

RESOLUTION FY2017-9

**Approval of Contract among the State of Ohio, Department of Mental Health and Addiction Services, The Cocoon Shelter, Transformative Praxis, LLC., and the Wood County Alcohol, Drug Addiction and Mental Health Services Board**

September 26, 2017

**Whereas**, the Department of Mental Health and Addiction Services (Department) approved the application for Community Assistance Funds for the Cocoon Shelter Relocation project by the Cocoon Shelter and Transformative Praxis, LLC. (jointly referred to as “Applicant”); and

**Whereas**, the Department received funding in the amount of \$800,000 as appropriated under S.B. 310 of the 131<sup>st</sup> General Assembly, line item C58026, for the purpose of providing behavioral health facilities and to insure continued use of these facilities for behavioral health services; and

**Whereas**, the Wood County Alcohol, Drug Addiction and Mental Health Services Board (Board) agrees to annually monitor the program and operations of the project and to cooperate with Department in seeking or developing alternative uses of the Project in the event of the Applicant’s default; and

**Whereas**, Board understand the term of this contract should be for thirty (30) years commencing upon the effective date of this contract; and

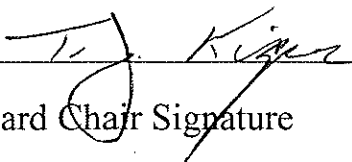
**Whereas**, the contract requires that the Board shall furnish a Board resolution authorizing the person or persons who sign on behalf of the Board to bind the Board to the terms of this contract; and

**Whereas**, the Board is under no obligation or expectation to provide financial support to the Cocoon Shelter for this contract;

**Now therefore be it resolved**, that the Board authorizes its Executive Director to sign the attached contract to enable the contracts enactment.

Board Members	Yes	No	Absent	Abstain
Beverley Hirzel	X			
Casey Cromwell	X			
John Alexander	X			
Doug Cubberley	X			
Patrick Wise			X	
Stan Korducki	X			
Leanne Eby			X	
Sue Moore	X			
Randy Rothenbuhler			X	
Cary Wise	X			
Heather Barnhiser			X	
Marc Jensen	X			
Allan Baer	X			
Tom Kiger	X			

This Resolution is adopted by the majority of the Board. John Alexander motioned; Stan Korducki seconded. Resolution passed.

  
 \_\_\_\_\_  
 Board Chair Signature

9-27-16  
 \_\_\_\_\_  
 Date

PROJECT: **MH-983**  
**200 Campbell Road**  
**Bowling Green, Ohio 43402**  
**\$800,000.00**

## CONTRACT

The Parties to this Contract are: The State of Ohio, **Department Of Mental Health and Addiction Services**, hereinafter called: Department, **The Cocoon Shelter and Transformative Praxis, LLC.**, hereinafter jointly called: Applicant and the **Wood County Alcohol, Drug Addiction and Mental Health Services Board**, hereinafter called: Board.

WHEREAS, Department has approved Applicant's Application for Community Assistance Funds, hereinafter called: Application, which Application is incorporated herein and made a part hereof by reference for all purposes, for the **Cocoon Shelter Renovation** project located at **200 Campbell Road**, in **Bowling Green, Wood County, Ohio**, said project to be known as Project No. **MH-983** hereinafter called: Project; and

WHEREAS, Department after its review of the Project Application, has determined that the Site acquired by Applicant, hereinafter described more fully in Exhibit A, attached hereto and made a part hereof for all purposes, when appropriately modified, is adequate and desirable for Project; and

WHEREAS, Department has determined that estimated project costs will be **\$2,328,500.00** and that the State share of project costs shall not exceed **\$800,000.00**; and

WHEREAS, the State funds to be provided under this Contract were appropriated under S.B. 310 of the 131st General Assembly, Line Item C58026, as designated by the Ohio General Assembly; and

WHEREAS, the purpose of this Contract is to provide behavioral health facilities and to insure the continued use of these facilities for behavioral health services; and

WHEREAS, Board intends to support programs described in the Application, to at least annually monitor the program and operations of the Project, and to cooperate with Department in seeking or developing alternative uses for the Project in the event of Applicant's default.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Applicant shall enter into binding written contracts for all work to be done and all materials to be furnished for the work completed herein.

1. Department will reimburse Applicant upon Applicant's written request, based on actual payments made by Applicant, for approved project costs as verified by Department audit of vouchers paid. Reimbursements shall be limited to **90%** of the total amount approved for State participation until: (a) Approval by Department of all construction work performed, receipt of an Affidavit of Contractor by original contractor and notarized waivers by all subcontractors, material men and laborers waiving all present and future claims to place a mechanic's lien on said premises; (b) Department has received evidence that the Project has been accepted by the Applicant; and (c) a

final audit has been completed. Upon receipt and approval of the above, Department shall reimburse Applicant the final **10%** of the amount approved for State participation.

