

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

DEPARTMENT: Community and Human Development
AGENDA DATE: September 14, 2010
CONTACT PERSON/PHONE: Bill Lilly/541-4643
DISTRICT(S) AFFECTED: District #1

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

A resolution authorizing the City Manager to sign a Consent to Assignment and Assumption Agreement by and among the City of El Paso, Valle Non-Profit Housing, Inc. ("Assignor"), and Texas Housing Finance Corporation Special ("Assignee"), consenting to the assignment of Assignor's rights, duties, and obligations under a Forgivable Loan Agreement (1995-1996 Community Development Block Grant Program) and related loan documents to Assignee, concerning the operation of a low-to-moderate income rental housing project located at 5453 Ridge Street, El Paso, Texas.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

In March 1996, the City entered into a Forgivable Loan Agreement with International Masonry Foundation (IMF), a District of Columbia non-profit corporation, in the amount of \$550,000 to finance site acquisition costs to facilitate the construction and operation of a 100-unit, low-to-moderate income rental housing development at 5453 Ridge Street. IMF then executed a long-term ground lease with Corona Del Valle Limited Partnership, as lessee, leveraged the necessary interim and permanent financing, HUD Section 8 project-based assistance, and state low-income housing tax credit allocations to construct and operate the affordable rental housing project.

Subsequently and as contemplated under the Forgivable Loan Agreement, the City, IMF and Valle Non-Profit Housing, Inc. entered into an Assignment and Assumption Agreement dated December 18, 1996, whereby IMF, as assignor, and Valle Non-Profit Housing, Inc., as assignee, assumed all of IMF's liabilities and obligations under all the City loan documents associated with the project.

It is now the intent of Valle Non-Profit Housing, Inc. to transfer ownership of the property on which the project is located. Therefore, they're requesting that the City approve the conveyance and the assignment of the City Loan Documents and Texas Housing Finance Corporation agrees to be responsible for all rights, duties and obligations under the City loan documents.

The CD Director approves and recommends that the City Manager be authorized to sign the subject Consent to Assignment and Assumption Agreement.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

As previously mentioned, the City originally entered into an Assignment and Assumption Agreement on December 18, 1996, with IMF, as assignor, and Valle Non-Profit Housing, Inc., as assignee.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

No funding by the City will be required by this action.

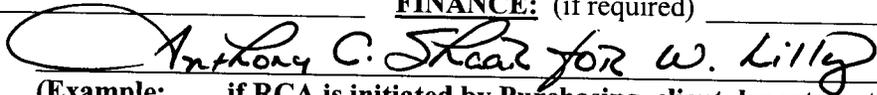
BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

NA

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:  _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

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

That the City Manager be authorized to sign a Consent to Assignment and Assumption Agreement by and among the City of El Paso, Valle Non-Profit Housing, Inc. ("Assignor"), and Texas Housing Finance Corporation Special ("Assignee"), consenting to the assignment of Assignor's rights, duties, and obligations under a Forgivable Loan Agreement (21st Year (1995-1996) Community Development Block Grant Program) and related loan documents to Assignee, concerning the operation of a low-to-moderate income rental housing project located at 5453 Ridge Street, El Paso, Texas.

Adopted this _____ day of _____, 2010.

CITY OF EL PASO

John F. Cook,
Mayor

ATTEST:

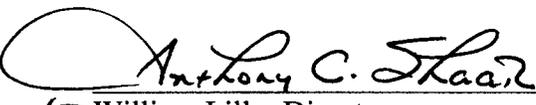
Richarda Duffy-Momsen,
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Marie A. Taylor
Assistant City Attorney



William Lilly, Director
Community and Human Development

(Space above this line for recording data)

STATE OF TEXAS)
)
COUNTY OF EL PASO) **CONSENT TO ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Consent to Assignment and Assumption Agreement (the "Agreement") is entered into this _____ day of _____, 2010, by and between the **CITY OF EL PASO, TEXAS**, a home-rule municipal corporation (the "City"), **VALLE NON-PROFIT HOUSING, INC.**, a Texas non-profit corporation ("Assignor"), and **TEXAS HOUSING FINANCE CORPORATION SPECIAL**, a Texas non-profit corporation ("Assignee").

