

**MEMORANDUM OF UNDERSTANDING
BETWEEN
ORANGE COUNTY COMMUNITY RESOURCES
AND
ORANGE COUNTY HEALTH CARE AGENCY**

This Memorandum of Understanding (“MOU”) is entered into, effective as of the date last signed, by and between Orange County Community Resources (“OCCR”) and Orange County Health Care Agency (“HCA”). OCCR and HCA may sometimes be referred to hereinafter individually as “Party” and collectively as “Parties.”

RECITALS

A. In 2004, the people of the State of California passed Proposition 63, which established the Mental Health Services Act (“MHSA”), as subsequently amended. The MHSA creates the Mental Health Services Fund (“MHSF”) within the State Treasury for the purpose of funding programs authorized under the MHSA.

B. Funds received by the County from the MHSF must be placed in a local Mental Health Services Fund (“Local MHSA Fund”). The County’s Local MHSA Fund is the MHSA Fund, Control Budget 13Y (“Fund 13Y”). The County Executive Office (“CEO”) controls and administers Fund 13Y.

C. The County may utilize the funds held in Fund 13Y to pay only for the programs described in, and as consistent with, the County’s Three-Year MHSA Plan and Annual Updates (“County’s MHSA Plan”). HCA is the department responsible for developing and overseeing the County’s MHSA Plan.

D. HCA uses Fund 100, Control Budget 042 (“Fund 100”) to pay for eligible MHSA expenditures. As eligible MHSA expenditures are incurred in Fund 100, HCA requests CEO to transfer funds from Fund 13Y to Fund 100 to pay for said incurred expenditures.

E. The County’s MHSA Plan for FY 2017 – 2020 includes a program for the development of permanent supportive rental housing units for individuals who are diagnosed with serious mental illness, as defined in Welfare & Institution Code (“WIC”) § 5600.3(b), and are homeless or at risk of being homeless.

F. OCCR is the department responsible for administering resources dedicated to the creation of affordable housing for low-income County residents. OCCR controls the County’s MHSA Housing Fund, Control Budget 12A (“Fund 12A”). Fund 12A is distinct and independent of Fund 13Y. Funds placed in Fund 12A may be utilized only for the development of permanent supportive rental housing units for individuals who are

diagnosed with serious mental illness, as defined in WIC § 5600.3(b), are eligible for MHSA services in their county of residence, and are homeless or at risk of being homeless.

G. Development of permanent supportive rental housing units for individuals who are diagnosed with serious mental illness, as defined in WIC § 5600.3(b), and who are homeless or at risk of being homeless is an eligible MHSA expenditure pursuant to WIC § 5892(a)(5) and § 5892.5(a)(2)(E).

H. HCA wishes to transfer \$36 Million from the HCA's Fund 100, Control Budget 042 to Fund 12A, and OCCR wishes to receive said funds, to be utilized by OCCR for the development of permanent supportive rental housing units for individuals who are diagnosed with serious mental illness, as defined in WIC § 5600.3(b), and are homeless or at risk of being homeless. Said transfer will constitute the incurring of an eligible MHSA expenditure in Fund 100, deemed spent for purposes of WIC § 5892(h)(1), and following the transfer, HCA will request CEO to transfer \$36 Million from Fund 13Y to Fund 100.

NOW, THEREFORE, HCA and OCCR agree as follows:

ARTICLES

1. Definitions

1.1 "Agreement" means an agreement between the developer, the primary service provider(s), the property management company, and OCCR to ensure compliance with the Regulatory Agreement terms and other development regulatory agreements that may impose income restrictions or more restrictive rent limits on the Regulated Units. The property management agent and the primary service provider may be related entities, provided there is a clear separation of staff and a clear delineation of their separate roles, staffing and responsibilities in the Agreement.

