Agenda Item Form

Agenda Date: 04/06/04

Districts Affected: 8
Dept. Head/Contact Information: Jaime Herrera - 541-4340

Type of Agenda Item:

- ☒ Resolution
- ☐ Tax Installment Agreements
- ☐ RFP/ BID/ Best Value Procurement
- ☐ Application for Facility Use
- ☐ Interlocal Agreements
- ☐ Other _____
- ☐ Staffing Table Changes
- ☐ Tax Refunds
- ☐ Budget Transfer
- ☐ Bldg. Permits/Inspection
- ☐ Contract/Lease Agreement
- ☐ Board Appointments
- ☐ Donations
- ☐ Item Placed by Citizen
- ☐ Introduction of Ordinance
- ☐ Grant Application

Funding Source:

- ☐ General Fund
- ☒ Grant (duration of funds: HUD Entitlement Months)
- ☐ Other Source: _____

Legal:

☒ Legal Review Required Attorney Assigned (please scroll down): Lee Ann Koehler ☒ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

SUBJECT: Housing Rehabilitation Project - 1318 Myrtle, El Paso, TX 79901

This item relates to an SRO (Single Room Occupancy) Housing Rehabilitation Project for a property at 1318 Myrtle, El Paso, Texas 79901. The City's $468,515.00 portion of the financing for this project was committed by Resolution adopted by City Council on November 18, 2003. The City Council is requested to authorize the Mayor to sign an Investor-Owned HOME Financial Terms Contract (5 units or more, loan and grant) between the owner, Opportunity Center for the Homeless (a Texas Non-Profit Corporation), and the City. This project involves rehabilitation of a vacant building at 1318 Myrtle Avenue into 12 units of SRO (Single Room Occupancy) permanent housing for chronically homeless women. After construction, there will be twelve (12) single-room-occupancy units, providing transitional housing for some of the City's homeless population. The site is ideal for the Coalition because it lies in close proximity to its Opportunity Center at 1208 Myrtle Avenue that is used to provide comprehensive services for the City's homeless population.

The rehabilitation of this structure will enable the Opportunity Center to access a HUD award of approximately $552,000 in Section 8 Certificates that will subsidize for ten years the rents of the homeless women who will occupy the units. The City's contribution will also leverage $150,000 in funding for this project from the El Paso Empowerment Zone Corporation.

The Opportunity Center received the $552,000 award under HUD's 2002 Super NOFA (Notice of Funding Availability) Continuum of Care competition. The HUD award is predicated upon the Opportunity Center's being able to secure funding to renovate a facility for the SRO housing.

When completed, the renovated building should contribute to the overall enhancement of the Magoffin Historical District, which is another criteria that the Department of Community and Human Development has taken into consideration in bringing this item to City Council. The Opportunity Center already has a strong record of enhancing the Magoffin area with the veterans transitional

housing facility constructed in 2001 at 818 Myrtle and the renovation of 1221 Magoffin for permanent SRO housing for elderly homeless, which was completed in 2002.

In relation to the financing terms, the HUD Section 8 rental assistance attached to the units is expected to enable the Opportunity Center to pay back the financing for "moderate" rehabilitation. In essence, there is an allowance built into the rental assistance by HUD for the repayment of the $120,000 that the Opportunity Center will repay to the City in 10 years. The rehabilitation work required for 1318 Myrtle goes well beyond "moderate" rehabilitation but once completed, the facility will require some unique operating costs, including 24-hour staffing, and case management for the residents. The proposed loan/grant package will assure the feasibility and long-term viability of this project.

The total project cost is estimated at $618,515.00, which includes a $52,374.00 construction contingency, architectural and engineering costs, property surveys, and environmental testing. Based on this estimate, the cost per unit is $51,543.00. The total square footage of this project is 5624 and the total estimated construction cost per square foot is $109.98. The City's financing will be in the form of a ten-year loan for $120,000, at zero percent interest with payments of $1,000.00 due monthly until the end of the ten-year term, a twenty-year HOME grant (deferred payment loan) of $348,515.00. All the units will be affordable to low and very-low-income individuals. Per the contract that the Coalition has with HUD, all rents are set at $384.00 and this includes all utilities. Under that same contract, the Coalition is committed to keeping all units affordable for a minimum period of ten years. This means that the units must remain affordable to low-and very-low-income tenants for the ten-year period, irrespective of the sale of the property. Should the building be sold or transferred, the outstanding balance of the loan and grants, at the time of sale, will become due. If there is a sale during the affordability period, Restrictive Covenants will impose the same conditions on the new owners as this transaction does on the current owners.

