



**City of Berkeley
MLK House
2023 REQUEST FOR PROPOSALS
FOR NEW OWNER/OPERATOR
(Available Electronically)**

July 19, 2023

The City of Berkeley (City), jointly with Resources for Community Development (RCD), is accepting applications for an organization to rehabilitate, own and operate the Martin Luther King House (MLK House), located at 2942-2944 Martin Luther King Jr Way, Berkeley. RCD is the current property owner, and is partnering with the City to transfer the property to a qualified owner/operator.

The goal of this RFP is to identify a new owner/operator that:

- Will serve a population that is appropriate for the property and supportive services available
- Has experience operating shared housing
- Is capable of securing new, sustainable operating and services funding sources.
- Is capable of rehabilitating the property.

The new owner/operator would assume RCD's obligations to the City, including the existing \$264k, 0% interest loan and the affordability restrictions that expire in 2047. The selected owner/operator would also have access to a \$1,178,974, 0% interest City loan to renovate the property, as well as \$107K in Mental Health Services Act (MHSA) funds, though the latter is subject to annual review and approval by the City Council through the MHSA Annual Action Plan. The MHSA funds were granted to hire and retain property management services to support on-site management.

About the property:

MLK House is a 12-room, Single-Room Occupancy (SRO) permanent housing project that currently serves up to eleven (11) formerly homeless individuals. 10 of the rooms are restricted under the City's Regulatory Agreement with RCD. Residents have private bedrooms, and share bathroom and kitchen spaces. One bedroom is currently rented by Berkeley's Shelter Plus Care department to use as an office for onsite staff. RCD was awarded \$1.18M in 2021 to renovate the property, and the proposed scope included roof repair, a new gutter/downspout system, replacement of single-paned windows with double-paned windows, upgrades to the common kitchen space and shared bathrooms, as well as some ADA and security features. A physical needs assessment from September 2021 will be shared with registered applicants.

More information about the property is available with the RFP materials on the City's Housing Trust Fund website (<https://berkeleyca.gov/community-recreation/affordable-housing-berkeley/housing-trust-fund>):

- Council Authorization of RFP:
- 2017 Loan Amendment
- 2017 Regulatory Agreement:

Current Use:

The property currently houses Shelter + Care clients. The residents are referred through Alameda County's Homestretch Coordinated Entry System (CES), and are the highest need homeless individuals in the CES system. The tenants have higher service needs than were intended for the existing service design at MLK house. The lack of adequate supportive services for the residents has led to problems that have adversely affected the physical condition and security of the property and residents. Although RCD's property management partner is experienced in managing affordable rental housing, the level of oversight required by current MLK House residents no longer fits their operations.

While the City supports RCD's plan to transfer the property to a qualified owner/operator, City staff have concerns about continuing the current model under which MLK House operates. The current program does not receive the level of assistance required by this population of severely and persistently mentally ill individuals, some with substance disorders, and there are concerns about the ability of CES-referred residents to live independently at this site without adequate social services and the appropriate program structure. The City and RCD are therefore interested in proposals that explore options for serving a different population more equipped for independent living with shared spaces.

Proposals will be reviewed based on the criteria in Exhibit D:

- Applicant qualifications and experience;
- Feasibility;
- Property Management and Services Plans

Applicants are strongly encouraged to consult the HTF Guidelines (linked below) and MLK House Underwriting Guidelines in Exhibit E for additional information on the project's requirements.

Application Instructions:

Applicants must submit a digital application via email. Please include a copy of the application spreadsheets in Excel format. The application and HTF Guidelines are available online at <https://berkeleyca.gov/community-recreation/affordable-housing-berkeley/housing-trust-fund>

Please pay careful attention to all requested items contained in this RFP. Incomplete proposals that do not comply with the conditions of this RFP may be considered non-responsive. Proposers are required to respond to all questions and provide all information requested in the RFP. Applicants responding to this RFP do so at their own expense. The City will not reimburse any cost incurred by any applicant responding to this RFP. The act of submitting a proposal is a declaration that the proposer has read the RFP and understands all the requirements and conditions.

