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City of Novato, City Manager Adam

9 McGill, Mayor Pat Eklund, Mayor Pro

Tem Eric Lucan, Chief of Police Mathew

10 McCaffrey, Public Works Director Chris  
Blunk

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 MARIN COUNTY HOMELESS  
14 UNION, a local affiliate of the  
CALIFORNIA HOMELESSNESS  
15 UNION, on behalf of itself and those it  
represents; CAMP COMPASSION, a  
16 Homeless Union-affiliated encampment  
in Lee Gerner Park; Individual Plaintiffs  
17 JASON SARRIS; LEA DEANGELO;  
ZACH BOULWARE; CARRIE  
18 HEALON, LISA NICOLE JOHNSON;  
DONALD HOBBS; DEBORAH ANN  
19 MIROMONTES; LISA JOHNSON;  
CHARLES TALBOT; BETHANY  
20 ALLEN; MICHELANGELO MONTEZ;  
DEBORAH ANN MIRAMONTES;  
21 KALANI WELSCH, and other similarly  
situated homeless persons including  
22 current residents of Camp Compassion  
homeless encampment,

23 Plaintiffs,

24 v.

25 CITY OF NOVATO; CITY MANAGER  
26 ADAM MCGILL, MAYOR PAT  
EKLUND, MAYOR PRO TEM ERIC  
27 LUCAN, CHIEF OF POLICE  
MATHEW MCCAFFREY, PUBLIC  
28 WORKS DIRECTOR CHRIS BLUNK,

Defendants.

**CASE NO.: 4:21-cv-05401-YGR**

[Assigned to the Hon. Yvonne Gonzalez  
Rogers]

**DECLARATION OF ADAM MCGILL  
IN SUPPORT OF CITY OF NOVATO'S  
MOTION TO MODIFY TEMPORARY  
RESTRAINING ORDER UNDER  
FRCP 65(B)(4)**

Hearing Date: July 26, 2021  
Time: 1:30 p.m.  
Ctrm: 1

Colantuono, Highsmith & Whatley, PC  
790 E. Colorado Blvd., Suite 850  
Pasadena, CA 91101  
SCN/CMA CA 05474

**DECLARATION OF ADAM MCGILL**

I, ADAM MCGILL, declare and state as follows:

1. I am the City Manager of the City of Novato, and a named Defendant in this action. I make this declaration in support of the City of Novato’s Motion to Modify Temporary Restraining Order under FRCP 65(b)(4). The facts set forth herein are true of my own personal knowledge, and if called upon to testify thereto, I could and would competently do so under oath.

2. On July 13, 2021, the Novato City Council authorized me in my capacity as City Manager to enter into a Memorandum of Understanding with Homeward Bound to provide immediate placement at the New Beginnings Center of up to 15 homeless individuals in Novato. A true and correct copy of the staff report detailing the provisions of the Memorandum of Understanding is attached hereto as Exhibit 1. A true and correct copy of the executed Memorandum of Understanding is attached hereto as Exhibit 2.

3. As the staff report states, if more than 15 individuals experiencing homelessness in Novato were willing to accept the placement offer, the City made arrangements to refer those individuals to Homeward Bound’s Kerner shelter in the City of San Rafael.

4. The staff report states that any person who accepts a placement offer will be offered free storage (paid by the City) of any personal property in excess of that permitted at the New Beginnings Center or the Kerner shelter for 60 days. The City has since approved extending the amount of time the City will pay for storage to 90 days.

5. The City intends to provide transportation to the New Beginnings Center and to the property storage facility to any person who accepts an offer of placement at New Beginnings Center.

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1 6. Because of the broad language of the TRO issued on July 15, 2021, the  
2 City has refrained from making any placement offers to the persons currently camping  
3 in Lee Gerner Park. The prohibition on removal could be read to prohibit offering  
4 transportation to persons who accept placement at New Beginnings Center. It could  
5 also be read to prohibit the City from storing the possessions of any person who  
6 accepts placement at New Beginnings Center at a property storage facility. If the  
7 language of the TRO is clarified, the City intends to take immediate action to offer  
8 these services to those persons currently camping in Lee Gerner Park.

9 7. Lee Gerner Park is a public park within the City of Novato. The park is  
10 owned by the City, and is adjacent to property owned by the County of Marin, and  
11 private property. The Novato Creek runs through the park, and the County of Marin  
12 Novato Branch Library sits on the park’s border. Several businesses consisting of  
13 medical offices and a restaurant surround the park.