The Loan Note contains a specific first-payment-due date which will come due sixty days after the date for completion agreed to in the Construction Contract, as opposed to a date which is tied to the issuance of a Certificate of Occupancy. This project is located in the Magoffin Historic District and will alleviate some of the substandard living conditions in the area. Favorable approval by City Council is recommended by the Director of Community & Human Development.

Funding is in (FY02 HOME Grant) Account 71150036-G7102HM-505204: $120,000.00 and in (HOME Investment RLF) Account 71150039-G710RLFHOME-505204: $348,515.00. (District No. 8.)

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:
see detailed explanation above

Statutory or Citizen Concerns:
none expected

Departmental Concerns:
none

RF

RESOLUTION

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

That the following Housing Rehabilitation application and funding be approved in the amounts shown below as recommended by the Director of Community and Human Development and that the City Comptroller be authorized to issue checks in the amounts shown below for the approved application:

Application No.: H01-10-CD/IO/MP-0313

HOME Loan:	$ 120,000.00
HOME Grant	$ 348,515.00
Total:	$ 468,515.00

Address: 1318 Myrtle Avenue (79901)
Interest at zero percent (0%)

AND THAT the Mayor be authorized to sign a HOME Financial Terms Contract between the City and the Opportunity Center for the Homeless, in the amount of $$468.515.00, and that the Mayor be authorized to sign a Builder's and Mechanic's Lien Contract and Deed of Trust (With Power of Sale) between the City, the Opportunity Center for the Homeless, and the selected Construction Contractor, upon approval by the Director of Community and Human Development and the City Attorney's Office.

Funding is in (FY02 HOME Grant) Account 71150036-G7102HM-505204: $120,000.00 and in (HOME Investment RLF) Account 71150039-G710RLFHOME-505204: $348,515.00.

ADOPTED this 6th day of April, 2004.

THE CITY OF EL PASO

Joe Wardy,
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lee Ann B. Koehler
Assistant City Attorney

APPROVED AS TO CONTENT:

For Nathalie Prise, Interim Director
Community and Human Development

RR982

STATE OF TEXAS }
} HOME FINANCIAL TERMS CONTRACT
COUNTY OF EL PASO }

THIS CONTRACT is made this 6th day of April, 2004, by and between CITY OF EL PASO, hereinafter referred to as "City" and Opportunity Center for the Homeless, hereinafter referred to as "Borrower."

WHEREAS, the City of El Paso has received a formula grant from the U.S. Department of Housing and Urban Development (HUD) under the HOME Investment Partnerships Program, hereinafter referred to as "HOME", as enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625, approved November 28, 1990);

WHEREAS, the City's Director of Community and Human Development has recommended approval of a grant/loan to Borrower, subject to the terms specified hereinbelow, and the El Paso City Council, meeting in regular session on November 18, 2003, by sufficient vote approved such grant/loan to Borrower, subject to the terms specified hereinbelow;

WHEREAS, the HOME funds having been approved for use in Borrower's improvement project, subject to the conditions and terms herein, and Borrower agrees to comply with all applicable HOME Program requirements;

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

WITNESSETH:

I. DESCRIPTION OF PROPERTY AND PROJECT

The subject matter property is legally described as:

Lots 9 and 10, Block 32, FRANKLIN HEIGHTS, an Addition in the City of El Paso, El Paso County, Texas, according to the City Block Map in the office of the County Clerk of El Paso County, Texas, also known and numbered as 1318 Myrtle, El Paso, Texas.

The City hereby agrees to lend Borrower funds not to exceed the amount of ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS ($120,000.00) subject to the terms hereinafter specified.

