

RIGHT OF ENTRY AGREEMENT
BY AND BETWEEN
THE CITY OF THOUSAND OAKS
AND
MANY MANSIONS, HOPE THE MISSION, AND DIGNITYMOVES (COLLECTIVELY,
PROPOSER)
(1205 LAWRENCE DRIVE, THOUSAND OAKS, CA)

This RIGHT OF ENTRY AGREEMENT ("**Agreement**") is entered into as of _____, 2023 ("**Effective Date**") by and between the CITY OF THOUSAND OAKS, a municipal corporation of the State of California ("**City**"), and MANY MANSIONS, HOPE THE MISSION, dba, HOPE OF THE VALLEY RESCUE MISSION, AND DIGNITYMOVES, a California nonprofit public benefit corporation ("**Proposer**"), each a "**Party**" and collectively the "**Parties**", on the basis of the following facts:

RECITALS

A. The City holds fee title to certain real property located at 1205 Lawrence Drive, Thousand Oaks, CA, APN: 667-0-080-105, (hereinafter defined as the "**Site**") and Proposer desires to lease 1.05 acres of the Site, to develop and construct a Navigation Center consisting of 30 small residential units and other ancillary buildings such as, but not limited to, restroom facilities, dining hall, laundry, and an administration office, as well as operate the Navigation Center to provide interim housing and other services for qualified applicants (the "**Project**").

B. The City and Proposer have entered into an Exclusive Negotiation Agreement dated _____, 2023 ("**ENA**") to negotiate, among other things, the terms of the City's lease of the Site to Proposer as well as operation and service agreements necessary to properly develop, construct, maintain and operate the Navigation Center ("Definitive Agreement").

C. The City and Proposer desire that Proposer have an opportunity to conduct due diligence on the Site, which may include performing physical tests, to determine the condition of the Site with regard to the proposed Project.

NOW THEREFORE, the Parties agree as follows:

1. Parties to this Agreement.

(a) The City is a municipal corporation of the State of California. The principal office of the City is 2100 E. Thousand Oaks Boulevard, Thousand Oaks, CA 91362, Attn: Andrew P. Powers, City Manager, with a copy to City of Thousand Oaks, 2100 E. Thousand Oaks Boulevard, Thousand Oaks, CA 91362, Attn: Patrick J. Hehir, Chief Assistant City Attorney, or such other location of which notice is given pursuant to this Agreement. "City" as used in this Agreement includes the City and any assignee or successor to its rights, powers and responsibilities.

(b) The Proposers are three California not-for-profit entities. The principal offices of each entity are: Many Mansions, 1259 E. Thousand Oaks Blvd., Thousand Oaks, CA 91362, Attn: Rick Schroeder, President; Hope the Mission, dba Hope of the Valley Rescue Mission, 16641 Roscoe Place, North Hills, CA 91343, Attn: Ken R. Craft, CEO; and DignityMoves, 2406 Bust Street, San Francisco, CA 94115, Attn: Elizabeth Funk, CEO. The parties may select other locations if proper notice is given pursuant to this Agreement.

2. Description of Site.

The City is the owner of certain real property located at 1205 Lawrence Drive, in the City of Thousand Oaks, Ventura County, California, (APN: 667-0-080-105). Proposer will have access to 1.05 acres of the City property as more particularly described in Exhibit A and illustrated by the site map in Exhibit B, which are attached to this Agreement and hereby incorporated by reference (the “**Site**”).

3. Grant of Right of Entry.

(a) Subject to and conditioned upon the terms and conditions of this Agreement, the City grants to Proposer and its authorized agents a non-exclusive right of entry (the “**Right of Entry**”) to perform the following acts on the Site: (1) obtain soil samples and make surveys and tests necessary to determine the suitability of the Site for the development of the proposed Project; and (2) conduct reasonable investigations on the method and feasibility of the Site to install necessary infrastructure such as water/wastewater connections, utility connections, foundations, walls, fencing and required structures, all for the purpose of meeting the obligations of serving qualified residents through the operation of the Navigation Center at the Site.

(b) Proposer may not use the Site for any other purpose or business without obtaining the City’s prior written consent, which consent may be withheld in the City’s sole an absolute discretion.

4. Term.

This Agreement shall commence on the Effective Agreement and shall automatically expire, without need for further notice or action of any kind, upon the expiration or earlier termination of the ENA, unless otherwise mutually extended beforehand by the Parties in writing or earlier terminated in accordance with its terms (the “**Term**”); provided that, if the City Council disapproves the City’s entry into a Definitive Agreement with the Proposer, then this Agreement will automatically expire, without need for further notice or action of any kind, at 11:59 pm on the day the City Council disapproves entry into a Definitive Agreement.

