



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: July 20, 2004

Item Number: 40 (Action Calendar—Old Business)

Item Description: Contract: Supportive Housing for Mentally Disabled

Attached please find a revised Contract and Memorandum of Understanding with Bonita House, Inc. Due to current unresolved issues related to HUD funding for the City's Shelter Plus Care Program, revisions to these attached documents were necessary.

Please replace the attachments provided with the July 13th Consent Calendar Item with the attached documents. Thank you.

City Manager Signature

(This cover sheet should be used only if the agenda item the material refers to is in addition to or is a revision of the material included in the original report)

PERSONAL SERVICES CONTRACT

THIS CONTRACT is entered into on July __, 2004, between the CITY OF BERKELEY ("City"), a Charter City organized and existing under the laws of the State of California, and Bonita House, Inc. ("Contractor"), a non-profit organization doing business at 6333 Telegraph Avenue, Suite 102, Oakland, CA 94609, who agree as follows:

1. **SCOPE OF SERVICES**

Contractor agrees to perform all services described in Exhibit A, in accordance with its stated terms and conditions. Exhibit A is attached to and made a part of this Contract.

2. **PAYMENT**

For services referred to in Section 1, City will pay Contractor a total amount not to exceed \$ 200,000. City shall make payment to Contractor in accordance with the provisions described in Exhibit B, which is attached to and made a part of this Contract.

3. **TERM**

a. This Contract shall begin on July 21, 2004 and end on June 30, 2019.

b. City may terminate this Contract for default upon five (5) days' written notice if the Contractor has substantially failed to fulfill any of its obligations under this Contract in a timely manner. City may terminate this Contract at its convenience and without cause upon ninety (90) days' written notice to Contractor. Except as provided in this Contract, in no event shall City be liable for costs incurred by or on behalf of Contractor after the effective date of a notice of termination.

c. In the event federal, state or other rental subsidies are no longer available to maintain any or all of tenants placed by City, including but not limited to subsidies necessary to support the three (3) housing units reserved for the City's clients, City may terminate this Contract upon sixty (60) days written notice to Contractor.

c. A written notice is deemed served when a party sends the notice in an envelope addressed to the other party to this Contract and deposits it with the U.S. Postal Service, first class mail, postage prepaid. For purposes of this Contract, all notices to City shall be addressed as follows:

City Manager
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

For purposes of this Contract, all notices to Contractor shall be addressed as follows:

Rick Crispino, Director
Bonita House, Inc.
6333 Telegraph Avenue, Suite # 102
Oakland, CA 94609-1328

4. **INDEMNIFICATION**

Contractor, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with Contractor's negligent or wrongful operations under this Contract, or with the negligent or wrongful performance of this Contract by Contractor or its officers, employees, partners, directors, subcontractors or agents. Contractor, for itself and its heirs, successors and assigns, further agrees to release and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with the acts and omissions of tenants residing at the Temescal Apartments Project and their invitees.

City, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless Contractor, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with the negligent or wrongful operations of City under this Contract, or with the negligent or wrongful performance of this Contract by City or its officers, employees, partners, directors, subcontractors or agents.

5. **INSURANCE**

Contractor shall maintain at all times during the performance of this Contract a commercial general liability insurance policy with minimum occurrence coverage in the amount of \$ 1,000,000; an automobile liability insurance policy in the minimum amount of \$ 500,000; and, if any licensed professional performs services under this contract, a professional liability insurance policy in the minimum amount of \$ 1,000,000 to cover any claims arising out of Contractor's performance of services under this Contract. All insurance, except professional liability, shall name the City, its officers, agents, volunteers and employees as additional insureds and shall provide primary coverage with respect to the City.

All insurance policies shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said policies except upon thirty (30) days written notice to the City's Risk Manager; 2) be evidenced by the original Certificate of Insurance attached to the City's form endorsement or the insurance carrier's standard form endorsement evidencing the required coverage; and 3) be approved as to form and sufficiency by the Risk Manager.

b. If the commercial general liability insurance referred to above is written on a Claims Made Form then, following termination of this Contract, coverage shall survive for a period of not less than five years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Contract.

c. If Contractor employs any person, it shall carry workers' compensation and employer's liability insurance and shall provide a certificate of insurance to the City. The workers' compensation insurance shall: 1) provide that the insurance carrier shall not cancel, terminate or otherwise modify the terms and conditions of said insurance except upon thirty (30) days written notice to the City's Risk Manager; 2) provide for a waiver of any right of subrogation against City to the extent permitted by law; and 3) shall be approved as to form and sufficiency by the Risk Manager.

d. Contractor shall forward all insurance documents to the Department of Health & Human Services, Mental Health Division, 3rd Floor, 1947 Center Street, Berkeley, CA 94704.