A. Borrower also agrees to fully and completely comply with all of the applicable terms and conditions of the Community Development Construction Contract, a copy of which is to be incorporated hereto and made a part hereof upon execution as Exhibit "A". Borrower further agrees to take all necessary action to perfect and protect City's lien position as specified in Section III. of this Contract for the life of the Deed of Trust (With Power of Sale), attached as

Exhibit "B", and incorporated by reference herein. City's lien being evidenced by said Deed of Trust (With Power of Sale), so attached as Exhibit "B".

B. City hereby agrees to provide HOME financing in the amount of $39,042.92 per unit of the eligible rehabilitation cost according to all terms and conditions as herein specified, including, but not limited to, the following terms and conditions: The City hereby agrees to provide Seventy Four and 38/100 Percent (74.38%) of the HOME funds allocated to this project, as a Grant of $348,515.00 using HOME Program Grant funds, as evidenced by a Secured Grant Note of even date herewith, attached as Exhibit "C" and incorporated by reference herein. Provided Borrower complies with the terms of this Contract, this grant shall be forgivable in Two Hundred Forty (240) monthly exempted payments of One Thousand Four Hundred Fifty Two and 15/100 Dollars ($1,452.15), and also using HOME funds as a Loan in the amount of One Hundred Twenty Thousand and No/100 Dollars ($120,000.00), with One Hundred Twenty (120) monthly payments of One Thousand and No/100 Dollars ($1,000.00), as noted in attached Loan Noted marked as Exhibit "C-1".

(1) HOME financing shall be approved and funds shall be advanced to Borrower, subject to the terms described herein, to include but not limited to those contained in Sections III. and IV., and any other terms and conditions specified herein.

(2)(a) Disbursement of public funds shall be made upon Receipt by City of Borrower's written request for such, the documentation as required in B (l) above and upon the approval of the Director of the Department of Community and Human Development of the City. Such disbursement may be withheld by the Director if, in the reasonable exercise of Director's discretion, the Borrower has failed to fulfill the requirements of this Contract.

(b) Loan payments on the note in the face amount of One Hundred Twenty Thousand AND No/100 DOLLARS ($120,000.00) shall be due monthly on the first day of the month as stated in the Loan Note, Exhibit "C-1". Borrower shall make monthly payments and such payments shall be calculated over 120 monthly installments.

(c) Borrower shall have not more than ten (10) years from the due date of the first payment in which to repay in full all principal and interest due and owing on such loan.

(d) The purpose of this loan is to provide Borrower with funds to rehabilitate Borrower's property located at 1318 Myrtle, as more fully described in the Deed of Trust (with Power of Sale) of even date herewith, attached hereto as Exhibit "B" and incorporated by reference herein. There is no other use of said funds authorized by City, and the use of the City's funds by Borrower for any other purpose shall constitute a breach of contract by Borrower for which City may pursue any and all remedies, whether at law or equity which are available to City.

C. Borrower may prepay at any time all or part of the current balance. Such prepayment, if any is made, will be applied first to any interest due and then to the reduction of principal. In the event a prepayment is made, the rate of interest on such prepayment shall be the

interest rate then in effect under the terms of this Contract. Prepayment will not release Borrower from fulfilling the HOME covenants described in Section IV of this Contract.

II. REPRESENTATIONS AND WARRANTIES

A. Borrower represents that the information furnished to City upon which City relied to make this Loan/Secured Grant is correct and true. Borrower hereby represents that each of said Borrower's representatives have the authority and capacity to commit to a financial obligation on behalf of Borrower. Specifically, but not by way of limitation, this authority includes signing a loan agreement, notes, and any security instrument related thereto in incurring financial obligations to rehabilitate the aforementioned building located at 1318 Myrtle, El Paso, El Paso County, Texas. Borrower further represents that it owns any and all buildings referenced above, subject to any and all restrictions, easements, covenants, and other matters of record.

B. Borrower agrees and understands that approval of this loan has been made by consideration of and in reliance upon various data furnished by Borrower, and agrees that should any of said data prove to be false or materially misleading in any way, the City shall have the right to unilaterally terminate this Contract for unremedied breach thereof and demand repayment in full of all principal advanced under the terms of the grant and loan, as evidenced by Exhibit "C" and Exhibit "C-1", plus all costs of collection. Provided, however, notwithstanding anything in this Contract or any documents executed in connection herewith to the contrary, the Borrower will not be liable for any portion of the Grant(s) which has been forgiven.

