

The Importance of a Memorandum of Understanding for the Housing Developer, Property Management and Lead Service Provider

Through Enterprise Community Partners' two-year capacity building training series, Embracing Success in Merging Populations, funded by the W.M. Keck Foundation, we have provided affordable housing developers with valuable technical information, strategies and tools for effectively operating housing to a mix of vulnerable populations.

A common theme throughout the training series has been the importance of establishing the partnership between the developer, property management and lead service provider for the operation of the affordable housing development. This Memorandum of Understanding (MOU) was prepared after reviewing a sampling of MOUs from nonprofits, all of which had a number of problems, including being outdated in relation to regulatory requirements, incomplete in defining the parties' responsibilities or lacking important provisions, such as a method for conflict resolution. The sample MOU has been prepared to assist the three partners in clearly defining in writing their individual and joint responsibilities for successfully operating affordable housing and providing resident services.

The MOU is based on several guiding principles, including the:

- Importance of articulating a collaborative approach to providing quality housing and resident services
- Need to define and distinguish the roles of the parties
- Commitment of the partners to ongoing communication and cooperative problem solving for the health of the development and the residents

What's in the MOU?

The agreement is structured similarly to other documents in which multiple parties memorialize their working relationship. Sections A through D set the framework of the agreement: identifying the parties, specifying the length of the agreement, articulating guiding principles and defining key terminology. Any documents that the parties rely upon or reference should be identified and attached to the MOU. Sections E through H outline the joint and individual responsibilities of the three parties. The final Section I provides the standard or boilerplate, provisions found in most legal contracts.

The difference between an MOU and a contract

Both an MOU and a contract create an agreement between two or more parties, but the key distinction rests with whether the parties intend to be legally bound by the terms of the agreement. In a contract, the parties exchange promises to do something of value and intend that they are creating a legal enforceable contract with remedies for a breach. Typically, MOUs define the mission and responsibilities of the parties; they are non-binding joint agreements in which the parties do not intend their promises to be legally enforceable. The sample MOU provided creates a joint agreement but the language is not intended to create a legally enforceable contract. It is recommended that the parties memorialize their intent as to the enforceability of their MOU and if they desire a legally binding agreement, they seek the advice and drafting expertise of legal counsel.

Moving forward (with a caveat)

The MOU is a sample agreement that developers, property management and lead service providers should carefully review and adapt to their particular development and the partnership relationship. And, while this sample is written for three separate entities, it may be modified and used where the housing developer and property

management services are part of the same entity. The MOU provided is not legal advice or a legal opinion and affordable housing developers, property management and lead service providers should seek legal counsel on their specific questions. Enterprise Community Partners encourages housing partners to solidify the important partnership through a MOU as they collaborate in providing affordable housing to the mix of vulnerable populations.

About the Author

Kim Savage is a consultant to Enterprise's Embracing Success in Merging Populations, providing expertise in fair housing and affordable housing operations. Ms. Savage's separate solo law practice includes representation of affordable housing developers in land use and zoning, civil rights matters and operational compliance. The Law Office of Kim Savage also provides training and technical assistance to local governments.

Acknowledgements

Enterprise Community Partners acknowledges the generous funding support from The Ahmanson Foundation, the S. Mark Taper Foundation, and the W.M. Keck Foundation to implement the capacity building program to address the experience gap of affordable housing developers in providing permanent supportive housing to special populations.

About Enterprise

Enterprise works with partners nationwide to build opportunity. We create and advocate for affordable homes in thriving communities linked to jobs, good schools, health care and transportation. We lend funds, finance development and manage and build affordable housing, while shaping new strategies, solutions and policy. Over more than 30 years, Enterprise has created nearly 340,000 homes, invested \$18.6 billion and touched millions of lives. Join us at www.EnterpriseCommunity.com or www.EnterpriseCommunity.org.

The content provided herein is for general informational purposes and does not constitute legal advice or a legal opinion. Affordable housing developers should seek legal counsel on their specific questions. Additionally, this information was prepared based on California law, and those outside of California also should consult their state and local laws in addressing the concerns discussed herein.

MEMORANDUM OF UNDERSTANDING

**BETWEEN THE PROJECT DEVELOPER, PROPERTY MANAGEMENT AND THE LEAD
SERVICE PROVIDER IN
_____ DEVELOPMENT**

This Memorandum of Understanding (“MOU” or “Agreement”) is entered into on this _____, 2015 (“Effective Date”), between _____ (“Developer”), _____ (“Property Management”) and _____ (“Lead Service Provider”), collectively referred to herein as “Parties.”