6. **CONFORMITY WITH LAW AND SAFETY**

a. Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, and all other applicable federal, state, municipal and local safety regulations. All services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations. Contractor shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

b. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Contractor shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this Contract, Contractor shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of Contractor's subcontractor, if any; 3) name and address of Contractor's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

c. If a release of hazardous materials or hazardous waste that cannot be controlled occurs in connection with the performance of this Contract, Contractor shall immediately notify the Berkeley Police Department and the City's Health Protection office.

d. Contractor shall not store hazardous materials or hazardous waste within the City of Berkeley without a proper permit from the City.

7. **MATERIAL SAFETY DATA SHEETS**

a. To comply with the City's Hazard Communication Program, Contractor agrees to submit Material Safety Data Sheets (MSDS) for all "hazardous substances" Contractor intends to use in the performance of work under this Contract in any City facility. "Hazardous substances" are defined as those substances so designated by the Director of Industrial Relations pursuant to the Hazardous Substances Information and Training Act (Labor Code sec. 6360 *et seq.*). The MSDS for all products must be submitted to the City before commencing work. The MSDS for a particular product must be reviewed and approved by the City's Risk Manager before Contractor may use that product.

b. City will inform Contractor about hazardous substances to which it may be exposed while on the job site and protective measures that can be taken to reduce the possibility of exposure.

8. **OWNERSHIP OF DOCUMENTS**

a. When this Contract is terminated, Contractor agrees to return to City all documents, drawings, photographs and other written or graphic material, however produced, that it received from City, its contractors or agents, in connection with the performance of its services under this Contract. All materials shall be returned in the same condition as received.

b. Contractor grants City a royalty-free, exclusive and irrevocable license to reproduce, publish, use and to authorize others to do so, all original computer programs, writing, sound recordings, pictorial reproductions, diagrams, charts, computations, drawings and other works of similar nature produced in the course of the performance of this Contract. Contractor shall not publish any such material without the prior written agreement of the City.

c. With the prior written approval of City's Project Manager, Contractor may retain and use copies of its work for reference and as documentation of its experience and capabilities.

9. **NON-DISCRIMINATION**

Contractor hereby agrees to comply with the provisions of Berkeley Municipal Code ("B.M.C.") Chapter 13.26 as amended from time to time. In the performance of this Contract, Contractor agrees as follows:

a. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.

b. Contractor shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Contractor shall fill-out, in a timely fashion, forms supplied by the City to monitor this non-discrimination provision.

10. **INDEPENDENT CONTRACTOR**

a. Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Contractor performs the services required of Contractor by the terms of this Contract. Contractor shall be liable for its acts and omissions, and those of its employees and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between City and Contractor.

b. Direction from City regarding the subject of this Contract shall be construed as providing for direction as to policy and the result of Contractor's Work only and not as to the means or methods by which such a result is obtained.

c. Except as expressly provided in this Contract, nothing in this Contract shall operate to confer rights or benefits on persons or entities not party to this Contract.

d. Payment of any taxes, including California Sales and use Taxes, levied upon this Contract, the transaction, or the services or goods delivered pursuant hereto, shall be the obligation of Contractor.

11. **CONFLICT OF INTEREST PROHIBITED**

a. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Contractor nor any employee, officer, director, partner or member of Contractor, or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of this Contract.

b. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Contractor, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Contractor.

c. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.

12. **NUCLEAR FREE BERKELEY**

Contractor agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.

