CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: **Community and Human Development**

AGENDA DATE: **02/22/11**

CONTACT PERSON/PHONE: **William Lilly, Director (541-4643)**

DISTRICT(S) AFFECTED: **6**

SUBJECT:
Discussion and action on a Resolution to approve the Empowerment Zone Revolving Loan Fund Small Business Loan application and loan funding of Desert Rock Co., in the amount of $212,294 with loan proceeds to be limited to use for inventory and operating expenses, as recommended by the Director of Community and Human Development; and, that the City Manager be authorized to execute any and all loan related documents between the City of El Paso, Desert Rock Co. and loan guarantor(s), required to meet loan program requirements, loan disbursement, and loan securitization upon approval by the City Attorney's Office.

BACKGROUND / DISCUSSION:
Desert Rock Co. was founded in 1972; the business provides landscaping stone and materials to various businesses and homeowners throughout El Paso. The business is located on 8500 Plant Road within the Lower Valley section of the El Paso Empowerment Zone. Desert Rock Co. is owned by Gilbert L. Sanchez (50%) and Enriquetta Sanchez (50%).

The loan proceeds will assist in the retention of 10 jobs with Desert Rock making a good faith commitment, in accordance with EZ regulations, to making jobs available to EZ residents at the time of vacancies or job creation. The project meets the 1 retained job: $35,000 loan requirement.

The loan will carry a fixed interest rate of 3%, 10-year term. Security for the loan will be in the form of a first lien on major equipment, second lien on property located at 212 S. Nevarez, personal guaranty from Mr. Gilbert and Mrs. Enriquetta Sanchez, and security agreement /corporate guaranty by the company.

Internal underwriting was conducted by Community Development, in accordance with the EZ RLF Lending Guidelines approved by City Council in December 2009, and Director of Community Development recommends that City Council approve the requested EZRLF loan to Desert Rock Co.

PRIOR COUNCIL ACTION:
none

AMOUNT AND SOURCE OF FUNDING:
$212,294 Empowerment Zone Revolving Loan Fund

BOARD / COMMISSION ACTION:
N/A

**********REQUIRED AUTHORIZATION**********

DEPARTMENT HEAD: _____

cc: Deborah G. Hamlyn, Deputy City Manager, Quality of Life

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That the Empowerment Zone Revolving Loan Fund Small Business Loan application and loan funding be approved to Desert Rock Co., in the amount of $212,294.00 for inventory and operating expenses, as recommended by the Director of Community and Human Development; and

2. That the City Manager be authorized to execute any and all loan related documents by and among the City of El Paso, Desert Rock Co., and loan guarantor(s), required to meet loan program requirements, loan disbursement, and loan securitization upon approval by the City Attorney's Office.

APPROVED this _____day of_____2011.

THE CITY OF EL PASO

_____
John F. Cook,
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
William L. Lilly, Director
Community and Human Development

CHD/EZ/11/Reso/EZ RLF/Loan/Desert Rock Co.
Document: #62065/ MTAY

EMPOWERMENT ZONE REVOLVING LOAN FUND PROGRAM
LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is made and entered into this _____ day of February, 2011, by and between the **CITY OF EL PASO, TEXAS**, a home-rule municipal corporation, (the "City") and **DESERT ROCK CO.** (the "Borrower").

WHEREAS, the City has established an Empowerment Zone Revolving Loan Fund ("RLF") to utilize revolving loan funds provided to the City by the U.S. Department of Housing and Urban Development ("HUD") as further defined and described in Part 598 of Title 24 of the Code of Federal Regulations ("C.F.R.") and administered by the City to provide financing for businesses establishing in or expanding in the El Paso Empowerment Zone ("EZ"), in El Paso, Texas (the "Empowerment Zone Revolving Loan Fund Program"); and

WHEREAS, the Borrower has applied to the City for loan assistance from the RLF to undertake activities which are consistent with the provisions of the Empowerment Zone Revolving Loan Fund Program Lending Guidelines.

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the City and the Borrower agree as follows:

1. City's Obligations.

A. Subject to the Borrower's compliance with the terms and conditions of this Agreement, the City shall lend an amount not to exceed $212,294.00 (the "Loan"), to the Borrower with the Loan bearing an interest rate of three percent (3%) per annum. The Loan is subject to the requirements of federal regulations and other applicable law and is contingent upon the availability of RLF funds. The City's obligation to loan RLF funds to the Borrower shall be contingent upon the following conditions: (a) the representations and warranties of the Borrower herein and in its application are true and accurate as of the date this Agreement; and (b) prior to disbursement of any RLF funds, the Borrower shall execute and deliver to the City all loan documents, including security instruments, that reasonably may be required by the City to effect the terms and conditions of this Agreement.