Department agrees to reimburse Applicant when Department has received satisfactory evidence that: (1) Applicant has complied with all other applicable provisions of this Contract dealing with Title, Mortgage and Applicant resolution; and (2) Applicant has awarded all construction contracts for the facilities under this Contract.

The Applicant shall enter into, execute and deliver a Note and a recorded Mortgage for the acquired property as security for the monies to be reimbursed under this Contract before any such reimbursements are made by the Department.

2. Applicant assures that use of the land and facilities under this Contract shall be devoted exclusively to services which are described in more detail in the Application and which are summarized as follows: **Domestic violence shelter with supportive services**. These services shall be provided for the term of this Contract and Department, with input from Board, including annual reports on Board's monitoring of the Project, has the authority to determine whether such services are being adequately provided under this Contract. In the event Department determines Applicant has failed to provide and maintain adequate, sufficient, or acceptable services and facilities as described in the Application, then Department shall notify Applicant, in writing, of any deficiencies. In the event that Applicant fails to cure the said deficiencies within one hundred eighty (180) days of notification or such further reasonable time as Department may grant, then such failure shall constitute an event of default under this Contract. In the case of default, the provisions of Paragraph 9 apply. Department shall be reasonable in determining whether or not the services are unacceptable.

3. The Parties agree that the use of the facilities under this Contract shall be for those services described in the Application. If any Party believes that the need for the services described under this Contract no longer exists, through no fault of any Party, that Party may provide written notice to the others. Department shall be reasonable in determining whether such need continues to exist.

Upon a determination by Department that the need for the services described in the Application no longer exists, the Parties shall enter into negotiations to find a mutually agreeable use similar to the original use of the facility. Board shall work cooperatively with Department to seek or develop alternative behavioral health uses for the Project.

In the event that the Parties cannot mutually agree upon either a similar or new use for the facility, then Department may declare Applicant to be in default and Applicant shall repay the reimbursements made to it in the same manner as specified in Paragraph 9.

4. The Parties agree that the term of this Contract shall be for **thirty (30) years** commencing upon the effective date of this Contract, and that in the event the use of the facilities constructed under this Contract are changed by direct action of Applicant prior to the expiration of **thirty (30) years** to a use other than the provision of an approved behavioral health service as determined by Department, such change shall constitute an event of default under this Contract.

5. Any transfer by sale, gift, devise, operation of law, or otherwise of the fee title interest in

all or any portion of said Premises or any other property secured hereunder shall have the same consequences as an event of default respecting the indebtedness secured hereby. Upon such transfer, Department, without prior notice or the elapse of any period of grace or the right to cure, shall have the right to declare all sums secured hereby, immediately due and payable. If Applicant fails to make such payment within thirty (30) days of written demand therefore, Department shall have the right to exercise all remedies provided in this Contract, or otherwise at law, without limitation.

6. In the event of the insolvency or bankruptcy or any action by Applicant under the Bankruptcy Act, including voluntary or involuntary bankruptcy or reorganization under any Chapter of the Bankruptcy Act, the assignment for the benefit of creditors, the appointment of a receiver, the insolvency of the Applicant or any judgment of execution which has not been satisfied within thirty (30) days of the rendering thereof, Department shall have without further notice, the absolute right to declare Applicant in default and to proceed with its remedies under Paragraph 9 of this Contract or any other remedies available to Department.

7. The following shall also constitute Events of Default hereunder:

(a) The failure of Applicant to comply with any provision of law(s) of the State of Ohio, or Administrative Rule(s) of the Department.

(b) The failure of Applicant to pay any tax, claim lien, encumbrance or insurance premium, when the same is payable; or to keep the premises in repair;

(c) The failure of Applicant to perform any covenant or agreement in this Contract;

(d) The failure of Applicant to continuously use the facility for the performance of approved behavioral health services;

(e) The occurrence of any Event of Default as defined in this Contract.

8. The failure of Applicant to comply with any of the terms of this Contract, time in each instance being of the essence, shall be deemed a default for which Department shall be at liberty to exercise all legal and/or equitable rights and remedies either successively or concurrently. No failure or delay of Department to prosecute any default by Applicant, or to exercise any power given it hereunder, and no custom or practice at variance with the terms thereof, shall constitute a waiver of any succeeding default by Applicant of Department's right to demand exact compliance with the terms hereof. The failure or delay of Department to enforce at any time any of the provisions of this Contract shall not be construed to be a waiver of such provision.

9. In the event of default by Applicant, Applicant shall reimburse Department in an amount equal to such amount as was actually reimbursed to Applicant under this Contract, minus **one three hundred sixtieth** per month in which the site and project were used for the behavioral health services as approved by Department to the total term of this Contract which is **three hundred sixty (360) months**.

10. Upon the happening of any one or more of said Events of Default, the entire unforgiven balance of the principal, and all other sums and/or reimbursements secured in this Contract shall, at the option of the Department, become immediately due and payable without notice or demand, and

in any such Event of Default, Department may forthwith institute such actions as the law may allow, at law or in equity, for the enforcement of this contract.