13. **OPPRESSIVE STATES CONTRACTING PROHIBITION**

a. In accordance with Resolution No. 59,853-N.S., Contractor certifies that it has no contractual relations with, and agrees during the term of this Contract to forego contractual relations to provide personal services to, the following entities:

- (1) The governing regime in any Oppressive State.
- (2) Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- (3) Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

b. For purposes of this Contract, the Tibet Autonomous Region and the provinces of Abo, Kham, and U-Tsang shall be deemed oppressive states.

c. Contractor's failure to comply with this section shall constitute a default of this Contract and City may terminate this Contract pursuant to Section 3. In the event that the City terminates Contractor due to a default under this provision, City may deem Contractor a non-responsible bidder for five (5) years from the date this Contract is terminated.

14. **RECYCLED PAPER FOR WRITTEN REPORTS**

If Contractor is required by this Contract to prepare a written report or study, Contractor shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin paper, and when such paper is available at the time it is needed. For the purposes of this Contract, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Contractor shall use white paper. Written reports or studies prepared under this Contract shall be printed on both sides of the page whenever practical.

15. **BERKELEY LIVING WAGE ORDINANCE**

a. Contractor hereby agrees to comply with the provisions of the Berkeley Living Wage Ordinance, B.M.C. Chapter 13.27. If Contractor is currently subject to the Berkeley Living Wage Ordinance, as indicated by the Living Wage Certification form, attached hereto, Contractor will be required to provide all eligible employees with City mandated minimum compensation during the term of this Contract, as defined in B.M.C. Chapter 13.27, as well as comply with the terms enumerated herein. Contractor expressly acknowledges that, even if Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts with City may subject Contractor to the requirements under B.M.C. Chapter 13.27 in subsequent contracts.

b. If Contractor is currently subject to the Berkeley Living Wage Ordinance, Contractor shall be required to maintain monthly records of those employees providing service under the Contract. These records shall include the total number of hours worked, the number of hours spent providing service under this Contract, the hourly rate paid, and the amount paid by Contractor for health benefits, if any, for each of its employees providing services under the Contract. These records are expressly subject to the auditing terms described in Section 16.

c. If Contractor is currently subject to the Berkeley Living Wage Ordinance, Contractor shall include the requirements thereof, as defined in B.M.C. Chapter 13.27, in any and all subcontracts in which Contractor engages to execute its responsibilities under this Contract. All subcontractor employees who spend 25% or more of their compensated time engaged in work directly related to this Contract shall be entitled to a living wage, as described in B.M.C. Chapter 13.27 and herein.

d. If Contractor fails to comply with the requirements of this Section, the City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Contractor's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this Contract pursuant to Section 3. In the event that City terminates Contractor due to a default under this provision, City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Contractor may be responsible for liquidated damage in the amount of \$50 per employee per day for each and every instance of an underpayment to an employee. It is mutually understood and agreed that Contractor's failure to pay any of its eligible employees at least the applicable living wage rate will result in damages being sustained by the City; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty of forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

16. **BERKELEY EQUAL BENEFITS ORDINANCE**

a. Contractor hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29. If Contractor is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, attached hereto, Contractor will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this contract, as well as comply with the terms enumerated herein.

b. If Contractor is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Contractor agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Section 17 of this contract.

c. If Contractor fails to comply with the requirements of this Section, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.

Contractor's failure to comply with this Section shall constitute a material breach of the Contract, upon which City may terminate this contract pursuant to Section 3. In the event the City terminates this contract due to a default by Contractor under this provision, the City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

In addition, at City's sole discretion, Contractor may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of violation of this Section. It is mutually understood and agreed that Contractor's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

17. **AUDIT**

Pursuant to Section 61 of the Berkeley City Charter, the City Auditor's Office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such audit, Contractor agrees to provide the City Auditor with reasonable access to Contractor's employees and make all such financial, performance and compliance records available to the Auditor's Office. City agrees to provide Contractor an opportunity to discuss and respond to any findings before a final audit report is filed.

18. **SETOFF AGAINST DEBTS**

Contractor agrees that City may deduct from any payments due to Contractor under this Contract any monies that contractor owes City under any ordinance, contract or resolution for any unpaid taxes, fees, licenses, unpaid checks or other amounts.

19. **CONFIDENTIALITY OF INFORMATION**

Contractor understands and agrees that, in the performance of the services under this Contract or in the contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Contract. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data.

20. **GOVERNING LAW**

This Contract shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this Contract shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Contract shall be in Alameda County, California.

21. **AMENDMENTS**

The terms and conditions of this Contract shall not be altered or otherwise modified except by a written amendment to this Contract executed by City and Contractor.