PROPOSALS ARE DUE TO:

Jenny Wyant at jwyant@berkeleyca.gov

BY 12:00 PM NOON ON THURSDAY, SEPTEMBER 7th, 2023.

PROPOSALS SUBMITTED AFTER THAT TIME WILL NOT BE CONSIDERED.

Property Tour

RCD will schedule a property tour of the site the week of **August 7th**. Details will be shared with registered applicants, and RCD may limit attendance to one person per applicant team depending on interest.

Questions and Updates to the RFP

City staff cannot respond to questions individually, and will post online responses to questions received. Submit questions to Jenny Wyant at jwyant@berkeleyca.gov by **Tuesday, August 30, 2023**. Updates will be posted online weekly and announced to interested parties who have submitted the registration form in Exhibit A. Responses and any addenda will also be available at: <https://berkeleyca.gov/community-recreation/affordable-housing-berkeley/housing-trust-fund>. It is the applicant's responsibility to check this site.

Review Process

Once applications are received, staff will review the applications, then work with the Housing Advisory Commission on funding reservation recommendations, using the scoring criteria in Exhibit D. Staff anticipate the City Council will consider any funding recommendations at a meeting in January 2024, though that timeline may be extended depending on the quantity and complexity of proposals received.

Once the City Council approves a funding reservation, staff will work with the City Attorney's Office and the borrower on loan documents, which will include:

- Development loan agreement;
- Deed of trust;
- Promissory note; and
- Regulatory agreement.

City's Rights to Determine Process and Actions Taken

The City reserves the right at any time, for its own convenience, and in its sole and absolute discretion, to modify or suspend any and all aspects of the selection process, including, but not limited to, this RFP. The City further reserves the right, in its sole and absolute discretion, to request additional information from any Applicant; waive any defects as to form or content of the RFP or any other step in the selection process; reissue the RFP; and to negotiate with any, all, or none of the Applicants. The City retains the right to award all or parts of this contract to several bidders, to not select any bidders, and/or to re-solicit proposals. Funding award decisions will be made solely by the City of Berkeley. The City is in no way obligated to select any application over another, and may, in its sole discretion, reject any and all applications.

Exhibits

- Exhibit A: 2023 MLK House RFP Registration Form
- Exhibit B: Applicant Certification of Proposal
- Exhibit C: Additional Contract Requirements
- Exhibit D: Application Scoring
- Exhibit E: MLK House Underwriting Guidelines

APPLICATION CHECKLIST
(Detailed descriptions in the Application Spreadsheets)

1. General Information

- Signed Certification of Proposal Form (Exhibit B)
- Spreadsheet Tab 1
- Attach a separate document with description of proposal (max 2 pages)

2. Applicant Experience – Development, Property Management, and Supportive Services

- Spreadsheet Tab 2
- Audited Financial Statements
- Interim Financial Statements
- Internal Controls
- Organization Chart
- Resumes of Organization's Team
- Articles of Incorporation
- By-Laws
- IRS Tax Exemption Letter
- Joint Venture and/or Partnership Agreement (if applicable)
- Attach a separate document with a written narrative of organization's relevant experience (max 2 pages)
- Attach a separate document with a written narrative of property management experience for the type of housing proposed (max 2 pages)

3. Financing

- Spreadsheet Tab 3
- Copies of Rehabilitation, Operations, and Services Funding Commitments

4. Unit Information

- Spreadsheet Tab 4
- Documentation of Estimated Utilities
- Attach separate document with an explanation of the proposed affordability, if it differs from the 2017 Regulatory Agreement
- Attach separate document describing Supportive Services Plan, budget, and funding plan

5. Budgets

- Spreadsheet Tabs 5a-5b.:
 - Annual Operating Budget
 - Proforma Cash Flow

6. Additional Submissions

- Attach a separate document with the Property Management Plan
- Attach a separate document with a written narrative of Services experience, if different from applicant and include services contracts
- Relocation Plan addressing required laws
- 3 References that cover developer, property management, and services experience (the same reference may be used for the same experience category)

Exhibit A
2023 MLK House RFP Registration Form

2023 MLK House RFP REGISTRATION FORM

Return via email to: jwyant@berkeleyca.gov

Submit this form, with the information requested, via email. Registration is not required, but only people who have registered will receive email notice of updates posted online. Registered applications will also receive the MLK House physical needs assessment, and an invitation to tour the site in August.