14 8. The homeless encampment at Lee Gerner Park (named “Camp  
15 Compassion” in the Complaint) has caused significant damage to the park and has  
16 prevented the residents of the City from taking advantage of what is supposed to be a  
17 community space. The concentration of people living at the Park has generated  
18 thousands of pounds of garbage and debris, polluted the environment, created health  
19 and safety problems and killed some of the plants and flora that once thrived in the  
20 Park. In order to remediate that damage, the City will need to perform a complete  
21 rehabilitation of the park, including all new landscaping and sanitation facilities. The  
22 most recent estimate of the cost of the rehabilitations is between \$200,000 and  
23 \$250,000. True and correct copies of several photographs depicting the damage to Lee  
24 Gerner Park are attached hereto as Exhibit 3.

25 9. I have received multiple complaints from members of the community  
26 who are afraid to enter or go near Lee Gerner Park because of the aggressive behavior  
27 of the campers there. In particular, some campers have dogs who are not leashed. This  
28 prevents other community members from walking their dogs in the park because of

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1 the risk that the unleashed dogs will attack. Campers will aggressively prevent  
2 community members from accessing the park by harassing and filming anyone who  
3 approaches the camp.

4 10. I have also received complaints from the business owners who operate  
5 businesses near the park. The business owners report offensive and harassing behavior  
6 from the campers directed at customers and staff. Campers have urinated and  
7 defecated on the private property belonging to these businesses, and the City has  
8 received multiple reports of theft.

9 11. I have reviewed the declarations attached to the Complaint. The pictures  
10 included with the declarations show campers using propane grills to cook food in the  
11 park. This poses a significant fire risk.

12 12. Novato is currently on the California Communities at Risk List. A  
13 countywide assessment of the wildland fire threat undertaken by CAL FIRE revealed  
14 that nearly 313,000 acres (approximately 82% of the total land area of the county) are  
15 ranked as having moderate to very high fire hazard severity zone ratings. In the  
16 current Marin County Community Wildfire Prevention Plan (CWPP), peak fire  
17 conditions modeling scenarios results identified that when the hazard assessment was  
18 overlaid with fire agency jurisdiction boundaries, Novato has 45,992 burnable acres.

19 13. The most destructive fires occur on high fire danger weather conditions  
20 know as Red Flag days. On these days fire can spread rapidly through ember  
21 dispersion, structures, and/or vegetation. Red Flag warnings were recently issued for  
22 Marin County on May 7, 2021, and July 18, 2021.

23 14. The number of people camping at the park has fluctuated during the past  
24 year. In March of 2020, there were nine people camping in the park. The City was  
25 able to assist eight of those people in locating temporary housing or an alternative  
26 location. Then, in August of 2020, an independent homeless advocate organized at  
27 least ten individuals, some from out of town, to move into Lee Gerner Park and create  
28 a new encampment. This number was significant because the CDC guidelines at the

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1 time required that sanitary services be provided to a homeless encampment that  
2 included ten or more people.

3 15. Because of this past history, I believe that if any of the persons currently  
4 camping in Lee Gerner Park accept the City's placement offer, Plaintiffs will recruit  
5 more residents to maintain or increase the number of people camping in the park.

6 16. As of July 22, 2021, I have been informed and believe that there are 18  
7 people camping in Lee Gerner Park, including the named Plaintiffs in this action.

8 17. During the pandemic, the City and County of Marin provided many  
9 resources to those camping in Lee Gerner Park in accordance with CDC's guidelines  
10 for homeless encampments during COVID-19. The Marin County Emergency  
11 Operations Center (EOC) installed portable restrooms and hand washing stations in  
12 the front of the library. The City pays for a mobile shower unit and offers showers to  
13 residents. The City Public Works Department has provided the camp with rolling  
14 garbage cans that were emptied weekly. Two weeks ago, the City also provided a 20  
15 yard sized dumpster, which was filled within days.

16  
17 I declare under penalty of perjury under the laws of the State of California that  
18 the foregoing is true and correct.

19  
20 Executed on July 22, 2021 at Novato, California.