1.2 "Area Median Income" ("AMI") means the median gross income of the area in which the development is located as determined by the Secretary of the Treasury of the United States for the purposes of Section 42 of the Internal Revenue Code of 1986, adjusted for family size in accordance with 26 USC 42(g)(2)(c)(ii).

1.3 "Borrower" means the party, or parties, to whom a loan is made pursuant to this MOU.

1.4 "Capitalized Operating Subsidy Reserve" ("COSR") means a capitalized operating subsidy reserve held by OCCR to cover deficits in operating expenses

attributable to a portion or all of the COSR Regulated Units. The COSR will be subject to the terms of a COSR Agreement between the borrower and OCCR.

1.5 “Certificate of Occupancy” means a certificate, or equivalent, issued by a local building department to the borrower that indicates that the development has met all local code requirements and is ready for occupancy.

1.6 “COSR Agreement” means the agreement between the borrower and OCCR governing the COSR.

1.7 “CTCAC” means the California Tax Credit Allocation Committee, which approves the competitive allocation of state and federal tax credits to eligible developments.

1.8 “Developer” means the party selected by OCCR to acquire and renovate or build rental housing that includes rental units reserved for Eligible Clients.

1.9 “Development” means a rental housing development which is fully or partially financed with loans made out of Fund 12A as consistent with this MOU.

1.10 “Development Proposal” means a financial proposal by a developer to renovate or construct a rental housing development that will include units reserved for occupancy by Eligible Clients. A Development Proposal includes the site location and environmental concerns, a summary of the proposed unit mix, rents, any income limits, the proposed sources and uses of funds needed to build the development, operating expense and vacancy projections, and a cash flow analysis of the development following issuance of a Certificate of Occupancy.

1.11 “Eligible Clients” means a person who is homeless or at risk of being homeless and who has a serious mental illness in accordance with WIC § 5600.3(b), verified by a State Licensed Mental Healthcare Professional and has been deemed to meet the MHSA Housing Program eligibility (MHSA Certified) by Health Care Agency MHSA Housing Program staff.

1.12 “Final Commitment Letter” means a letter issued by OCCR to memorialize the terms and conditions relating to the loans made out of Fund 12A and conditions relating to a proposed development and units reserved for Eligible Clients, including: (a) the terms and conditions of the loan and COSR approval; (b) any reserve requirements; (c) the required loan lien priority; and (d) any special conditions related to the development financing or scope of rehabilitation or construction.

1.13 “Financial Analysis” means the comparison of the development’s anticipated sources of funds to the anticipated development costs, and an income and

expense analysis based on proposed rents, utility allowances, vacancy assumptions, rental subsidies, operating expenses, debt service. This analysis allows OCCR to determine the projected COSR funding levels needed to subsidize the MHSA COSR Assisted Units, and any subsidy, operating or replacement reserves needed to ensure the financial viability of the development as indicated in the Term Sheet.

1.14 “Funds” mean \$36 Million transferred from the Fund 100 to Fund 12A, plus accrued interest.

1.15 “Homeless or at Risk of Being Homeless” means living on the streets or lacking a fixed and regular night-time residence. This includes living in a shelter, motel or other temporary living situation in which the individual has no tenant rights. “At risk of being homeless” may be due to one of the following situations: (a) transition age youth exiting the child welfare or juvenile justice systems; (b) discharge from crisis and transitional residential settings, a hospital, including acute psychiatric hospitals, psychiatric health facilities, skilled nursing facilities with a certified special treatment program for the mentally disordered, and mental health rehabilitation centers; (c) release from city or county jails, but not a parolee from state prison; (d) temporary placement in a residential care facility upon discharge from (b) or (c) above; and (e) individuals who have been deemed to be at imminent risk of being homeless.

1.16 “Housing Trust” means the Orange County Housing Finance Trust created by AB 448 and the Joint Power Agreement approved by the Orange County Board of Supervisors on March 3, 2019.

1.17 “Loan” means a secured County loan made out of Fund 12A as consistent with this MOU.