RECITALS

WHEREAS, on or about March 29, 1996, the City and the International Masonry Foundation ("IMF"), a District of Columbia non-profit corporation, entered into a Forgivable Loan Agreement whereby the City provided a forgivable loan to IMF in the amount of \$550,000.00 (the "Loan") to finance site acquisition costs in order to facilitate the construction and operation of a 100-unit low-to-moderate income rental housing development for not less than a fifteen-year period (the "affordable rental housing project") at certain real property, legally described as follows:

Lot 1, Block 1 and Lot 1, Block 2, CORONA DEL VALLE, an addition to the City of El Paso, El Paso County, Texas, according to the plat thereof recorded in Volume 71, Page 50, of the Plat Records of El Paso County, Texas, being all of the land covered by and shown on said Plat of CORONA DEL VALLE; also known and numbered as 5453 Ridge Street, El Paso, Texas (the "Property"); and

WHEREAS, as contemplated under the Forgivable Loan Agreement, IMF executed a long-term ground lease with Corona Del Valle Limited Partnership and Corona Del Valle Limited Partnership, as lessee, leveraged the necessary interim and permanent financing, HUD Section 8 project-based assistance, and state low-income housing tax credit allocations to construct and operate the affordable rental housing project pursuant to the terms of the parties' ground lease; and

WHEREAS, as contemplated under the Forgivable Loan Agreement, the City, IMF, and Valle Non-Profit Housing, Inc. entered into an Assignment and Assumption Agreement dated December 18, 1996, recorded in Volume 3292, Page 854, Real Property Records of El Paso County, Texas, whereby IMF, as assignor, and Valle Non-Profit Housing, Inc., as assignee, assumed all of IMF's liabilities and obligations under the Forgivable Loan Agreement, the Promissory Note, the City's Deed of Trust (recorded in Volume 3037, Page 562, Real Property Records of El Paso County, Texas), and the Property Agreement Concerning Covenants and Restrictions Running with the Land (recorded in Volume 3037, Page 580, Real Property Records of El Paso County, Texas), collectively referred to herein as the "City Loan Documents"; and

WHEREAS, Valle Non-Profit Housing, Inc. intends to transfer ownership of the Property on which the affordable rental housing project is located; and

WHEREAS, Valle Non-Profit Housing, Inc. has requested that the City approve the conveyance and the assignment of the City Loan Documents and Texas Housing Finance Corporation Special agrees to be responsible for all rights, duties, and obligations under the City Loan Documents; and

WHEREAS, Texas Housing Finance Corporation Special's assumption of the rights, duties, obligations, and responsibilities under the City Loan Documents is mutually beneficial to said entity and the City; and

WHEREAS, the City is willing to give its consent to the contemplated conveyance and to accept Texas Housing Finance Corporation Special as assignee of the City Loan Documents on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual benefits and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Consent of City. The City hereby consents to conveyance of the Property by Valle Non-Profit Housing, Inc. to Texas Housing Finance Corporation Special and to Texas Housing Finance Corporation Special's assumption of all of Valle Non-Profit Housing, Inc.'s rights, duties, and obligations encompassed in the City Loan Documents, on the conditions further specified below.

2. Representations. Texas Housing Finance Corporation Special represents that it has the capacity to continue to operate and maintain the affordable rental housing project for the benefit of the low to moderate income residents in El Paso during the remainder of the reversionary period as is specified in the Forgivable Loan Agreement and the Property Agreement Concerning Covenants and Restrictions Running with the Land.

3. Obligations Assigned and Assumed. Valle Non-Profit Housing, Inc. hereby assigns to Texas Housing Finance Corporation Special and Texas Housing Finance Corporation Special hereby assumes and agrees to perform all duties and obligations under the City Loan Documents in accordance with the terms and conditions stated therein. Texas Housing Finance Corporation Special accepts the assignment of the City Loan Documents and, in addition, expressly assumes and agrees to abide by, perform, fulfill, timely discharge and be solely responsible for all of the terms, covenants, conditions, duties, liabilities and obligations required to be performed, fulfilled, discharged or paid by Valle Non-Profit Housing, Inc. or IMF under the City Loan Documents to the same extent as if Texas Housing Finance Corporation Special had originally executed each document contained within the City Loan Documents.