22. **ENTIRE CONTRACT**

a. The terms and conditions of this Contract, all exhibits attached and any documents expressly incorporated by reference represent the entire Contract between the parties with respect to the subject matter of this Contract. This Contract shall supersede any and all prior contracts, oral or written, regarding the subject matter between City and Contractor. No other contract, statement, or promise relating to the subject matter of this Contract shall be valid or binding except by a written amendment to this Contract.

b. If any conflicts arise between the terms and conditions of this Contract and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Contract shall control.

23. **SEVERABILITY**

If any part of this Contract or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision or application, and to this end the provisions of this Contract are declared to be severable.

24. **WAIVER**

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this Contract or a waiver of any other default of Contractor.

25. **ASSIGNMENT**

Contractor may not assign this Contract without the prior written consent of the City, except that Contractor may assign its right to any money due or to become due hereunder.

26. **EFFECT ON SUCCESSORS AND ASSIGNS**

This Contract shall be binding on and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

27. **CONSULTANTS TO SUBMIT STATEMENTS OF ECONOMIC INTEREST**

The City's Conflict of Interest Code, Resolution No. 59,769-N.S., as amended, requires consultants who make a governmental decision or act in a staff capacity as defined in 2 Cal. Code of Regs. § 18700, as amended from time to time, to disclose conflicts of interest by filing a Statement of Economic Interest (Form 700). Consultants agree to file such statements with the City Clerk at the beginning of the contract period and upon termination of the Contractor's service.

28. **SECTION HEADINGS**

The sections and other headings of this Contract are for convenience of reference only and shall be disregarded in the interpretation of this Contract.

29. **CITY BUSINESS LICENSE, PAYMENT OF TAXES, TAX I.D. NUMBER**

Contractor has obtained a City business license as required by B.M.C. Chapter 9.04, and its license number is written below; or, Contractor is exempt from the provisions of B.M.C. Chapter 9.04 and has written below the specific B.M.C. section under which it is exempt. Contractor shall pay all state and federal income taxes and any other taxes due. **Contractor certifies under penalty of perjury that the taxpayer identification number written below is correct.**

IN WITNESS WHEREOF, City and Contractor have executed this Contract as of the date written on the first paragraph of this Contract.

CITY OF BERKELEY

By: City Manager

This Contract has been Countersigned by:

Approved as to Form

By:

City Attorney

City Auditor

Attest:

City Clerk

CONTRACTOR

Bonita House, Inc.

By: _____
Rick Crispino, Director

Printed name and title of signatory, if different from contractor name

Tax Identification No. 94-1735133

Berkeley Business License No. 200419420

Incorporated: Yes No

Certified Woman Business Enterprise: Yes ___ No

Certified Minority Business Enterprise: Yes ___ No

If yes, state ethnicity:

Certified Disadvantaged Business Enterprise: Yes ___ No

EXHIBIT A

SCOPE OF SERVICES

A. Contractor shall perform pre-development, development, acquisition, rehabilitation and construction activities related to the property located at 5406, 5408 and 5410 Telegraph Avenue, Oakland, CA 94609, otherwise described as: "Lot 9, Block A, Map of the Vicente Peralta Reservation Tract, Filed June 15, 1886. Map Book 6, Page 35, Alameda County Records" located in the City of Oakland. AP No. 014-1225-009-03, or, for purposes of this Agreement, referred to as the "Temescal Apartments Project."

B. The above-described activities, in performance of this Agreement, shall result in the transfer and acquisition of the real property herein referred to as the Temescal Apartments Project from the current private property owner to Bonita House, Inc., a recognized non-profit service provider and property management agency serving adults with co-occurring mental health and substance abuse disorders.