1.18 “Permanent Loan Conversion” means the conversion of construction loans to permanent status, and may include payment in full or part of the principal of a construction loan or the funding of additional loans upon completion of construction. Permanent Loan Conversion may be subject to additional due diligence requirements.

1.19 “Primary Service Provider” means HCA as the entity responsible for overall implementation and delivery of the supportive services to the Eligible Clients as specified in an Eligible Development’s supportive services plan.

1.20 “Regulated Unit” means a rent and occupancy-restricted bedroom or unit in a development reserved for Eligible Clients pursuant to this MOU.

1.21 “Regulatory Agreement” means a recorded development-specific agreement that restricts occupancy of a specific number of units/bedrooms reserved for Eligible Clients.

1.22 “Rental Housing Development” means an apartment building or buildings with five or more apartments. A Rental Housing Development shall not include a development which is subject to any State of California licensure requirements.

1.25 “Supportive Service Plan” means a specific supportive services plan for a Development, developed by HCA MHSA Housing Program in partnership with the developer, supportive service provider(s) and the property manager.

1.26 “Unit” means: a traditional apartment residence containing at least one (1) bathroom and a kitchen in the case of Rental Housing Developments.

2. Purpose

2.1 The purpose of this MOU is to set forth the Parties’ responsibilities with respect to and specify the terms and conditions for the use of the Funds.

3. Term

3.1 The term of this MOU shall commence as of the date last signed and continue until such time OCCR or any assignee thereof has fully spent all of the Funds unless terminated sooner by either Party as provided herein.

4. Administrative Cost

4.1 As established in a separate arrangement between the Parties, i.e. MOU for Administrative Costs of MHSA Housing Program, OCCR will be provided general administrative costs associated with the loan program described in this MOU. This amount will be separate and apart from the \$36 million transferred in this MOU.

5. Control and Assignment of Funds

5.1 The Funds shall be held in Fund 12A for the duration of this MOU for the exclusive purposes of developing supportive rental housing units for Eligible Clients (and their families). OCCR may assign any or all monies in Fund 12A to the Housing Trust, provided OCCR enters into an agreement or other written arrangement with the Housing Trust that requires compliance with the following terms and condition of this MOU: Article 6, 7, 12.2 (reports to be made annually), 12.3, 12.4, 12.5, 12.6, 12.9, 12.14, 12.15, 14.6, 14.7, 14.8, 14.9, 14.10, 14.11 and 17.5.

6. Eligible Use of Funds

6.1 Funds may be used to finance capital development loans for the development of new permanent supportive rental housing units and may be used to provide operating subsidies for some or all of the rental housing units reserved for Eligible Clients.

7. Eligible Developments

7.1 Eligible developments include new construction or the acquisition and rehabilitation of a Rental Housing Development, with five or more units to provide new permanent supportive rental housing for Eligible Clients, which may include occupancy restrictions, including preference or other restrictions, such as units for seniors, veterans, or transitional aged youth, etc. Master leasing is not permitted.

8. Loans

8.1 Loans shall require annual residual receipt payments in accordance with a Regulatory Agreement, and have a minimum term of 20 years. Loans shall be consistent with OCCR lending practices as approved by the Board of Supervisors.

8.2 Accrued interest and payments on the loan shall be deposited in Fund 12A unless instructed otherwise by HCA. OCCR may use the accrued interest and payments only in accordance with this MOU.

9. Capitalized Operating Subsidy Reserve

9.1 OCCR may elect to provide a COSR using the Funds to subsidize the rents of some or all of the Regulated Units (“COSR-Assisted Units”) by approving a maximum COSR as part of the loan application.

9.2 COSR funds shall be held by OCCR in a development-specific reserve sub-account in Fund 12A subject to the terms of the COSR Agreement.