RECITALS

WHEREAS, the Parties desire to memorialize their commitment to coordinating their resources and actions toward the common goals of providing affordable housing to eligible individuals and families at _____ Development and making available supportive services for housing stability and resident well being.

WHEREAS, the Parties desire to outline their roles and responsibilities to further effective housing and supportive services for the best outcome for tenants and the financial health of the development.

THEREFORE, in consideration of the mutual covenants and mutual benefits set forth in this Agreement, all Parties agree as follows:

A. TERM OF AGREEMENT

The term of this Agreement shall commence on _____ and shall expire _____ years from the date the building is placed in service unless sooner terminated or extended by mutual written agreement of the Parties, in whole or in part, to ensure that this Agreement is in effect throughout any applicable regulatory period(s).

B. GUIDING PRINCIPLES

All Parties share the following common principles that will guide this housing development:

1. All Parties shall work together cooperatively, establish a foundation of trust and partnership, and provide to each tenant high quality services, based on the tenant’s individual needs.
2. The Parties agree that each of them individually, and collectively, shall protect the privacy of tenants and comply with HIPAA and all other applicable confidentiality requirements.
3. The Parties individually, and collectively, agree to communicate promptly in all matters related to the maintenance and operations of the building and residents’ well-being.
4. The Parties agree to the following housing objectives regarding outcomes as required by any funding agencies (i.e., retention rates, employment) and to monitor and discuss objectives at their quarterly meetings:

C. DEFINITION OF KEY TERMINOLOGY

“Building,” “the property” and “the development” are interchangeable and refer to the housing development that is the subject of this Agreement, _____ (development address). The development consists of ____ units with the following bedroom size breakdown: _____.

“Confidential Information” shall mean personal protected health information (PHI) and tenant information that cannot be disclosed to other parties according to California and federal law without the express written permission of the individual about whom the personal information relates.

“Coordinated Entry System” (CES) refers to the assessment process adopted and used by the County of Los Angeles and other governmental entities to assess, prioritize and match chronically homeless individuals with affordable housing that meets their needs.

“Developer” shall refer to the developer of the housing who is responsible for the development of the building and operation of the housing in accordance with all applicable local, state and federal laws and regulatory agreements.

“Lead Service Provider” shall mean the organization or entity, engaged by the Developer, to coordinate and provide supportive services and linkages to services to homeless individuals and families, as well as others, residing in the building.

“Party” shall mean Developer, Property Management or Lead Service Provider, individually.

“Parties” shall mean Developer, Property Management and Lead Service Provider, collectively.

“Property Management” shall mean the property management company engaged by the Developer to manage and maintain the housing development in accordance with all applicable local, state and federal laws and regulatory agreements.

“Supportive housing” units shall mean those units in the building reserved for households with a qualifying disability who may also be homeless or at-risk of becoming homeless.

“Tenants” and “residents” are interchangeable and refers to the individuals who are residing at the development that is the subject of this Agreement.

Additional terms agreed to by the Parties: _____

D. ATTACHMENTS

The Parties agree to the following attachments, which are relevant to the development and its operations:

E. GENERAL RESPONSIBILITIES OF ALL PARTIES

1. Attend regular joint meetings coordinated by Property Management for information sharing as follows: on a weekly basis during the initial lease up of units and on a monthly basis thereafter.
2. Prepare a directory of each Party’s key staff with e-mail, fax, phone and emergency contact information. Developer shall coordinate the distribution of directories, and the Parties agree to promptly provide Developer with any changes in staff or their contact information.
3. Share written policies, procedures and forms for filing complaints, grievances, and incident reports related to owners, managers, or services, including an overview of the reporting structure within each organization.

4. Respect tenant confidentiality and share information with other Parties only when a tenant has signed an authorization for disclosure form and tenant is in jeopardy of losing housing.
5. Conduct regular trainings for staff regarding maintaining client/tenant confidentiality.
6. Notify all Parties, in a timely manner, of any potential changes to the regular operations of the housing site, or any potential changes or losses of funding that could impact the provisions of housing and resident services.
7. Participate in data collection requirements of regulatory agencies as set forth further in Section F of this MOU.
8. Make available for purposes of inspection and audit, any and all books, papers, documents, financial and other records pertaining to the operation of this Agreement. Any records containing confidential client information will be made available in compliance with state and federal law pertaining to client confidentiality including the Health Insurance Portability and Accountability Act ("HIPAA"). Records shall be available for inspection and audit during regular business hours throughout the term of this Agreement, and for a period of six (6) years after the expiration of the term of this Agreement.