C. This Contract 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

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

A. Borrower will execute all documents necessary to impose the Covenants and Restrictions Running with the Land required by the HOME program described in the Code of Federal Regulations.

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

(1) A first lien on the following described real property:

Lots 9 and 10, Block 32, FRANKLIN HEIGHTS, an Addition in the City of El Paso, El Paso County, Texas, according to the City Block Map in the office of the County Clerk of El Paso County, Texas, also known and numbered as 1318 Myrtle, El Paso, Texas

C. This lien shall be subservient only to the following described liens on the above described property:

NONE.

D. Borrower agrees to take any and all necessary action to perfect and 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 Contract.

E. Borrower agrees to provide sufficient documentation to satisfy all rehabilitation HOME loan requirements.

F. Borrower 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 Borrower's indebtedness on the aforementioned property. This insurance coverage shall name the City as an Additional Insured.

G. Borrower agrees to obtain all necessary permits, licenses and special privileges which may be required by City prior to conducting the rehabilitation work on the property subject to this Contract. In the event Borrower must pay any fees for obtaining any of the above items, Borrower agrees to pay such to City. Borrower shall also comply with any County, State or Federal requirements which apply to its rehabilitation activities. This is specifically to include but not limited to the HOME "rent limitations" outlined in Exhibit "A-2" and affordability requirements as noted herein.

H. Borrower understands, covenants and agrees to fully and completely comply with all terms and conditions of the Community Development Construction Contract, Exhibit "A-1".

If Borrower breaches any term or condition of this Section III., entitled "Conditions Precedent," the entire principal amount of the Secured Grant and Loan, as evidenced by Exhibit "C" and Exhibit "C-1", and the entire outstanding principal advanced and all accrued interest under the terms of the Loan, 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 Contract entitled "Events of Default."

IV. COVENANTS

The following covenants in Subparagraphs A-R of this Section IV. shall apply as long as any amounts are outstanding under the Secured Grant and Loan Note, unless a long-period is specified:

A. Borrower agrees that HOME funds shall be used only for eligible rehabilitation costs. Borrower hereby acknowledges and agrees that neither the HOME funds, may not be used for any other purpose.

B. "Eligible rehabilitation cost(s)" as the term is used herein shall include the actual rehabilitation cost, required appraisals, title searches, insurance, attorney's fees, architectural fees, escrow charges, tax recordation costs and credit reports, all in the amounts associated directly with the rehabilitation of the structure, as well as relocation payments made, in accordance with the City's Tenant Assistance Policy, to tenants who are displaced or temporarily relocated as a result of HOME projects.

C. Borrower also agrees to comply fully with all requirements of the Tenant Assistance Policies as developed by the City. A copy of the City's Tenant Assistance Policy has been provided to Borrower during the application process. Borrower further agrees to comply with §92.353 of the Code of Federal Regulations regarding displacement, relocation and acquisition.

D. Borrower 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. Borrower agrees to comply with §92.252 of Title 24 of the Code of Federal Regulations, specifically to include, but not limited to Paragraph (4) of said Section.

E. Borrower hereby further agrees that for a period of Ten (10) years from the date rehabilitation is completed, the rehabilitated property will comply with Subpart F -Project Requirements of Part 92 of Title 24 of the Code of Federal Regulations, HOME Investment Partnership Program. Borrower further agrees to comply with §92.250 regarding Maximum Per Unit Subsidy; §92.251 regarding Property Standards; §92.252(a)(b)(c)(d) regarding Qualification as Affordable Housing, of Title 24 of the Code of Federal Regulations, and their subsections and amendments thereto regarding:

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

It is the further intention of this Contract that Borrower fulfill the HOME occupancy requirements by reserving 100% of the HOME units that are identified for tenants whose income is no more that 50% of the City's median income for their household size. The City will provide Borrower with the HUD-approved median income limits for the City on an annual basis whenever the limits are revised by HUD. The City will also provide the Borrower with updated rent limits whenever the HOME rents are revised by HUD. Borrower will be allowed to make adjustments to the project rents in order to comply with rent limit revisions by HUD.