21  
22   
23 \_\_\_\_\_  
24 ADAM MCGILL

# **EXHIBIT I**





922 Machin Avenue | Novato, CA 94945  
novato.org

## STAFF REPORT

### MEETING

DATE: July 13, 2021

TO: City Council

FROM: Adam McGill, City Manager

SUBJECT: **APPROVE MOU PROVIDING FOR DIRECT REFERRAL OF UP TO 15 NOVATO HOMELESS PERSONS TO HOMEWARD BOUND**



## REQUEST

Authorize the City Manager to enter into a Memorandum of Understanding (MOU) with Homeward Bound of Marin for services that include housing, food, case management assistance, medical coordination services, job placement/training, and transitional/ permanent housing referrals for up to 15 homeless individuals in Novato.

## BACKGROUND

The City of Novato, like most cities, is experiencing an increasing number of homeless persons camping, living or loitering on various parcels of property owned by public agencies, including the City and the County of Marin. These circumstances are not only undesirable to the unhoused but have created an inability for other individuals to enjoy and benefit from public spaces, both for recreation and the continuity of essential government services.

As a result, the City Council adopted [Ordinance 1669](#) and [Ordinance 1670](#) at its regular scheduled City Council meeting of June 8, 2021. These ordinances are effective July 9, 2021, but in light of the existing COVID-19 public health emergency, the ordinances cannot be enforced to clear illegal encampments until the earlier of the following occurs:

1. The Centers for Disease Control and Prevention amends or revokes its Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Official to no longer recommend local agencies allow individuals living unsheltered or in encampments to remain where they are; or
2. COVID-19 vaccinations are accessible for individuals experiencing homelessness, at least 90 percent of County residents 16 year and older have been fully vaccinated, as defined by the California Division of Occupational Safety and Health, and the County meets the State of California requirements for the Yellow (Minimal) Tier in place as of May 25, 2021.

## DISCUSSION

The City has enjoyed a strong and lengthy partnership with Homeward Bound of Marin which is headquartered in Novato's Hamilton community. City and Homeward Bound staff have agreed to terms and conditions to facilitate the immediate housing and offering of services to those experiencing homelessness in Novato and occupying encampments within the City of Novato.

Specifically, up to fifteen (15) individuals currently experiencing homelessness within the City will be offered immediate placement into Homeward Bound's New Beginnings Center which will include all the services noted under the 'Request' header above.

This arrangement is a first of its kind and creates an unprecedented offering of immediate interim housing through direct referral from the City of Novato. If the number of homeless persons willing to accept such referrals exceeds 15 individuals, others will be referred to Homeward Bound's Kerner shelter in the City of San Rafael.

This provides the opportunity for Novato's homeless to remain, for the most part, in their home city and to immediately receive full wrap around services designed to aid in positively impacting their lives with a foundation that only Homeward Bound can offer. Those willing to participate and accept such services will remain eligible for housing vouchers and other services through the County's Housing First and Coordinated Entry Program for housing vouchers.

The City cannot require homeless individuals to participate in this this program but will encourage participation to the best of our ability. Staff is pleased to present this opportunity to the Council and the community and is proud to offer a compassionate alternative to the unhoused living in tents outdoors on public spaces with our partners at Homeward Bound of Marin.

The City will offer all persons who accept housing from the City the storage of their personal property up to two (2) twenty-seven (27) gallon plastic storage bins for up to sixty (60) days.

### **FISCAL IMPACT**

In exchange for Homeward Bound providing such care, accommodations, and services to City Referred Persons (defined in the MOU) pursuant to the MOU, the City shall pay Homeward Bound a not to exceed amount of \$148,000 of which Staff recommends the use of American Rescue Plan dollars. An additional, authorization of \$12,000 of ARP funds is requested for expenses related to implementation of this arrangement such as police and public works staff, associated encampment clean up activity such as dumpsters, storage containers, and the storage of some valuables of the unhoused.

### **STRATEGIC PLAN ALIGNMENT**

This item helps further City Council Strategic Plan Living Well Together Workplan Item # 1, *Work with service providers and other agencies to coordinate response and solutions to homelessness including transitioning homeless Novatans into shelter and housing.*

### **RECOMMENDATION**

Authorize the City Manager to enter into a Memorandum of Understanding with Homeward Bound of Marin for Novato homeless individuals to be offered immediate services that includes housing, food, case management assistance, medical coordination services, job placement/training, and transitional/permanent housing referrals by direct City referral for an amount not to exceed \$148,000 and authorize allocating an additional \$12,000 (Total expense NTE \$160,000 of ARP funds) for related costs that include staffing, public space restoration, and the storage of some personal property of the unhoused.