B. Loan Disbursement:
(1) Loan disbursements shall be made within ten (10) business days upon receipt by City of Borrower's written request for such, the documentation as required herein and only for work completed, as applicable. Disbursement request period will expire 120 days from the day and year first above written. Disbursement will be made only upon approval by the Director of the Department of Community and Human Development of the City (the "Director"). Approval of disbursements may be withheld by the Director if, in the reasonable exercise of the Director's discretion, there is a determination that the request or its backup material is inaccurate, unreasonable, or inadequate, or if Borrower is in any way in default hereunder. Representatives of the City may at all reasonable times examine work in progress.

(2) As an additional safeguard to any City monies provided, Borrower shall require a retainage clause in any contract entered into for any construction, reconstruction, or renovation. Specifically, Borrower's agreement with any contractor shall provide that Borrower retains the final 10% of the contract price until the work has: (i) passed any required City inspection, (ii) thirty (30) days has lapsed since any construction work has been completed or any materials have been delivered, and (iii) the City receives a certification in writing that there are no claims for materials, supplies, equipment, laborers, or mechanics arising out of the work completed.

C. Provided Borrower complies with the terms of all loan documents, including security instruments, makes timely scheduled payments of the entire principal amount and accrued interest, and incurs no late fees on the Loan, upon the maturity date of the Loan, Borrower will be entitled to a rebate from the City in an amount equal to the lesser of twenty percent (20%) of the original principal loan amount or $20,000.00. The City agrees to use its best efforts to process Borrower's rebate request within 30 days following receipt. Any late fee assessment or prepayment of the Loan will cancel the City's rebate obligation.

2. Borrower's Obligations. Borrower agrees to use the Loan funds only for the purposes set forth herein and in its application submitted to the City. Borrower agrees to sign and deliver to City upon request one or more promissory notes to evidence the Loan. The Loan Note shall be in a form and substance satisfactory to City. Borrower agrees to repay the Loan in accordance with the terms of the respective Loan Note. Borrower agrees that its receipt and retention of the RLF funds under this Agreement are contingent upon Borrower's full and satisfactory performance of its obligations under this Agreement.

3. Security. The Loan from the City shall be secured by:

(A) A first lien on the equipment specifically listed below:

1. 1981 Caterpillar 950 Wheel Loader Serial #31K02616
2. 1978 Caterpillar D8K Dozer Serial #77V8806
3. 1997 Caterpillar 950F Wheel Loader Serial #8TK04797
4. 1978 Caterpillar 950 Wheel Loader Serial #81J12047

The lien in the form of a Uniform Commercial Code financing statement shall be filed with the Secretary of State of Texas to protect the City's lien interest in the collateral identified above for the term of the Loan.

(B) Loan guarantors will grant a second lien on real property legally described as:

> Tract 25-A-1, Block 16, SOCORRO GRANT, El Paso County, Texas, according to the map on file in the office of the Central Appraisal District of El Paso County, Texas; also known and numbered as 212 S. Nevarez Road, Socorro, Texas 79927.

Borrower and/or loan guarantors shall execute and deliver to the City, simultaneously with execution and delivery of this Agreement, a Subordinate Deed of Trust, Security Agreement, Guaranty Agreement(s), and Financing Statement from Borrower in favor of the

City, covering the Property (collectively, the "Deed of Trust"). The Deed of Trust shall be in form and substance satisfactory to the City. At the same time, the Borrower shall concurrently cause to be issued to the City, at Borrower's expense, a Mortgagee's Policy of Title Insurance in the name of the City in an amount equal to the Loan funds, from a title insurance company acceptable to the City, which reflects the Property to be free and clear of all liens, reservations, exceptions, and encumbrances [except those acceptable to the City].

4. Term. The term of this Agreement shall commence on the day and year first above written and expire on March 15, 2021, or the date on which all of the requirements of this Agreement have been satisfied and Borrower has made full payment on the Note evidencing the Loan, whichever date is later.

5. Purpose. Proceeds of the Loan shall be used for: Inventory ($150,000.00) and Operational Expenses ($62,294.00).

6. Job Creation. In consideration for the Loan described above, Borrower agrees to create or retain at least one full-time employment position for every $35,000.00 in RLF loan funds loaned within one (1) year at its facility located in El Paso, Texas. "Full-time" means any permanent, full-time position where an employee is required, as a condition of employment, to work at least 40 hours per week and 2,080 hours per year including paid leave and holidays. At its discretion, the City or its designee will conduct monitoring of job retention and employment performance of employees placed under this Agreement during the term of the Loan Note.

