

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF DENTON, TEXAS ("CITY") AND DENTON ASSISTANCE CENTER, INC. D/B/A SERVE DENTON ("SERVE DENTON") TO IMPLEMENT EMPLOY TO EMPOWER, DENTON'S EMPLOYMENT EMPOWERMENT PROGRAM FOR PERSONS EXPERIENCING HOMELESSNESS; PROVIDING FOR THE EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Denton City Council expressed an interest in pursuing a program similar to Albuquerque's "There's a Better Way" program that creates employment opportunities for the homeless; and

WHEREAS, a group of local nonprofits came together and reviewed similar projects offered in Albuquerque, Amarillo, and Denver, and drafted a proposal to the Denton City Council for a pilot project called "Employ to Empower;" and

WHEREAS, this project will help the literally homeless gain the skills, experience and confidence needed to find living-wage jobs by providing training and experience to develop soft skills, providing a job, and connecting people to long-term employment opportunities; and

WHEREAS, City staff was directed to proceed with the "Employ to Empower" pilot project, propose contributions by all parties, provide \$42,000.00 in funding, and identify and coordinate work projects; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Memorandum of Understanding between the City and Serve Denton attached hereto, on behalf of the City, including authorizing the expenditure of funds, and is further authorized to carry out the rights and duties of the City under the Memorandum of Understanding.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

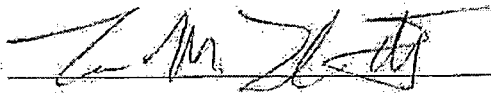
PASSED AND APPROVED this the _____ day of _____, 2017

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY:  _____

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF DENTON, TEXAS AND
DENTON ASSISTANCE CENTER, INC. d/b/a SERVE DENTON TO IMPLEMENT
EMPLOY TO EMPOWER (E₂E)
DENTON'S EMPLOYMENT EMPOWERMENT PROGRAM FOR PERSONS
EXPERIENCING HOMELESSNESS**

STATE OF TEXAS §
 §
COUNTY OF DENTON §

This Memorandum of Understanding, made this ____ day of June, 2017, by and between the City of Denton, A Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called "City" and Denton Assistance Center, Inc. d/b/a Serve Denton, a 501c3 organization with an office at 1980 East University Drive, Denton, Texas 76209, hereinafter called "Serve Denton," acting herein, by and through their duly authorized representatives.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

INTRODUCTION

There is growing recognition that homelessness is a significant issue in our community. The number of homeless will continue to increase and the costs to the community will continue to mount unless immediate action is taken.

Employment empowers people experiencing homelessness. Meaningful and sustainable employment is a key component to creating and maintaining housing stability. However, individuals experiencing homelessness face obstacles to finding and maintaining employment. Connecting them with job training and placement programs is critical to ensure they have the tools needed to exit homelessness and for long-term stability.

OVERVIEW AND PURPOSE

This program will help the literally homeless gain the skills, experience and confidence needed to find living-wage jobs.

1. Help people develop a job history.
2. Provide training and experience to develop soft skills.
3. Connect people to long-term employment opportunities.

BACKGROUND

Denton City Council members expressed interest in pursuing a similar program to Albuquerque, New Mexico's program called "There's a Better Way". City staff were asked for ideas how to implement a program that creates employment opportunities for the homeless in Denton. In November, 2016 a planning group of city staff and local nonprofits was assigned the task to draft a project proposal and identify level of interest for implementation from other community partners.

The group met regularly through January 2017 making final recommendations to City Council for a program called *Employ 2 Empower*. The program sought \$42,000 in funding to be leveraged with cost sharing options through in-kind service delivery through multiple partner agencies.

This proposal was accepted and the City Council agreed to fund \$42,000.

This Memorandum of Understanding (MOU) between the City and Serve Denton regards the implementation of a homeless employment initiative known as *Employ 2 Empower* (the "Program") under which Serve Denton will employ literally homeless persons (the "Participants").

RESPONSIBILITIES

The City of Denton, Texas Contribution

The City will provide a one-time contribution to fund, in part, the Program.

Barbara Ross, Community Development Manager, will serve as the key staff contact to oversee the City's contribution.