### **ALTERNATIVES**

1. Do not approve MOU and provide alternative direction to Staff.

### **ATTACHMENT**

1. Memorandum of Understanding between the City of Novato and Homeward Bound of Marin



## **EXHIBIT 2**

**MEMORANDUM OF UNDERSTANDING**

**By and Between**

**CITY OF NOVATO**

**and**

**HOMEWARD BOUND OF MARIN**

THIS MEMORANDUM OF UNDERSTANDING (“MOU” or “Agreement”) is entered into as of July 13, 2021, by and between the City of Novato, a general law city of the State of California (“City”) and Homeward Bound of Marin, a California nonprofit public benefit corporation (“Homeward Bound”), with respect to the following facts:

**RECITALS**

A. By Ground Lease Agreement between Homeward Bound and the Novato Public Finance Authority entered into as of July 12, 2005, Homeward Bound leased real property located in the former Hamilton Navy Airfield Base for the purpose of constructing a homeless shelter facility thereon (the “New Beginnings Center” or “Center”). This property is commonly referred to as the New Beginnings Property (APN 157-970-0). Said Ground Lease has been amended twice (collectively, the Ground Lease and its amendments shall be referred to as the “Ground Lease”). Subsequent to July 12, 2005, the Novato Public Finance Authority transferred the New Beginnings Property to the City of Novato.

B. Homeward Bound has constructed the New Beginnings Center on the New Beginnings Property which includes housing for up to 60 individuals experiencing homelessness. Covid protocols from Marin County Public Health limit the number of beds at New Beginnings Center to 60. Homeward Bound offers accommodations, food, and a variety of services to residents of the Center including housing focused case management such as medical, job placement and transitional or permanent housing referrals (collectively, “Services”).

C. The City is experiencing an increasing number of homeless persons camping, living and loitering on various parcels of property owned by public agencies, including the City and the County of Marin. The City is interested in offering persons who are experiencing homelessness the opportunity to be housed at the New Beginnings Center, and Homeward Bound has agreed to accept homeless persons for occupancy at the New Beginnings Center who are directly referred to Homeward Bound by the City under the terms and conditions of this MOU.

NOW, THEREFORE, the parties agree as follows:

## AGREEMENT

1. During the term of this MOU, Homeward Bound shall accept and house in its New Beginnings Center on the New Beginnings Property up to fifteen (15) persons who are experiencing homelessness and who are directly referred to Homeward Bound for such purpose by the City. In the event that the number of persons exceed the number of available beds, persons will be referred to Homeward Bound's Kerner shelter in San Rafael.

2. Said persons so referred to Homeward Bound by the City ("City-Referred-Persons") shall be entitled to receive the care, accommodations, and Services Homeward Bound offers to other persons experiencing homelessness who are provided shelter at the New Beginnings Center.

3. In exchange for Homeward Bound's providing said care, accommodations, and Services to City-Referred-Persons pursuant to this MOU, the City shall pay Homeward Bound the sum of One Hundred Forty-Eight Thousand Dollars (\$148,000), the receipt of which is acknowledged by Homeward Bound.

4. Homeward Bound shall regularly and promptly keep the City informed of the availability of beds at the New Beginnings Center for occupancy by City-Referred-Persons. Without limiting the generality of the foregoing, Homeward Bound shall immediately report (by email and telephone) the following things to the following person: (a) when the fifteen (15) beds described in Section 1 above are first fully occupied by City-Referred-Persons; and (b) when a City-Referred-Person who is occupying a bed at the New Beginnings Center vacates that bed and leaves the New Beginnings Center. The person to whom this information shall be reported is Novato Police Sergeant Melissa Hinkle. This, in order for the city to know whether or not it can offer accommodations at the New Beginnings Center to other persons experiencing homelessness within the City's limits who are not housed at the New Beginnings Center.

5. The insurance policies that are required to be purchased and maintained by Homeward Bound under the Ground Lease shall be endorsed or otherwise certified to cover any liability arising out Homeward Bound's performance under this MOU. Evidence of same shall be provided to the City prior to the commencement of the term of this MOU. In addition, the indemnification and defense obligations of Homeward Bound set forth in Section 6.4 of the Ground Lease shall include claims, actions, demands, judgments, settlements, costs, expenses, and attorney's fees arising out of, attributable to or otherwise occasioned by Homeward Bound's acts and omissions as well as its performance under this MOU. Homeward Bound's indemnification obligations shall survive the termination of this MOU.