5. Compliance with Laws.

Proposer and Proposer's agents, contractors, licensees, employees, and invitees, at Proposer's expense, shall comply with all applicable federal, state, and local laws, ordinances, regulations, rules, and orders with respect to the Site and Proposer's and/or Proposer's agents, contractors, licensees, employees, and/or invitees' actions or activities on or in connection with the Site. Proposer, its agents, contractors, licensees, employees, and invitees shall not permit to be placed upon the Site any gasoline or any hazardous, toxic or explosive material, waste or substance unless such items are used in the ordinary course of Proposer's permitted activities under this Agreement. The term "hazardous" shall include any substance, material, waste pollutant, contaminant or matter now or hereafter regulated by any environmental law, rule or regulation. Proposer and Proposer's agents, contractors, licensees, employees, and invitees shall conduct all of operations on the Site in connection with this Agreement at Proposer's sole cost and expense.

6. Reports and Studies.

In consideration of the City's granting of the Right of Entry, Proposer shall promptly provide the City with a copy of all reports and test results arising from this Agreement, without creating any liability for Proposer or the preparer of such reports.

7. Right of Entry Nonassignable.

This Agreement is personal to Proposer and shall not be assigned. Any attempt to assign this Agreement shall be void *ab initio* and shall be of no force or effect.

8. Relationship Between the City and Proposer

The City is granting the Right of Entry to Proposer as an accommodation. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of owner and contractor or of partnership or of joint venture or of any association between the City and Proposer other than that of licensor and licensee. No legal title or leasehold interest in the Site is created or vested in Proposer by the grant of the Right of Entry.

9. Nonexclusive Right of Entry.

The Right of Entry is revocable and nonexclusive. Nothing contained herein shall be construed to restrict or prevent the entry onto and use of the Site during the Term of this Agreement by the City or the City's agents, contractors, licensees, employees, and invitees and/or its other licensees.

10. Surrender.

On or before the termination date for this Agreement, Proposer shall remove all of its personal property from the Site and shall fill any excavations made by Proposer and shall surrender possession of the Site to the City in good order and repair to the satisfaction of the City, normal wear and tear excepted.

11. Removal of Liens.

Under no circumstance whatsoever shall any lien, including any mechanic's lien, stop notice, materialmen's lien, or any lien for goods, labor, material, services or work delivered or performed on the Site, attach to or encumber the Site. If any mechanic's lien, stop notice, materialmen's lien, or any other lien is filed for work done or claimed to have been done or for materials or services furnished or claimed to have been furnished, then such lien shall be discharged by Proposer at its sole cost and expense in a timely manner no later than ninety (90) days thereafter whether by payment, release, or posting of a bond or other similar assurance. The City may, in its sole and complete discretion, bond or discharge the same by paying the amount claimed to be due, and Proposer shall reimburse the City for all sums paid by the City under this Section, together with reasonable attorneys' fees and costs, plus interest on those sums, fees, and costs from the date of payment at the highest rate allowed by law.

12. Release and Indemnity.

Proposer, as a material part of the consideration to be rendered to the City for the granting of the Right of Entry, for itself and its successors and assigns, hereby agrees:

(a) to indemnify, defend, protect, and hold the City and its officers, employees, attorneys, agents, and volunteers (collectively, the "**Indemnified Parties**" and each an "**Indemnified Party**"), free and harmless from any and all loss, liability, claims, damages and expenses (including, but not limited to, reasonable attorneys' fees and costs) arising from the exercise of the Right of Entry or Proposer's and/or Proposer's agents, contractors, licensees, employees, and/or invitees actions or activities on or in connection with the Site, including, but not limited to:

- (1) any and all risks of or exposure to any loss or liability arising from actions or activities conducted by Proposer and/or Proposer's agents, contractors, licensees, employees, and/or invitees on the Site under this Agreement;
- (2) any and all claims arising from or relating to the transportation, storage, handling or use of any material taken from the Site pursuant to this Agreement, or from any substance, known or unknown, emanating or derived therefrom; and
- (3) any and all claims for damage to the Site, any improvements thereon, or to the property or person of any third party, alleged to have been

caused by, or in any way connected with the physical properties of the Site or any material taken from the Site pursuant to this Agreement.

The foregoing undertaking of indemnity shall apply regardless of whether the loss, liability, claims, damages and expenses were in part contributed to by the acts or omissions of any Indemnified Party; provided, however, that nothing herein shall be interpreted as obligating Proposer to indemnify an Indemnified Party for an Indemnified Party's gross negligence or willful misconduct. Such undertaking of indemnity shall survive the termination of this Agreement for any reason. Notwithstanding the foregoing, Proposer shall have no obligation to indemnify an Indemnified Party for loss, liability, claims, damages and expenses arising from Proposer's mere discovery of hazardous substances already present on the Site prior to the commencement of this Agreement, so long as Proposer has not contributed to the placement, release or migration of such pre-existing hazardous substances.