The City agrees to:

1. Fund a total of \$42,000 to be used by Serve Denton to employ Participants in the Program. Participants in the Program are expected to work 2 days a week, for a period not to exceed six months. The City and Serve Denton agree that Participants will serve as at-will employees of Serve Denton, and nothing in this Agreement shall be construed to create a right of any Participant to employment with Serve Denton, the City, or any other entity or person. The funding from the City is expected to support the wages and administrative costs for 4,000 man-hours of labor for around 10 employees.
2. The above contemplated amount will be paid pursuant to a payment schedule: Pay to Serve Denton \$21,000 to be funded from FY 2017 payable in June 2017 and \$21,000 to be funded from FY 2018 payable in October 2017.

3. Work with Serve Denton's lead staff to approve outputs and outcomes associated with this initiative.
4. Notify the City Council, Denton County Homeless Coalition and the United Way of any related activities addressing homelessness so as not to duplicate efforts.
5. Identify City department lead staff who can provide weekly job projects for Participants in the Program.

Serve Denton's Contribution

Serve Denton will serve as the manager and supervisor of the Program. Serve Denton will receive City funds and seek input from other community partners concerning Serve Denton's employment of Participants. The City and Serve Denton agree that all decisions concerning hiring, termination, employee discipline, work schedules, or any other decision requiring the exercise of employer discretion will be made by Serve Denton alone.

Danita Summers will serve as the key staff contact for Serve Denton concerning the management of the Program.

Serve Denton agrees to:

1. As the project manager and legal employer, receive City funds to administer the Program and pay Participants.
2. Provide human resources administrative services to handle employee processing and pay wages for hours worked to Participants in the Program.
3. Spend no more than \$6,000 of the funds provided by the City on its administrative costs.
4. Work with the *Employ 2 Empower* Steering Committee and pilot project partners to identify and update outputs and outcomes associated with this initiative.
5. Ensure that *Employ to Empower* Steering Committee and pilot project partners provide regular reports to the City on the progress toward agreed upon outputs and outcomes.

SCOPE OF SERVICES

The Program is designed to help the literally homeless gain the skills, experience and confidence needed to find living-wage jobs. The following services will be provided by Serve Denton, or their contractors, as part of this program.

1. Within the period of this Agreement, provide training and experience to at least ten Participants in order to develop job and soft skills.
2. Coordinate with the City to identify work requirements and determine a work schedule for the persons in this program.
3. Help the persons in this program develop a job history.

4. Connect graduates of this program to long-term employment opportunities.
5. The City and Serve Denton agree that Participants will only pick up litter in mowed open areas along main thoroughfares and city parks, paint park restrooms, paint trash cans, or paint playground equipment.
6. The City and Serve Denton agree that at no time will any Participant operate any electric or gasoline powered tool or equipment, use a ladder of any height, or work in areas not previously mowed on a monthly basis.
7. Serve Denton agrees to provide appropriate safety equipment including reflective vests, eye protection, gloves, work boots, sun hats, sunscreen, water, and handheld tools as Serve Denton, in its sole discretion, deems appropriate.

DURATION OF THE AGREEMENT

This MOU will be executed upon signature of both parties and will apply for the period of June 1, 2017 to May 31, 2018.

This MOU may be modified, altered, or revised, by mutual written consent of all parties, by the issuance of a written amendment, signed and dated by all the parties.

OBLIGATIONS

In consideration of the receipt of funds from the City, Serve Denton agrees to the following terms and conditions:

1. The City shall not be obligated or liable under this Agreement to any party other than Serve Denton for payment of any monies or provision of any goods or services.
2. All expenditures of these funds shall be those in accordance with the scope of services as provided herein and shall not utilize these funds for any other purpose.
3. Serve Denton will establish, operate, and maintain an account system for this program that will allow for a tracing of funds and a review of the financial status of the program. The system will be based on generally accepted accounting principles as recognized by the American Institute of Certified Public Accountants.
4. Serve Denton will maintain financial records that will provide accurate, current, separate, and complete disclosure of the status of the funds received under this Agreement, and permit authorized officials of the City to review these records at any time.
5. Serve Denton will not enter into any contracts that would encumber funds provided by the City for a period that would extend beyond the term of this Agreement.
6. Serve Denton will appoint a representative who will be available to meet with City officials when requested.
7. Serve Denton will permit authorized official from the City to carry out monitoring and evaluation of Serve Denton's activities to ensure adherence to the Scope of Services, and Program Goals and Objectives.
8. Serve Denton will submit performance/beneficiary reports on a quarterly basis to the City, to include information such as: number of persons assisted, training provided;

number of persons transitioned to permanent employment; and explanation of any major changes in program services.