6. The term of this Agreement shall be six (6) months and it shall commence on July 14, 2021, and expire on January 13, 2022, unless it is extended or otherwise modified in writing by the parties. Upon the expiration of this Agreement, the City shall not be entitled to directly refer and Homeward Bound will not be required to accept up to fifteen (15) persons experiencing homelessness within the city limits of the City of Novato unless by other agreement or law

Homeward Bound is otherwise required to accept for housing such directly referred persons experiencing homelessness.

7. This MOU constitutes the entire agreement between the parties with respect to its subject matter. This MOU completely supersedes all prior understandings or agreements, both written and oral, between the parties relating to the City directly referring persons experiencing homelessness to the New Beginnings Center.

8. Except as provided in Section 4, above, all notices herein shall be in writing and shall be sufficient if delivered personally, transmitted by email (with no evidence that the email transmittal was not received), U.S. First Class Certified Mail, postage prepaid, or express delivery service with the receipt showing the date of delivery and addressed:

if to the City:

City of Novato  
922 Machin Avenue  
Novato, CA 94945  
City Manager  
Email: amcgill@novato.org

if to Homeward Bound:

Homeward Bound of Marin  
1385 North Hamilton Parkway  
Novato, CA 94949  
Attention: Executive Director  
Email: mksweeney@hbofm.org

or any other address as either party may have furnished to the other in writing pursuant to the requirements of this Section 8, as a place for service of the notice. Any notice so mailed shall be deemed to have been given on the delivery date or the date that delivery is refused by the addressee, as shown on the return receipt, or within three (3) business days of the date the notice was mailed, whichever is earlier.

9. No member, official, officer, employee, agent, contractor, or volunteer of any party shall be personally liable to the other, or any successor in interest.

10. This MOU may be executed in counterparts and multiple originals, each of which shall be an original and all of it shall constitute the same instrument.

11. Nothing contained in this MOU shall be deemed or construed by the parties or by any third party to create the relationship of principal or agent, partnership, joint venture, association, or buyer and seller.



12. This MOU shall be governed by and construed in accordance with the laws of the State of California and any litigation seeking to enforce its provisions or arising out of the parties' performance thereof shall be brought in the County of Marin.


13. The Recitals set forth above are hereby incorporated by this reference as though fully set forth herein.

IN WITNESS WHEREOF, the parties hereto execute this MOU on the date first written above.

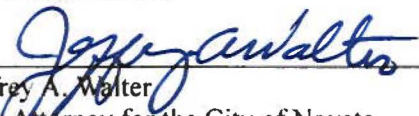
**CITY OF NOVATO**

By:   
Adam McGill  
Its: City Manager

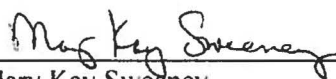
**ATTEST:**

By:   
Laura McDowall  
Its: City Clerk

**APPROVED AS FORM:**

By:   
Jeffrey A. Walter  
Its: City Attorney for the City of Novato

**HOMEWARD BOUND OF MARIN,  
a California Nonprofit Public Benefit Corporation**

By:   
Mary Kay Sweeney  
Its: Executive Director

## **EXHIBIT 3**























**CERTIFICATE OF SERVICE**

*Marin County Homeless Union v. City of Novato, et al.*  
United States District Court, Northern District  
Case No. 4:21-cv-05401-YGR

I, McCall L. Williams, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 East Colorado Boulevard, Suite 850, Pasadena, California 91101. My email address is: MWilliams@chwlaw.us. On July 23, 2021, I served the document(s) described as **DECLARATION OF ADAM MCGILL IN SUPPORT OF CITY OF NOVATO’S MOTION TO MODIFY TEMPORARY RESTRAINING ORDER UNDER FRCP 65(B)(4)** on the interested parties in this action as follows:

**BY ELECTRONIC TRANSMISSION:** I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Northern District by using the CM/ECF system on July 23, 2021. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the USDC, Northern District CM/ECF system.

I declare that I am employed in the offices of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on July 23, 2021, at Pasadena, California.

*/s/McCall Williams*  
McCall L. Williams

Colantuono, Highsmith & Whitley, PC  
790 E. Colorado Blvd. Suite 850  
Pasadena, CA 91101

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