F. RESPONSIBILITIES OF THE DEVELOPER

Outreach, Application & Screening

1. Comply with all regulatory agreement requirements for establishing tenant selection criteria and screening procedures.
2. Develop and implement an affirmative marketing plan for the housing development units with the assistance of Property Management.
3. Implement the leasing procedures, including lease preparation, as required by the regulatory agreements and outlined in any adopted tenant certification process.
4. Designate available office space in the building for the Lead Service Provider and staff.
5. Comply with requirements of the CES and amend this MOU and any regulatory agreements as necessary to comply with subsequently adopted CES protocol.
6. Comply with federal and state fair housing laws in outreach, tenant application, screening and selection processes.

Ongoing Tenancy

1. Monitor and provide oversight of Property Management.
2. In collaboration with Property Management, prepare a comprehensive safety and security plan, including evacuation plan information, for tenant and building staff safety.
3. Provide regular trainings for onsite Lead Service Provider staff and Property Management staff in advanced safety precautions, including first aid, crisis management, conflict de-escalation and other skills.
4. Establish a procedure for conflict resolution between Property Management and Lead Service Provider when the parties cannot reach agreement on a course of action (e.g., mediation process, process with Board of Directors).
5. Comply with the necessary documentation and reporting requirements established by applicable regulatory agencies.

Communication

1. Coordinate and conduct monthly meetings with Property Management and Lead Service Provider and their staff to discuss building operations and share relevant information.
2. Respond promptly to Property Management and Lead Service Provider communications in emergency and nonemergency circumstances.

Fiscal Responsibilities

Establish and maintain, on a current basis, an accounting system in accordance with generally accepted accounting principles and standards as well as all federal, state and local requirements.

Data Collection

On an ongoing basis, collect, manage and submit data to demonstrate tenant outcomes as required under regulatory agreements and pursuant to federal and private funding sources. Developer shall work with the Parties to develop and implement tenant tracking systems that include, but are not limited to: tenant characteristics and demographics, collection and reporting of outcomes data, and monitoring of the quality of services provided to residents.

G. RESPONSIBILITIES OF PROPERTY MANAGEMENT

Outreach, Application & Screening

1. Assist Developer in complying with all regulatory agreement requirements for establishing tenant selection criteria and screening procedures.
2. Assist Developer in preparing and implementing an affirmative marketing plan for the units.
3. In collaboration with Developer, implement the leasing procedures, including lease preparation, required by the regulatory agreements and outlined in any adopted tenant certification process.
4. Comply with ongoing and subsequently adopted requirements of the CES including, but not limited to, affirmative marketing, waiting lists and other aspects of lease up.
5. Comply with federal and state fair housing laws in outreach, tenant application, screening and selection processes.

Move-In Process

1. Notify Lead Service Provider as far in advance as possible of the day and time of move-ins.
2. Provide to new tenants the following: an orientation of building common areas and their individual units; written procedures and forms for maintenance requests and; building emergency procedures.
3. Notify all tenants in writing of the availability of the fair housing reasonable accommodation policy and procedure established for the development.

Ongoing Tenancy

1. Comply with applicable local, state, and federal statutes and regulations, including statutes and regulations governing fair housing and tenants' rights.
2. Maintain building wait lists in accordance with regulatory agreements and funding sources and promptly notify eligible prospective tenants on the project's waiting lists when units become available through vacancies or follow CES protocol in effect at the time or later implemented.

3. Ensure that all Property Management staff working in the building is introduced to Lead Service Provider staff and are aware of their mutual and distinct roles and responsibilities.
4. Property Management shall coordinate and ensure that all building premises, including the grounds, are maintained in an exemplary manner that brings credit to all parties to this Agreement.
5. Property Management will ensure the prompt and quality repair of all building defects, wear and tear and damages for a decent and safe property that complies with all applicable codes.
6. Property Management shall have the capacity to respond to tenants' requests for service within ____ hours, contingent on the nature of the request.
7. Establish and post in the building policies and procedures for tenant access to Property Management for the following: routine business from ____ a.m. to ____ p.m., Monday through Friday; weekend days _____ and; for 24-hour emergencies.

