



# ***CITY COUNCIL AGENDA REPORT***

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MEETING DATE: MAY 15, 2012

ITEM NUMBER:

**SUBJECT:** MEMORANDUM OF UNDERSTANDING FOR POLICE MUTUAL AID ON FAIRVIEW DEVELOPMENTAL CENTER PROPERTY

**DATE:** MAY 3, 2012

**FROM:** POLICE DEPARTMENT / SUPPORT SERVICES DIVISION

**PRESENTATION BY:** PAUL DONDERO, POLICE LIEUTENANT

**FOR FURTHER INFORMATION CONTACT:** PAUL DONDERO, POLICE LIEUTENANT, 714-754-5087

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## **RECOMMENDATION:**

Approve renewal of the attached Memorandum of Understanding (MOU) for Mutual Aid Policing between the Costa Mesa Police Department (CMPD) and the Fairview Developmental Center, Office of Protective Services (FDC Police) and authorize the Chief of Police to sign.

## **BACKGROUND:**

On March 20, 2012, the City of Costa Mesa approved renewal of a Memorandum of Understanding for Use of Facilities with the Fairview Developmental Center (FDC) allowing the City's use of recreational facilities owned and possessed by the FDC. The renewal also contained a renewal of the ground lease, and an obligation for the City police forces to respond to certain incidents at FDC facilities. The obligations of the Costa Mesa Police Department, as referenced in the overarching MOU for Use of Facilities, is set out in more detail by the attached memorandum of understanding for police mutual aid. That MOU, defining the mutual aid agreement, was attached to and incorporated into the MOU for Use of Facilities previously approved by the City in April of 2007.

Staff is now recommending renewal of the MOU for Mutual Aid to more fully set forth the Costa Mesa Police Department's obligations pursuant to current law. The law enforcement services defined in the MOU are consistent with established practice and the Costa Mesa Police Department Manual policies covering mutual aid at the Fairview Developmental Center.

## **ANALYSIS:**

The purpose of the MOU for Mutual Aid is to maintain an established process that complies with California Welfare & Institutions Code, Section 4427.5(A), which mandates all developmental centers to immediately report all resident deaths and serious injuries of an unknown origin to the appropriate law enforcement agency.

The MOU further describes the role of the Costa Mesa Police Department with regards to private residences on Fairview Developmental Center Property, the role the Police Department will take in assisting FDC Police when a client goes missing from FDC grounds, defines the parameters of the notification process required of FDC to report all serious injuries and deaths to CMPD, and the process/parameters required of FDC to provide CMPD with confidential client information.

**ALTERNATIVES CONSIDERED:**

City Council could choose not to approve renewal of the MOU for the Chief of Police to sign. The CMPD would still respond to any criminal matters and calls for assistance solely as mandated by State law, though absent more clearly defined parameters between the CMPD and FDC Police.

**FISCAL REVIEW:**

No fiscal impact.

**LEGAL REVIEW:**

The City Attorney's Office has approved the Memorandum of Understanding as to form.

**CONCLUSION:**

Staff recommends approval for the renewal of the MOU between the CMPD and the FDC Police.



**PAUL DONDERO**

Lieutenant



**TOM DUARTE**

City Attorney



**TOM GAZSI**

Chief of Police

ATTACHMENTS: 1 MOU BETWEEN THE COSTA MESA POLICE DEPARTMENT AND THE FAIRVIEW DEVELOPMENTAL CENTER, OFFICE OF PROTECTIVE SERVICES

**MEMORANDUM OF UNDERSTANDING**

- **COMPLIANCE WITH MEMORANDUM OF UNDERSTANDING – RECREATIONAL FACILITIES - March 20, 2012**
- **MUTUAL AID POLICING**
- **WELFARE & INSTITUTIONS CODE SECTION 4427.5**

**FAIRVIEW DEVELOPMENTAL CENTER  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA**

And

**COSTA MESA POLICE DEPARTMENT  
CITY OF COSTA MESA**

**RECITALS**

On April 4, 2007, the City of Costa Mesa (the "City") entered into a Memorandum of Understanding for Use of Facilities with the Fairview Developmental Center ("FDC") allowing the City's use of recreational facilities owned and possessed by the FDC ("Facilities") and in one paragraph also setting forth an obligation for City police forces to respond to certain incidents related to the Facilities. Attached to and incorporated into the April 4, 2007, Memorandum of Understanding for Use of Facilities was (1) a ground lease agreement for the Facilities and (2) a Memorandum of Understanding for Mutual Aid setting out in more detail the Costa Mesa Police Department obligations referenced in the overarching Memorandum of Understanding for Use of Facilities.