(b) Except to the extent of an Indemnified Party's gross negligence or willful misconduct, to fully and finally release the Indemnified Parties from any and all claims, demands, actions, or suits of any kind or nature arising out of Proposer's and/or Proposer's agents, contractors, licensees, employees, and/or invitees actions or activities on or in connection with the Site during the Term of this Agreement, including, but not limited to, rights or claims for implied contribution or indemnity, or any claim or liability based or asserted pursuant to any law or ordinance which seeks to impose any liability or damage whatsoever upon any Indemnified Party arising from the execution and/or performance of this Agreement, or from any of its terms.

In connection with the foregoing release, Proposer hereby acknowledges that it has been advised by legal counsel and is familiar with the provisions of California Civil Code, section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Proposer, being aware of such code section, agrees to expressly waive any rights it may have thereunder, as well as under any other statute or common law principles of similar effect.

_____ Initials of Proposer's authorized signatory

13. Insurance.

(a) Proposer shall maintain liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Site, resulting directly or indirectly from any acts or activities of Proposer, or any person acting for Proposer, or under its respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Site, or in connection with Proposer's activities thereon, caused directly or indirectly by or from acts or activities of Proposer, or any person acting for Proposer, or under its control or direction. Such property damage and personal injury insurance shall also provide for and protect the City against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the Term in the following amounts: Commercial General Liability on a per occurrence basis of not less than Two Million Dollars (\$2,000,000) and in a general aggregate amount of not less than Four Million Dollars (\$4,000,000); and Commercial Automobile Liability of not less than One Million Dollars (\$1,000,000) combined single limit, including owned, non-owned and hired automobile coverage. Proposer agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Proposer may be held responsible for the indemnification of the City or the payment of damages to persons or property resulting from Proposer's activities, or the activities of any other person or persons for which Proposer is otherwise responsible.

(b) Proposer shall maintain workers' compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Proposer in connection with the Site and shall cover liability within statutory limits for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Site or the operation thereof by Proposer. Notwithstanding the foregoing, Proposer may, in compliance with the laws of the State of California and in lieu of maintaining such insurance, self-insure for workers' compensation in which event Proposer shall deliver to the City evidence that such self-insurance has been approved by the appropriate State authorities.

(c) Proposer shall cause all contractors and subcontractors performing work to maintain insurance of the types and in the amount described in this Section 13. Proposer shall cause any architects and engineers also to maintain Architects and Engineers Professional Liability (Errors and Omissions) insurance on a "claims made basis" in an amount of not less than One Million Dollars (\$1,000,000). When coverage is provided on a "claims made basis", Proposer shall cause all contractors and subcontractors to continue to renew the insurance for a period of five (5) years after this Agreement expires

or is terminated. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this Agreement and will cover Proposer for all claims made by the City arising out of any acts or omissions of Proposer, or its officers, employees or agents during the time this Agreement was in effect.

(d) All policies, including the policies maintained by all contractors and subcontractors performing work, must name the City and its officers, employees, attorneys, agents, and volunteers as additional insureds and/or loss payees as its/their interests may appear. Policy endorsements providing the additional insureds/loss payees must be included with Certificates of Insurance. Proposer, and all contractors and subcontractors performing work, must require its/their insurer(s) to waive its/their subrogation rights against the City and its officers, employees, attorneys, agents, and volunteers as to all Commercial General Liability, Commercial Automobile Liability, and workers' compensation insurance policies, and shall provide the City policy endorsements evidencing same with Certificates of Insurance.

(e) All insurance provided under this Section shall be for the benefit of Proposer and the City. Proposer agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Proposer agrees to submit policies of all insurance required by this Section, or certificates evidencing the existence thereof and additional insured endorsements, to the City not less than fifteen (15) days prior to its commencement of any activities on the Site, indicating full coverage of the contractual liability imposed hereby. All insurance herein provided for shall be effected under policies issued by insurers of recognized responsibility, licensed and admitted to do business in the State of California (or if not admitted in California shall have a "General Policyholders Rating" of at least "A" as set forth in the most current issue of "Best's Key Rating Guide"), reasonably approved by the City. All policies or certificates of insurance shall provide that such policies shall not be canceled or limited in any manner without at least thirty (30) days prior written notice to the City.