Date: _____

Project: _____

Applicant Name: _____

Contact person: _____

Phone: _____

Email: _____

Exhibit B
Applicant Certification of Proposal

Applicant hereby certifies:

1. Truth of Application

The information submitted in the project application and any supporting materials is true, accurate and complete to the best of my knowledge. The Applicant acknowledges and understands that if facts and/or information herein are found to be misrepresented, it will constitute grounds for the default of the funding from which application is being made.

2. Choice-Limiting Actions During NEPA Review

The Applicant acknowledges that any choice-limiting action or actions that have environmental consequences, such as site acquisition, demolition, or construction that are undertaken during the period between application submittal and the completion of the City’s environmental review process will make the project ineligible for federal funds.

3. Applicant Will Be Responsible for Cost of Environmental Review, If Required

If applicable, the Applicant will be responsible for the cost of completing the environmental review associated with the use of a Housing Trust Fund loan that includes federal funds.

4. Applicant Will Abide by Program Rules

If the Applicant is successful in receiving funds as a result of this Application, it will abide by all applicable rules and regulations governing the program, including the HTF Guidelines.

5. Applications are Public Records

The Applicant acknowledges that the information submitted as part of this application may be made available to the public pursuant to a request under the California Public Records Act.

6. Material Changes to Project

The Applicant acknowledges that any material changes to the Project not disclosed to and approved by the City may result in termination of funding for the project. Material changes include but are not limited to: changes to the project’s design, amenities, and number and size of units; changes to the development budget; changes to the proposed sales prices, rents or operating expenses; changes to the sources, amounts or terms of financing; changes to the ownership entity or key staff and consultants identified in the Application, or changes to other Application items. Material changes may require Housing Advisory Commission and City Council review.

Applicant

Applicant Representative

Signature

Title

Date

Exhibit C

Additional Contract Requirements

LOAN TERMS AND DOCUMENTS

- 3% simple interest; (*note: Council approved a 0% interest rate for MLK House*)
- Maximum repayment term of 55 years
- Repayable from 50% of the project's residual receipts.

The City may approve certain variations on a project-by-project basis. The developer must request the variation in writing and explain why a variance is warranted. Changes to the interest rate and term can only be made by a City Council action to waive the HTF Guidelines.

The City loan is evidenced by a Promissory Note secured by a Deed of Trust on the project. A Development Loan Agreement (DLA) specifies all development obligations. Post-occupancy use restrictions will be enforced through a Regulatory Agreement recorded against the project. For this reason, the Applicant must maintain ownership of the site or have a long-term ground lease for the term of affordability. The minimum term for affordability restrictions is 55 years.

The City current loan documents will be replaced with new loan documents including the additional funds for the rehabilitation. The terms for the new loan will be 55 years for the loan and the Regulatory Agreement. The City will record the new Deed of Trust and Regulatory Agreement against the property.

CONTRACT REQUIREMENTS

The City of Berkeley's DLA will detail the terms and conditions of the loan for development. In addition to project-specific information, the loan agreement will include local contract provisions including:

- First Source Hiring Policy;
- Nuclear Free Berkeley;
- Use of Recycled Paper;
- Ban on Use of Virgin Redwood and Preference for Certified Sustainable Wood;
- Living Wage Ordinance;
- Berkeley Equal Benefits Ordinance;
- Oppressive States Contracting Prohibition; and
- Sanctuary City Compliance.