C. Contractor shall perform all necessary activities, and assume the costs thereof, utilizing in part the entirety of funds provided by this Agreement, for the successful transfer, acquisition, construction and rehabilitation of the Temescal Apartments Project including, but not limited to, the following:

- 1) Securing local permits and payment of all applicable fees;
- 2) Architecture, design and engineering studies and plans;
- 3) Construction and rehabilitation of property consistent with all applicable codes and regulations;
- 4) Obtaining all necessary risk and liability insurance coverage;
- 5) Appraisals and related costs;
- 6) Legal analysis and review;
- 7) Title and escrow services and fees;
- 8) Relocation services and expenses;
- 9) Environmental consultants and reports;
- 10) Pre-development and development consultant services; and
- 11) Any additional, as necessary, development costs including rent-up costs, security, accounting and costs certifications
- 12) Ongoing property management services

D. Upon complete legal transfer, acquisition and close of escrow, Contractor shall rehabilitate as necessary the property, consistent with all applicable local, state and federal requirements, to provide no fewer than three (3) habitable one bedroom apartment units, numbered 5410-2, an ADA accessible unit, and 5410-3 and 5410-4, on a dedicated basis for referral and placement of eligible clients by the Mental Health Division, Health & Human Services Department of the City of Berkeley. Contractor shall make these housing units available to the City from the date the Project receives a certificate of occupancy, whether temporary or not, through June 30, 2019.

E. Clients referred by the City for housing placement in the Temescal Apartments Project shall be categorically eligible for the Shelter Plus Care Program or related federal and/or state or other housing subsidies to be provided by the City contingent upon continued receipt by the City of such federal housing subsidies. Such federal housing subsidies made available to individual tenants of the Temescal Apartments Project are based on the fair market rental rate of each dedicated housing unit, consistent with federal and/or state regulations. Additionally, such referred clients will meet the clinical requirements consistent with State funding governing the City of Berkeley Mental Health Division's activities, including, but not limited to, State Realignment and/or State AB 2034 funding, as applicable. Units are to be occupied by single adults who qualify for housing placement and occupancy in the Temescal Apartments Project. Placement will be based in part on the City's determination that applicants qualify as "very low income" as defined by the U.S. Department of Housing & Urban Development and/or other applicable state agencies.

F. In accordance with section 4 of the contract, the City assumes no responsibility whatsoever for the acts or omissions of tenants placed at the Project by the City. Contractor shall purchase sufficient insurance coverage in accordance with section 5 of the contract. The City may however, in its **sole** discretion, provide Contractor with up to \$2,500 per incident, not to exceed \$10,000 in any twelve-month period, to assist Contractor with supplying the applicable insurance policy deductible in the event of property damage, injury or death caused by such tenants. These limits may be adjusted in accordance with any increases in Contractor's insurance deductible, as determined in the **sole** discretion of the City. In the alternative, in the event Contractor is reimbursed by an insurance company for damages incurred with respect to any incident, Contractor shall first reimburse City for any City funds provided with respect to that incident. The City's provision of such funds shall in no way be construed as an assumption of liability for the acts and omissions of such tenants.

G. Contractor agrees, pursuant to this Agreement and in accordance with Exhibit B herein, to expend a sum of no more than forty thousand dollars (\$40,000) of the total funds provided for any pre-development activity enumerated above, or related activities commonly associated with pre-development activities. The balance of funds provided pursuant to this Agreement, or a sum not less than one hundred and sixty thousand dollars (\$160,000), shall be exclusively expended by Contractor for those enumerated activities referred to above, and/or those activities commonly associated with the development, acquisition, construction and rehabilitation of the Temescal Apartments project.

H. Contractor shall provide a regular written reporting of activities and a full and complete accounting of all expenditures by activity category related to this Agreement at the close of escrow. Further, Contractor shall provide a final written reporting of activities and a full and final accounting of all expenditures by activity category, pursuant to this Agreement, by June 30, 2005, or within ten (10) business days upon receipt of written request of same by the City.

I. In the event that Contractor, despite all reasonable and good faith efforts, cannot, or otherwise does not within 180 days of the date of this Agreement, successfully effectuate the transfer and acquisition of the Temescal Apartments Project, Contractor must notify the City in writing within five (5) business days of such a determination or the above deadline and provide a comprehensive explanation for such a determination. In such an event, all unexpended and unencumbered pre-development, development, acquisition, construction and/or rehabilitation funds provided pursuant to this Agreement shall be returned payable to the City of Berkeley within 15 calendar days of the date of the above-described determination, with or without demand and

with a full and complete accounting of all expended funds.