9.3 The rents for COSR-Assisted Units shall not exceed the greater of: (a) thirty percent (30%) of the current Social Security Income/Social Security Pension (SSI/SSP) grant amount for a single individual living independently (less CTCAC utility expenses and other mandatory fees); or (b) thirty percent (30%) of total household income (less CTCAC utility expense and other mandatory fees), whichever is higher (up to thirty percent (30%) of thirty percent (30%) of AMI adjusted for family size and determined annually by CTCAC).

9.4 If the COSR is no longer needed, the COSR funds shall be disencumbered and returned to Fund 12A.

10. Term Sheet

10.1 OCCR will publish a MHSA Housing Term Sheet (“Term Sheet”), in addition to the general lending practices, on its Website, providing details of the County’s MHSA loan program, including recommended Loan and COSR limits per Regulated Unit, required borrower or developer-paid fees, and reserve requirements among other items.

10.2 The Term Sheet may be subject to change at OCCR’s discretion, provided HCA is notified of the changes.

10.3 In the event of a conflict between this MOU and Term Sheet, the provisions of this MOU shall control.

11. HCA Responsibilities

11.1 HCA will be responsible for all matters relating to tenant selection and supportive services provided to Eligible Clients residing in Regulated Units, including the development, implementation and monitoring of supportive services plans.

11.2 HCA will develop a tenant selection plan for each development.

11.3 Prior to occupancy of a development and release of the first COSR draw (if applicable), HCA will provide to OCCR the approved supportive services plan.

11.4 HCA will review Term Sheet as requested by OCCR at least once annually.

12. OCCR Responsibilities.

12.1 OCCR will be responsible for the development of such lending operations and protocols as may be needed to implement a loan program pursuant to this MOU, including development of: (a) an application; (b) specific loan and COSR approvals; (c) the issuance of loan commitments; and (d) loan and COSR documentation, including but not limited to escrow instructions, promissory note, deed of trust, regulatory agreement, and subordination agreements, as applicable.

12.2 OCCR will: (a) select the development(s) to receive loans from the Funds in accordance with Article 8, herein; (b) approve the location of the development(s); (c) determine the maximum amount of loan to be offered from the Funds for the development(s); (d) identify the number and size of Regulated Units (bedroom count) and their maximum rent (not to exceed 30% of 30% AMI); (e) if applicable, the number of COSR Assisted Units, the maximum COSR funding available, and the maximum COSR subsidy term for the COSR-Assisted Units; (f) determine any use or occupancy

restrictions on the Regulated Units or unit sizes; (g) ensure that HCA's tenant plan is in compliance with all local, state and federal fair housing laws; and (h) determine lien priority of the loan documents.

12.3 OCCR will underwrite each development proposal and recommend the maximum loan and minimum COSR's needed to subsidize all or a portion of the Regulated Units for a minimum. This will include preparation of a financial analysis to determine the anticipated COSR needed to subsidize the COSR-Assisted Units for the term requested by OCCR.

12.4 OCCR will coordinate with applicants to schedule a Concept Meeting after receipt of a complete County application. The Concept Meeting will be held to provide an overview of the development proposal, including the Eligible Client supportive service needs, the experience of the property manager and primary service provider, and proximity to other resident service needs.

12.5 OCCR will coordinate the creation of the Regulatory Agreement, which shall: (a) identify the number, size (number of bedrooms), and use or occupancy restrictions of the Regulated Units; (b) specify the maximum rents for the regulated units; and (c) be recorded senior to the loan deed of trust.

12.6 OCCR will record the Regulatory Agreement, which will restrict the development and the Regulated Units.

12.7 Following OCCR approval of the loan and the development's receipt of a CTCAC allocation (if applicable), OCCR will issue a Final Commitment Letter.

12.8 Following receipt of the required loan closing checklist items, as posted on the OCCR's website, OCCR will close the loan, release any approved draws and fund the COSR from Fund 12A.

12.9 OCCR will advise HCA of any supplemental regulatory provisions or income restrictions imposed by other lenders or CTCAC that would potentially affect the rents, or impose income restrictions on the Regulated Units.