On March 20, 2012, the City approved renewal of the Memorandum of Understanding for Use of Facilities, which renewal also contained obligation for City police forces to respond to certain incidents at the Facilities, and a renewed ground lease. Therefore, staff is now recommending renewal of the Memorandum of Understanding for Mutual Aid to more fully set forth the Costa Mesa Police Department's obligations pursuant to current law.

The purpose of this Memorandum of Understanding for Mutual Aid is to establish a process that complies with California Welfare & Institutions Code, Section 4427.5(A), which states "***A Developmental Center shall immediately report all resident deaths and serious injury of an unknown origin to the appropriate law enforcement agency that may, at its discretion, conduct an independent investigation.***"

It is also the purpose of this agreement to define the role of the Costa Mesa Police Department (CMPD) with regards to private residences on Fairview

Developmental Center Property (FDC) and additionally, the role CMPD will take in assisting FDC when a client goes missing from FDC grounds.

This Memorandum defines the parameters of the notification process required of FDC to report all serious injuries of unknown origin and all deaths to CMPD and the process/parameters required of FDC to provide CMPD with confidential client information.

The State Department of Developmental Services, Fairview Developmental Center (FDC), Office of Protective Services (FDC Police) and the City of Costa Mesa's Police Department (CMPD) shall provide the following mutual aid and co-operative efforts to deliver law enforcement services at FDC.

## I. RECREATIONAL FACILITY

The Memorandum of Understanding dated March 20, 2012 (MOU) between FDC and the City of Costa Mesa (City) is a collaborative effort to create opportunities for the joint use of a recreational facility (Facility) by City permitted users and the consumers/clients living at FDC.

The following MOU text in italics were extracted directly from the MOU for the indicated mutual aid responses/activities by the City, CMPD, FDC, and FDC Police for the recreational Facility at FDC:

A. MOU Section 3. Hours of Operation of Facility: *City will be entitled to use Facility for City-related youth (15 years old and under) recreational activities, in accordance with the terms of this MOU, Monday through Friday, 4:00 to 8:00 p.m. and Saturday from 9:00 a.m. to 5:00 p.m....*

B. MOU Section 5. Obligation of City (H.): *City shall enforce all FDC rules, regulations, and policies during use of Facility by City-permitted users. City will inform all users of FDC rules, etc., and will also make known to City-permitted users that compliance with all applicable government codes is additionally required.*

C. MOU Section 5. (L.): *City police forces shall be required to respond to incidents and/or requests for services involving Facility during periods of City permitted use. However, FDC reserves the right to use FDC police forces and/or assume incident command if the incident primarily concerns FDC consumers, employees or guests at FDC discretion. FDC police will confer with City police in this event. Control of any criminal act involving City permitted users at the site will be the purview of City police, although FDC police may be first responders.*

D. MOU Section 8. Other Terms And Conditions (A.): *All City-permitted Facility users shall be required to adhere to all FDC policies, procedures, rules and regulations...*

E. MOU Section 8. (B.): *City agrees to monitor site sufficient to control permitted activities with appropriate adult staff, which may include, but not be limited to Field Ambassadors, City Park Rangers, City Police and Recreation Division personnel. City and FDC shall meet and confer to ensure monitoring of permitted activities at site is sufficient. FDC will be provided emergency call numbers for all relevant personnel. FDC shall reserve the right to use its own police force and/or other personnel to enforce FDC rules and regulations and State codes, laws, etc. as these pertain to their clients, employees and guests and/or non-criminal infractions.*

F. MOU Section 8. (J.): *City and City-permitted Facility users shall report to FDC immediately upon discovery the loss of any tools, equipment or materials stored or used on Facility. FDC will not be responsible for losses due to theft or otherwise. However, this paragraph shall not be construed to obligate FDC to assume responsibility for investigations of theft reported to FDC.*

G. MOU Section 8. (O.): *City employees and field users shall not have access to or use of any facilities on the FDC site except for the recreational areas and related parking lot(s) covered by this MOU.*

**For FDC Police and CMPD law enforcement clarification purposes, Section 8.0. does not prevent and/or restrict CMPD personnel access to FDC facilities on FDC grounds for conducting any mutual aid law enforcement service(s).**

## II. POLICING RESPONSIBILITIES

A. CMPD will respond immediately to any request for back-up assistance for a crime in-progress at FDC.

B. When the situation is stabilized the FDC Office of Protective Services will assume responsibility for all subsequent casework including report writing, crime scene identification, follow-up investigation, booking of evidence and filing the case with the District Attorney. The Office of Protective Services will be responsible for booking at the Orange County Jail.