(f) The evidence of insurance required hereunder is a condition precedent to the right to enter upon the Site. If Proposer fails or refuses to procure or maintain (or cause to be procured and maintained) the insurance required by this Agreement, the Right of Entry granted by this Agreement shall automatically terminate and be of no further force or effect.

14. City's Authorized Representative.

Unless otherwise specified or the context requires otherwise, all references to the City in this Agreement and its attachments shall mean the City's City Manager or any officer or employee of the City to whom the City Manager or the City Council of the City delegates authority to perform, carry out and/or enforce this Agreement. Unless otherwise specified or the context requires otherwise, all references to the City's City Manager shall mean the City Manager or his or her designee.

15. Notices, Demands and Communications Between the Parties.

Formal notices, demands and communications between the City and Proposer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Proposer. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by mail. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt by the recipient; and any notice that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

16. Conflict of Interest.

To the extent prohibited by law, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

Proposer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

17. Non-liability of Officials and Employees.

(a) No member, official or employee of the City shall be personally liable to Proposer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Proposer or on any obligations under the terms of this Agreement.

(b) No member, official or employee of Proposer shall be personally liable to the City, or any successor in interest, in the event of any default or breach by Proposer or for any amount which may become due to the City or its successor or on any obligations under the terms of this Agreement. This release shall not apply in the event of fraud, waste or intentional damage by Proposer or any agent, member, official, or employee of Proposer.

18. Interpretation of Agreement; Terminology; Application of Law.

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters addressed herein. In addition, each Party has been given the opportunity to consult with experienced and knowledgeable

legal counsel. Accordingly, any rule of law (including Civil Code section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effectuate the purpose and intent of the Parties to this Agreement. This Agreement shall be construed and enforced in accordance with the internal laws of California and not the principles regarding conflict of laws, except to the extent that Federal law preempts State law.

When the context so requires when used in this Agreement, the masculine gender shall be deemed to include the feminine and neuter gender and the neuter gender shall be deemed to include the masculine and feminine gender. When the context so requires when used in this Agreement, the singular shall be deemed to include the plural. The paragraph and section headings have been used for convenience only and shall not be used in the interpretation hereof.

19. Waivers.

A waiver by the City or Proposer of any term, covenant, or condition herein contained shall not be a waiver of such term, covenant, or condition on any subsequent breach. All waivers must be in writing and signed by the appropriate representatives of the City or Proposer, as applicable.

20. Time of the Essence.

Time is of the essence in this Agreement and each and all of its provisions in which performance is a factor.

21. Attorneys' Fees and Costs.

If any action or proceeding is brought by any Party against any other Party under this Agreement, whether for interpretation, enforcement or otherwise, the prevailing Party shall be entitled to recover all costs and expenses, including the reasonable fees of its attorney and any expert witnesses in such action or proceeding. This provision shall also apply to any post-judgment action by either Party, including without limitation efforts to enforce a judgment.

22. Severability.

Any provision of this Agreement that shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

23. Entire Understanding of the Parties; Amendments.

This Agreement, including any document or instrument incorporated herein by reference, contains a complete and final expression of the agreement between the City and Proposer relating to this Agreement, and there are no promises, representations, agreements, warranties, or inducements either express or implied other than as are set forth in this Agreement. Any and all previous discussions or agreements between the City and Proposer with respect to this Agreement, whether oral or written, are superseded by this Agreement. No amendment, change, or addition to, or waiver of termination of, this Agreement or any part hereof shall be valid unless in writing and signed by the City and Proposer.

24. No Third-Party Beneficiaries.

The Parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of the City and Proposer, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein.

25. Further Assurances.

Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all necessary acts and things in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the Parties.

26. Execution in Counterparts.

This Agreement may be executed in several counterparts and all such executed counterparts shall constitute one agreement, binding on all of the Parties hereto, notwithstanding that all of the Parties hereto are not signatories to the original or to the same counterpart. This Agreement shall not be binding unless and until all Parties hereto have executed this Agreement.

27. Authority to Sign.

The individual executing this Agreement on behalf of Proposer hereby represents that he/she has full authority to do so and to bind Proposer to perform pursuant to the terms and conditions of this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

"CITY"

CITY OF THOUSAND OAKS

By:

Kevin McNamee, Mayor

"PROPOSER"

MANY MANSIONS

By:

Rick Schroeder, President

ATTEST:

By:

Laura B. Maguire, City Clerk

HOPE THE MISSION

By:

Ken R. Craft, CEO

DIGNITYMOVES

By:

Elizabeth Funk, CEO

APPROVED AS TO ADMINISTRATION:

By: _____
Andrew P. Powers, City Manager

APPROVED AS TO FORM:

By: _____
Tracy M. Noonan, City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF SITE

EXHIBIT "B"

SITE MAP