

ORIGINAL

FUNDING AGREEMENT #3527

Development, Construction, and Operation of Rental Housing Development Property

THIS AGREEMENT is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Mother Lode Rehabilitation Enterprises, Inc., a California Corporation, whose principal place of business 399 Placerville Drive, Placerville, CA 95667, and whose Agent for Service of Process is *Susie Davies, 1171 Hidden Lake Drive, Placerville, CA 95667*, (hereinafter referred to as "Grantee");

RECITALS

WHEREAS, effective November 25, 1981, the County executed agreement 80-RHC-009, available at https://www.edcgov.us/Government/hhsa/Pages/hhsa_contractor_resources.aspx and incorporated by reference as if attached hereto, by and between the County of El Dorado, Mother Lode Rehabilitation Enterprises, Inc., and the California Department of Housing and Community Development (hereinafter referred to as the "Department"), to provide financial assistance for the development, construction, and operation of rental housing development property (hereinafter referred to as the "Development") for the care of developmentally disabled residents, with an initial term of thirty (30) years; and

WHEREAS, in Agreement 80-RHC-009, the County was identified as the Local Finance Entity, and agreed to provide a below-market interest rate financing equivalent, to be used in conjunction with financial assistance for the Development, as provided by the Department; and

WHEREAS, between 1981 and 2018 the County and Department have executed 41 Amendments to Agreement 80-RHC-009, each one establishing an annual payment to Grantee; and

WHEREAS, in Amendment 36 to said Agreement, the termination date of that Agreement was set at September 30, 2048; and

WHEREAS, October 17, 2018 County was notified via email that the Department would no longer be sending payment directly to Grantee, but would be sending the payment to County for disbursement; and

WHEREAS, County and Grantee mutually agree to establish this Agreement #3527 as a mechanism for disbursement of monies received by the County from Department; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, the parties agree the funding will be in conformity with all applicable federal, state and local laws and use of the funding shall be in conformity with the stated purpose in Agreement 80-RHC-009;

NOW, THEREFORE, County and Grantee mutually agree as follows:

ARTICLE I

Payment and Use of Funds: Within thirty (30) days of execution of this Agreement, County shall advance to Grantee the amount received from Department in accordance with Agreement 80-RHC-009. The use of funds shall be in accordance with the requirements of Agreement 80-RHC-009.

All funding shall be used for direct costs of the Development and not staff time, administrative or overhead costs. Funding shall not be used for political advocacy of any kind and shall not be used for individual person or business promotion or advertisement.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall continue in effect through September 30, 2048 or the termination date of Agreement 80-RHC-009, whichever occurs first, unless earlier terminated by one of the parties hereto in accordance with Article VIII – “Fiscal Considerations” or Article XII – “Termination of Agreement.”

ARTICLE III

Reporting: Grantee shall submit annual reports to County in accordance with the terms and conditions of Agreement 80-RHC-009.

ARTICLE IV

Local Sourcing: Grantee shall make every reasonable effort to secure and/or purchase materials, supplies and labor from local businesses and the local labor pool. For purposes of this Agreement, a local business is one that maintains a current business license from the Treasurer/Tax Collector of El Dorado County.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VI

No Joint Venture: This Agreement shall not create a joint venture, partnership, or any other relationship of association between County and Grantee.

ARTICLE VII

No Grant of Agency: Except as the parties may specify in writing, neither party shall have authority, express or implied, to act on behalf of the other party in any capacity whatsoever as an agent. Neither

party shall have any authority, express or implied, pursuant to this Agreement, to bind the other party to any obligation whatsoever.

ARTICLE VIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE IX

Audit by California State Auditor: Grantee acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Grantee shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

ARTICLE X

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
Health and Human Services Agency
3057 Briw Road, Suite B
Placerville, CA 95667
ATTN: Contracts Unit

or to such other location as the County directs.

Notices to Grantee shall be addressed as follows:

Mother Lode Rehabilitation Enterprises, Inc.
399 Placerville Drive
Placerville, CA 95667
ATTN: Chief Executive Officer

or to such other location as the Grantee directs.

ARTICLE XI

Change of Address: In the event of a change in address for Grantee's principal place of business, Grantee's Agent for Service of Process, or Notices to Grantee, Grantee shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties." Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XII

Termination of Agreement: This Agreement may be terminated at any time by either party upon seven (7) days written notice to the other party. If the Agreement is terminated prior to completion of the Project, Grantee shall return to County all monies received by Grantee from the County under this Agreement within thirty (30) days of demand by County.

ARTICLE XIII

Indemnity: The Grantee shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Grantee's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Grantee, subcontractors(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Grantee to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIV

Insurance: Grantee shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Grantee maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Grantee as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Grantee in the performance of the Agreement.
- D. In the event Grantee is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Grantee shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Grantee agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Grantee agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Grantee agrees that no work or services shall be performed prior to the giving of such approval. In the event the Grantee fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Grantee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be in excess of the Grantee's insurance and shall not contribute with it.

- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Grantee's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Grantee cannot provide an occurrence policy, Grantee shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XV

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Grantee under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XVI

Interest of Grantee: Grantee covenants that Grantee presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Grantee further covenants that in the performance of this Agreement no person having any such interest shall be employed by Grantee.

ARTICLE XVII

Nondiscrimination: In completing the Project, employing personnel, or in any other respect of this Agreement, Grantee shall not employ discriminatory practices on the basis of race, color, sex, age, religion, sexual orientation, national origin or ancestry, or physical or mental disability.

ARTICLE XVIII

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XIX

Assignment: This Agreement is not assignable by Grantee in whole or in part without the express written consent of County.

ARTICLE XX

Compliance with Laws, Rules and Regulations: Grantee shall, at all times while this Agreement is in effect, comply with all applicable laws, ordinances, statutes, rules, and regulations governing its conduct.


ARTICLE XXI

Administrator: The County Officer or employee with responsibility for administering this Agreement is Daniel Del Monte, MPA, Deputy Director, Community Services Division, or successor.

ARTICLE XXII


Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Contract Administrator Concurrence:

By: 
Daniel Del Monte, MPA
Deputy Director
Health and Human Services Agency

Dated: 11/13/18

Requesting Department Head Concurrence:

By: 
Patricia Charles-Heathers, Ph.D., MPA,
Director
Health and Human Services Agency

Dated: 11/20/18


IN WITNESS WHEREOF, the parties hereto have executed this Agreement #3527 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 12/4/2018

By: 
Michael Ranalli, Chair
Board of Supervisors
"County"


ATTEST:
James S. Mitrison
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 12/4/2018

-- GRANTEE --

MOTHER LODGE REHABILITATION ENTERPRISES, INC.
A CALIFORNIA CORPORATION

By: 
Susie Davies
Chief Executive Officer
"Grantee"

Dated: 11-15-18

By: 
Corporate Secretary

Dated: 11-15-18