C. The CMPD has jurisdiction for policing responsibilities for the 450 apartments identified as Harbor Village; the following single family residences addressed: 2500-2513 Christopher Lane; 2500-2528 Mark Lane; 4,5,47,48,49 & 50 Mark Lane; and the gated residential development known as Cornerstone, residences addressed 2504-2547 Cornerstone Lane.

D. CMPD may, at its discretion, conduct an independent or coordinated investigation into any suspected violation of law under the jurisdiction of the FDC Office of Protective Services.

### III. WELFARE & INSTITUTIONS CODE SECTION 4427.5

On January 16, 2002, CMPD and the FDC Office of Protective Services recognized the reporting requirements by FDC to CMPD to comply with W&I Section 4427.5. As a result of those reporting requirements, effective October 15, 2001, The FDC Office of Protective Services reports all client deaths and serious injuries of unknown origin or as a result of neglect or abuse to CMPD. CMPD may, at its discretion, conduct an independent investigation.

A. REPORT OF DEATH: The Office of Protective Services shall report as soon as possible all deaths occurring at FDC and/or at Community Hospitals. The Office of Protective Services shall prepare form 200 "Death Investigation Preliminary Report" and fax it to CMPD to the attention of the Watch Commander, fax number 714-754-5124. The fax shall include instructions to forward the report to the Chief of Police, Detective Bureau, Watch Commander, and Records Bureau. The form will be faxed immediately following completion and review. The DS213 (Department of Developmental Services, Office of Protective Services Crime/Incident Report) will also be faxed upon request.

B. The CMPD will review all information provided by FDC on form DS200, and/or DS213, and make a determination as to the degree of involvement necessary by CMPD.

C. The CMPD may conduct an investigation, independent or in cooperation with any FDC investigation, at its discretion.

### III. INJURIES

A. FDC shall, immediately or as soon as practically possible, report all serious injuries of an unknown origin to the CMPD dispatch center, 714-754-5255. Form DS213 will be faxed immediately after completion and review.

Serious injuries of unknown origin shall include the following:  
(As defined in DDS/OPS Departmental Policy)

ALL injuries wherein the cause is not observed and results in:

- a) Internal bleeding or organ damage
- b) Unconsciousness
- c) Requires 5 or more sutures
- d) Involves the loss or partial loss of body parts
- e) Involves ¼ or more of the body
- f) Any fracture
- g) Any type of sexual assault alleged to have occurred at FDC or within the jurisdiction of CMPD.

#### IV. REPORT OF MISSING CLIENT

A. In the event that an FDC client is found to be missing from FDC in excess of 15 minutes, CMPD will be contacted at 714-754-5255 with the following client information: Client's name, DOB, physical and clothing description, last known location, last known direction of travel, criminal history (if any), and any other pertinent information that may assist in locating and contacting the client.

Upon receipt of this information, CMPD will immediately issue a CMPD radio General Broadcast (GB), and dispatch an officer as soon as possible to coordinate with FDC staff for purposes of completing a Missing Persons Report as necessary, and entering the information into the Missing Persons System.

CMPD, based on staffing levels, availability of resources, and/or other factors as determined by CMPD, will assist FDC in recovery of the missing client.

B. CMPD will ensure all information either faxed or released to them by FDC, pertinent to FDC clients, will be treated as a controlled document. The information will not be released to any other individual or agency without the consent of FDC unless required by law, judicial proceeding, or other law enforcement purpose.

#### V. GENERAL TERMS

A. Governing Law.

This MOU shall be governed by and construed in accordance with laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Orange. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

B. Severability

If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions nevertheless will continue in full force and effect without being impaired or invalidated in any way.

C. Non-Discrimination.

In the performance of this MOU, FDC shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age physical or mental handicap, medical condition, or sexual orientation. FDC will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race,

color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

D. Acts Beyond the Control of Parties.

In the event that City or FDC is wholly or partly prevented from performing obligations under this MOU because of causes beyond its reasonable control, including but not limited to, acts of God, labor disputes, lawsuits, sudden actions of the elements, actions of federal or state agencies or courts, or actions of local governments (herein, "force majeure"), City or FDC shall be excused from whatever performance is affected by such cause to the extent so affected, and failure to perform shall not be considered a material breach, provided that: (1) the suspension of performance is of no greater scope and no longer duration than is required by the force majeure, (2) within two weeks after the occurrence of the force majeure City or FDC gives the other party written notice describing the particulars of the occurrence; (3) City or FDC uses its best efforts to remedy its inability to perform (this provision shall not require the settlement of any strike, walk-out, lock-out, lawsuit or labor dispute on terms which, in the sole judgment of CITY or FDC, are contrary to its interests); and (4) when City or FDC is able to resume performance of its obligations hereunder, City or FDC shall give notice to the other party to that effect.