7. Relocation. Borrower shall not relocate the business out of the boundaries of the EZ during the term of this Agreement. Without limitation, relocation shall include the following events: closure of the business, going out of business, failing to retain its operations in the EZ boundaries, or moving to another location outside the EZ boundaries.

8. EZ Resident Benefit Standard (Title 24 C.F.R. §598.610). Borrower warrants and represents that a majority (51 percent) of Borrower's business activities from the business will benefit the residents of the Empowerment Zone directly or indirectly by stimulating business activity within the Empowerment Zone; Borrower will make reasonable, good faith efforts to employ and retain as employees, residents of the EZ for the business. Under this Agreement, "reasonable, good faith efforts" shall mean developing a good faith plan to provide first consideration to employment of EZ residents who reasonably be expected to fill 35 percent of the jobs, public notification of employment opportunities, and participation in job fairs that are targeted to EZ residents. [72 Fed. Reg. 239, 71009 (Dec. 13, 2007)]

9. Anti-pirating (Title 24 C.F.R.§598.215(c)). Pursuant to the requirements of Title 24 C.F.R. §598.215(c), which prohibit the expending of EZ funds to support certain business relocation, Borrower agrees, warrants, and represents that no Loan funds will be used to in relocating its business from one area that is outside the EZ boundaries to a location within the EZ. Notwithstanding the foregoing and only if EZ funds are provided to Borrower for such express purpose, Loan funds may be used to assist expansion of an existing business through the establishment of a new branch, affiliate or subsidiary if: (a) the establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations; and (b) there is no reason to believe that the new branch, affiliate, or

subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

10. Records. Borrower shall prepare and maintain fiscal records and supporting documentation for all expenditures of Loan funds made under this Agreement. Upon request of the City, Borrower shall furnish any personnel records, which are necessary for the City to determine whether the employment performance of the Borrower complies with the terms of this Agreement. Borrower shall give the City, HUD, the Office of the Inspector General, the Comptroller General of the United States and their respective designees, complete access to its premises and business for monitoring and related purposes, and to inspect, audit, and copy all books and records of any kind of Borrower. Borrower shall also provide reports to the City at such times, and in a format, satisfactory to the City. Borrower shall furthermore provide to the City upon request: quarterly financial statements including income statement and balance; Borrower's and Guarantors federal income tax return and all schedules thereto; and state tax returns of Borrower.

11. Compliance with Laws. Borrower shall comply with all applicable federal, state and local laws, municipal ordinances and codes and regulations. Borrower understands and shall ensure that the Loan funds shall be used in a manner free from religious influence. Borrower furthermore certifies that it is aware of and shall strictly comply with the federal statutory and regulatory requirements that apply to activities carried out with Empowerment Zone loan funds, including but not limited to all applicable environmental laws and other regulations contained in Part 598, Title 24 of the Code of Federal Regulations. Borrower understands and agrees that no Empowerment Zone loan funds will be released until the City has conducted an environmental review as required under Title 24 C.F.R. Part 50. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City of a release of funds from HUD under Title 24 C.F.R. Part 50. The parties further agree that the provision of any funds to the project is conditioned on the City's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. [HUD Community Planning and Development (CPD) Notice 01-11]

Borrower acknowledges that it is subject to all federal laws and Empowerment Zone policies, regulations and procedures applicable to federal assistance awards, including but not limited to: all the financial and administrative requirements set forth in Title 48 CFR Part 31 (for-profit entities) and Title 24 CFR Part 85, including but not limited to, Title 24 CFR 85.36; the procurement requirements of Title 24 C.F.R. Sections 84.40 - 84.48; the regulations at Title 24 C.F.R. Part 87, related to lobbying, including the certifications required in **Addendum A**, incorporated by reference herein; the restrictions on participation by ineligible, debarred or suspended persons or entities as described in Executive Order 12549 and at Title 24 C.F.R. Section 5.105(c); the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4201 et seq.), as applicable, and the implementing regulations at Title 49 CFR Part 24 (Relocation); Lead-Based Paint Regulations at 24 C.F.R. Part 35, including, without limitation, inspections and certifications required therein; Title 24 C.F.R. Section 5.105 (equal opportunity requirements), Executive Order 11246, "Equal

Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 C.F.R. Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" and the requirements attached to this Agreement and incorporated by reference herein as **Attachment 1**, as applicable; and 18 U.S.C. 874 (Anti-Kickback). For for-profit entities, the OMB Circular Nos. A-87 and A-133 shall also apply. Any reference in this Agreement to an OMB Circular, standard, or publication of any governmental agency, or to the Act, the Code, or any statute, regulation, rule, ordinance, or law of any kind, shall be construed to include any amendments thereto and any successors thereto.

12. Non-Discrimination. No person in the United States shall, on the grounds of race, creed, color, national origin (including immigration status where an alien holds proper work authorization), religion, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to the Borrower pursuant to this Agreement, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at Title 24 C.F.R. Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at Title 24 C.F.R. Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at Title 24 C.F.R. Part 8; and Title 1 of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at Title 28 CFR Part 35. Borrower must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner that impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Agreement.

13. Indemnity. **THE CITY SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE GRANTEE INCURRED IN THE PERFORMANCE OF THIS AGREEMENT. THE BORROWER, AND/OR ITS INSURER, EXPRESSLY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, DEMANDS, LIABILITIES AND OBLIGATIONS OF ANY KIND AND NATURE, INCLUDING INJURY OR DEATH OR PROPERTY DAMAGE MADE UPON THE CITY, INCIDENT TO, OR ARISING OUT OF, OR IN CONNECTION WITH THE BORROWER'S PERFORMANCE UNDER THIS AGREEMENT, INCURRED DUE TO BORROWER'S NEGLIGENCE, ANY OF BORROWER'S NEGLIGENT ACTS, OR ANY OMISSION TO ACT, ANY BREACH OF CONTRACT, OR ANY ACTIONS OF THE BORROWER OUTSIDE THE SCOPE OF THIS AGREEMENT, INCLUDING ANY ACT OR OMISSION OR NEGLIGENCE BY THE BORROWER'S AGENTS, EMPLOYEES OR SUBCONTRACTORS WHILE THIS AGREEMENT EXISTS, ALL WITHOUT HOWEVER WAIVING ANY GOVERNMENT IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW. THIS INDEMNITY SHALL COVER ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS, INCLUDING AWARDS AND SETTLEMENTS AND ANY INTEREST THEREON.**

14. Representations. Borrower hereby represents, warrants, and covenants to the City the following, as of the date of this Agreement and continuing thereafter throughout the term of this Agreement, acknowledging the City's reliance thereon: (a) if an entity, Borrower is a validly organized and existing entity in good standing under the laws of the state of its organization, is duly qualified under the laws of the state of its organization and the State of Texas to transact business and to perform its services, and has taken all requisite organizational action to authorize execution and performance of this Agreement by Borrower; (b) Borrower is fully and duly authorized to execute and perform this Agreement, and the person signing below has been properly authorized and directed to do so; (c) the execution and performance of this Agreement by the Borrower shall not violate any federal, state, local, or other law; (d) the execution and performance of this Agreement by Borrower shall not breach another agreement or contract of the Borrower; (e) Borrower has not made any misrepresentation of material fact, or failed to disclose any material fact, in connection with efforts to obtain award of Loan funds under this Agreement; (g) Borrower has not directly or indirectly, made or caused to be made and will not make or cause to be made, any illegal gratuity, gift, bribe, favor, entertainment or other benefit having monetary value or other payment, for himself or herself or for another person or entity, with respect to the award of the Loan or performance of this Agreement; and (h) all information furnished to the City by Borrower herein or in any related loan document or application is true, correct, and complete in all material respects, and states all material facts required to be stated therein or necessary to make the statements therein, in light of the circumstances under which such statements are made, true, correct, and complete.

15. Conflict of Interest. Pursuant to Title 24 C.F.R. Part 84.42 Borrower shall ensure that no employee, officer, representative, or agent of the Borrower shall participate in the selection, or in the award or administration of a contract or subcontract supported by funds provided herein if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: 1) The employee, officer, representative or agent; 2) any member of his or her immediate family; 3) his or her partner; or, 4) any organization which employs, or is about to employ any of the above, has a financial interest or other interest in the firm or person selected to perform the contract or subcontract. The officers, employees, and agents of the Borrower shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors.

16. Default. Failure of Borrower to comply with or to perform any material term, obligation, covenant or condition contained in this Agreement or in any related documents, and Borrower fails to cure such failure within thirty (30) days after written notice from the City describing such failure shall be deemed an event of default. If such failure cannot be cured within such thirty (30) day period in the exercise of all due diligence, but if Borrower also fails or refuses to commence such cure within such thirty (30) day period or fails or refuses to continuously thereafter diligently prosecute the cure of such failure, such act or omission shall be deemed an event of default. Upon an event of default the City, at its discretion, may declare as immediately due and payable the entire outstanding principal advanced and all accrued interest of the Loan and the City shall be entitled to exercise all rights and remedies under the law or in equity.

17. Amendments. This Agreement may not be amended, modified, or altered except where in writing and signed by the parties.

18. Severability. The invalidity of any provision in this Agreement shall not affect the validity of the remaining provision, which shall remain in full force and effect.

19. Headings. The headings in this Agreement are for convenience of reference only and shall not be construed as forming part of this Agreement.

20. Additional Agreements. Any amounts due from Borrower to the City, and any part thereof, shall be paid without claim of set-off, counterclaim, or deduction of any nature or for any cause whatsoever. Time is of the essence with respect to Borrower's obligations under this Agreement and the Note. The representations, warranties, covenants, and indemnities made by Borrower in this Agreement, as well as all other provisions which expressly or by their nature extend beyond termination of this Agreement, shall survive execution, performance, and /or termination of this Agreement. Nothing herein is intended to, or shall be construed to, provide any rights or remedies to any third party, or to create any third party beneficiary. This Agreement, and every provision thereof, shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Wherever the context shall require, the singular shall include the plural, and the male gender shall include the female gender and the neuter, and vice versa. In the event the City brings an action to enforce or interpret any provision of this Agreement, City, if the prevailing party, will be entitle to recover its costs and expenses including, without limitation, reasonable attorney's fees, costs, and necessary disbursements, in addition to any other relief to which the City shall be entitled to receive. No consent or waiver, express or implied, by a party to or for any breach of any provision hereunder by the other party shall be deemed a consent or waiver to or for any other breach of the same provision or any other provision hereunder. The parties have jointly prepared this Agreement, and no ambiguity shall be construed against any party based on the identity of the author of this Agreement. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND IS PERFORMABLE IN EL PASO COUNTY, TEXAS.** This Agreement may be executed in original or facsimile signatures, in multiple counterparts. This Agreement does not constitute a join venture, partnership, or similar venture, or any employer-employee relationship, of any kind between the parties hereto. Borrower is contracting with the City as an independent contractor only, and not as an employee, officer, or representative of the City. No term or provision hereof or act of Borrower in performance of this Agreement shall be construed as making Borrower an agent or employee of the City. All officers and employees of Borrower shall be solely responsible to Borrower, and the City shall not have any authority, responsibility, or liability with respect thereto. If Borrower is more than one person or entity, all references herein refer to all of the same, singly and collectively, and the obligations thereof shall be joint and several.

21. Employment of Undocumented Workers. During the term of this Agreement, Borrower agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Borrower shall repay the amount of the Loan received by Borrower from the City as of the date of such violation not later than one hundred twenty (120)

days after the date Borrower is notified by City of a violation of this section, plus interest from the date the Loan was issued to Borrower, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Loan was issued to Applicant until the date the reimbursement payments are repaid to the City. The City may also recover court costs and reasonable attorney's fees incurred in an action to recover the Loan subject to repayment under this section. Borrower is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Borrower contracts.

22. Entire Agreement. This Agreement and the accompanying loan documents is the final, complete, integrated, and entire agreement between the parties with respect to the subject matter and supersedes all prior communications, oral or written, between the parties.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties hereto as of the date above written.

CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:

William Lilly, Director
Community and Human Development
Department

BORROWER: **DESERT ROCK CO.**
P.O. Box 17727
El Paso, TX 79917

By: Gilbert L. Sanchez
Gilbert L. Sanchez, President

By: Enriquetta G. Sanchez
Enriquetta G. Sanchez, Secretary

ATTACHMENT 1 – EQUAL OPPORTUNITY CLAUSE

(Taken from) §130.15 Equal Opportunity clause.

(a) *Government contracts.* Except as otherwise provided, the following equal opportunity clause contained in section 202 of the Order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees place by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of the contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(sic) **(c)** *Subcontracts.* Each nonexempt prime *contractor* or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than $50,000 and such other contracts as the Director may designate.

(e) *Incorporation by operation* of *the order and departmental regulations.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulations" and these regulations to include such a clause whether or not it is physically incorporated in such contracts. The clause is applicable to every nonexempt contract where there is no written contract between the Department and the contractor.

(f) *Adaptation* of *language.* Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertakings

ADDENDUM A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

BORROWER: **DESERT ROCK CO.**
P.O. Box 17727
El Paso, TX 79917

By: Gilbert L. Sanchez, President

By: Enriquetta G. Sanchez, Secretary