In the event of default, the Parties hereto agree that nothing contained in this Contract shall preclude Department from exercising all rights granted to it in the Open End Mortgage and Note given to it by Applicant and dated **August 1, 2016**.

11. Any notice required or permitted to be given hereunder, shall be in writing and shall be hand delivered or delivered by certified mail, postage prepaid, and shall be deemed to have been given on the date that the notice is received as set forth below:

Notice to Applicant:           **The Cocoon Shelter  
P.O. Box 1165  
Bowling Green, OH 43402**

Notice to Department:       **Ohio Department of Mental Health and Addiction  
Services  
30 East Broad Street,  
Suite 1160  
Columbus, Ohio 43215-3430**

Notice to Board:           **Wood County Alcohol, Drug Addiction and Mental  
Health Services Board  
745 Haskins Road  
Bowling Green, Ohio 43402**

Each Party may, by written notice to the other, change the place to which all further notices to said Parties shall be sent.

12. All representations and warranties contained in this Contract shall survive the Closing.

13. This Contract, including any exhibits referred to herein, contains the entire Contract between the Parties with respect to the transaction contemplated herein. It may be executed in any number of counterparts, each and all of which shall be deemed for all purposes to be one Contract. The Contract may not be changed or modified orally but only in writing and signed by the Parties thereto.

14. This Contract shall be governed by and construed according to the laws of the State of Ohio.

15. This Contract shall not be assignable by Applicant without the written consent of Department during the term of this Contract. Nothing in the Contract is intended to confer upon any person other than the Parties hereto and their successors any rights or remedies under or by reason of this Contract.

16. This Contract shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

17. The provisions of this Contract are separable, it being the intention of the Parties that should any provision hereof be found invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions, but the same shall remain in full force and effect as though such invalid provisions had not been herein contained.

18. Applicant shall comply with any and all municipal ordinances, statutes, rules, regulations or other laws affecting the premises within 30 days after notice thereof.

19. Applicant shall furnish a certified copy of a corporate resolution or other corporate document that clearly shows that the person or persons who sign on behalf of Applicant have the authority to sign and bind Applicant to the terms of this Contract.

20. Applicant shall furnish Department with proof of good title in the acquired property which proof shall be a current valid title insurance policy.

21. Applicant warrants that he is the lawful fee simple owner of the Land, and has the right to obligate the same. The land is free from all liens, encumbrances, easements, right-of-way, restrictions, covenants, reservations, or other conditions which affect Applicant's authority to obligate said premises.

22. Should the Attorney General or his designated assistant, in their sole discretion, not find good title to the Premises in Applicant, then this Contract shall be null and void.

23. Should Applicant, within a reasonable time, not furnish the above referenced resolution or proof of good title or not execute and deliver to the Department and aforementioned Mortgage, Note and Deed, then this Contract shall be null and void.

24. Applicant shall execute, furnish and deliver to Department upon request, any and all affidavits concerning matters involving the real property, fixtures, and/or personal property which is security for this Contract.

25. Board shall furnish a Board Resolution authorizing the person or persons who sign on behalf of the Board to bind the Board to the terms of this Contract.

26. The obligations of the State of Ohio arising under this Contract are subject to the provisions of Section 126.07, of the Ohio Revised Code.

27. Applicant expressly recognizes and agrees to abide by its obligation pursuant to Section 154.20 of the Ohio Revised Code and rules as hereafter promulgated in accordance with this Section.

28. Applicant hereby indemnifies and agrees to hold Department harmless against, from, and in respect of: (a) any and all claims, demands, expenses, losses, damages or deficiencies of any nature whatsoever to persons or property resulting from, arising out of, or attributable to: (i) any misrepresentation by Applicant; (ii) any breach of or untruth of any warranty made by Applicant; (iii)

non-fulfillment of any agreement on the part of Applicant; (iv) any inaccuracy or omission in any certificate or other instrument furnished by Applicant or its officers required under this Contract; (v) any liability or obligation of Applicant whether or not yet asserted and whether absolute or contingent, including without limitation any liability arising from claims or lawsuits arising out of this Contract; (vi) any acts or omissions by Applicant, its employees, agents or servants arising out of the Contract; (vii) any litigations brought by or against Applicant for acts or omissions arising out of Applicant's obligations under this Contract; and (b) any and all actions, demands, judgments, costs, interest and legal or other expenses incidental to any of the foregoing.

29. If Applicant complies with the provisions of this Contract and pays to Department said principal sum, and all other sums payable by Applicant to Department as are hereby secured, in the manner and at the time herein set forth, without deduction, fraud, or delay, then and from thenceforth this Contract, and the obligation hereby created shall cease and become void, anything hereinafter contained to the contrary notwithstanding.

When this Contract has been executed by all Parties, it will be effective as of **August 1, 2016**.