This list not comprehensive. This information is provided to help applicants understand and plan for the requirements that come with City funding. If you have questions about these requirements, contact Jenny Wyant at jwyant@berkeleyca.gov

Exhibit D

Application Scoring

To be considered, projects must meet the threshold criteria identified in the HTF Guidelines, Section I. Threshold Requirements. All projects that meet the Threshold Requirements will be scored by considering the following criteria:

1. Organization Capacity **Up to 35 points**

A higher point score will be awarded to projects in which the developer has:

- Exceeded the minimum developer capacity threshold qualifications, as described in the HTF Guidelines and MLK House Underwriting Guidelines;
- A demonstrated successful track record with sources that are the same or similar to those proposed and with projects that are the same type or similar complexity;
- Secured a property manager that exceeds the minimum threshold qualifications as described below in the MLK House Underwriting Guidelines;
- Secured a resident services provider that exceeds the minimum threshold qualifications as described below in the MLK House Underwriting Guidelines;
- If applicable, has a history of compliance with Housing Trust Fund requirements;
- Demonstrated the organizational financial capacity necessary to complete the project; and
- Demonstrated the organizational staffing capacity necessary to complete the rehabilitation and manage the project long-term.

2. Feasibility **Up to 35 points**

A higher point score will be awarded to projects that:

- Have identified sources of financing adequate to operate the property;
- Reasonably propose to leverage a greater proportion of non-City funds;
- Have a comprehensive plan and adequate budget identified for relocation;
- Have an operating proforma that shows positive cash flow over 15 years and which reasonably projects sustainable operations of the completed project.

3. Property Management and Services Plan **Up to 30 points**

A higher point score will be awarded to projects that provide:

- Property Management Plan that demonstrates an effective management program and adequately serves the population.
- Service Plan that shows appropriate services, client/staff ratios, etc. for the proposed population.

Exhibit E

MLK House Underwriting Guidelines

These Underwriting Guidelines are an administrative supplement to the City's Housing Trust Fund Guidelines, which will prevail in case of a conflict with these guidelines. Exceptions to the administrative guidelines may be approved by the Director of Health, Housing & Community Services. Exceptions to the Housing Trust Fund Guidelines typically require approval of the City Council.

ELIGIBILITY

Eligible applicants (including developer capacity), projects, and activities are described in the *Housing Trust Fund Guidelines*.

DEVELOPER CAPACITY

The City will consider whether the developer has at both the organizational level and in its current staffing assigned to the project:

- Successful experience completing three projects within the last 10 years similar to the one proposed in size, location, and scope;
- Successful experience using funding sources similar to those proposed; and
- Adequate financial ability and stability to complete and operate the proposed project.

SERVICES PROVIDER CAPACITY

- Successful in providing services to one project similar to the one proposed in size, location, and scope for at least 3 years;
- Successful experience using funding sources similar to those proposed; and
- Adequate financial ability and stability to complete and operate the proposed project.

PROPERTY MANAGEMENT CAPACITY

- Property Manager must have managed at least one project in service for at least 24 months subject to satisfactory performance review by a jurisdiction from which the Applicant received project funding.

AFFORDABILITY TARGETING

Rents and tenant incomes will be annually reviewed for compliance by the City's Monitoring Staff.

MINIMUM AFFORDABILITY

Project Requirements

The following rent limits are required in the Regulatory Agreement:

- Incomes of tenants cannot exceed 60% Area Median Income.

All restricted units must be charged annual rents (less utility allowance) of no more than the 60% AMI for the appropriate bedroom size, as published by the California Tax Credit Allocation Committee.

Annual Recertification of Tenant Income

Owners are required to re-examine tenant incomes annually to ensure that tenants continue to meet the income requirements of the Regulatory Agreement and other applicable funding programs. Rent schedules and utility allowances, including any increases, must be reviewed and approved annually by the City. In the event that a tenant's income exceeds the applicable HUD income limits for lower income households, the tenant's rent must be increased to an amount equal to 30% of the tenant's adjusted income, less an allowance for tenant-paid utilities.

FINANCING GUIDELINES

For all proposed projects, the City will require a review of a Sources and Uses statement and operating pro-forma.