12.10 OCCR may assist developer in locating alternative subsidies to cover the Eligible Client's minimum required rent payment.

12.11 OCCR will be responsible for all matters related to the handling, investment, and disbursement of monies in Fund 12A.

12.12 OCCR will be responsible for reporting to HCA on matters listed in Article 15, herein.

12.13 If funds in Fund 12A are insufficient to make loans or otherwise pay any fees or costs payable therefrom for matters related to this MOU, OCCR shall have no obligation to contribute or advance any other OCCR funds to Fund 12A for that purpose.

12.14 OCCR will monitor the rehabilitation and construction of each development, as necessary.

12.15 OCCR will participate in the Permanent Loan Conversion and require borrower to submit all appropriate documentation.

13. Developer or Borrower Fees

13.1 OCCR shall be able to charge fees to Developers or borrowers for project-related costs as developed as part of their lending practices, and may cover Application Fee, Underwriting Fee, Escrow/Closing Fees and/or Monitoring Fees. Such fees charged by OCCR to the Developer or borrowers shall be used and accounted for at the discretion of OCCR toward fulfilling the obligations imposed by this MOU.

14. Parties' Responsibilities after Completion of Loan Transaction

The Parties will have the following responsibilities after the completion of the loan transaction, development completion and stabilized occupancy, or permanent loan conversion (if applicable).

HCA Responsibilities

14.1 HCA will be responsible for providing mental health supportive services to the tenants of the Regulated Units.

14.2 HCA will ensure that each development has an acceptable supportive services plan, and that any modifications to the supportive services plan are appropriate to meet the needs of Eligible Clients and the development(s).

14.3 HCA will approve any modifications or amendments to the supportive services plan.

14.4 HCA will coordinate with borrowers and development property managers to ensure adequate numbers of Eligible Clients are referred to developments to fill vacancies in a timely manner.

14.5 HCA will coordinate with the Agreement (as defined in Article 1.1, herein) parties to monitor the development to ensure the Agreement requirements are met.

OCCR Responsibilities

14.6 OCCR will provide the asset management services described below:

14.6.1 Review and approval of the following required borrower submittals:

(a) evidence of property and liability insurance; (b) Regulated Unit rent rolls and proposed rent increases; (c) current local Housing Authority utility allowances by unit size; (d) evidence of rental subsidies; (e) annual development audits showing actual rents and operating costs for the prior year; and (f) COSR draw requests (if applicable).

14.7 OCCR will hold, control and approve disbursements of development reserve accounts and COSR, as applicable.

14.8 OCCR will perform periodic reviews regarding the adequacy, use, disbursements, and need for COSR on any given development, and annually provide the results of such reviews to HCA.

14.9 OCCR will perform inspections and prepare physical inspection reports biennially or as deemed necessary by OCCR, and provide copies to HCA if requested.

14.10 OCCR will provide concurrently to HCA and the borrower any statutory notices of default under the loan documents.

14.11 OCCR will accept accrued and principal payments on the loan as consistent with Article 8.-2, herein.

14.12 OCCR will collect from borrower such fees described in Article 13, above.

14.13 Subject to an additional fee to be paid by borrower, as necessary to cover OCCR's costs as determined by OCCR, OCCR may agree to provide certain other administrative services in connection with the loan, such as processing requests for approval of borrower organizational changes, transfers of the development or other ownership changes, and substitution of property management firms.

14.14 Subject to a separate agreement between the Parties as deemed necessary by OCCR, OCCR may agree to assist HCA with the services described in Article 14.15, below, as well as transactions related to refinancing, restructuring, or other changes to the loan documents, development or borrower. Costs for such services will not exceed the amount necessary to cover OCCR's costs as determined by OCCR and may be paid from Fund 12A upon HCA's approval.