E. Indemnity.

FDC agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at FDC's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of FDC, its employees, and/or authorized subcontractors, of any action undertaken pursuant to this MOU. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by FDC, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of FDC, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by FDC, its employees, and/or authorized subcontractors under this Agreement, whether or not FDC, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, FDC shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City.

City agrees to defend, indemnify, hold free and harmless the FDC, its elected officials, officers, agents and employees, at City's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the FDC, its elected officials, officers, agents and employees arising out

of the performance of City, its employees, and/or authorized subcontractors, of any action undertaken pursuant to this MOU. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by City, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of City, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the FDC, its elected officials, officers, agents and employees based upon the work performed by City, its employees, and/or authorized subcontractors under this Agreement, whether or not City, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, City shall not be liable for the defense or indemnification of the FDC for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the FDC.

These indemnity provisions shall supersede and replace all other indemnity provisions which shall be of no force and effect.

F. Independent Contractor

FDC and City is, and shall at all times remain as to each other, wholly separate entities. Neither FDC nor City shall have power to incur any debt, obligation, or liability, or otherwise act on behalf of the other party as an agent. Neither City nor FDC, or any of their respective agents shall have control over the conduct of the other party or any of the other party's employees, except as set forth in this MOU. FDC and City shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the other. FDC and City agree to indemnify and hold each other harmless from any and all taxes, assessments, penalties, and interest asserted against the other party by reason of the relationship created by this MOU. Each party shall fully comply with the workers' compensation law and further agrees to indemnify and hold each other harmless from any failure of its failure to comply with applicable worker's compensation laws.

G. PERS Eligibility

In the event that FDC, or employee, agent, or subcontractor of the FDC providing service under this MOU claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS), or other relevant entity to be eligible for enrollment in PERS or other relevant retirement program as an employee of the City, the FDC shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of FDC or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

In the event that City, or employee, agent, or subcontractor of the City providing service under this MOU claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS), or any other agency with jurisdiction, to be eligible for enrollment in PERS, or any other relevant retirement program as an employee of the FDC, the City shall indemnify, defend, and hold harmless FDC for the payment of any employee and/or employer contributions for benefits on behalf of City or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of FDC.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, City and any of its employees, agents, and subcontractors providing service under this MOU and FDC and any of its employees, agents, and subcontractors providing service under this MOU shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by the other party, including but not limited to eligibility to enroll in PERS, or other relevant retirement program, as an employee of the other party and entitlement to any contribution to be paid by the other party for employer contribution and/or employee contributions for PERS benefits or other relevant retirement program.

H. Defaults and Remedies.

Either party may terminate this MOU for breach of contract upon giving the other party written notice at least sixty (60) days prior to said termination date. In the event of any breach of this MOU by either party, the non breaching party shall provide notice in writing of such breach, and the breaching party shall have thirty (30) days in which to initiate action to cure said breach.

I. Term of MOU

The term of this MOU shall commence on March 20, 2012 and shall continue for a period not to exceed five years. The Term of this MOU shall be extended only by mutual agreement of the PARTIES made in writing.

J. Termination and Remedies.

Notwithstanding Section V(I), City may terminate this MOU at any time, with or without cause, in its sole discretion, with thirty (30) days written notice.

K. Agreement in Counterparts.

This MOU may be executed in counterparts, each of which shall be deemed an original.

L. Agreement in Writing.

This MOU contains the entire agreement between the parties hereto and neither it nor any part of it may be changed, altered, modified, limited, or extended orally, or by any agreement between the parties unless such agreement is expressed in writing and signed by the parties, or their successors in interest.

M. Assignment and Successors in Interest.

Unless otherwise provided in this MOU, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of who shall be jointly and severally liable hereunder.

N. Effective Date.

The effective date of this MOU ("Effective Date") shall be the day the last party has signed.

O. Non-assignability; Subcontracting

FDC shall not assign or subcontract all or any portion of this Agreement. Any attempted or purported assignment or subcontracting by FDC shall be null, void and of no effect.

P. Waiver

No waiver of any of the provisions of this MOU shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Q. Governing Law.

This instrument shall be construed and enforced in accordance with, and governed by, the laws of the State of California. If any term, covenant, condition, or provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

R. Construction

The parties have participated jointly in the negotiation and drafting of this MOU. In the event an ambiguity or question of intent or interpretation arises with respect to this MOU, this MOU shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

ATTACHMENT 1

Signed this      day of      , 2012

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**Tom Gazsi, Chief of Police**  
Costa Mesa Police Department

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**Michael Jackson, Commander**  
Fairview Developmental Center  
Office of Protective Services