DEVELOPMENT LOANS

Development loans may be used for any reasonable property acquisition, rehabilitation or new construction cost. The primary purpose of the HTF is to fund these capital costs. However, the City will consider the use of local funds to establish a capitalized operating reserve to subsidize rents for homeless households. Such a reserve must be projected to last at least 15 years, and the use of funds will be recorded in a regulatory agreement.

OTHER SOURCES

The specific proposed sources, amounts and timing for all other sources of financing must be identified, but not necessarily committed, at the time of application. All sources of funding must be firmly committed before closing the City loan regardless of funding source, with documentation satisfactory to the City of the amount and type of funding committed provided to the City.

OPERATING PRO FORMA

Project proformas must demonstrate a positive cash flow for at least 15 years after project completion, and must demonstrate sufficient cash flow to support non-residual receipts debt and the ability to refinance or repay debt in a timely manner without additional resources from the City.

On the operating pro forma, the City will assume that costs are increasing at a faster rate than revenues. Projects must show a 5% vacancy rate, unless another rate is required by another lender or supported by market conditions. Projects must have a debt service coverage ratio between 1.1 and 1.2.

Reserve Requirements

- Operating Reserve. Projects must have a capitalized operating reserve equal to 25% of annual operating expenses. Deposits from cash flow are required when the operating reserve balance drops below 25% of the prior year's operating expenses.
- Replacement Reserve: The replacement reserve deposits must be the higher of \$666 per year each of the 12 rooms (\$7,992 total) or the amount required by a physical needs assessment (PNA), whichever is higher. The PNA must be no more than 5 years old. The replacement reserve may be capitalized in the development budget or paid from operations.

REASONABLE DEVELOPMENT COSTS

Applicant/borrowers must provide project budgets with sufficient itemized detail to evaluate whether the projected costs are sufficient and reasonable, and provide related documentation as needed.

Prior to loan closing, the City will request and review the following documentation with regard to cost reasonableness:

- Acquisition documentation, such as a purchase agreement, option or closing statement;
- Construction cost estimate, construction contract, or preliminary bids;
- Contracts, quotes, or other agreements substantiating key professional costs and the basis for estimating other soft costs and working capital items, including capitalized reserves;

Projects must not exceed reasonable development costs. Staff may request additional information if project budgets submitted through the application are deemed unusually high. If costs go up after application and before loan closing, the City reserves the right to reconsider the project's application and withdraw funding based on new information. Projects with above average costs must provide justification for the costs.

CONSTRUCTION CONTINGENCY

A minimum of 15% construction cost contingency is typically required for renovation projects.

SOFT COST CONTINGENCY

A minimum 5% soft cost contingency is required.

RETURNS TO THE DEVELOPER

A developer fee is an eligible cost and must reflect a reasonable rate. The fee allowed in the Housing Trust Fund Guidelines for small projects is \$80,000 plus \$10,000 per unit, not to exceed 5% of the project costs, excluding the developer fee. A fee in excess of this standard may be approved at the discretion of the Housing and Community

Services Manager, and developers will be required to justify developer fees proposed in excess of this standard in a written request.

Partnership and Asset Management Fees

The maximum asset management fee is \$12,000 per year.

TIMELINE OF CITY COMMITMENTS and MONTHLY COMMUNICATION

The City process for fund approval will include (1) a fund reservation by City Council and (2) the formal commitment of funds through the DLA.

Applicants must demonstrate that it is likely they will secure full financing commitments shortly after a reservation of City funds. It is the developer's responsibility to keep City staff apprised of all schedules and milestones for the project with a written monthly update. Monthly updates will allow City staff to anticipate upcoming approvals needed and to stay informed about efforts to move the project forward on schedule. Failure to keep City staff informed or failure to move the project forward in a reasonable timeframe could result in loss of funds.

Changes to the City's boilerplate loan documents and any non-boilerplate agreements, such as subordination agreements, must be received well in advance in order to be reviewed and approved by the City Attorney's Office. Applicants are responsible for communicating with City staff about other documents needed and desired timeframe well in advance in order to ensure adequate time for review.