INSURANCE

1. Serve Denton shall be required to purchase and maintain General Liability insurance with a combined single limits of not less than \$1,000,000. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies. Said General Liability shall provide coverage for:
 - a. premises, operations;
 - b. products, and completed operations;
 - c. independent contractors;
 - d. contractual liability covering this contract; and
 - e. broad form property damage coverage.
2. Serve Denton shall be required to purchase and maintain Workers' Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$100,000 for each accident, \$100,000 per each employee, and a \$500,000 policy limit for occupational disease. The City need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against the City, its officials, agents, employees and volunteers for any work performed for the City by the Named Insured.
3. Serve Denton shall be required to purchase and maintain Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than \$500,000 either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract, and shall provide coverage for any auto, or all owned, hired, and non-owned autos.
4. Serve Denton will maintain adequate and continuous automobile liability insurance on all vehicles owned, leased or operated for this program. Additionally, all employees and contractors of Serve Denton who are required to drive a vehicle in the normal scope and course of this program must possess a valid Texas driver's license and automobile liability insurance. Evidence of the employee's current possession of a valid license and insurance must be maintained on a current basis in Serve Denton's files.
5. Actual losses not covered by insurance as required by this Section are not allowable costs under this Agreement, and remain the sole responsibility of Serve Denton.
6. The policy or policies of insurance shall contain a clause which requires that the City and Serve Denton be notified in writing of any cancellation or change in the policy at least 30 days prior to such change or cancellation.

7. Any general liability or automobile insurance policies shall name the City of Denton as an Additional Insured.

INDEMNIFICATION/HOLD HARMLESS

Serve Denton shall release, indemnify, defend, and hold harmless the City, its employees, officials and agents against any and all claims, demands and lawsuits, and shall pay all costs and attorney's fees incurred in the defense thereof, for any injury to persons or premises damage, including claims of Serve Denton employees, agents and invitees allegedly resulting from any act, incident, or accident arising from this program, except for those acts, incidents, or accidents arising from the gross negligence or willful misconduct of the City. The City and its employees and agents are not liable to Serve Denton employees, agents, invitees, or any other persons for any injury to any of those persons or for any damage to personal property caused by an act, omission, or neglect.

It is expressly intended that any Participants in the Program working on job projects identified by the City for the Program are not employees of the City and shall not be entitled to any benefits from the City, including workers' compensation coverage. Additionally, Serve Denton expressly releases, waives, and indemnifies the City for any claims by its employees in the *Employ 2 Empower* program for workers' compensation or related benefits, and shall cause its workers' compensation insurance carrier to provide a Waiver of Subrogation in favor of the City.

INDEPENDENT CONTRACTOR

Serve Denton shall provide services to the City as independent contractors, not as employees of the City. Serve Denton shall not have or claim any right arising from employee status.

NO PARTNERSHIP OR JOINT VENTURE

Nothing in this MOU shall be construed or interpreted to make the City and Serve Denton partners or joint venturers, or to make one an agent or representative of the other, or to afford any rights to any third party other than as expressly provided herein.

ARBITRATION AND ALTERNATE DISPUTE RESOLUTION

The parties may agree to settle any disputes under this Agreement by submitting the dispute to mediation. No mediation arising out of or relating to this Agreement may proceed without the agreement of both parties to submit the dispute to mediation. The location for the mediation shall be the City of Denton, Denton County, Texas unless a different location is agreed.

TERMINATION OF AGREEMENT

Notwithstanding any other provision of this Agreement, either party may, for reasons specified below, terminate by giving thirty (30) days' advance written notice to the other party.

This Agreement may be terminated in whole or in part in the event of either party substantially failing to fulfill its obligations under this Agreement. No such termination will be affected unless the other party is given (1) written notice (delivered by certified mail, return receipt requested) of intent to terminate and setting forth the reasons specifying the non-performance, and not less than thirty (30) calendar days to cure the failure; and (2) an opportunity for consultation with the terminating party prior to termination.

