement constitutes the entire agreement between the Parties, with respect to the subject matter hereof, and supersedes all discussions, agreements and understandings, both written and oral, among the Parties with respect thereto.

l. No Third Party Beneficiaries. The rights and obligations set forth herein are intended exclusively for the benefit of the Parties and shall not be construed to convey any rights or remedies to any third party.

m. No Agency Relationship. Nothing herein will be construed to create an agency relationship between the Parties.

n. Effective Date of this Agreement. The effective date of this Agreement (the "Effective Date") shall be the latest date of execution hereinafter set forth opposite the names of the signators hereto. No Party shall have any obligations under this Agreement (notwithstanding

any approval of such Agreement given by the Parties' governing body) unless and until all parties execute this Agreement in compliance with all applicable law.

o. Recitals Incorporated. The Recitals to this Agreement are, by this reference, incorporated into this Agreement and made a part hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth below.

Dated: _____, 2019

CITY OF FULLERTON, a California
municipal corporation

By: _____
Its: City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Richard D. Jones, City Attorney

Dated: _____, 2019

ILLUMINATION FOUNDATION

By: _____
Paul Leon
President & CEO

Dated: _____, 2019

ILLUMINATION FOUNDATION

By: _____

[TITLE]

APPROVED AS TO FORM:

By: _____

Attorney for Illumination Foundation