4. Validity and Lien Priority. Texas Housing Finance Corporation Special hereby acknowledges and agrees that the City Loan Documents are valid and subsisting and

remain in full force and effect and specifically, that the City's Deed of Trust creates a valid and subsisting lien against the Property. Valle Non-Profit Housing, Inc. and Texas Housing Finance Corporation Special each acknowledge that the Property remains subject to the lien, covenants, conditions, restrictions, and agreements set forth in the City Loan Documents, and that nothing contained herein shall affect the lien, covenants, conditions, restrictions or the priority thereof over any other subsequent recorded lien instrument.

5. Binding on Successors. This Agreement shall be binding on and insure to the benefit of the parties of this Agreement, their respective representatives, successors in interest and assigns.

6. Counterparts. This Agreement may be executed in one or more counterparts; signature pages may be detached from such separately executed counterparts and reattached to other counterparts, each of which counterparts when executed and delivered shall be deemed to be an original and all of which together constitute one and the same instrument.

7. Miscellaneous.

a. All terms and conditions of the City Loan Documents shall remain in full force and effect and unmodified except as herein stated.

b. This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Texas and venue shall be in El Paso County, Texas.

c. This Agreement is binding on and shall inure to the benefit of the transferees, successors, and assigns of each party.

d. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, arrangements, or understandings by or between the parties relating to its subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, among the parties relating to the subject matter hereof that are not mentioned herein.

(Signature Page to follow)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

CONSENT TO ASSIGNMENT AND
ASSUMPTION AGREEMENT

(Signature Page)

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

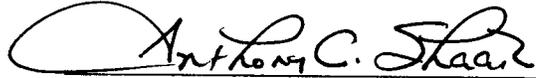
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



for William L. Lilly, Director
Community and Human Development Department

ASSIGNOR:
VALLE NON-PROFIT HOUSING, INC.



Name (Printed): HECTOR E. ARCECANO
Title (Printed): PRESIDENT

ASSIGNEE:
TEXAS HOUSING FINANCE
CORPORATION SPECIAL



Name: Calvin C. Jones
Title: Chief Operating Officer

Address for Notices:
2512 South Interstate 35, Suite 130
Austin, Texas 78704
Attn: Calvin Jones

(Acknowledgments on Following Page)

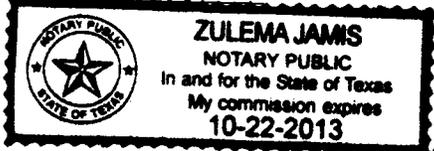
(Acknowledgment)

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me this 30th day of AUGUST, 2010, by HECTOR ARRIAGA of **VALLE NON-PROFIT HOUSING, INC.**, on behalf of said entity.

Notary's Commission Expires:

10-22-2013



Zulema Jamis
Notary Public, State of Texas
ZULEMA JAMIS
Notary's name (printed)

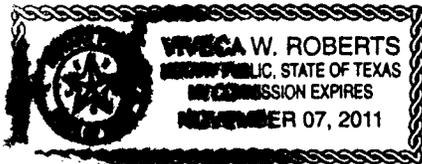
(Acknowledgment)

STATE OF Texas)
COUNTY OF TRAVIS)

This instrument was acknowledged before me this 18th day of August, 2010, by Calvin Jones of **TEXAS HOUSING FINANCE CORPORATION SPECIAL**, on behalf of said entity.

Notary's Commission Expires:

November 7, 2011



Viveca Roberts
Notary Public, State of Texas
Viveca W. Roberts
Notary's name (printed)

(Acknowledgment)

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2010, Joyce A. Wilson as City Manager of the **CITY OF EL PASO, TEXAS**, a municipal corporation, on behalf of said corporation.

Notary's Commission Expires:

Notary Public, State of Texas

Notary's name (printed)

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