If the Agreement is terminated prior to completion of the services to be provided hereunder, Serve Denton shall immediately cease all services and shall render a final bill for services to the City within thirty (30) days after the date of termination. The City shall pay Serve Denton for all services properly rendered and satisfactorily performed and for reimbursable expenses incurred prior to the date of termination, in accordance with "Compensation." Should the City subsequently contract with a third party for the continuation of services on the Program, the third party and Serve Denton shall cooperate in providing information. Serve Denton shall turn over all documents prepared or furnished by Serve Denton pursuant to this Agreement to the City on or before the date of termination, but may maintain copies of such documents for its use. Serve Denton shall refund to City any excess payment for services that were not rendered within ten working days of the City's request. This includes any sum of money which has been paid by the City and which the City at any time thereafter determines; has resulted in overpayment to Serve Denton; or has not been spent strictly in accordance with the terms of this Agreement; or is not supported by adequate documentation to fully justify the expenditure.

RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Approval by the City shall not constitute, nor be deemed a release of the responsibility and liability of Serve Denton, its employees, associates, agents, subcontractors, and sub Partners for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the City for any defect in the design or other work prepared by Serve Denton its employees, subcontractors, agents, and Partners. Serve Denton retains responsibility and liability at all times during this Agreement and after completion of this Agreement.

NOTICES

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

To SERVE DENTON: Denton Assistance Center, Inc. d/b/a Serve Denton
 1980 East University Drive
 Denton, Texas 76209

To CITY:

City of Denton
Barbara Ross
215 East McKinney
Denton, Texas 76201

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

SEVERABILITY

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

COMPLIANCE WITH LAWS

Serve Denton shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as they may now read or hereinafter be amended.

ETHICAL REQUIREMENTS

Serve Denton covenants and agrees that its officers, employees, and agents have no interest, and will acquire no interest, including personal financial interest, either directly or indirectly, which will conflict in any manner with the performance of the services called for under this Agreement. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City or in compliance with the provisions of the City of Denton's Personnel Policies and Procedures Manual. Any violation of this provision shall render this Agreement voidable at the discretion of the City.

DISCRIMINATION PROHIBITED

In performing the services required hereunder, Serve Denton shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or disability.

PERSONNEL

Serve Denton represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, or have any contractual relations with the City. Serve Denton shall inform the City of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.

All services required hereunder will be performed by Serve Denton. All personnel engaged in work shall be qualified, and shall be authorized and permitted under state and local laws to perform such services.

In those instances deemed necessary by the City, Serve Denton shall conduct background checks on Participants

ASSIGNABILITY

Serve Denton shall not assign any of its scope of services under in this Agreement, and shall not transfer any of its scope of services under this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the City, and such consent will not be unreasonably withheld or delayed. Should Serve Denton assign any part of the monies due under this Agreement, Serve Denton is required to provide written notice of the same to City. Any assignment of monies due under this Agreement shall not change any of the terms or conditions of this Agreement to include but not limited to the terms and conditions for payment under this Agreement.

MODIFICATION

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

VENUE

This Agreement shall be governed by the laws of the State of Texas, venue and jurisdiction of any suit or cause of action arising under this Agreement shall lie exclusively in a court of competent jurisdiction sitting in Denton County, Texas.

RIGHT TO AUDIT

The City shall have the right to audit and make copies of the books, records and computations pertaining to this Agreement. Serve Denton shall retain such books, records, documents and other evidence pertaining to this Agreement during the contract period and five (5) years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within 10 business days of written request. Further, the Serve Denton shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to this Agreement, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the

City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by Serve Denton, which must be payable within five business days of receipt of an invoice. Failure to comply with the provisions of this section shall be a material breach of this contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

SIGNATURES

Todd Hileman, City Manager
City of Denton

Date

Karen K. Martin

Date

6/9/17

Denton Assistance Center, Inc. d/b/a Serve Denton
By: Karen K. Martin
Title: Executive Director

ATTEST:

City Secretary

APPROVED AS TO FORM:

[Signature]

City Attorney