Safety, Security, and Emergency Response

1. Ensure that all onsite staff is trained as to when to call emergency medical personnel and/or the police for help, and when to communicate with their supervisors and/or Lead Service Provider staff in the event of an emergency.
2. Maintain an incident log and allow the Lead Service Provider staff to review those logs on an as-needed basis when a tenancy is in jeopardy.
3. Prepare and post building evacuation plans and provide all staff working in the building and all tenants with regularly scheduled (monthly) emergency plan training.

Communication

1. Notify Lead Service Provider staff in a timely manner when a tenant is displaying behaviors that could jeopardize tenancy including, but not limited to, failure to pay rent or other potential lease breach and/or conflicts with property management or other tenants.
2. Inform Lead Service Provider staff immediately of any critical incidents at the building that result in police action, loss of life, or serious bodily harm. Document all incidents at the building.

Lease Violation Interventions/Eviction Prevention

1. Work with Lead Service Provider to establish policies to help tenants obtain the appropriate support, services and fair housing reasonable accommodations, they need to maintain their permanent housing in times of crisis.
2. If applicable, maintain a copy of written tenant authorizations to speak with Lead Service Provider in case of emergency or when a tenancy is in jeopardy.

H. RESPONSIBILITIES OF LEAD SERVICE PROVIDER

Outreach, Application and Screening

1. If applicable, meet tenants at move-in and provide information about supportive services available on and off site.
2. Following tenant selection, meet with eligible (or all) tenants individually for identifying specific supportive services needs.

3. Request of each tenant his or her written authorization to communicate with Property Management in case of emergency or when a tenancy is in jeopardy. Provide tenant with a copy of the executed authorization.

Ongoing Tenancy

1. In collaboration with each tenant (or those eligible for resident services), conduct needs assessments, develop focused service plans and establish appropriate linkage to community-based services as needed. Update residents' service plans every _____ months.
2. Ensure that Lead Service Provider has face-to-face contact with each tenant (or those eligible for resident services) at least _____ per month.
3. Be knowledgeable of community services and supports including, but not limited to physical and mental health care, childcare, alcohol and substance abuse treatment, education and/or employment services and self-help groups, and make this information readily available to all tenants.
4. Maintain the capacity to respond 24 hours a day, 7 days a week for crisis intervention as needed.
5. Provide Property Management with a list of staff hours and regular supportive services events at each site, and keep this list updated.
6. Comply with HIPPA and other laws by developing and maintaining a system of privacy and confidentiality of residents' personal health information.

Communication

1. Notify Property Management and Developer of any changes in the supportive services package offered to tenants, and any potential changes or losses of funding that could impact the availability of supportive services.
2. Act as a liaison between Property Management and the tenant to facilitate the communication of concerns that could jeopardize a tenant's residency, as permitted by the tenant's completed authorization for disclosure form.

Lease Violation Interventions/Eviction Prevention

1. In collaboration with the tenant and Property Management, establish plans to help tenants obtain appropriate support and services they need to maintain their permanent housing in times of crisis.
2. Assist tenants in times of crisis to obtain the appropriate support and services they need to maintain their permanent housing.
3. If applicable, maintain a copy of written tenant authorizations to speak with Property Management in case of emergency or when a tenancy is in jeopardy.

I. STANDARD AGREEMENT PROVISIONS

1. Each Party shall at all times maintain appropriate levels of insurance for their employees, consultants, officers and agents to protect both persons and property and at all times shall maintain any other insurance required by regulatory agreements. The Parties agree to the minimum level of insurance coverage:

2. All Parties in the performance of this Agreement will be acting in an independent capacity. The employees or agents of one Party shall not be deemed or construed to be the agents or employees of the other Parties for any purpose whatsoever.

3. All modifications to this MOU shall be in writing and must be approved by all Parties.
4. The Parties shall comply with all applicable federal, state and local laws, as well as new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement.
5. Each Party is at all times responsible for compliance with federal and state civil rights laws and shall not discriminate against any resident or staff.
6. This Agreement contains the full and complete Agreement among the Parties.
7. This Agreement may be terminated under the follows circumstances:

8. Notice of termination shall be provided as follows:

9. No Party shall assign, subcontract, or sublet any part of this Agreement for professional services without the express written consent of the other Parties.
10. Nothing within this Agreement shall create a contractual relationship between the Parties to this Agreement and any third party.
11. If any term or condition of this Agreement is held to any extent to be invalid or unenforceable, all remaining terms and conditions shall be enforceable to the fullest extent permitted by law.

The Parties have executed this Agreement as of the Effective Date.

Lead Service Provider

Developer

Executive Director Signature

Executive Director Signature

Property Manager

President Signature

List of Attachments: