

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Community and Human Development

AGENDA DATE: April 17, 2012

CONTACT PERSON NAME AND PHONE NUMBER: William L. Lilly, Director 541-4241

DISTRICT(S) AFFECTED: 6

SUBJECT:

That the following affordable rental housing development is approved for a funding in relation to construction and operation of affordable rental housing on the Property.

Project Name: Paisano Housing Redevelopment Corporation
Project Type: Construction of 15 Rental Units
Project Address: Tracts 7-K, 7-K-1, 7-L-1-A, and 7-L-1-B, Block 35, Ysleta Grant
Project Amount: \$1,7000,000.00
District: 6

That the City Manger be authorized to sign a Neighborhood Stabilization Program (NSP) Development Agreement between the City of El Paso and Paisano Housing Redevelopment Corporation, as well as any related contract documents necessary to effectuate the award and to secure and protect the City's lien interest, upon the recommendation of the Director of Community and Human Development and the approval of the City Attorney's Office.

BACKGROUND / DISCUSSION:

USE / PROJECT

Construction of fifteen (15) a multi-family apartment community for elderly consisting of five (5) two bedroom – 1 bath, 750 square feet per unit and ten (10) one bedroom – 1 bath, 450 square feet per unit. located at tracts 7-K, 7-K-1, 7-L-1-A, and 7-L-1-B, Block 35, Ysleta Grant, in the City of El Paso, El Paso County, Texas (located near the intersection of Elvin Way and Independence Drive)

**AFFORDABILITY
AND RENTAL
RATES**

- 100% of total households earn \leq 50 % of AMI
 - Maximum allowable Low HOME rents: posted at www.hud.gov/cpd/home/limits/rent/rentlimt.html.
- Affordability restrictions to be remain in place for twenty (20) years, secured via property covenants.

PRIOR COUNCIL ACTION:

Introduction of ordinance authorizing a Contract of Sale to Paisano Housing Redevelopment on April 3, 2012. Public hearing scheduled for April 17, 2012

AMOUNT AND SOURCE OF FUNDING:

71150034, 07901, G71NSP2

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the following affordable rental housing development is approved for a funding commitment, as recommended by the Director of Community and Human Development, as listed below:

Project Name:	Paisano Housing Redevelopment Corporation
Project Type:	Construction of 15 Rental Units
Project Address:	Tracts 7-K, 7-K-1, 7-L-1-A, 7-L-1-B, Block 35, Ysleta Grant (Elvin Way/Independence Drive) (79907)
Project Amount:	\$1,700,000.00
District:	6

That the City Manager be authorized to sign a Neighborhood Stabilization Program (NSP) Development Agreement by and between the City of El Paso and Paisano Housing Redevelopment Corporation, as well as any related contract documents necessary to effectuate the award and to secure and protect the City's lien interest, upon the recommendation of the Director of Community and Human Development and the approval of the City Attorney's Office.

APPROVED AND ADOPTED this ____ day of _____, 2012.

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

STATE OF TEXAS §
 §
 § **NEIGHBORHOOD STABILIZATION PROGRAM**
 § **(NSP) DEVELOPMENT AGREEMENT**
 COUNTY OF EL PASO § (Elvin Estates Elderly Rental Housing Project)

THIS NEIGHBORHOOD STABILIZATION PROGRAM (NSP) FUNDING AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2012, by and between THE CITY OF EL PASO, a Texas municipal corporation, hereinafter referred to as "City" and PAISANO HOUSING REDEVELOPMENT CORPORATION, Texas non-profit corporation and wholly-owned subsidiary of the Housing Authority of the City of El Paso (HACEP), hereinafter referred to as "PHRC"

RECITALS

WHEREAS, the City of El Paso has received the City has received grant funds from the United States Department of Housing and Urban Development ("HUD") under Title III of Division B of the Housing and Economic Recovery Act of 2008 ("HERA") (P.L. 110-289) (hereinafter referred to as "Neighborhood Stabilization Program" or "Program") and is authorized to award funds under the Program pursuant to rules and regulations adopted by HUD as contained in 73 Fed. Reg. 194, 58330 (Oct. 6, 2008) and 74 Fed. Reg. 117, 29223 (June 19, 2009), as may be amended; and

WHEREAS, twenty-five percent (25%) of the grant funds must be set aside for housing programs that assist persons or households earning very low incomes at or below 50% of the Area Median Income (AMI); and

WHEREAS, the El Paso City Council meeting in regular session on _____, 2012, adopted a Resolution approving the use of NSP funds by PHRC under the project designated; and

WHEREAS, the City's Director of Community and Human Development has recommended approval of a forgivable deferred payment loan to PHRC, subject to the terms specified hereinbelow, and the El Paso City Council, meeting in regular session on _____, 2012, by sufficient vote approved such loans to PHRC, subject to the terms specified hereinbelow; and

WHEREAS, the NSP funds having been approved for use in PHRC's elderly rental housing new construction project (the "Project"), subject to the conditions and terms herein, and PHRC agrees to comply with all applicable Program requirements.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth and for value received by PHRC from City, the parties hereto do mutually agree to be bound by all terms and conditions of this Agreement, and all documents incorporated by reference herein, as follows:

I. DESCRIPTION OF PROPERTY AND PROJECT SCOPE

The subject matter property is legally described as:

Tracts 7-K, 7-K-1, 7-L-1-A, 7-L-1-B, Block 35, YSLETA GRANT, in the City of El Paso, El Paso County, Texas, according to the resurvey of said YSLETA GRANT made by El Paso County, Texas, for tax purposes

all of such property, hereinafter referred to as the "Property." The parties intend that the legal description of the Property in this Section will be revised, without need of a contract amendment, to reflect the Property description following the filing of the replat of the Property in the Real Property Records of El Paso County, Texas

The City hereby agrees to lend PHRC funds not to exceed the total amount of ONE MILLION SEVEN HUNDRED THOUSAND AND 00/100THS DOLLARS (\$1,700,000.00) subject to the terms hereinafter specified, to be drawn from NSP funds.

A. PHRC agrees to take all necessary action to perfect and protect City's lien position as specified in Section III. of this Agreement for the life of the Deed of Trust (With Power of Sale), attached as **Exhibit "A"** or in a form acceptable to the City. City's lien being evidenced by said Deed of Trust (With Power of Sale) so attached as **Exhibit "A,"** and the Declaration Concerning Covenants and Restrictions Running with the Land, attached hereto as **Exhibit "B"** (the "Declaration"), are both to be recorded in the El Paso County Real Property Records. PHRC expressly acknowledges that it will be the PHRC's obligation to procure any additional private funding (in excess of the above-referenced amount) for completion of the development and construction of the Project and if additional private funding not originally anticipated becomes available for the Project, which shall mean PHRC has received a firm commitment from the applicable source of funding, PHRC will promptly notify the City so that the City's public financing may be reduced in the amount of such funding if and when funded to PHRC.

B. City hereby agrees to provide NSP funds for the eligible costs for 15 NSP-Assisted Units (to consist of 10 one (1) bedroom units and 5 two (2) bedroom units), according to all terms and conditions as specified in the Agreement, including, but not limited to, the following terms and conditions:

(1) The City hereby agrees to provide the NSP funds allocated to this Project as a Forgivable Deferred Payment Loan of ONE MILLION SEVEN HUNDRED THOUSAND AND 00/100THS DOLLARS (\$1,700,000.00) using NSP funds, as evidenced by a Forgivable Deferred Payment Loan Note(s) of even date herewith, attached as **Exhibit "C"** and incorporated by reference herein. Provided PHRC complies with the terms and conditions of this Agreement, repayment of the Forgivable Deferred Payment Loan shall be deferred and the entire principal balance shall be forgiven following expiration of the affordability period of TWENTY (20) years, to commence on the date of project completion in described in Section IV. E herein.

(2) NSP funds shall be approved and funds shall be advanced to PHRC, subject to the terms described herein, to include but not limited to those contained in Sections III. and IV. below, and any other terms and conditions specified in the Agreement.

(3)(a) Disbursement of public funds shall be made within ten (10) business days upon receipt by City of PHRC's written request for such, the documentation as required herein has been provided and upon the approval of the Director of the Department of Community and Human Development of the City (the "Director"). PHRC shall not request disbursement of NSP funds until they are needed to pay eligible costs and each disbursement request shall be limited to the amount needed. Such disbursement may be withheld by the Director if, in the reasonable exercise of Director's discretion, the PHRC has failed to fulfill the requirements of this Agreement. A final disbursement will be withheld and not disbursed to PHRC until PHRC provides the City proof of completion and final inspection of the 15 NSP-Assisted Units. Disbursements shall be made on a pro-rata basis with PHRC's private financing, if any, and in accordance with PHRC's Project Budget, attached hereto as **Exhibit "D"** (the "Project Budget"), which may be updated and revised upon prior approval of the Director, provided however, the City's funding in the revised Project Budget for the 15 NSP-Assisted Units may not exceed \$1,700,000.00. Pursuant to Title 24 of the Code of Federal Regulations ("24 CFR") §570.206, the City's estimated project delivery costs allocated for the Project are \$20,000.00 and are included in the Project Budget. Disbursement of NSP funds for project delivery costs will be at the Director's discretion and in accordance with the Project Budget; provided however, if the Project construction schedule is extended or delayed, the project delivery costs budget item will be proportionately increased with the additional cost being drawn from the construction contingency budget item, thereby reducing the construction contingency funds set-aside for the Project. The final drawdown for this Project must be requested by November 30, 2012.

(b) The purpose of the loan(s) is to provide PHRC with funds to acquire and construct FIFTEEN (15) NSP-assisted elderly rental units ("NSP-Assisted Units") on Property located at the intersection of Elvin Way and Independence Drive, as more fully described in the Deed of Trust (With Power of Sale). PHRC agrees that within ten (10) months from the date of this Agreement the 15 NSP-Assisted Units will be completed and occupied by tenant households with incomes that do not exceed fifty percent (50%) of the Area Median Income (AMI). There is no other use of said funds authorized by City, and the use of the City's funds by PHRC for any other purpose shall constitute a breach of contract by PHRC for which City may pursue any and all remedies, whether at law or equity, which are available to City, subject to PHRC's rights to cure any default following thirty day written notice, as provided in Section V in this Agreement.

(c) PHRC shall maintain the Project Schedule attached as **Exhibit "E"** for carrying out the required tasks to complete the Project, which may be updated and revised upon prior written approval of the Director.

(d) The approved plans and specifications for the reconstruction of the property are incorporated by reference herein.

(e) The Rehabilitation Act of 1973 (29 U.S.C. Section 794) and the implementing regulations at 24 CFR Part 8 apply to this Project. All common spaces in the

project must be made accessible in accordance with the Uniform Federal Accessibility Standards (UFAS). For this Project, PHRC agrees to exceed the minimum requirements for new construction of multifamily rental projects of five or more units, by constructing a minimum of twenty percent of the total number of dwelling units in the Project as Type A accessible to individuals with mobility impairments in accordance with the UFAS, with the remainder constructed as adaptable units. Further all dwelling units will be built to conform to the design and constructions requirements of the Fair Housing Act.

(4) No NSP funds will be advanced and no reimbursable costs can be incurred until the City has conducted an environmental review of the property sites as required under 24 CFR Part 58. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, 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 24 CFR Part 58. 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]

C. It is expressly understood and agreed by the parties hereto that City's obligations under this Section I. are contingent upon the actual receipt of adequate federal funds to meet the City's obligations under this Agreement. The City anticipates that it will receive adequate federal funds to meet City's obligations under the Agreement; however, if adequate funds are not available to make payments under this Agreement, the City shall notify PHRC in writing as soon as practicable after such fact is determined. The City shall thereupon terminate this Agreement, will not be liable for failure to make payments to PHRC under this Agreement, and will release PHRC of all obligations under this Agreement and any and all related documents.

D. PHRC agrees that any Program Income, less allowable expenses, must be applied solely to a segregated Replacement Reserve Account or else returned to the City as NSP program income. Grantee is directed to HUD regulation 24 CFR §570.500 for a definition of Program Income and for additional requirements with regard thereto. The Replacement Reserve Account funds shall be used for the expressed purpose of assuring the safety and long term viability of the project properties and shall be limited to capital replacement improvements as follows:

Replacement of existing items to include: Appliances (stoves, refrigerators of same or comparable models); screen doors (same or comparable styles); Exterior and interior doors (same or comparable styles); gutters/downspouts; windows (same or comparable styles); hot water tanks (same or comparable styles); HVAC System to include Roof Jacks, Evaporative units, motors (pumps-filters and pads excluded)(same or comparable styles); Carpet-VTC or Ceramic floorings; Bathtubs/sinks/showers/toilets (same or comparable styles); Roofing (repair and/or replacement); Concrete sidewalks, parking areas (repair and/or replacement); Painting (exterior only); Stucco or other structural repairs/replacements; and Irrigation System.

(1) Borrower shall have the right to withdraw funds from the Replacement Reserve Account as deemed necessary and appropriate to address the replacement/repair of the aforementioned items. Documentation of unit, item replaced, costs and proof of payment must be maintained by Borrower and is subject to review by the City's Community and Human Development Department during the periodic monitoring of the property or at other times as deemed necessary and appropriate by the City.

(2) Borrower shall prepare on an annual basis, no later than the 30th day of November, a "Proposed Capital Expenditure Plan." Such Plan shall be submitted to the Director for review and approval and will forecast items or costs that may include use of Replacement Reserve funds. In the event of emergency repair(s) to necessitate the safe living environment of the tenant(s) is needed, Borrower may make such repairs and shall inform the Director, in writing within seven (7) business days of such repairs. Repairs of this nature may include, but are not limited to replacement of HVAC system, hot water tank replacement, electrical and plumbing issues or structural damages that would cause harm to the tenant(s).

(3) Borrower shall on a semi-annual basis (July 31, for the period of January 1 to June 30 and January 31, for the period of July 1 to December 31) issue to the Director a report indicating: (a) the amount of funds deposited into the Replacement Reserve Account (to include bank statements); (b) the amount of funds withdrawn from the Replacement Reserve Account; and (c) documentation of expenses related to the withdrawals from the Replacement Reserve Account. Such documentation shall include receipts, proof of payment (e.g., cancelled check) and other support documentation as requested. Such report shall be filed on the approved form and shall bear the signature of Executive Director and/or President of Borrower. Such report shall only be issued in the event Replacement Reserve funds were utilized. It shall be the Borrower's responsibility to maintain within its corporate offices documentation of such expenditures for review and monitoring by the City, HUD, or their authorized representatives or designees.

E. 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.

F. This Agreement is subject to and contingent upon the acquisition of the Property from the City to PHRC. In the event that the Property is not conveyed to PHRC within 60 days of the date of execution of this Agreement, this Agreement shall terminate without further notice to PHRC. Upon termination, neither the City nor PHRC shall have any further obligations to each other under this Agreement.

II. REPRESENTATIONS AND WARRANTIES

A. PHRC represents that the information furnished to City upon which City relied to make this loan(s) is correct and true. PHRC hereby represents that each of said PHRC's representatives have the authority and capacity to commit to a financial obligation on behalf of PHRC. Specifically, but not by way of limitation, this authority includes signing a loan

agreement, note(s), and any security instrument related thereto in incurring financial obligations to construct the NSP-Assisted Units. PHRC further represents that it will own any and all buildings referenced above, subject to any and all restrictions, easements, covenants, and other matters of record.

B. PHRC agrees and understands that approval of the loan(s) has been made by consideration of and in reliance upon various data furnished by PHRC, and agrees that should any of said data prove to be false or materially misleading in any way, subject to PHRC's rights to cure any default following thirty day written notice, as provided in Section V in this Agreement, the City shall have the right to unilaterally terminate this Agreement for unremedied breach thereof and demand repayment in full the entire principal amount of the Forgivable Deferred Payment Loan Note(s), as evidenced by **Exhibit "C"**, plus all costs of collection.

C. This Agreement is entered into in the City and County of El Paso, Texas and shall be governed and construed under the laws of the State of Texas. Venue shall be in El Paso County, Texas, for all purposes.

III. CONDITIONS PRECEDENT

PHRC agrees to fully comply with the following terms and conditions, as a condition precedent to PHRC's receipt of any and all public financing described herein:

A. PHRC will execute all documents necessary to impose the Declaration required by the NSP Program; a copy of the Declaration to be recorded in the El Paso County Real Property Records is attached hereto as **Exhibit "B"** and incorporated herein by reference. The Declaration shall run with the Property and shall inure to the benefit of the City. If the City succeeds in enforcing or enjoining the violation of any restriction, the City shall be reimbursed for its court costs and reasonable attorneys' fees incurred in such action.

B. PHRC agrees to grant to City the following collateral as security for the City loan(s) as agreed thereto:

(1) A *first* lien on the Property.

C. PHRC agrees to take any and all necessary action to perfect such lien(s) and to protect City's *first* lien position in the property described above. Any loans made under future advance clauses of any previous loans, without the City's written consent hereunder, shall constitute a breach of this Agreement.

D. PHRC agrees to provide sufficient documentation to satisfy all NSP requirements.

E. PHRC shall furnish to City acceptable evidence of liability and casualty insurance on said real estate and improvements thereon which shall be sufficient to guarantee payment of all of the PHRC's indebtedness on the aforementioned Property. This insurance coverage shall name the City as an additional insured.

F. PHRC agrees to obtain all necessary permits, licenses and special privileges that may be required by City prior to conducting the construction work on the property subject to this Agreement. In the event PHRC must pay any fees for obtaining any of the above items, PHRC agrees to pay such to City. PHRC shall also comply with any County, State or Federal requirements that apply to its construction activities.

G. PHRC agrees to ensure that the City is named in both the performance and payment bonds, if such bonds are required under the terms of the contract between PHRC and the selected contractor(s) for the construction of the Property described herein.

If PHRC breaches any term or condition of this Section III., entitled "Conditions Precedent," and following PHRC's failure to cure the breach after written notice and a thirty (30) day opportunity to cure period, the entire principal amount of the Forgivable Deferred Payment Loan Note(s), as evidenced by **Exhibit "C"**, shall immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement entitled "Events of Default."

IV. COVENANTS

The following covenants in Subsections A-Z of this Section IV. shall apply as long as any amounts are outstanding under the Forgivable Deferred Payment Loan, unless a longer period is specified:

A. PHRC shall take all necessary steps possible to minimize displacement as a result of this Project. PHRC further agrees to comply with 24 CFR §92.353 regarding displacement, relocation and acquisition; the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 et seq.), as applicable; and the implementing regulations at Title 49 CFR Part 24 (Relocation).

B. Except to the extent permitted by law, PHRC agrees that it will not discriminate against current or prospective tenants on the basis of the receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance programs, or on the basis that such tenants have a minor child or minor children who reside with them. PHRC agrees to comply with 24 CFR §92.252, specifically to include, but not limited to, subsection (d) "Non discrimination against rental assistance subsidy holders".

C. PHRC hereby further agrees that for the entire affordability period of **TWENTY (20)** years from the date of project completion, the newly constructed property will comply with Subpart F - Project Requirements of Part 92 of Title 24 of the Code of Federal Regulations, HOME Investment Partnerships Program. PHRC further agrees to continuously comply with 24 CFR §92.250 regarding Maximum Per Unit Subsidy; 24 CFR §92.251 regarding Property Standards; 24 CFR §92.252 regarding Qualification as Affordable Housing: Rental Housing, 24 CFR §92.203 regarding Tenant Income, 24 CFR §92.355 regarding lead-based paint requirements, and applicable subsections and amendments thereto regarding:

- a) rent limitations;

- b) rent schedules;
- c) increases in tenant income;
- d) adjustments of qualifying rent

1. PHRC shall fulfill the HOME occupancy requirements by reserving 100% of the NSP-Assisted Units for tenants whose income is no more than 50% of the City's median income for their household size.

2. The initial rent schedule for each NSP-Assisted Unit in the Project (as identified by bedroom size) is attached hereto as **Exhibit "F"** and incorporated by reference. The rent schedule specifies the maximum rents that can be charged, taking utilities into account for Low HOME rent units.

3. The current NSP rent limitations are outlined in **Exhibit "G"**, attached hereto and incorporated by reference are subject to periodic adjustments by HUD and will be provided to PHRC by the City as such is updated. Further, the City will provide updated utility allowances to the PHRC on at least an annual basis.

4. The terms and conditions regarding subsequent rent increases and HUD median income adjustments to be utilized for the NSP program are the same as those identified in **Exhibit "H"**, "NSP Program Rents and Tenant Eligibility," attached hereto and incorporated by reference herein. The City reserves the right to amend said attachment and to notify the PHRC of the changes, without need for a written amendment to this Agreement.

5. All NSP-Assisted Units must be maintained in compliance with the applicable state and local housing quality standards and code requirements throughout the affordability period, as required by 24 CFR §92.251(c). If none exist, the housing must meet Housing Quality Standards (HQS) found at 24 CFR §982.401. The City will verify maintenance of the Project to these standards through on-site inspections according to the following schedule: for projects with five (5) to twenty-five (25) NSP-Assisted Units, every two (2) years. In addition, PHRC shall meet all mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

6. For rehabilitation projects involving housing units that were built prior to 1978, housing assisted with NSP funds is subject to the Lead-Based Paint Poisoning Prevention Act (42.U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, J, K and R; 24 CFR §570.487 or 24 CFR §570.608.

7. For purposes of this Agreement, "project completion" means that all necessary title transfer requirements to the PHRC have been performed; construction has been completed; the project complies with the requirements of 24 CFR Part 92 (including the property standards under 24 CFR §92.251); the final drawdown has been disbursed for the Project; the PHRC has submitted all necessary demographic and financial information to the City for initial occupancy of all NSP-Assisted Units; and the project completion information (which includes the

demographic and financial information) has been entered into the Integrated Disbursement and Information System (IDIS) established by HUD. Once the requisite information is provided, the City agrees to use its best efforts to enter that information into IDIS within 30 days of receipt.

D. PHRC agrees to comply with 24 CFR §92.216 regarding Income Targeting:

1. Initial Occupancy –100% of the NSP-Assisted Units in this Project must be occupied by tenants with annual incomes at fifty percent (50%) or less of Area Median Income (AMI).

2. Annual reexamination.

3. It is the further intention of this Agreement that all applicable requirements and conditions be fulfilled in order to assist Very Low- Income persons in obtaining suitable housing. PHRC agrees to comply with 24 CFR §92.253 regarding Tenant and Participant Protections regarding the leases, federally-prohibited lease terms specifically identified in 24 CFR§92.253 (b), and adoption of written tenant selection policies and criteria that conform to HUD requirements outlined in 24 CFR §92.253(d). Further, PHRC agrees to comply with all applicable state and local tenant-landlord laws.

E. In order to assure compliance with the Project Requirements of the Program (Title 24 of the Code of Federal Regulations, Part 92, Subparts E and F), PHRC agrees to submit annually the following documentation to City for review and approval:

1. A copy of the tenant application and a description of the tenant qualification process to include Tenant Selection Procedures that PHRC will utilize to verify tenant incomes.

2. A copy of the lease agreement form that will be utilized for the Property. PHRC agrees to attach to its standard lease agreement form, the Mandatory Lease Addendum to control over any conflicting prohibited lease terms, a copy of which is attached hereto as **Exhibit "I"**, which must be completed by PHRC and every tenant household in connection with the execution of the lease and upon the City's request.

3. PHRC hereby agrees to verify all income, assets, household characteristics, and any other circumstances that affect tenant eligibility in accordance with 24 CFR Part 5 and as more specifically described in **Exhibit "H"**, "NSP Program Rents and Tenant Eligibility". Further, PHRC shall assist the City in acquiring tenants' consent and release authorization for purposes of determining or auditing tenant income eligibility or for verifying related information from depository or private source of income, or any Federal, State, or local agency ("source documentation").

4. If applicable, a copy of PHRC's procedures for marketing the availability of accessible units to eligible persons such that reasonable, nondiscriminatory steps are taken in making the accessible units that become available are offered to persons who require the accessibility features.

F. PHRC agrees that it will not discriminate against any class of individuals protected against discrimination under federal law in soliciting and accepting tenants for the newly constructed or rehabilitated structure. PHRC further agrees to participate with City in making all good faith efforts necessary to attract as tenants any and all classes of individuals protected against discrimination under federal law as required by the City, pursuant to 24 CFR §92.351 (Affirmative Marketing Policy and Procedures). For the duration of this Agreement, PHRC agrees to comply with all requirements of the City's Affirmative Marketing Policy and Procedures, attached hereto as **Exhibit "J"**. The City reserves the right to amend said attachment and to notify the PHRC of the changes, without written amendment to this Agreement. Further, the City reserves the right to review on an annual basis the records that document the PHRC's affirmative marketing actions. PHRC agrees to take corrective actions when the affirmative marketing requirements are not met, in accordance with 24 CFR §92.351(a)(2)(v).

G. **Furthermore, PHRC understands and agrees that for the entire minimum affordability period of twenty (20) years commencing on the date of project completion of the newly constructed property that the Property shall remain affordable to Very Low-income individuals and/or households without regard to term of any loan or mortgage or transfer of ownership pursuant to 24 CFR §92.252, as evidenced by and enforced through the Declaration. The definition of Very low Income individuals and/or households is attached as Exhibit "F" and are adjusted by HUD on a periodic basis. Subject to PHRC's rights to cure any default following thirty day written notice, as provided in Section V in this Agreement, failure to meet the affordability requirements for the entire affordability period, shall constitute an event of default requiring immediate repayment to the City of the entire principal amount of the Forgivable Deferred Payment Loan Note(s), and additionally, the City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement entitled "Events of Default."**

H. PHRC agrees that within **ninety (90)** days after the date the City approves the Owner's Acceptance Form for the newly constructed Property, as described herein, PHRC will furnish to City data on the demographic characteristics of tenants occupying the newly constructed structure initially after construction. Such data must be of a quality acceptable to the Director.

I. PHRC further agrees to comply with subpart H - "Other Federal Requirements" of 24 CFR Part 92, as applicable, the federal requirements set forth in 24 CFR Part 5, subpart A, 24 CFR Part 570, subpart K, federal laws identified in and attached hereto and made a part of this Agreement as **Addendum A**, and the federal regulations at 24 CFR Part 87, related to lobbying. PHRC hereby agrees to sign the Certification, attached hereto and made a part of this Agreement as **Addendum B**, and if necessary, the Disclosure Lobbying Activities, referenced therein and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to the City. **PHRC shall require the language of the Certification and disclosure be included in all construction contracts and subcontracts and that all contractor(s) and subcontractor(s) shall certify and disclose accordingly.**

J. PHRC agrees to comply with the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended and implementing regulations at Title 24 CFR Part 100), including applicable design and construction standards and other Federal Rules, regulations and policies applicable to the performance of this Agreement. Further, PHRC agrees to assist in the City's compliance with the requirements of 24 CFR §92.202 (and 24 CFR Part 983.6) Site and Neighborhood Standards.

K. 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 PHRC 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 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at Title 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at Title 24 CFR Part 8; and Title 1 of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at Title 28 CFR Part 35. PHRC must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner which impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Agreement.

L. PHRC hereby agrees that in all solicitations for employment applications, PHRC shall hold itself out as an equal opportunity employer. Furthermore, PHRC shall comply with all the equal opportunity requirements in Title 24 CFR Section 5.105, the requirements of Executive Order 11246 (Equal Opportunity) and the implementing regulations at Title 41 CFR Part 60, and the requirements of Executive Orders 11063 and 12259 (Equal Opportunity in Housing) and the implementing regulations at Title 24 CFR Part 107, and executive orders referenced in 24 CFR §570.607, as revised by Executive Order 13279. PHRC shall fully comply with all federal and state laws, regulations, and executive orders regarding equal employment and shall further comply with Davis-Bacon Act (40 U.S.C. §276a-276a-5) compensation requirements, if applicable, to PHRC, pursuant to 24 CFR §92.354. PHRC's Project, regardless of the number of NSP-Assisted Units or NSP funding amount, is subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S. §327-332), the requirements of the Copeland (Anti-Kickback) Act (40 U.S.C. 276c), and Fair Labor Standards Act of 1938, as amended (29 U.S. 20 et. seq.). Further, PHRC agrees to comply with the following project requirements:

1. Every contract (including subcontracts) for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with NSP funds (for any eligible project costs under 24 CFR §92.206) must contain a provision requiring the payment of not less than the prevailing wages for El Paso County, as pre-determined by the Secretary of Labor pursuant to the Davis Bacon Act, to all laborers and mechanics employed in the development of any part of the housing. If this subsection applies, PHRC shall stipulate in all construction contracts with its general contractor(s) engaged in furtherance of the execution of this Agreement that said general contractor(s) pay and cause its subcontractor(s) to pay not less than the

prevailing wage rate for its workers and shall comply with all 24 CFR §92.354 requirements. PHRC's contractors and subcontractors shall submit required payroll certification documentation to the City for inspection, review and certification prior to making any disbursement for the construction work. PHRC is expressly prohibited from arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions herein.

2. It is agreed that the work to be performed under this Agreement is subject to employment and contracting requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135 and all applicable rules and orders of the Department issued thereunder. Section 3 requires that, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, opportunities for training and employment, contracting and other economic opportunities generated by the expenditure of this assistance be given to low and very low income persons and to business concerns that provide economic opportunities for these persons. The requirements of Section 3 apply to contractors and subcontractors performing work on Section 3 covered projects for which the amount of assistance is or exceeds \$200,000; and the contract or subcontract is or exceeds \$100,000. Every Section 3 covered contract and subcontract must include the City's **Exhibit "K"** attached hereto, entitled "Section 3-Area Business and Workforce Agreement", incorporated by reference herein, and also comply with all terms and conditions of **Exhibit "L"**, attached hereto and incorporated by reference herein, entitled "Affirmative Action." When applicable, **Exhibits "K" and "L"** will be completed and submitted to the City prior to commencement of any construction. **PHRC will include or cause to be included in every contract or subcontract in connection with the project the Section 3 clause and will, at the direction of the City, take appropriate action pursuant to the contract upon a finding that the contractor or subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135.**

3. PHRC shall comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with NSP funds provided herein. All program assets (e.g., unexpended program income, property), not otherwise disposed of in a closeout agreement shall revert to the City upon expiration or termination of this Agreement.

4. PHRC shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

M. With respect to NSP-Assisted Units, PHRC shall maintain such records and accounts, including program records; financial records; program administrative records; equal opportunity and fair housing records; affirmative marketing records; records demonstrating compliance with the income determination and requirements of 24 CFR §92.203; record keeping requirements of 24 CFR §92.508; records demonstrating compliance with the applicable uniform administrative requirements of 24 CFR §92.505; records demonstrating compliance with the labor requirements of 24 CFR §92.354; records demonstrating compliance with the lead-based

paint requirements of 24 CFR §92.355; records supporting exceptions to the conflict of interest prohibition pursuant to 24 CFR §92.356; debarment and suspension certifications required by 24 CFR Parts 94 and 91; and any other records as are deemed necessary by the City to assure a proper accounting and monitoring of all NSP funds. Further, PHRC shall prepare and maintain proper files, books, and records in accordance with all applicable HUD requirements (including but not limited to OMB Circular A-122, 24 CFR §§570.502, 570.504, 570.506, and 24 CFR Part 33, and other records necessary to document compliance with Subpart K of 24 CFR Part 570) pertaining to costs incurred, audits, program income, administration, persons assisted, and all other relevant matters.

Pursuant to 24 CFR §92.508, PHRC shall keep and maintain adequate records to demonstrate compliance with program requirements:

1. PHRC shall maintain project records to verify at a minimum: the source and application of NSP funds, including supporting documentation; the minimum per-unit subsidy amount and maximum per-unit subsidy amount for the project; rent and utility allowance calculations; compliance with on-going property maintenance standards and lead based paint requirements; occupancy requirements are being met; and compliance with rent increase procedures.

2. PHRC shall maintain tenant records to verify at a minimum that: the project is satisfying the affordability and income targeting requirements for the required period; tenants are income eligible; the project is in compliance with tenant and participant protections of 24 CFR §92.253. Such documentation must be kept for each household, and will include: the tenant's application, initial income verification documents, subsequent income recertification documents, the tenant's lease and lease addendum, and any additional Project performance data and statistical information as may be required by the NSP regulations or other HUD regulations and any amendments thereto.

3. For general rental housing projects, records must be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period or until five years after the affordability period terminates, whichever date is later.

4. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required record, whichever is later.

5. PHRC further agrees to allow City and/or HUD, or their designees, to conduct periodic project monitoring and evaluation activities as determined necessary by City and HUD and/or their designees. PHRC agrees that it will make its premises and records available for such on-site, physical inspection and monitoring.

N. During the term of this Agreement, PHRC shall provide the City with its annual financial statement within ninety (90) days of the end of its operating year. Said financial

statement shall be prepared by an actively licensed certified public accountant and in conformance with OMB Circular A-133 regulations concerning annual audits.

O. PHRC agrees to execute any and all notes, security agreements, financing statements, affordability covenants, builder's and mechanic's liens and deeds of trust (With Power of Sale) and any other documents or amendments that are consistent with this Agreement and are reasonably necessary for perfection of City's lien or lien interests in the form submitted by Counsel for the City. PHRC further agrees to cooperate with the City in re-signing any documents to correct errors or omissions, if any, in any form or legal document required by the City or HUD.

P. PHRC agrees to use all best good faith efforts to close on the City loan advanced herein within ninety (90) consecutive calendar days from the date of approval by the City Council. Where justified, the anticipated closing date may be extended for a reasonable time period, as determined by the Director and at the Director's sole discretion.

Q. Upon reasonable request, City shall have the right at all times to inspect PHRC's business premises, and its books and records relating to employment. PHRC agrees that it will make its premises and records available for such inspection by City. PHRC further agrees that City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of PHRC for the purpose of making an audit, examination, excerpts, and transcriptions.

R. PHRC is prohibited from assigning this Agreement in whole or in part in any manner without the written consent of the City. PHRC hereby understands and agrees that if the newly constructed Property, as described herein, is voluntarily or involuntarily sold or transferred in whole or in part within the affordability period, as further described hereinabove the City shall declare the entire principal amount of the Forgivable Deferred Payment Loan Note(s), **Exhibit "C"**, immediately due and payable following PHRC's failure to cure the breach after written notice and a thirty (30) day opportunity to cure period.

S. PHRC hereby agrees that it shall not impair, whether by means of affirmative action or inaction, the lien status of the City in the collateral as described herein, used as security for the City loan.

T. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 or Part 85 and 24 CFR Sections 570.503-.505, as applicable, which include but are not limited to the following:

1. PHRC agrees to return to the City any NSP funds or property acquired with NSP funds, remaining on hand at the end of the term, or at the time of cancellation or termination, that have not been used or acquired, as the case may be in accordance with the provisions of this Agreement or the NSP regulations. If repayments, interest or other returns on investment attributable to NSP funds are received after end of the term of this Agreement they shall be returned to the City to be deposited in accordance with NSP or other housing regulations.

2. PHRC agrees that it will reimburse the City for any expenditure of NSP funds disallowed by HUD through its audit exception or other monetary compliance enforcement action.

3. Real property under PHRC's control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used in accordance with the Agreement. If PHRC fails to use NSP-assisted real property in accordance with this Agreement, affordability and benefit requirements within and for the prescribed period of time, PHRC agrees to comply with the applicable sections under 24 CFR §§570.503, 570.504, and 570.505.

4. Any NSP funds invested in housing that fails to meet the affordability requirements for the affordability period must be repaid to the City in accordance with NSP or other housing regulations.

U. TO THE EXTENT PERMITTED BY STATE LAW, PHRC HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY SUITS, ACTIONS, DEMANDS, LIABILITIES, TYPE OR DESCRIPTION, BROUGHT OR MADE, AND CLAIMS OF ANY CHARACTER, FOR OR ON ACCOUNT OF ANY INJURIES OR DEATH, OR ACTIONABLE TORTS, SUSTAINED BY ANY PERSON(S), AND DAMAGE OR DESTRUCTION OF ANY PROPERTY ARISING OUT OF, OCCASIONED BY, OR RELATING TO THE PERFORMANCE OF THE AGREEMENT, OR THE ACTIVITIES CARRIED OUT HEREUNDER, WHETHER OR NOT BASED IN WHOLE OR IN PART ON THE CITY'S NEGLIGENCE. THIS INDEMNITY SHALL COVER CITY'S ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS INCLUDING JUDGMENTS, AWARDS AND SETTLEMENTS.

V. PHRC, at its sole expense, shall purchase and maintain in full and effect during the term of this Agreement, policies of insurance as provided in this section naming the City as an additional insured on all such policies. PHRC shall furnish to City binders or policies showing insurance in force at the time of commencement of this Agreement and such insurance shall continue in full force and effect until the final, ending date of the Agreement. PHRC shall furnish to the City, in a timely manner, certificates of insurance as proof that it has secured and paid for policies of commercial insurance as specified herein. Such insurance shall cover all insurable risks incident to or in connection with the execution and performance of this Agreement. PHRC shall maintain the following coverages and limits thereof:

1. PHRC agrees to maintain for the term of this Agreement: (i) a liability insurance policy in the minimum amounts of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) for each person and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for each single occurrence covering bodily injury or death and One Hundred Thousand and No/Dollars (\$100,000.00) for each single occurrence of damage to or destruction of property, ALL SUBJECT TO A POLICY YEAR AGGREGATE LIMIT OF NOT LESS THAN ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00); (ii) flood insurance for the full value of the property, if applicable, and (iii) property insurance for the property's full insurable value complete with extended coverage with a deductible that shall not exceed 2% of the value of the insurable

interest or twenty thousand dollars, whichever amount is less. Such insurance policies shall contain an endorsement naming the City as an additional insured on the polic(ies) with regard to all suits, actions, demands, claims, and liabilities arising out of, occasioned by, or relating to this Agreement or the activities carried out hereunder. PHRC's insurance shall also contain an endorsement that it may not be cancelled or non-renewed without 30-days' prior written notice to the City.

2. PHRC shall produce a copy of the insurance policies, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage limits, and terms and provisions shown thereon, incorporating the above requirements, to the City prior to the effective date of this Agreement. PHRC shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

3. PHRC shall furnish to City certificates of insurance evidencing the foregoing insurance coverages, as specified above.

4. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS AGREEMENT UNTIL SUCH CERTIFICATES OF INSURANCE AND COPIES OF THE ORIGINAL POLICIES HAVE BEEN DELIVERED TO THE DIRECTOR, AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.

5. The City reserves the right to review the insurance requirements of this section during the effective term of this Agreement and to adjust insurance coverages and their limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or the claims history of the industry, if applicable, as well as the claims history of PHRC.

6. The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Upon such request by the City, PHRC shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof. PHRC remains responsible for procuring any other types of insurance not listed above, but required by law, necessary for performing its duties.

7. Notwithstanding any suspension or termination hereof, PHRC shall not be relieved of any liability to the City for damages or indemnification due to the City by virtue of any breach of this Agreement by PHRC or by virtue of this Section. The City may withhold payments to PHRC until such time as the exact amount of damages due to the City from PHRC is agreed upon or is otherwise determined

W. No member, officer, or employee of City, or its designees or agents, no member of the governing body of City and no other public official of City who exercises any functions or responsibilities, or who has been in a position to participate in a decision-making process or gains inside information with regard to the activities governed by this Agreement during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or

subcontract, or the proceeds thereof, for work to be performed in connection with the Program under this Agreement. PHRC further agrees to comply with all provisions contained in 24 CFR §§84.42, 92.356 and 570.611; in the procurement of property and services by PHRC, the conflict of interest provisions of 24 CFR 85.36 and 84.42, respectively, shall apply and in all other cases not governed by those sections, the provisions of 24 CFR 92.356 shall apply. Unless expressly permitted by the City in writing, no developer, officer, employee, agent or consultant of the PHRC, may occupy a NSP-Assisted Unit in the Property.

X. PHRC certifies that it is not debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, PHRC shall establish procedures to ensure that it does not make any award to any contractors at any tier in violation of the nonprocurement debarment and suspension standard. PHRC will verify and document that none of its contractors are debarred, suspended or otherwise excluded from participation through the effective use of the List of Parties Excluded from Federal Procurement or Nonprocurement programs ("List"). PHRC may request assistance from the City to access the List and document results.

Y. PHRC agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent be engaged in the conduct of political activities in violation of Chapter 15 of Title 5, United States Code (Hatch Act).

Z. If applicable, PHRC must meet conditions and limitations for use of NSP funds involving faith-based activities, as specified in 24 CFR §570.200(j).

If PHRC breaches any term or condition of this Section entitled "Covenants", the entire principal amount of the Forgivable Deferred Payment Loan Note(s) as evidenced by **Exhibit "C"**, may immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement, entitled "Events of Default."

V. EVENTS OF DEFAULT

A. Upon breach of this Agreement by PHRC and following PHRC's failure to cure the breach after written notice and a thirty (30) day opportunity to cure period, the City has the right to accelerate the payment of the loan(s), as evidenced by **Exhibit "C"**, and City further has the right to declare that the entire principal amount of the Forgivable Deferred Payment Loan Note(s), immediately due and payable by PHRC to City at the time of the contract breach. City's right to accelerate the loan(s) shall apply to all events as specifically designated in Sections III. and IV. of this Agreement, and to the following events, but shall not be limited to these events:

- (1) material errors in the representations and warranties given to City by PHRC;
- (2) PHRC's failure to perform any of the covenants or conditions precedent as stated in this Agreement;

(3) any new or unstayed judgment or unsatisfied lien against PHRC in an amount which, in the City's judgment, may impair its security or perfection of its security status regarding the collateral subject to this Agreement;

(4) failure to pay principal on time;

(5) PHRC's timely payment of principal, interest or any other amount due by check or automatic check withdrawal for which insufficient funds exist;

(6) PHRC's failure to comply with the timelines required for completion of the construction of the HOME-Assisted Units, specified in **Exhibit "E"** (Project Schedule); or

(7) PHRC's failure to comply with the Declaration and the HUD-mandated minimum affordability period, so long as such affordability period is in effect.

B. City hereby expressly reserves any and all other rights and remedies available to it in the event of PHRC's breach of this Agreement. It is hereby understood and agreed that in the event City agrees to a settlement of any breach of contract by PHRC, this shall not preclude the City from exercising its rights for any further or additional breaches of this Agreement. This shall also apply to any instances in which the City allows a period of time to pass in excess of thirty (30) days so that PHRC has an opportunity to remedy any breach of this Agreement.

VI. LIABILITY

PHRC understands and agrees that if PHRC fails to comply with any term or condition, as specified in Section III. entitled "Conditions Precedent" or Section IV. entitled "Covenants", any other term or condition of this Agreement, or any other term or condition of any document incorporated by reference herein, such that City is entitled to withhold payment of publicly-financed funds under the terms and conditions of this Agreement. PHRC will bear sole liability for all obligations in any way related to the construction of the Property described herein, and City shall be entitled to all rights and remedies reserved herein.

VIII. NOTICES

Any communications or notices regarding this Agreement shall be effective only if sent postage prepaid by (i) certified mail, return receipt (effective upon receipt or denial of receipt); (ii) regular U.S. Mail (deemed effective 3 business days after deposit with the United States Postal Service); (iii) nationally-recognized overnight courier (effective upon receipt or denial of receipt); or (iv) hand delivery (effective upon receipt or denial of receipt), to the following addresses, unless either party notifies the other in writing of a change of address:

CITY: City of El Paso
Attn: Director, Dept. of Community and Human Development
2 Civic Center Plaza
El Paso, TX 79901-1196

PHRC: Paisano Housing Redevelopment Corporation
c/o Housing Authority of the City of El Paso (HACEP)
Attn: Gerald Chicon, Chief Executive Officer
5300 E. Paisano Drive
El Paso, Texas 79905

IX. DURATION OF AGREEMENT

This agreement shall be effective on the date first above written and shall remain in effect for the affordability period required by Title 24 of the Code of Federal Regulations, Part 92 following project completion until terminated, and for five years thereafter or until full repayment of the Loan Notes under the terms of the particular notes, whichever date is later.

X. SUSPENSION OR TERMINATION

In accordance with 24 CFR §§ 85.43 and 85.44, this Agreement may be suspended or terminated if PHRC materially fails to comply with any term of this award and this award may also be terminated for convenience. Title 24, Sections 85.43 and 85.44 of the Code of Federal Regulations are incorporated herein by reference as provisions of this Agreement. Without limiting any of the rights and remedies available to the City under this Agreement or by law or equity, the City specifically reserves all rights and remedies set forth in 24 CFR §§ 85.43 and 85.44.

XI. COUNTERPARTS

This Agreement may be executed in any number of counterparts; all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

XI. COLLATERAL DOCUMENTS

The following Exhibits "A-1" -"L", Addendums A and B, and Equal Opportunity Clause are attached and incorporated by reference for all purposes.

Exhibit "A": Deed of Trust (With Power of Sale) - FORM
Exhibit "B": Declaration Concerning Covenants and Restrictions Running with the Land
Exhibit "C": Forgivable Deferred Payment Loan
Exhibit "D": Project Budget
Exhibit "E": Project Schedule
Exhibit "F": Initial Rent Schedule
Exhibit "G": NSP rent limitations

Exhibit "H": NSP Program Rents and Tenant Eligibility
Exhibit "I": Mandatory Lease Addendum
Exhibit "J": Affirmative Marketing Policy and Procedures
Exhibit "K": Section 3- Area Business and Workforce Agreement
Exhibit "L": Affirmative Action Plan

Addendum A: Applicable Laws and Regulations
Addendum B: Certification Regarding Lobbying
Equal Opportunity Clause

XI. ENTIRE AGREEMENT

This Agreement and the related documents embody all of the representations, rights, duties and obligations of the parties, and any prior oral or written agreement not embodied herein shall not be binding upon or inure to the benefit of any of the parties. This Agreement may only be amended by written instrument signed by duly authorized representatives of the parties. If any term, covenant or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms, covenants and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term, covenant, or provision held to be invalid.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE CITY OF EL PASO

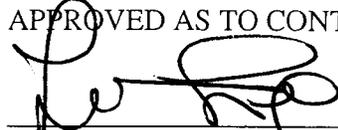
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Director
Community and Human Development

PAISANO HOUSING REDEVELOPMENT
CORPORATION

By: 

Name (printed)/Title: CEO

(The foregoing representative(s) of PHRC expressly represents that he/she has lawfully authorized execution of this Agreement).

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20____, by JOYCE A. WILSON as City Manager of **THE CITY OF EL PASO**, on behalf of said municipal corporation.

Notary's Commission Expires:

Notary Public, State of Texas
Notary's name (printed):

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20____,
by _____ as _____ of **PAISANO HOUSING REDEVELOPMENT
CORPORATION**, a Texas non-profit corporation, on behalf of said entity.

Notary's Commission Expires:

Notary Public, State of Texas
Notary's name (printed):

ADDENDUM A

APPLICABLE LAWS AND REGULATIONS

This Agreement is governed by the statute and regulations governing the NSP program pursuant to Title III of Division B of the Housing and Economic Recovery Act of 2008 (P.L. 11-289) (HERA), procedures and regulations provided for under HERA, including but not limited to regulations published in the October 6, 2008 Federal Register, other applicable housing regulations, including HOME Investment Partnerships Program Grant (HOME) pursuant to the National Affordable Housing Act of 1990 (P.L. 101-605), and implementing regulations under 24 CFR Part 92 et seq., as amended, and Community Development Block Grant regulations, as applicable, under 24 CFR Part 570 et seq., as amended.

In addition to laws and regulations specifically identified in the Agreement, PHRC shall all comply with all federal, state, and local laws and regulations applicable to the activities and performances rendered under this Agreement including but not limited to the laws, and the regulations promulgated thereunder specified in this Addendum A, as applicable.

I. CIVIL RIGHTS

Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.); 24 CFR Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";

Title VIII of the Civil Rights Act of 1968, "the Fair Housing Act of 1968" (42 U.S.C. Sec 3601 et seq.), as amended;

Executive Order 11063, as amended by Executive Order 12259, and 24 CFR Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063". The failure or refusal of the Contractor to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 CFR 107.60;

The Age Discrimination Act of 1975 (42 U.S.C. sec 6101 et seq.);

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) and "Nondiscrimination Based on Handicap in Federally-Assisted Program and Activities of the Department of Housing and Urban Development", 24 CFR Part 8. By signing this Agreement, the Subrecipient understands and agrees that the activities funded shall be operated in accordance with 24 CFR Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. Sec. 4151 et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system; and the Uniform Federal Accessibility Standards, 24 CFR Part 40, Appendix A.

II. LABOR STANDARDS

The Davis-Bacon Act, as amended (40 U.S.C. Secs. 276a-276a-5);

The Contract Work Hours & Safety Standards Act (40 U.S.C. 327 et seq.);

The Copeland "Anti-Kickback" Act (18 U.S.C. Sec 874).

Drug Free Workplace Act of 1988 (41 U.S. C. Sections 701 et seq.) and 24 CFR Part 23, Subpart F.

III. EMPLOYMENT OPPORTUNITIES

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. Sec 1701u) and its related regulations at 24 CFR Part 135.

24 CFR Part 7 and 41 CFR Part 60 Equal employment opportunity without regard to race, sex, color, religion, age, national origin, and disability in federally assisted construction contracts.

IV. LEAD-BASED PAINT

Section 302 of the Lead-Based Pain Poisoning Prevention Act (42 U.S.C. Sec 4831(b)) and the procedures established by the Department thereunder; 24 CFR Part 35, Subpart B imposing certain requirements on disclosure of lead based paint hazards.

V. ENVIRONMENTAL LAW AND AUTHORITIES

Environmental Review Procedures for Recipients assuming HUD Environmental Responsibilities, 24 CFR Parts 50 and 58, as amended.

In accordance with the provisions of law cited in §58.1(b), the responsible entity must assume the environmental responsibilities for projects under program cited in §58.1(b), and in doing so must comply with the provisions of the National Environmental Policy Act of 1969, as amended and the Council on Environmental Quality regulations contained in 40 CFR parts 1500 through 1508. This includes responsibility for compliance with the applicable provisions and requirements of the Federal laws and authorities specified in §58.5 [below]. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) Historic Properties

(1) The National Historic Preservation Act of 1966 as amended (16 U.S.C. 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2), except as provided in §58.17 for Section 17 projects.

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).

(3) Federal historic preservation regulations as follows:

(i) 36 CFR Part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG) and

(ii) 36 CFR part 801 with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), particularly section 3 (16 U.S.C. 469a-1).

(b) Floodplain management and wetland protection

(1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A).

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR 1977 Comp., p. 121 particularly sections 2 and 5.

(3) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(c) Coastal Zone Management

(1) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as amended, particularly sections 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) Sole source aquifers

(1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424(e) (42 U.S.C. 300h-3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency- 40 CFR Part 149).

(e) Endangered Species

(1) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536)

(f) Wild and scenic rivers

(1) The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly sections 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) Air quality

(1) The Clean Air Act (42 U.S.C. 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency- 40 CFR parts 6, 51, and 93).

(h) Farmland protection

(1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture -7 CFR part 658).

(i) HUD environmental standards

(1) Applicable criteria and standards specified in HUD environmental regulations (24 CFR part 51) other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303(a)(3).

(2) HUD Notice 79-33, Policy Guidance to Address the Programs Posed by Toxic Chemicals and Radioactive Materials, September 10, 1979. All properties that are being proposed for use must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property. The environmental review of non-residential property, (or multi-family housing with five or more dwelling units, including leasing) must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any hazards. Particular attention must be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained hazardous wastes. The PHRC shall use current techniques by qualified professionals to undertake investigations determined necessary.

(j) Environmental justice

(1) Executive Order 12898 of February 11, 1994---Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629), 3 CFR, 1994 Comp., p. 859.

(k) Other requirements- See 24 CFR Part 58.6.

VI. ACQUISITION/RELOCATION

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Sec. 4601 et seq.), 49 CFR Part 24; 24 CFR Part 42, and 24 CFR §570.606.

VII. FAITH-BASED ACTIVITIES

Executive Order 13279 of December 12, 2002- Equal Protection of the Laws for Faith-Based and Community Organizations, (67 FR 77141)

VIII. IMMIGRATION

Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et seq.) specifically including the provisions requiring employer verifications of legal status of its employees.

IX. FISCAL ADMINISTRATIVE

24 CFR Parts 84 and 85, 24 CFR Part 45, and OMB Circular A-122- Uniform Administrative Requirements for Grant and Agreements with Institutions of Higher Education, Hospitals and Non-Profit Organizations; regulations that identify cost principals for non-profit organizations. The applicable sections of 24 CFR Parts 84 and 85 are set forth at 24 CFR §570.502.

ADDENDUM B

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, 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 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.

GRANTEE:
PAISANO HOUSING REDEVELOPMENT CORPORATION

By: _____
NAME (PRINTED)/TITLE: _____

(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.

Exhibit A

DRAFT 3/12/2012

DEED OF TRUST

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

DATE: _____, 20__

Grantor: PAISANO HOUSING REDEVELOPMENT CORPORATION

Grantor's Mailing Address (including county):

c/o The Housing Authority of the City of El Paso (HACEP)
5300 E. Paisano Drive
El Paso, Texas 79905
El Paso County, Texas

Trustee: The City Clerk of the City of El Paso

Trustee's Mailing Address (including county):

#2 Civic Center Plaza
El Paso, Texas 79901-1196
El Paso County, Texas

Beneficiary: The City of El Paso, Texas

Beneficiary's Mailing Address (including county):

Director
Department of Community & Human Development
#2 Civic Center Plaza
El Paso, Texas 79901-1196
El Paso County, Texas

Forgivable Deferred Payment Loan: \$1,700,000.00

Date: _____, 20__

Amount: ONE MILLION SEVEN HUNDRED THOUSAND AND NO/100THS
DOLLARS (\$1,700,000.00)

Maker: PAISANO HOUSING REDEVELOPMENT CORPORATION

DEED OF TRUST
Paisano Housing Redevelopment Corporation
Elvin Estates (Elvin Way/Independence Drive)

Terms of Payment: See Note and the parties' NSP Development Agreement (the "Agreement"), dated _____, 2012, all executed between Grantor and Beneficiary. Any default thereunder shall be a default hereunder, including, but not limited to, default by failing to meet the affordability requirements contained therein and in 24 CFR §92.252 for the specified time period.

Property Encumbered by this Deed of Trust (including any improvements):

Tracts 7-K, 7-K-1, 7-L-1-A, 7-L-1-B, Block 35, YSLETA GRANT, in the City of El Paso, El Paso County, Texas, according to the resurvey of said YSLETA GRANT made by El Paso County, Texas, for tax purposes (the "Property").
[Property Legal Description to be revised following replat prior to Closing]

Prior Lien(s) (including recording information):

NONE

For value received and to secure payment of the note and performance of all obligations in the note, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. Grantor agrees to perform all covenants noted below:

GRANTOR'S OBLIGATIONS

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due;
3. preserve lien priority as it is established in this deed of trust;
4. maintain, in a form acceptable to Beneficiary, an insurance policy that:
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
 - b. contains an 80% coinsurance clause;
 - c. provides fire and extended coverage, including windstorm coverage;
 - d. protects Beneficiary with a standard mortgage clause;
 - e. provides flood insurance at any time the property is in a flood hazard area;and
 - f. contains such other coverage as Beneficiary may reasonably require;
5. comply at all times with the requirements of the 80% coinsurance clause;
6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten days before expiration;
7. keep any buildings occupied as required by the insurance policy; and
8. pay off all prior notes that Grantor is personally liable to pay regarding this property and abide by all prior lien instruments.

9. comply at all times with the terms, representations, and conditions of the Note, and with all terms and conditions as specified in the parties' Agreement, incorporated by reference herein and secured by this deed of trust, including, but not limited to, the following covenants:
 - a. comply with 24 CFR §92.254 Qualification as Affordable Housing: Rental Housing
 - b. comply with the requirements of 24 CFR §92.252 and the affordability period(s) set forth in the parties' Agreement concerning maximum rent limitations and tenant eligibility for NSP-assisted unit occupancy.

BENEFICIARY'S RIGHTS

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
3. Beneficiary may apply any proceeds received under the insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy.
4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, Beneficiary may:
 - a. declare the unpaid principal balance and earned interest on the note immediately due;
 - b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
 - c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.
6. If the Property, or any interest therein, is sold or transferred or any lien or encumbrance is created against the property without the prior written consent of the Beneficiary, the note secured by this deed of trust may, at the option of the holder thereof, be accelerated and the entire amount thereof shall be then immediately due and payable and the Beneficiary shall be entitled to foreclose the liens securing the note if it is not paid in full upon acceleration.

TRUSTEE'S DUTIES

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;

2. sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
 - a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;
 - b. to Beneficiary, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
 - c. any amounts required by law to be paid before payment to Grantor; and
 - d. to Grantor, any balance.

GENERAL PROVISIONS

1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting such sums.
7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts from the property as long as Grantor is not in default under the note or this deed of trust. Grantor will apply all rent and other income and receipts from the property to payment of the note and performance of this deed of trust, but if the rent and other income and receipts from the property exceed the amount due under the note and deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the note or performance of this deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts from the property. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property. Beneficiary shall apply all rent and other income and receipts from the property collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the note and this deed of trust in the order determined by Beneficiary.

DEED OF TRUST
Paisano Housing Redevelopment Corporation
Elvin Estates (Elvin Way/Independence Drive)

Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes voluntarily or involuntarily bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.

8. When the context requires, singular nouns and pronouns include the plural.

9. The term note includes all sums secured by this deed of trust.

10. This deed of trust shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.

11. If Grantor and Maker are not the same person, the term Grantor shall include Maker.

Grantor: **PAISANO HOUSING REDEVELOPMENT CORPORATION,**

By: _____

Name (printed)/Title: _____

(Execution of this instrument by the above-referenced officer is relied upon by City as an express representation that such officer has authority to execute this document.)

(Acknowledgment)

STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20__, by _____ as _____ of PAISANO HOUSING REDEVELOPMENT CORPORATION, on behalf of said entity.

Notary's Commission Expires:

Notary Public, State of Texas

Notary's name (printed):

DEED OF TRUST
Paisano Housing Redevelopment Corporation
Elvin Estates (Elvin Way/Independence Drive)

AFTER RECORDING RETURN TO:
City of El Paso
Dept. of Community Development
Two Civic Center Plaza, 8th Flr.
El Paso, Texas 79901-1196

PREPARED IN THE OFFICE OF:
City Attorney
City of El Paso
Two Civic Center Plaza, 9th Flr.
El Paso, Texas 79901-1196

Exhibit B

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

DECLARATION CONCERNING COVENANTS AND RESTRICTIONS RUNNING WITH THE LAND

STATE OF TEXAS)
) KNOW ALL MEN BY THESE PRESENTS
COUNTY OF EL PASO)

THIS DECLARATION CONCERNING COVENANTS AND RESTRICTIONS RUNNING WITH THE LAND (the "Declaration") is made as of _____, 20____, by PAISANO HOUSING REDEVELOPMENT CORPORATION, its successors and assigns, organized and existing under the laws of the State of Texas, (the "Owner") and is given as a condition precedent to the award of NSP funds pursuant to Title 24 Code of Federal Regulations ("CFR") Parts 92 and 570 being the regulations of the United States Department of Housing and Urban Development), as amended, to the CITY OF EL PASO, a municipal corporation organized and existing under the laws of the State of Texas (the "City").

RECITALS:

WHEREAS, the Owner is participating in the City's Neighborhood Stabilization Program (NSP) under the U. S. Department of Housing and Urban Development ("HUD") through a loan from the City (the "NSP funds") and the Owner is entering into this Agreement pursuant to the terms of NSP Development Agreement (the "Agreement") dated _____, 2012 with the City related to the construction of 15 NSP -assisted rental units located at the intersection of Elvin Way and Independence Drive in El Paso, Texas, the legal description of which is more particularly set forth in Exhibit "A" hereto (the "Property");

WHEREAS, in connection with the acceptance and as a condition for the receipt of the NSP funds, HUD regulations mandate the enforcement of certain affordability/rent restriction requirements upon the Property for a period of time as specified in the parties' Agreement, and in order to comply with the HUD affordability requirements and to fulfill other obligations required under the Agreement, the Owner has agreed to execute this Declaration and to subject the Property to certain restrictive covenants running with the land.

THIS DOCUMENT IS TO BE FILED IN THE EL PASO COUNTY CLERK'S REAL PROPERTY RECORDS.

As part of the consideration for and as a condition of the City's loan(s) to the Owner, under the above-referenced Agreement, the Owner has agreed to comply with the Code of Federal Regulations, which requires the above-referenced Covenants and Restrictions Running with the Land in consideration of the mutual benefits to the City and the Owner, as set out in various funding agreements, the Owner hereby grants and creates the Covenants and Restrictions

Running with the Land which are set forth below and which shall apply to the Owner's Property, specifically including the property rehabilitated with the funds advanced in the Agreement noted above, and FIFTEEN (15) NSP-assisted rental units built thereon, hereinafter called the "Project".

NOW, THEREFORE, the parties, for and in consideration of the receipt of the NSP funds, and such other covenants and conditions herein contained, do hereby agree for themselves, their heirs, executors, administrators, and assigns, as follows:

COVENANTS AND RESTRICTIONS

Section I. Income, Rental, Occupancy, and Use Restrictions

1. The Owner shall not convert any units in the Project to condominium ownership or to any form of cooperative ownership.
2. Except to the extent permitted by law, the Owner shall not discriminate against current or prospective tenants on the basis of the receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance programs, or on the basis that such tenants have a minor child or minor children who reside with them. The Owner shall comply with 24 CFR §92.252, specifically to include, but not limited to subsection (d) "Non discrimination against rental assistance subsidy holders".
3. The Owner shall not illegally or unconstitutionally discriminate against or segregate any person or group of persons on account of gender, marital status, race, age, disability, color, religion, creed, national origin or ancestry in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property.
4. The Owner represents, warrants, and covenants throughout the term of this Declaration and in order to satisfy the requirements of 24 CFR §92.252 and the City, that the NSP -assisted units shall meet the following requirements:

(a) *Rent limits.* The Owner shall lease one hundred percent of the NSP - assisted units that are hereby identified as "Low" HOME rent units to qualified tenants whose income is no more than 50% of the City's median income for their household size ("Very Low-Income" tenants). The initial rent schedule for the Property is contained in the parties' Agreement and amendments thereto, which is incorporated and referenced herein for all purposes. The maximum NSP/HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. The City will provide the Owner with information on updated NSP/HOME rent limits on an annual basis or whenever HUD revises the limits. Annually and upon request, the City will review the Owner's request to adjust project rents. The City must review and approve all increases in rents for NSP-assisted units. It is the Owner's responsibility to request an annual increase in rent in accordance with the City's procedures and requirements, as further specified in the parties' Agreement, "NSP

Program Rents and Tenant Eligibility." However, in no event shall the rents for Low-Income and Very Low-Income tenants exceed the most recent HUD determination of federal HOME Program rents for the City of El Paso, Texas.

(b) *Tenant Income Limits.* Income-eligible tenants shall occupy the NSP-assisted units at all times during the term of this Declaration. Tenant income limits for Very Low and Low-Income households shall be determined in accordance with the HUD HOME Rental Housing Income Guidelines, which are periodically adjusted by HUD. The household income of each tenant must be determined initially and in addition, each year the Owner must re-examine each tenant's annual household income. The Owner acknowledges receipt of the City's "Income and Asset Verification Guidelines" (effective May 15, 2007) and agrees to abide by the income and asset verification procedures contained therein and incorporated by reference, 24 CFR Part 5, and the income examination, re-examination, and verification requirements contained in the parties' Agreement.

(c) *Property Standards.* All NSP-assisted units are and shall remain habitable according to city local codes throughout the term of this Declaration.

(d) The tenant income, rent, occupancy, and use restrictions stated herein shall apply for the entire HUD-mandated minimum affordability of **TWENTY (20)** years from the date of project completion, as said term is defined in the parties' Agreement.

Section II. Representations, Covenants, and Warranties of the Owner

1. The Owner intends, declares, and covenants, on behalf of itself and all further owners and operators of the Property that, during the term of this Declaration, all of the covenants and restrictions set forth herein regulating and restricting the use, occupancy, and transfer of the Property: (i) shall be and are covenants running with the Property, encumbering the Property, and are binding upon the Owner's successors in title and all subsequent owners and operators of the Property; (ii) are not merely personal covenants of the Owner; and (iii) shall bind the Owner and its and their respective successors and assigns grantees and lessees, claimants during the term of this Declaration. The Owner hereby agrees that any and all requirements of the laws of the State of Texas to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full.
2. The Department of Housing and Urban Development and the City of El Paso, Texas shall be deemed beneficiaries of the covenants and restrictions contained herein, and such covenants and restrictions shall run in favor of HUD and the City of El Paso for the entire term during which such covenants and restrictions shall be in force and effect. Such beneficiaries shall have the right to exercise all the rights and remedies hereunder, and to maintain any actions at law or suits in equity or other property proceedings to enforce the curing of any breach hereof along with any other relief as may be available. Owner agrees that the City and HUD may examine any of its records pertaining to the requirements hereof.

3. All references herein to Owner are understood to include all successors, assigns, grantees, lessees and all other claimants to Owner's Property, which are not prior in title hereto, whether or not their claim is through Owner.
4. Owner shall not convey, transfer, sell or encumber all or any portion of the Property, or permit the same, without the prior written consent of the City.
5. Notwithstanding anything in this instrument to the contrary, the provisions hereof are subordinate to all applicable HUD mortgage insurance regulations and related administrative requirements. In the event of any conflict between the provisions in this instrument and the provisions of any applicable HUD regulations, related HUD administrative requirements, or HUD/FHA loan documents, the HUD regulations, related administrative requirements or loan documents shall control.
6. During any period of time in which the Owner is not in compliance with the income or rent guidelines for any HOME-assisted unit(s), the Owner shall either (1) repay the subsidy provided by the City under the parties' Agreement for the unit not in compliance; or (2) extend the affordability period of the unit(s) for the length of time they were not in compliance.

Section III. Term of Declaration

1. This Declaration shall be in effect for a total affordability period of TWENTY (20) years commencing on the final date of initial occupancy of the total NSP-assisted rental units on the Property, but not later than the date of project completion as said term is defined in the parties' Agreement, and expiring TWENTY (20) years from said date of project completion.
2. THIS DECLARATION AND THE TOTAL AFFORDABILITY PERIOD SPECIFIED HEREIN SHALL REMAIN IN EFFECT FOR NOT LESS THAN THE TOTAL AFFORDABILITY PERIOD WITHOUT REGARD TO THE TERM OF ANY LOAN OR MORTGAGE OR THE TRANSFER OF OWNERSHIP.
3. Upon the expiration of the term hereof, the City agrees to promptly execute and deliver to Owner, a statement and documentation to certify that the covenants and restrictions contained herein have expired and terminated and if requested, a release instrument duly executed and in recordable form for filing in the El Paso County Real Property Records.

Section IV. Record Keeping

1. During the term of this Declaration, the Owner shall maintain and make available to the City any and all records, documents, and policies necessary to demonstrate compliance with 24 CFR Parts 92 and 570 and the parties' Agreement.
2. The Owner shall maintain all records as required by 24 CFR §92.508 and the City as applicable and shall take any and all actions reasonably required by the City to substantiate the Owner's compliance. The Owner shall submit any other information, documents, or

certifications requested by the City, which the City shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the restrictions and covenants specified in this Declaration. The City or its designee may enforce this Declaration and the parties' Agreement of which it is a part in the event the Owner fails to satisfy any of the requirements herein.

Section V. Miscellaneous

1. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of the Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
2. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. The City, and the Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

If to the City:

City of El Paso
Housing Programs Division,
Community and Human Development Department
2 Civic Center Plaza, 8th Floor
El Paso, Texas 79901

If to the Owner:

Paisano Housing Redevelopment Corporation
c/o The Housing Authority of the City of El Paso (HACEP)
5300 E. Paisano Drive
El Paso, Texas 79905

3. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with 24 CFR Parts 92 and 570, the City, and any and all applicable rules, regulations, policies, rulings, or other official statements pertaining to NSP assistance. The City, together with Owner, may execute and record any amendment or modification to this Declaration and such amendment or modification shall be binding.
4. This Declaration shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, The Owner hereby executes this Declaration Concerning Covenants and Restrictions Running with the Land as of the year and day of the acknowledgment(s).

OWNER: **PAISANO HOUSING REDEVELOPMENT CORPORATION**

Date: _____

By: _____
Name (printed)/Title: _____

(The foregoing representative(s) of Owner expressly represents that execution of this Agreement has been lawfully authorized by the Owner).

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20____,
by _____ as _____ of PAISANO HOUSING
REDEVELOPMENT CORPORATION., on behalf of said entity.

Notary's commission expires:

Notary Public, State of Texas
Notary's Name (Printed):

WHEN RECORDED, RETURN TO:

City of EL Paso, Texas
Community and Human Development Department
2 Civic Center Plaza, 8th Floor
El Paso, Texas 79901
Attn: Housing Programs Manager

EXHIBIT "A"

[To be replaced with revised legal description after review -
prior to closing]

Tracts 7-K, 7-K-1, 7-L-1-A, 7-L-1-B, Block 35, YSLETA
GRANT, in the City of El Paso, El Paso County, Texas,
according to the resurvey of said YSLETA GRANT made by
El Paso County, Texas, for tax purposes.

Exhibit A

11-1039-105 CHD NSP 12 K Covenants - Paisano Housing Redevelopment Corporation - Elvin Estates
101250 MAT

Exhibit C

FORGIVABLE DEFERRED PAYMENT LOAN PROMISSORY NOTE (Neighborhood Stabilization Program)

\$1,700,000.00

El Paso, Texas

_____, 20____

FOR VALUE RECEIVED, PAISANO HOUSING REDEVELOPMENT CORPORATION, hereinafter referred to as "Maker", promises to pay to the order of THE CITY OF EL PASO (the "City") at its office at Two (2) Civic Center Plaza in El Paso, El Paso County, Texas, the principal sum of ONE MILLION SEVEN HUNDRED THOUSAND AND 00/100THS DOLLARS (\$1,700,000.00) or so much thereof as may be advanced, in legal and lawful money of the United States of America, without interest thereon.

The principal on this Note is payable on the first day of each month with an initial payment of SEVEN THOUSAND EIGHT FOUR AND 13/100THS DOLLARS (\$7,084.13) and 239 equal monthly installments of SEVEN THOUSAND EIGHTY THREE AND 13/100THS DOLLARS (\$7,083.33) to be paid on the first day of the month as provided in the Loan Note between Maker and the City related to the property to be constructed located on certain real property in El Paso, El Paso County, Texas, as fully described in a certain Deed of Trust (With Power of Sale) of even date herewith, and incorporated by reference herein. So long as Maker complies with the terms and conditions of the NSP Development Agreement dated _____, 2012, such monthly payment shall be deferred and the original principal balance shall be forgiven in its entirety TWENTY (20) years after the date of project completion, as said term is defined in the parties' NSP Development Agreement, provided Maker has remained in full compliance. Such payments are to be made in lawful money of the United States at the principal office of THE CITY OF EL PASO, 2 Civic Center Plaza, in El Paso, Texas 79901-1196, or at such other place as shall be designated by THE CITY OF EL PASO.

The forgivable deferred payment loan evidenced by this Note is made for the purpose of the construction of a 15-unit affordable housing development on the property described in the Deed of Trust (With Power of Sale) of even date herewith. As a condition of receiving this loan, Maker agrees to abide by all the terms and conditions of this Note, the parties' NSP Development Agreement, the associated Declaration Concerning Property Covenants Running with the Land of even date herewith, and Title 24 Code of Federal Regulations ("CFR") Parts 92 and 570, the implementation regulations of the United States Department of Housing and Urban Development HOME Investment Partnership Act and Program and Community Development Block Grant Program.

Except as otherwise expressly provided herein, each Maker, surety and endorser of this Note expressly waives all notices, demands for payment, presentation for payments, notices of intention to accelerate the maturity, protest and notice of protest, as to this Note and as to each, every and all installment hereof, and each agrees that the time of payment hereof may be extended by the principals without further consent of any accommodation Maker, endorser, guarantor or surety.

In the event this Note is placed in the hands of an attorney for collection or collected through any of the courts including bankruptcy proceedings, or if suit is brought on this Note, the Maker(s) hereof agree and promise to pay a reasonable attorney's fee for collection.

As a condition precedent to a transfer of all or any portion of the fee title of the property secured under this Note, Maker shall obtain the written consent of City. As a condition precedent to the assumption of this Note, Maker shall obtain the written consent of City. If, in either instance, as specified in this paragraph, Maker fails to obtain such written consent of City, City may, at its option, declare all of the balance of this Note, including the entire balance of principal on this Note immediately due and payable. If City does choose in its own discretion to give its written consent to Maker to transfer all or any portion of the fee title of the property secured under this Note, or if City does choose in its own discretion to give its written consent to Maker for a third-party to assume this Note, City may, at its option, convert this forgivable deferred payment loan to an amortized loan upon such terms and conditions as City may, in its discretion, specify. This Note is not assignable or assumable without the express written consent of the City. Any sale, transfer, leasing or other disposition of the property in violation of this paragraph shall not relieve the Maker of any obligation or obligations under this Note or any related document.

By the terms of this Note, it is to be understood that for each month that Maker has made all payments due on the Loan Note of even date herewith and complied with the NSP Development Agreement noted herein (incorporated by reference, as though set forth at length) and remains in full compliance with all terms and conditions of all related notes and all security documents securing same, and if Maker has fully complied with all the applicable terms of the NSP Development Agreement and all contracts of even date herewith and incorporated by reference herein and made a part hereof for all purposes, City shall not require Maker to make the monthly installments due under this Note to City for that particular month only, as described in paragraph two (2) above. However, if in any particular month, Maker breaches any term or condition of this Note, the aforementioned Loan Note or the NSP Development Agreement, as described directly hereinabove, City at its option, may declare the entire balance of this Note immediately due and payable.

In the event of a default by Maker with respect to the hereinabove NSP Development Agreement or any other security document related hereto, and referenced herein, and upon a failure to cure any such default before the expiration of ten (10) days from receipt by Maker of notice of any such default, such notice to be given by certified mail, return receipt requested, or by personal service, the holder of this Note shall have the right and option, in addition to any and all other rights, remedies or recourses available to it, to declare the unpaid balance of principal on this Note at once due and payable, in addition to any and all other rights, remedies or recourses available to it, proceed with the foreclosure of the liens securing payment hereof in the manner provided in the Deed of Trust (With Power of Sale) referenced herein, or any other security document, or in any other manner allowed by law or in equity. Failure to exercise such right upon any default or any occurrence shall not constitute a waiver of the right to exercise it in the event of any subsequent default or occurrence of the same or some other character.

This Note is secured by a Deed of Trust (With Power of Sale) of even date herewith, and referenced herein on the property identified therein, and is expressly subject to the terms and conditions as specified in the NSP Development Agreement, incorporated by reference herein and made a part hereof for all purposes; all rights and remedies of City as specified in such above-referenced contracts as to the acceleration of the indebtedness evidenced by this Note, and any other terms and conditions of such contracts are expressly reserved herein and incorporated herewith.

This Note and all of the covenants, promises and agreements contained herein shall be binding upon and shall inure to the benefit of Maker and City and their respective executors, administrators, successors and assigns.

Any prepayment must be in accordance with the terms specified in that certain NSP Development Agreement referenced herein.

If any provision of this Note shall be found to be unenforceable or illegal, the remaining provisions shall not be affected thereby and shall remain in full force and effect.

APPLICABLE LAW: THIS NOTE SHALL BE GOVERNED IN ALL RESPECT, INCLUDING WITHOUT LIMITATION VALIDITY, INTERPRETATION AND EFFECT, BY AND SHALL BE ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

ENTIRE AGREEMENT: THIS NOTE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Maker has duly executed, and is liable hereon as of the date and year above first written.

**MAKER:
PAISANO HOUSING
REDEVELOPMENT CORPORATION**

By: _____
Name (printed)/Title: _____

(By signing on behalf of Maker, Maker's representative(s) expressly represents this action has been fully authorized by Maker in any and all forms required by Maker to constitute a binding contract)

[Acknowledgment on Following Page]

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 20____, by Gerald Cichon, Chief Executive Officer of PAISANO HOUSING REDEVELOPMENT CORPORATION, on behalf of said entity.

Notary's Commission Expires:

Notary Public, State of Texas
Notary's name (printed):

Sample NSP Single-Family Rental Development Budget

Project Name: NSP Elvin States
Developer: Paisano Housing Redevelopment Green Cells are User Input
Address: Elvin St. El Paso TX White Cells are Automatically Calculated Values

Uses

Acquisition Costs:

Acquisition: Land	\$	-
Acquisition: Buildings	\$	-
Total Acquisition:	\$	-

Construction:

Contract with GC (incl profit, OH, gen conditions)	\$	1,400,000
Bond Premium	1%	\$ 17,500
Construction Contingency	5%	\$ 70,000
Total Construction:	\$	1,487,500

Soft Costs:

Building Permit, License & Fees	\$	300
Architect or Rehab Specialist - Specs/Estimates	\$	600
Engineering	\$	-
Environmental: Site-Specific Review	\$	300
Acquisition Closing - Legal and Recording Fees	\$	500
Title Search & Title Insurance	\$	600
Survey	\$	400
Appraisal & Analysis of Rent Comparables	\$	600
Builder's Risk and/or Casualty Insurance	\$	800
Carrying Costs - Real Estate Taxes	\$	700
Carrying Costs - Utilities	\$	600
Carrying Costs - Site Security	\$	1,000
Carrying Costs - Grounds Maintenance	\$	800
Furniture Fixtures & Equipment	\$	-
Prefunded Replacement Reserve	\$	1,500
Prefunded Operating and/or Rental Loss Reserves	\$	1,350
Seller Legal and Recording Costs	\$	400
Tenant Relocation	\$	-
Rent-Up Marketing Costs	\$	200
Other	\$	-
Soft Cost Contingency	10%	\$ 1,065
Administrative Cost - Developer	10%	\$ 149,922
Total Soft Costs:	\$	161,637

Total Development Cost:	\$	1,649,137
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Sources

Supportable Debt (see Operating Budget)	\$	(9)
Additional Sources of Funds:		
NSP Soft 2nd Mortgage	\$	1,649,146
Owner/Investor Equity	\$	-
Other	\$	-
Total Development Sources:	\$	1,649,137

Exhibit "D"

Operating

Project Name NSP Elvin States

Address: Elvin St. El Paso TX

Tot NSP Units Serving Households below 50% AMI:

15

Income:

Rent:	# Units	Monthly Rent	Annual Rent
One Bedroom - Low Rent	10	\$ 463	\$ 55,560
One Bedroom - High Rent	0		\$ -
Two Bedroom - Low Rent	5	\$ 555	\$ 33,300
Two Bedroom - High Rent	0		\$ -
Total Units	15		
Gross Rent			\$ 88,860
Less:			
Vacancy		5.0%	\$ (4,443)
Bad Debt		2.0%	\$ (1,777)
Gross Effective Income:			\$ 82,640

Expenses:

Administrative		Annual
Advertising & Marketing		\$ -
Mgmt Fee (% of collections)	8.0%	\$ 6,611
Administrative		\$ 3,225
Legal		\$ 1,350
Accounting		\$ -
Office Supplies		\$ -
Credit Checks		\$ -
Leasing Fees		\$ -
Other		
Total Administrative:		\$ 11,186
Payroll		
Administrative Payroll		\$ 5,250
Maintenance Payroll		\$ 11,250
Fringe	32.0%	\$ 5,280
Payroll Taxes	7.65%	\$ 1,262
Total Payroll:		\$ 23,042
Maintenance		
Decorating (unit make ready)		\$ 1,000
Repairs		\$ 800
Security		\$ 750
Grounds (landscaping, etc.)		\$ 2,000
Building supplies		\$ 150
Service contracts (HVAC)		\$ -
Other		\$ -
Total Maintenance:		\$ 4,700
Operating:		
Fuel (heating & hot water)		\$ 3,600
Electric		\$ 9,000
Water/Sewer		\$ 4,500

Sample Pro Forma Single Family Rentals

Trash removal	\$	-
Janitorial	\$	-
Exterminating	\$	900
Telephone	\$	-
Other		
Total Operating Costs:	\$	18,000
Taxes & Insurance:		
Real Estate Taxes	\$	13,112
Insurance	\$	3,000
Other Taxes, Licenses, Fees	\$	600
Total Taxes:	\$	16,712
Total Annual Operating Expenses:	\$	73,640

NOI Before Reserves & Debt Svc:	\$	9,000
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Reserves:

	Per Unit	Annual
Replacement Reserve	\$ 500	\$ 7,500
Operating Reserve	\$ 100	\$ 1,500
Cashflow Before Debt Service:		\$ (0)
Debt Service (See Terms Below)		(\$0.45)
Cashflow After Debt Service		\$0.00

Supportable Debt Service Calculation:

Required Debt Service Coverage (Ratio):	1
Loan Amortization Period (in years)	20
Interest Rate	0%

Supportable Debt on Terms Above:	\$	(9.00)
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(This figure ties to the Development Budget/Sources & Uses)

Sample Single-Family Rental 20-Year Cash Flow Projection

Project Name: **NSP Elvin States**

Project Address:

Elvin St. El Paso TX

Income Adjuster: 2.25%

Expense Adjuster:

2.45%

Income:	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Gross Effective Income	\$ 82,640	\$ 84,499	\$ 86,400	\$ 88,344	\$ 90,332	\$ 92,364	\$ 94,442	\$ 96,567	\$ 98,740	\$ 100,962

Expenses:

Administrative	\$ 11,186	\$ 11,460	\$ 11,741	\$ 12,029	\$ 12,324	\$ 12,626	\$ 12,935	\$ 13,252	\$ 13,577	\$ 13,910
Payroll	\$ 23,042	\$ 23,607	\$ 24,185	\$ 24,778	\$ 25,385	\$ 26,007	\$ 26,644	\$ 27,297	\$ 27,966	\$ 28,651
Maintenance	\$ 4,700	\$ 4,815	\$ 4,933	\$ 5,054	\$ 5,178	\$ 5,305	\$ 5,435	\$ 5,568	\$ 5,704	\$ 5,844
Operating	\$ 18,000	\$ 18,441	\$ 18,893	\$ 19,356	\$ 19,830	\$ 20,316	\$ 20,814	\$ 21,324	\$ 21,846	\$ 22,381
Taxes & Insurance	\$ 16,712	\$ 17,121	\$ 17,540	\$ 17,970	\$ 18,410	\$ 18,861	\$ 19,323	\$ 19,796	\$ 20,281	\$ 20,778
Total Expense:	\$ 73,640	\$ 75,444	\$ 77,292	\$ 79,187	\$ 81,127	\$ 83,115	\$ 85,151	\$ 87,237	\$ 89,374	\$ 91,564

NOI (w/o Res & Debt Svc)	\$ 9,000	\$ 9,055	\$ 9,108	\$ 9,157	\$ 9,205	\$ 9,249	\$ 9,291	\$ 9,330	\$ 9,366	\$ 9,398
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Replacement & Op Reserves	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000
Debt Service	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)

Cashflow After Debt Svc:	\$0	\$55	\$108	\$157	\$205	\$249	\$291	\$330	\$366	\$398
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Income:	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
Gross Effective Income	\$ 103,234	\$ 105,557	\$ 107,932	\$ 110,360	\$ 112,843	\$ 115,382	\$ 117,978	\$ 120,633	\$ 123,347	\$ 126,122

Expenses:

Administrative	\$ 14,251	\$ 14,600	\$ 14,958	\$ 15,324	\$ 15,699	\$ 16,084	\$ 16,478	\$ 16,882	\$ 17,296	\$ 17,720
Payroll	\$ 29,353	\$ 30,072	\$ 30,809	\$ 31,564	\$ 32,337	\$ 33,129	\$ 33,941	\$ 34,773	\$ 35,625	\$ 36,498
Maintenance	\$ 5,987	\$ 6,134	\$ 6,284	\$ 6,438	\$ 6,596	\$ 6,758	\$ 6,924	\$ 7,094	\$ 7,268	\$ 7,446
Operating	\$ 22,929	\$ 23,491	\$ 24,067	\$ 24,657	\$ 25,261	\$ 25,880	\$ 26,514	\$ 27,164	\$ 27,830	\$ 28,512
Taxes & Insurance	\$ 21,287	\$ 21,809	\$ 22,343	\$ 22,890	\$ 23,451	\$ 24,026	\$ 24,615	\$ 25,218	\$ 25,836	\$ 26,469
Total Expense:	\$ 93,807	\$ 96,106	\$ 98,461	\$ 100,873	\$ 103,344	\$ 105,877	\$ 108,472	\$ 111,131	\$ 113,855	\$ 116,645

NOI (w/o Res & Debt Svc)	\$ 9,427	\$ 9,451	\$ 9,471	\$ 9,487	\$ 9,499	\$ 9,505	\$ 9,506	\$ 9,502	\$ 9,492	\$ 9,477
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Replacement & Op Reserves	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000
Debt Service	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)	(\$0)

Cashflow After Debt Svc:	\$427	\$451	\$471	\$487	\$499	\$505	\$506	\$502	\$492	\$477
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ELVIN ESTATES SCHEDULE

ID	Task Name	Mar '12	Apr '12	May '12	Jun '12	Jul '12	Aug '12	Sep '12	Oct '12	Nov '12	Dec '12	Jan '13
1	ELVIN ESTATES		▶									
2	RFP Advertising		█									
3	RFP Opening Date			◆								
4	RFP Review/Selection			█								
5	HACEP Board Approval				◆							
6	Contract Award				█							
7	A/E Design					█						
8	Permits						█					
9	Construction							█				↓

Project: Elvin Estates Date: Fri 3/30/12	Task		Milestone		External Tasks	
	Split		Summary		External Milestone	
	Progress		Project Summary		Deadline	

EXHIBIT "F"
Elvin Estates
Paisano Housing Redevelopment Corporation

REFERENCE PAGES 5-6 OF THE HOUSING PROGRAMS HANDBOOK (Revised 2/3/09)

Number of Units Fifteen units (10 one-bedroom and 5 two-bedroom units) will be rented to households at the Low HOME rent to households whose income is $\leq 50\%$ of Area Median Income (AMI).

The owner will pay all utilities and provide refrigerators and stove.

Ten 1-bedroom Units

Income Level $\leq 50\%$ of Area Median Income

Rents – The lesser of 2012 Fair Market or Low HOME Rent

Low HOME Rent	\$463
Less Utility Allowance	<u>- 0</u>
Maximum Rent	\$463

Five 2-bedroom Units

Income Level $\leq 50\%$ of Area Median Income

Rents – The lesser of 2012 Fair Market or Low HOME Rent

Low HOME Rent	\$555
Less Utility Allowance	<u>- 0</u>
Maximum Rent	\$555

Maximum Rents are guidelines that indicate the most the owner will be allowed to charge based upon HOME Program Rents and Incomes. The maximum rents are the lesser of the Fair Market Rents or the Low Home Rents. The Rent and Income guidelines are updated on an annual basis and usually become effective the later part of April. If the guidelines for FY 2012-2013 change prior to project completion, the above rents will be updated accordingly.

Affordability Period is **20 years**

R. Tillman March 29, 2012

EXHBIT "G"
Elvin Estates
Paisano Housing Redevelopment Corporation

HOME PROGRAM RENTS AND INCOMES 2012-2013
UPDATED ANNUALLY FOR THE CITY OF EL PASO

AS PUBLISHED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 IN THE FEDERAL REGISTER

FY 2012 HOME PROGRAM RENTS						
EFFECTIVE FEBRUARY 9, 2012						
(All utilities paid and includes appliances)						
PROGRAM	SRO	EFFICIENCY	1-BDRM	2-BDRM	3-BDRM	4-BDRM
FAIR MARKET RENT	391	521	559	666	955	1133
LOW (50%) HOME RENT	324	432	463	555	641	715
HIGH (65%) HOME RENT	406	541	581	699	800	873
MINIMUM SIZE (SQ. FT) R.= REHAB, N=NEW	125 (R) 150 (N)	300	450	750	900	1000

At least 20 percent of the HOME-assisted units in a project with five or more rental units must be occupied by very low-income families at rents not to exceed the low HOME rent

HOME RENTAL HOUSING INCOME GUIDELINES 2012-2013			
EFFECTIVE FEBRUARY 9, 2012			
NUMBER IN FAMILY	VERY LOW INCOME LIMIT FOR FAMILIES OCCUPYING NOT LESS THAN 20% OF THE UNITS (50% OF MEDIAN INCOME)	INCOME LIMIT FOR FAMILIES OCCUPYING NOT LESS THAN 100% OF THE UNITS (60% OF MEDIAN INCOME)	LOW-INCOME LIMIT FOR FAMILIES OCCUPYING NOT MORE THAN 10% OF THE UNITS (80% OF MEDIAN INCOME)
1	\$17,300	\$20,760	\$27,650
2	\$19,750	\$23,700	\$31,600
3	\$22,200	\$26,640	\$35,550
4	\$24,650	\$29,580	\$39,450
5	\$26,650	\$31,980	\$42,650
6	\$28,600	\$34,320	\$45,800
7	\$30,600	\$36,720	\$48,950
8	\$32,550	\$39,060	\$52,100

EXHIBIT " H "

HOME PROGRAM RENTS & TENANT ELIGIBILITY

I. HOME Rent Limitations and the Affordability Period

A. For Projects with 1 to 4 HOME-assisted units, all the HOME-assisted units must be offered at rents the lesser of: (1) "Fair Market" or (2) "High" HOME rent level, to low income households, as defined by HUD ($\leq 60\%$ AMI). 24 CFR §92.252(a).

The HOME-assisted units must meet the HUD minimum affordability requirements for not less than the applicable period specified in the following table, beginning after project completion:

Rental Housing Activity	HUD Minimum Period of Affordability in Years
Rehab/Acquisition:	
<\$15,000 per unit	5
\$15,000 to \$40,000 per unit	10
>\$40,000 per unit	15
New Construction, any amount	20

24 CFR §92.252(e).

B. For Projects with 5 or more HOME-assisted units, at least 20% of the HOME-assisted units must be offered at rents at the "Low" HOME rent to Very Low Income households, as defined by HUD ($\leq 50\%$ AMI). The remaining 80% must be offered at rents the lesser of: (1) "Fair Market" or (2) "High" HOME rent level, to low income households, as defined by HUD ($\leq 60\%$ AMI).

24 CFR §92.252(b).

The HOME-assisted units must meet the HUD minimum affordability requirements for not less than the applicable period specified in the following table, beginning after project completion:

Rental Housing Activity	HUD Minimum Period of Affordability in Years
Rehab/Acquisition:	
<\$15,000 per unit	5
\$15,000 to \$40,000 per unit	10
>\$40,000 per unit	15
New Construction, any amount	20

24 CFR §92.252(e).

II. Initial Rent Schedule and Subsequent Rental Increases During the Affordability Period

A. Initial Rent Schedule (24 CFR §92.252(c))

The City must review and approve rents proposed by the owner for the HOME-assisted units (the maximum rent limitations). For all units subject to the maximum rent limitations for which the tenant is paying utilities and services, the City must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services (excluding telephone). The initial rent schedule for the Project shall be as contained in the parties' HOME Program Written Agreement for the Project and any amendments thereto.

The HOME rent limits provided by HUD include average occupancy per unit and adjusted income assumptions. 24 CFR §92.252(b)(1).

B. Subsequent Rent Increases During the Affordability Period (24 CFR §92.252(f))

The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. The City will provide the Borrower with information on updated HOME rent limits and utility allowances on an annual basis or whenever HUD revises the limits, so that rents may be adjusted (not to exceed the updated maximum HOME rent limits).

Annually and upon request, the City will review any Borrower's request to adjust project rents. The City must review and approve all increases in rents. It is the Borrower's responsibility to request an annual increase in rent in accordance with the following procedures and requirements:

(1) Recalculation: The Borrower shall recalculate and submit to the City for review such recalculations and the monthly rent to be charged for each unit, twelve (12) months from the date of the first rental by the Borrower, and once annually thereafter for the entire affordability period in effect for the project. Said calculations are to be sent to the attention of and for the approval of the Housing Programs Division of the City's Community and Human Development Department ninety (90) days prior to the date the Borrower expects to have the rent increase to take effect. The recalculation shall be based upon the most recent HUD determination of federal HOME Program Rents for the City of El Paso.

(2) Approval Process: The City will review the Borrower's calculations and determine whether the calculations are correct, and the Borrower shall be so notified. In the event that the Borrower is notified of the City's disapproval, the adjusted rent schedule may not be used for the Project's HOME-assisted units. The Borrower shall promptly meet with the City to resolve the monthly rent to be charged for each HOME-assisted unit in the Project.

All rents increases are subject to the provisions of outstanding leases and no unit's rent in the Project may be increased until one year has passed since the last increase for that unit. The Borrower must provide each tenant not less than 30 days prior written notice before implementing any increase in rents.

The Borrower must annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance.

II. HOME Program Tenant Income Limitations/Tenant Eligibility

A. Maximum Tenant Income (24 CFR §§92.203, 92.252(h))

There are income targeting requirements for the HOME Program and for all HOME-assisted Projects. Tenant income limits for Very Low and Low-Income households are determined in accordance with the HUD HOME Rental Housing Income Guidelines, which are periodically adjusted by HUD.

The household income of each tenant must be determined initially and in addition, each year during the affordability period for the Project, the Borrower must re-examine each tenant's annual household income. The Borrower acknowledges receipt of the City's "Income and Asset Verification Guidelines" (effective May 15, 2007) and agrees to abide by the income and asset verification procedures contained therein and incorporated by reference, in addition to the following income examination and verification requirements:

(1) In order to determine whether a prospective tenant or a tenant is a Very Low and Low-Income Household, the Borrower shall ascertain the annual gross income of all members of the household. Annual income is the anticipated total gross income from all sources to be received by each of the household members, including all income derived from assets. The Borrower will acquire all required income documentation and will submit the same to the City's Housing Programs Division for review and approval prior to occupancy. The Borrower is required to verify income annually after initial occupancy to determine income eligibility prior to lease renewal. The Borrower shall consult with the City's Housing Programs Division to obtain advice and guidance with respect to income determinations.

(2) The Borrower must verify all income, assets, household characteristics, and circumstances that affect tenant income/asset eligibility in accordance with 24 CFR Part 5 and the City's Income and Asset Verification Guidelines, as may be amended from time to time. Written verification directly from the source must be obtained when possible. The Borrower must maintain documentation of all verification efforts for at least three (3) years from the effective date of determination.

- (3) In verifying income, the Borrower shall to the extent feasible:
- (a) Maintain tenant files to include the unit lease with income and assets verification documentation.
 - (b) Maintain required Part 5 income/assets worksheets and cover sheet in each tenant file with required income/asset documentation to include: (1) as appropriate, an explanation of the information being requested; (2) contain the tenant's authorization to release information; and (3) Record of Oral Verification of specific information required.
 - (c) 24 CFR Part 5 Verification Forms

(1) Third party verification forms will be provided for income documentation and must be signed by the appropriate household member to authorize Borrower to solicit income/asset information.

(2) The Borrower will include a self-addressed, stamped envelope with mailed requests for verification.

(3) The Borrower may make personal contacts with employers and public agencies if authorization to do so has been provided by the applicant/tenant by execution of an appropriate verification form.

(d) Give the household an opportunity to explain any significant differences between the amounts they reported on their application and amounts reported on third-party verifications.

(4) The Borrower shall reexamine the income of each tenant household living in the units at least once a year for lease renewal and the City shall monitor the Borrower's verification to determine whether eligible households are occupying the units.

(5) In the event a tenant is determined over-income (by HUD's standards), the Borrower shall notify the tenant that Borrower must recalculate the tenant's monthly rent to be charged for the unit when tenant's current lease expires. If the tenant who is determined over-income (by HUD's standards) elects not to renew the tenant lease, the tenant shall be replaced by Borrower with a new tenant meeting the income eligibility requirements specified herein. During any period of time in which the Borrower is not in compliance with the income or rent guidelines for any unit(s), the Borrower shall either (1) repay the subsidy provided by the City under the parties' HOME Program Written Agreement for the unit not in compliance; or (2) extend the affordability period of the unit(s) for the length of time they are not in compliance.

(6) Temporary non-compliance with the project income targeting requirements is permissible when the non-compliance is caused by an increase in a tenant's income. The Borrower must adjust the tenant's rent according to 24 CFR Part 5 and must rent the next available comparable unit in a manner that complies with the required Floating Unit ratio of "High" Home rental units and "Low" Home rental units for the Project. If the tenant's income is over 80% AMI the rent will be 30% of the tenant's income, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. §42) must pay rent governed by Section 42.

EXHIBIT "I"

LEASE ADDENDUM

Paisano Housing Redevelopment Corporation

Property Address, Unit/Apartment No.: _____

1. This lease addendum is an addendum to the lease agreement ("lease agreement"), entered into on _____, _____, between _____ ("Owner") and _____ ("Tenant") for the leasing of the premises listed above.
2. Purpose of the Addendum. The lease for the above-referenced unit/apartment is being amended to include the provisions of this addendum, to comply with HUD regulations regarding tenant leases for HUD-funded rental rehabilitation projects.
3. Conflict with Other Provisions of the Lease. The provisions of this addendum supercede in all respects any conflicting provisions contained in the lease agreement. To the extent any conflict exists between the lease agreement and this addendum, the provisions of this addendum shall govern.
4. Terms of the Lease. The term shall begin on _____, _____ and shall continue for one year, unless the Owner and Tenant have mutually agreed to a lesser term in the lease agreement, which may not be for a period that is less than thirty (30) days.
5. Prohibited Lease Terms. Any of the following provisions contained in the lease agreement shall be null and void and unenforceable:
 - 5.1 **Confession of Judgment.** Any and all provisions in the lease agreement in which the Tenant agrees to be sued, to admit guilt, or to a judgment in favor of the Owner in a lawsuit brought in connection with the lease.
 - 5.2 **Treatment of Property.** Any and all provisions in the lease agreement governing the right of the Owner or its agents to take, hold, or sell personal property of household members without notice to the Tenant and a court decision on the rights of the parties, with the exception of personal property remaining in a housing unit after the Tenant has moved out of the unit which is disposed of in accordance with Texas law.
 - 5.3 **Excusing the Owner from Responsibility.** Any and all provisions in the lease agreement that excuse the Owner or its agents from

EXHIBIT "J"

Page 1 of 2

**Elvin Estates
Paisano Housing Redevelopment Corporation**

AFFIRMATIVE MARKETING PROCEDURES

Section 511.10 (m) (2) of the regulations for the Rental Rehabilitation Program outlines the five major elements of an effective Affirmative Marketing Program: (These regulations also apply to construction of new housing when assisted with **HOME** and/or **CDBG FUNDS**.)

- ⇒ Policy Announcements
- ⇒ Outreach Procedures
- ⇒ Method of reaching those least likely to apply
- ⇒ Record Keeping
- ⇒ Evaluation

The requirements apply for the **Affordability Period, 20 years** to the marketing of all vacant units rehabilitated or constructed with program funds.

Record keeping requirements are **in effect for the established affordability period** beginning on the date when at least one **unit in the project has been initially rented** and the **Housing Program Specialist has entered the demographic information in the HUD Website**. Grantees and owners must reach an agreement on how to achieve compliance under these requirements. Owners must submit documentation as soon as the first unit is rented so that the information can be provided to HUD, by City Housing Program Staff, so that the affordability period for the Elvin Estates can be established.

HOME MONITORING/AFFIRMATIVE MARKETING PROCEDURES

Following is additional detail on El Paso's Affirmative Marketing Procedures:

Owners of rental projects that are funded through HOME are initially made aware of the requirements at the time their applications are approved. When the project is approximately 50% complete, we meet with the owners and their rental agent (when applicable) to review in detail the Affirmative Marketing and Monitoring requirements.

The following Checklists are used to ensure that vital information is covered with the owners and that samples of all required documentation are given to them.

Monitoring of Rental Projects funded through NSP:

The owners are made aware during the Conference that we perform an initial Monitoring six months after the project completion date, to ensure they are in compliance and then annually thereafter. They receive a notification letter 30 days prior to the Monitoring, to schedule the date.

Housing Program Division monitoring staff will coordinate with the Paisano Housing Redevelopment Corporation staff so that the monitoring for Minimum Acceptable Standards (MAS), as applicable, is completed.

EXHIBIT "K"

Paisano Housing Redevelopment Corporation may substitute Housing Authority City of El Paso (HACEP) Section 3 Area Business and Workforce Agreement regulations and documentation in lieu of Exhibit "K" providing the City of El Paso, Community and Human Development Department, Housing Program Division Section 3 requirements are met for City documentation of this project.

CITY OF EL PASO

SECTION 3 AREA BUSINESS AND WORKFORCE AGREEMENT

Community Development Block Grant Projects
and Federally Assisted Projects

CONTRACTORS/SUBCONTRACTORS

The following Certification for Business Concerns Seeking Section 3 Preference in Contract and Demonstration of Capability will be filled out and signed by all contractors and subcontractors with contracts exceeding \$100,000. This document will then become a part of the contract.

AN EQUAL OPPORTUNITY EMPLOYER

Contractor: _____

Name of Firm

Project: _____

Project Location: _____

Date: _____ Base Bid Amount \$ _____

1. POLICY

The purpose of this plan is to set forth procedures to assure compliance with Section 3 of the Housing and Urban Development Act of 1968 as required by the Housing and Community Development Act of 1974 and codified in Title 24, Part 135 (38F.R.29220. 1-/23/73) and Title 24, Part 570 CDBG by the City of El Paso.

2. PURPOSE OF SECTION 3

Section 3 is intended to ensure that when employment or contracting opportunities are generated because a covered project or activity necessitates the employment of additional persons or the awarding of contract for work, preference must be given to low- and very low-income persons and Section 3 business concerns residing in the Section 3 area defined as the City of El Paso.

3. DEFINITIONS

A. Section 3 Covered Area

The Section 3 covered area shall be El Paso City and County. First priority within the Section 3 covered area shall be given to the general area in which this project is located.

B. Section 3 Business

51% or more of the business is owned by Section 3 residents;

OR

At least 30% of the full time employees are currently Section 3 residents, or within three years of the date of first employment with the business were Section 3 residents;

OR

Provide a commitment to subcontract in excess of 25% of the total dollar amount of subcontracts to qualified Section 3 businesses.

C. Section 3 Resident is:

Low- and Very-Low Income persons living in the City or County of El Paso.

4. CITY OF EL PASO GOALS

- 30% of New Hires are Section 3 Residents
- 10% of Construction Contracts to Section 3 Businesses
- 3% of Non-Construction Contracts to Section 3 businesses

Section 3 goals are minimum numerical targets that must be met for HUD to consider the City of El Paso in compliance. The City of El Paso is required, to the greatest extent feasible, to take the necessary actions to achieve the goals. In the event the goals are not achieved, the City of El Paso must be prepared to explain why the goals were not achieved.

5. CONTRACTOR RESPONSIBILITIES

- Ensure that Section 3 goals are met.
- Document activities initiated to meet Section 3 goals.
- Report to the City of El Paso on efforts to meet Section 3 goals

6. RECORD KEEPING FOR CONTRACT AGENCIES

- Maintain records of job vacancies, solicitation for bids or proposals, selection materials, and contact documents (including scope of work and contract amount), and provide copies of information to the City of El Paso in accordance with Federal or State procurement laws and regulations.
- Maintain copies of newspaper and other public announcements, and provide copies of information to the City of El Paso in accordance with Federal or State regulations.
- Complete Section 3 Summary Report and provide copies of information to the City of El Paso in accordance with Federal regulations.

7. CONTRACTS EXCEEDING \$100,000.00

A. Type of Subcontract/Name of Proposed Subcontractor (If known)
 Lead Abatement, Plumbing, Electrical, Carpentry, Suppliers, etc
 Attach another page if necessary.

Example: Electrical _____ \$250,000 _____
 ABC Electrical Company, Inc. _____

1.	_____	\$ _____
2.	_____	\$ _____
3.	_____	\$ _____
4.	_____	\$ _____
5.	_____	\$ _____

SECTION 3 BUSINESSES

All Section 3 covered businesses, presently known or which may become known in the future, who are capable of performing services relating to the above listed projects will be

invited to submit bids. It is anticipated that the following projects and estimated dollar amounts will be awarded to Section 3 covered businesses.

Attach another page if necessary.

Example:	<u>Electrical</u>	<u>\$250,000</u>
	<u>ABC Electrical Company, Inc.</u>	
	<u>Electrical (sub)</u>	<u>\$ 55,000.</u>
	<u>Home Electric</u>	
	<u>Electrical sub</u>	<u>\$ 40,000.</u>
	<u>Unknown (sub)</u>	

- 1. _____ \$ _____
- 2. _____ \$ _____
- 3. _____ \$ _____
- 4. _____ \$ _____
- 5. _____ \$ _____

8. ANTICIPATED PROGRAM

To achieve goals set for this project, this format will be inserted into the bid documents.

To recruit eligible business concerns, the contractor will contact those firms in the Register provided by the City of El Paso and other eligible firms known to the contractor. They shall be informed of the contractor's intention to utilize Section 3 covered businesses and be given the opportunity to bid on projects. Bidders considering themselves eligible for consideration as a Section 3 covered business may submit with their bid the Self-Certification Forms certifying their eligibility. Refer to K- 6-8 (Extra copies are available from the contracting agent.)

Contracts which are typically awarded on a negotiated rather than a bid basis in areas other than Section 3 covered project areas shall also be awarded on a negotiated basis, whenever feasible, when awarded in a Section 3 covered project area.

EMPLOYMENT OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH COMMUNITY DEVELOPMENT BLOCK GRANT OF THE CITY OF EL PASO, TEXAS.

- A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701U. Section 3 requires that to the

- B. greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns, which are located in or owned in substantial part by persons residing in the area of the project.
- C. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
- D. The Contractor agrees to send to each labor organization, representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- E. The Contractor agrees to include the Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135.30 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with requirements of these regulations.
- F. Compliance with provisions of Section 3, the regulations set forth in 24 CFR 135, and applicable rules and orders of the Department issued there under prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.135.
- G. When competitive bids are solicited, the Contractor shall inform the bidders of Section 3 requirements. The low bidder will be required to submit goals for Section 3. The Contractor shall determine the bidder's responsiveness through careful evaluation for the bidder's submission to determine whether Section 3 goals will be accomplished. If necessary, the Contractor will assist bidders in complying with Section 3 requirements.
- H. During the course of the activity period, the Contractor shall provide the City of El Paso with reports of the progress made to achieve the goals set forth in Section 3. The contracting agent is responsible for the Section 3 activities of subcontractors and shall require of them all that the City of El Paso requires of the prime contractor.

9. SECTION 3 CLAUSE

The Section 3 clause must be included in all the contracts let in connection with this project.

10. OWNER INCOME RESIDENTS

To fulfill the requirements to hire lower income persons as much as possible, the following actions will be taken by the contractor:

- A. The Section 3 Summary Report (K-6) must be submitted before the contract is signed and will provide information on existing and, if known, the work force that will be needed once the project is underway. Goals for hiring lower income persons will be listed on this form.
- B. Contractors or subcontractors seeking to prove that they have tried to hire lower-income target area residents shall keep records of their recruitment methods. The following are examples of how lower income target area people might be recruited: The City of El Paso Housing Authority, the Homeless Coalition, Youth bound, apprenticeship programs signs placed at the project site advertisements in local papers, and contracts with organizations within or working for the target area.
- C. If any vacant positions are filled immediately before work begins on this contract, the contractor or subcontractor must prove that this action is not an attempt to circumvent these requirements.
- D. To receive priority as lower income, applicants shall state their family income for the past twelve (12) months at the time of application. When lower income target area workers apply, the contractor shall determine their qualifications. If applicant qualifications are equal, lower income persons shall be hired first.

**HUD INCOME LIMITS
BY FAMILY SIZE
YEAR 2012
EL PASO, TEXAS**

El Paso, Texas FY 2012 Area Median Income: 4-person AMI \$41,700

FAMILY SIZE	LOW INCOME 80% OF MEDIAN	VERY LOW INCOME 50% OF MEDIAN	EXTREMELY LOW INCOME 30% OF MEDIAN
1 PERSON	27,650	17,300	10,400
2 PERSON	31,600	19,750	11,850
3 PERSON	35,550	22,200	13,350
4 PERSON	39,450	24,650	14,800
5 PERSON	42,650	26,650	16,000
6 PERSON	45,800	28,600	17,200
7 PERSON	48,950	30,600	18,400
8 PERSON	52,100	32,550	19,550

Source: U.S. Department of Housing and Urban Development: www.huduser.org
INCOME GUIDELINES Effective February 9, 2012

Part II: Contracts Awarded

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	\$
B. Total dollar amount of contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving contracts	

2. Non-Construction Contracts:

A. Total dollar amount all non-construction contracts awarded on the project/activity	\$
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	\$
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
D. Total number of Section 3 businesses receiving non-construction contracts	

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other; describe below.

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Form HUD-60002, Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.

Instructions: This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to recipients of housing and community development assistance in excess of \$200,000 expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts, which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' efforts to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit one copy of this report to HUD Headquarters, Office of Fair Housing and Equal Opportunity. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

HUD Field Office: Enter the Field Office name .

1. Recipient: Enter the name and address of the recipient submitting this report.
2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
- 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
6. Reporting Period: Indicate the time period (months and year) this report covers.
7. Date Report Submitted: Enter the appropriate date.

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of HUD Program corresponding with the "Program Code" in number 8.

Part I: Employment and Training Opportunities

Column A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

Column B: (Mandatory Field) Enter the number of new hires for each category of workers identified in Column A in connection with this award. New hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column C: (Mandatory Field) Enter the number of Section 3 new hires for each category of workers identified in Column A in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column D: Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

Column E: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

Column F: (Mandatory Field) Enter the number of Section 3 residents that were trained in connection with this award.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Part III: Summary of Efforts – Self-explanatory

Submit one (1) copy of this report to the HUD Headquarters Office of Fair Housing and Equal Opportunity, at the same time the performance report is submitted to the program office. The Section 3 report is submitted by January 10. Include only contracts executed during the period specified in item 8. PHAs/IHAs are to report all contracts/subcontracts.

* The terms "low-income persons" and very low-income persons" have the same meanings given the terms in section 3 (b) (2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that

The Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 percent of the median family income area, as determined by the Secretary with adjustments or smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

**SELF CERTIFICATION FOR BUSINESS CONCERNS SEEKING SECTION 3
PREFERENCE IN CONTRACTING AND DEMONSTRATION OF CAPBILITY
Elvin Estates**

This project has been funded by the Department of Housing and Urban Development (HUD) and has been identified as a Section 3 project. This Section 3 project is to ensure that when employment or contracting opportunities are generated by businesses awarded in excess of \$100,000 that the employment of additional persons or the award of contracts for work, that preference must be given to low- and very low-income persons and Section 3 business concerns residing in the City of El Paso. To the greatest extent feasible project participations should achieve the following goals or be prepared to explain why the goals were not achieved.

Project Goals: 30% of new hires (full time employees) are Section 3 Residents
10% of Construction Contracts to Section 3 Businesses
3% of Non-Construction Contracts are to Section 3 businesses

Business Name: _____

Business Address: _____

Business Authorized Contact Representative: _____

Contact Information: Phone _____ Cell Phone _____ Fax _____ e-mail _____

Section 3 is defined as the City of El Paso.

Section 3 Project Area is defined as an identified project area that is located within Section 3.

Section 3 Resident is defined as a low-income person who is at or below 80% of Area Median Income (AMI) or a very-low income person who is at or below 50% of Area Median Income (AMI) who is living within Section 3 or the Section 3 Project Area. (Refer to Page 3)

Section 3 Business is defined as a business that meets one of the following three HUD Section 3 business definitions:
Check Type of Business: Corporation Partnership Sole Proprietorship Joint Venture LLC

Definition – 1 OR

51% or more of the business is owned by Section 3 resident(s)

For business owner eligibility, provide one of the following:

- | | |
|--|---|
| <input type="checkbox"/> Copy of HACEP* resident lease | <input type="checkbox"/> Copy of receipt of public assistance, or |
| <input type="checkbox"/> Copy of evidence of participation
In a public assistance program | <input type="checkbox"/> Copy of Self Certification of Section 3 Resident
Business Owner, page 3 |

For business eligibility, provide the following applicable documentation:

- | | |
|--|---|
| <input type="checkbox"/> Copy of Articles of Incorporation | <input type="checkbox"/> Certificate of Good Standing |
| <input type="checkbox"/> Assumed Business Name Certificate | <input type="checkbox"/> Partnership Agreement |
| <input type="checkbox"/> List of owners/stockholders and
% ownership of each | <input type="checkbox"/> Corporation Annual Report |
| <input type="checkbox"/> Organization chart with names and titles
and brief function statement. | <input type="checkbox"/> Latest Board minutes appointing officers |
| | <input type="checkbox"/> Additional documentation, as needed |

Definition – 2 OR

► **Fraud is investigated by the Federal Bureau of Investigation and is punishable by time in Federal prison, fine, or both. It is illegal for a person to make any false statement regarding income, assets, debt or matters of identification. ◀**

At least 31% of the full time employees are currently Section 3 residents or within three years of the date of first employment with the business were section 3 residents.

For employee identification, the business provides:

- List of all current full-time employees List of employees claiming Section status

For employee eligibility, provide one of the following:

- Copy of HACEP* resident lease Copy of receipt of public assistance, or
 Copy of evidence of participation Copy of Self Certification for Section 3 Resident
In a public assistance program Seeking Preference in Employment and Training

Definition - 3

Business certifies to subcontract in excess of 25% of the total dollar amount of subcontracts to qualified Section 3 businesses.

- List of subcontracted Section 3 business(s) and subcontract amount

_____ If applicable (Corporate Seal)
Authorizing Name (Please Print)

Signature

Attested by: _____

Date: _____

► Fraud is investigated by the Federal Bureau of Investigation and is punishable by time in Federal prison, fine, or both.
It is illegal for a person to make any false statement regarding income, assets, debt or matters of identification. ◀

Signature _____

Date _____

Print Name _____

► Fraud is investigated by the Federal Bureau of Investigation and is punishable by time in Federal prison, fine, or both.
It is illegal for a person to make any false statement regarding income, assets, debt or matters of identification. ◀

EXHIBIT "L"

AFFIRMATIVE ACTION

(Attachment to Fulfill Executive Order 11246 SC-7)

1. GOALS. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
2012	57.8%	6.9%

These goals are applicable to all the contractor's construction work, whether or not it is federal or federally assisted, performed in the covered area and are percentages of total hours of employment.

The contractor's compliance with the executive order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the covered area. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the Contract, the Executive Order and the Regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

2. NOTICE. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$100,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

3. DEFINITIONS.

- A. "Covered Area" means the geographical area described in the solicitation from which this contract resulted, El Paso County.
- B. "Director" means Director, Office of Federal Contract Compliance Programs. United States Department of Labor, or any person to whom, the Director delegates authority.
- C. "Employer Identification Number" means the federal Social Security Number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.
- D. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

4. CONTRACT DOCUMENTS. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$100,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

5. AFFIRMATIVE ACTION STEPS. The contractor shall implement and document the specific Affirmative Action steps provided in Paragraphs 5a through 5p of these specifications. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

- A. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- B. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contract or its unions have employment opportunities available, and maintain a record of the organization's responses.
- C. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore; along with whatever additional actions the contractor may have taken.
- D. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- E. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 5b above.
- F. Disseminate the contractor's EEO Policy by providing notice of the policy to unions and training programs requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.: By specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO Policy on bulletin boards accessible to all employees at each location where construction work is performed.
- G. Review, at least annually, the company's EEO Policy and Affirmative Action obligations under these specifications with all employees having responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- H. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- I. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- J. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- K. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- L. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- M. Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
- N. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- O. Document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- P. Conduct a review, at least annually of all supervisors' adherence to and performance under the contractor's EEO policies and Affirmative Action obligations.

6. UNION CONTRACT. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom, the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
7. TRAINEE, APPRENTICE COUNT. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such, apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
8. JOINT EFFORTS. Contractors are encouraged to participate in voluntary associations which; assist in fulfilling one or more of their affirmative action obligations (5a through p). The efforts of a contractor association joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 5a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.
9. DISPARATE HIRING. A single goal for minorities and a separate goal for women have been established. The contractor, however, is required to provide equal opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the executive order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the executive order if a specific minority group of women is under utilized).
10. NON-DISCRIMINATION. The contractor shall not use the goals and timetables of Affirmative Action Standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. SUBCONTRACTOR SANCTIONS. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

12. SANCTIONS. If the contractor fails to comply with the Executive Order, and implementing regulations or these specifications, the Owner may proceed in accordance with 41 CFR 60-4.8.
13. RECORDS. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO Policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee: the name, address, telephone numbers, construction trade, union affiliation (if any), employee identification number (when assigned), social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easy-to-read retrievable form. However, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
14. OTHER AREAS. Nothing herein provided shall, be constructed as a limitation upon the application of other superseding laws which establish different standards of compliance.