14.15 OCCR may, subject to a separate agreement between the Parties as deemed necessary by OCCR provide the following additional services beyond those specified, above: (a) specific enforcement; (b) judicial or non-judicial foreclosure; (c) receivership; (d) legal fees; (e) loan document changes related to a default, or potential default, under the loan documents; (f) title insurance claims; and (g) advancement of funds to pay insurance and taxes (or as otherwise necessary to preserve the security interest in the development). Costs related to the additional services described herein may be paid from Fund 12A.

15. OCCR Reporting Requirements

15.1 OCCR will keep such books and records of the operation of the loans and the development(s), pursuant to common accounting principles, practices and state laws.

15.2 Starting in 2020, OCCR will provide to HCA a quarterly accounting of Fund 12A to include: (a) the costs associated with the loans and development(s), (b) the amount of funds held by OCCR at the beginning of the reporting term; (c) the amount of funds received from loan repayments or unused COSR deposits to Fund 12A; (d) the amount of interest earned on the funds in Fund 12A by date posted; (e) the amount in Fund 12A at the end of the reporting term; and (f) a report on the total amount of committed and uncommitted funds in Fund 12A by development.

16. Return of Funds

16.1 HCA may request the return of any unencumbered funds remaining in Fund 12A by providing sixty (60) days written notice to OCCR.

17. Miscellaneous

17.1 Entirety of Agreement. This MOU supersedes any and all other agreements, oral or in writing, between the Parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the Parties with respect thereto.

17.2 Amendments. No amendment or modification of the provisions of this MOU shall be valid unless made in writing and signed by the Parties hereto.

17.3 Survival. The terms, conditions, and warranties contained in the MOU that by their sense and context are intended to survive the performance hereof by the Parties hereunder shall so survive the expiration and termination of the MOU.

17.4 Termination.

17.4.1 Either Party may terminate this MOU by providing sixty (60) days written notice to the other Party. However, any developments with approved/encumbered Fund 12A funds shall continue to be processed by OCCR.

17.4.2 Upon termination of this MOU: (a) OCCR's authority to lend money from Fund 12A shall cease; (b) OCCR shall retain responsibility for the servicing for development(s) for which it is providing such services; (c) all uncommitted or unencumbered funds in Fund 12A shall be returned to HCA; and (d) all future funds received from a development, including payments, interest earned, and other income, shall be returned to HCA or transferred in accordance with HCA's written instructions.

17.5 Commingled Interest.

Any commingled interest earned in Fund 12A should be used for the purpose of the developing permanent supporting housing for Eligible Clients, as defined in Article 1.11, above.

18. Notice

18.1 Any notice, tender, or delivery to be given hereunder by either Party to the other may be effected by personal delivery, in writing, by facsimile transmission, by e-mail or by mail, postage prepaid, and shall be deemed communicated as of the date of actual receipt. Mailed notices shall be addressed as set forth below, but each Party may change its address by written notice in accordance with this Paragraph.

For OC Community Resources:

Julia Bidwell
Director, Housing & Community Development
1501 E. St. Andrew Place, 1st Floor
Santa Ana, CA 92705
Julia.Bidwell@occr.ocgov.com

For Orange County Health Care Agency:

Jeffrey A. Nagel, Ph.D.
Behavioral Health Director
Orange County Health Care Agency
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JNagel@ochca.com

WHEREFORE, the parties hereto have executed this MOU as of the date set forth above, and by their signatures acknowledge their understanding of and agreement to all of its provisions.

Signatures follow on next page

Dated:

Health Care Agency:

By: DocuSigned by:
Dr. Clayton Chau
AFEE619990EB464...

Dr. Clayton Chau, Director

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: DocuSigned by:
Massoud Shamel
79055CA571A94F8...

5/22/2020


Dated: _____

Dated:

OC Community Resources:

By: 
A69B1261E22F4B4
Dylan Wright, Director

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By: 
8452584753D3488...

Dated: 5/21/2020