J. In the event that Contractor utilizes the funds provided by the City under this Agreement for any purpose other than the pre-development, development, acquisition, rehabilitation and construction activities described above, then (1) Contractor shall repay all such funds to the City immediately upon demand in addition to a fifteen percent (15%) penalty, and (2) notwithstanding anything to the contrary in this Agreement, the City may seek any other available remedy at law or equity. In the event the City terminates this contract due to a default by Contractor under this paragraph, the City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated.

K. This Agreement, in conjunction with the Memorandum of Understanding (MOU) between Berkeley Mental Health and Bonita House, Inc. (Exhibit C) shall govern and be the basis for activities between the parties associated with the Temescal Apartments Project. In the event of any unintended conflict or inconsistencies between this Agreement and the MOU, this Contract shall govern.

EXHIBIT B

PAYMENT

Within fifteen (15) business days following receipt of a written invoice, City shall (1) pay Contractor forty thousand dollars (\$40,000) for the pre-development activities addressed in Exhibit A, and (2) upon the successful close of escrow by the Contractor of the subject property, pay Contractor one hundred and sixty thousand dollars (\$160,000).

Memorandum of Understanding
between
The City of Berkeley
and
Bonita House, Inc.

This is a Memorandum of Understanding (MOU) between the City of Berkeley (City), through the City Department of Health and Human Services Mental Health Division (BMH) and Bonita House, Inc. (BHI) to delineate the roles and responsibilities of each agency for planning, coordinating, and implementing a joint endeavor to provide appropriate and effective care and treatment to the tenants at the Temescal Apartments.

Background

BMH and numerous community partners, including Community Based Organizations and City departments and services, and other stakeholder groups have been meeting over the last two years as the Berkeley System of Care Policy Council (BSOC). The mission of BSOC is to develop and improve treatment and supportive services for individuals with mental illnesses and/or substance abuse disorders.

The Alameda County Homeless Survey conducted in 2003, indicated that the City has the highest number per capita of homeless mental ill males the S.F. Bay area and possibly the nation. The City has a limited number of affordable apartments for the low-income residents. Safe affordable and habitable housing options for Berkeley residents who are suffering from mental illness and substance abuse are limited. Supported independent living options and the opportunity for greater self-sufficiency amongst the dual diagnosed severely mentally ill population are rare. The mission of the Berkeley System of Care is furthered by City and BHI working in collaboration as mental health providers to expand the range of housing and service options available to persons with severe and persistent mental health issues.

BHI is an exemplary program that has a 30-year history of providing dual diagnosed services. This collaboration with BHI and Berkeley Mental Health to provide independent living options for six mentally ill clients will increase the necessary housing options for the dual diagnosed population. Bonita House, Inc and Berkeley Mental Health anticipate that this collaboration will provide more opportunities for future collaborations between the City via BMH and BHI.

The Temescal Apartments consists of six apartments for single adults located at 5406, 5408, and 5410 Telegraph Avenue, in Oakland California. City and BHI will each provide, to the extent available, rental subsidies for their respective units in the event of vacancies.

Purpose

This MOU between City and BHI delineates the roles and expectations of each organization for providing collaborative services to the residents and resident applicants of the Temescal Apartments Project.

Specifically the purposes of this MOU are to:

1. Formally delineate the roles of each agency with the goal of collaborating to provide efficient and effective services to support the independent living experience for the tenants at the Temescal Apartments Project.
2. Provide clear and specific actions for which each agency will be held accountable.
3. Coordinate the implementation of services that maximizes the use of available resources and generates the maximum revenues available for these services, and jointly work to bring additional resources into this project.

Role of Berkeley Mental Health

1. Provide mental health treatment and case management services to BMH residents of the Temescal Apartments Project.
2. Provide Mobile Crisis Team services from 11AM to 11 PM 7 days per week in collaboration with the Oakland Police Department as necessary to the Temescal Apartments Project.
3. Provide Program Supervisor on-call status via cell phone for urgent care issues that occur after 11:00 PM till 8:00 AM daily to BMH clients.
4. Collaborate with BHI staff to implement a voluntary recreation and activities program for all clients at Temescal Apartments Project when possible.
5. Establish and participate in house meetings necessary to implement the purposes of this MOU, including:
 - Bi-monthly Temescal Apartments house meetings that will be hosted by each tenant and rotated between the tenants.
 - A BMH Case Manager will attend the Temescal Apartments house meetings.
 - Ad-hoc administrative or case manager meetings as needed for problem solving called by administrators, case managers or per request of the tenants.
6. Collaborate on all joint Temescal Apartments clients through case conferences, feedback and referrals (conditioned upon the individual execution of releases permitting the disclosure of medical information).
7. Designate an administrator and a case manager as liaisons between BHI and BMH.

8. Provide each BMH client that is participating in the Temescal Apartments Project an orientation that outlines responsibilities and expectations of all parties involved and grievance procedures.
9. Participate in forums and meetings to monitor this MOU.

Role of Bonita House, Inc.

1. Provide property management services to the Temescal Apartments Project.
2. Designate an administrator and a case manager as liaisons between BMH and BHI
3. Collaborate with City staff to implement a voluntary recreation and activities program for all tenants of the Temescal Apartments Project.
4. Establish and participate in house meetings necessary to implement the purposes of this MOU, including:
 - Bi-monthly Temescal Apartments house meetings that will be hosted by each tenant and rotated between the tenants.
 - A BHI Case Manager will attend the Temescal Apartments house meetings.
 - Ad-hoc administrative or case manager meetings as needed for problem solving called by administrators, case managers or per request of the tenants.
5. Collaborate on all joint Temescal Apartments clients through case conferences, feedback and referrals (with releases of information from clients).
6. Provide clinical case management including on-call telephone response for BHI clients 24 hours per day, seven days per week.
7. Participate in forums and meetings to monitor this MOU.

Eligibility

This project is substantially funded by a low-interest loan from the California Department of Housing and Community Development. The loan agreement requires that all units be occupied by very low-income individuals (as defined by the U.S. Department of Housing and Urban Development) who were previously homeless. All tenants will be individuals with a history of severe and persistent mental disability and priority will be given to those diagnosed with a co-occurring substance abuse disorder. City and BHI agree to maintain their waiting lists and eligibility criteria accordingly.

General Provisions

1. Indemnification.

BHI, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with BHI's negligent or wrongful operations under this MOU, or with the negligent or wrongful performance of this MOU by BHI or its officers, employees, partners, directors, subcontractors or agents. BHI, for itself and its heirs, successors and assigns, further agrees to release and hold harmless City, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with the acts and omissions of tenants residing at the Temescal Apartments Project and their invitees.

City, for itself and its heirs, successors and assigns, agrees to release, defend, indemnify and hold harmless BHI, its officers, agents, volunteers and employees from and against any and all claims, demands, liability, damages, lawsuits or other actions, including, but not limited to, personal injury or death or property damage arising out of or in any way connected with the negligent or wrongful operations of City under this MOU, or with the negligent or wrongful performance of this MOU by City or its officers, employees, partners, directors, subcontractors or agents.

2. Conformity with Law and Safety

BHI shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the duties of BHI under this MOU. BHI shall release, defend, indemnify and hold harmless City, its officers, agents, volunteers and employees from any and all damages, liability, fines, penalties and consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

If a death, serious personal injury or substantial property damage occurs in connection with the performance of this MOU, BHI shall immediately notify the City's Risk Manager by telephone. If any accident occurs in connection with this MOU, BHI shall promptly submit a written report to City, in such form as the City may require. This report shall include the following information: 1) name and address of the injured or deceased person(s); 2) name and address of BHI's subcontractor, if any; 3) name and address of BHI's liability insurance carrier; and 4) a detailed description of the accident, including whether any of City's equipment, tools or materials were involved.

3. Governing Law

This MOU shall be deemed to have been executed in Alameda County. The formation, interpretation and performance of this MOU shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this MOU shall be in Alameda County, California.

4. Amendments

The terms and conditions of this MOU shall not be altered or otherwise modified except by a written amendment to this MOU executed by City and BHI.

5. Severability

If any part of this MOU or the application thereof is declared invalid for any reason, such invalidity shall not affect the other provisions of this MOU which can be given effect without the invalid provision or application, and to this end the provisions of this MOU are declared to be severable.

6. Waiver

Failure of City to insist on strict performance shall not constitute a waiver of any of the provisions of this MOU or a waiver of any other default of BHI

Approved and Entered into upon the ____ day of _____, 2004 in Berkeley, California.

Philip Kamlarz, City Manager
City of Berkeley

Rick Crispino, Executive Director
Bonita House, Inc.