Borrower agrees to comply with §92.216 of Title 24 of the Code of Federal Regulations regarding Income Targeting.

Borrower agrees to comply with §92.253 of Title 24 of the Code of Federal Regulations regarding Tenant and Participant Protections.

F. In order to assure compliance with the Project Requirements of the HOME Program (as defined in Subpart F of Part 92 of Title 24 of the Code of Federal Regulations, Borrower agrees to submit the following documentation to City for review and approval:

(1) A copy of the tenant application and a description of the tenant qualification process that Borrower will utilize to verify tenant incomes.

(2) A copy of the lease agreement form that will be utilized for the subject residential property at 1318 Myrtle.

G. Borrower agrees that it will not discriminate against any class of individuals protected against discrimination under federal law in soliciting and accepting tenants for the rehabilitated structure. Borrower 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.

H. Furthermore, Borrower agrees for a period of Ten (10) years commencing on the date of completion of the rehabilitated property that the property shall remain affordable to low and very low income individuals and/or families pursuant to deed restrictions without regard to term of mortgage or to transfer of ownership pursuant to §92.252(5) of Title 24 of the Code of Federal Regulations. A definition of low and very low income individuals and/or families is attached as Exhibit "E" and incorporated by reference herein.

I. Borrower agrees that within ninety (90) days after the date the City of El Paso, Office of Housing Rehabilitation, signs the Owner's Acceptance Form for the rehabilitated property, as described herein, Borrower will furnish to City data on the demographic characteristics of tenants occupying the rehabilitated structure initially after rehabilitation. Such data must be of a quality acceptable to the Director of the Department of Community and Human Development. Borrower further agrees to comply with Subpart H - "Other Federal Requirements" as noted in §92.350 et. seq. of Title 24 of the Code of Federal Regulations

J. Borrower agrees to comply with the Federal Fair Housing Act and other Federal Rules, regulations and policies applicable to the performance of this Contract.

K. Borrower hereby agrees that in all solicitations for employment applications, Borrower shall hold itself out as an equal opportunity employer. Borrower shall fully comply with all federal and state laws, regulations, and executive orders regarding equal employment and shall further comply with Davis-Bacon compensation requirements, if applicable, to Borrower. Borrower agrees to comply with §92.508, (a)(2)(vi), (a)(3)(ii), (a)(3)(iii) of Title 24 of Code of Federal Regulations, regarding recordkeeping.

L. Borrower agrees to execute any and all notes, security agreements, financing statements, Builder's and Mechanic's Lien Contracts and Deeds of Trust (With Power of Sale) and any other documents necessary for perfection of City's lien in the form submitted by Counsel for the City.

M. Upon reasonable request, City shall have the right at all times to inspect Borrower's business premises, and its books and records relating to the requirements of this Contract. Borrower agrees that it will make its premises and records available for such inspection by City.

N. Borrower is prohibited from assigning this Contract in whole or in part in any manner. Borrower hereby understands and agrees that if the rehabilitated property, as described herein, is sold or transferred in whole or in part within the Ten (10) year covenant period, as further described hereinabove, without the written approval of the City, the City, at its option, may declare the entire outstanding principal and all accrued interest on the Loan Note, and the entire outstanding, unforgiven balance of the Secured Grant Note, Exhibits "C" and "C-1", immediately due and payable.

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

P. This Contract 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.

Q. Borrower hereby agrees to indemnify, defend, and hold City, its officers, agents, and employees harmless 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 Contract, 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 attorneys fees, court costs, witness expenses, and all other related costs including judgments, awards and settlements.

R. No employee, agent, consultant, officer, or elected or appointed official of City who exercises any functions or responsibilities, or who has been in a position to participate in a decision-making process or gain inside information with regard to the activities governed by this Contract 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 HOME Program under this Contract.

Borrower and City agree that the anticipated rehabilitation will involve Twelve (12) units. No units rehabilitated under this Contract will be exempt from the requirements and conditions noted herein.

If Borrower breaches any term or condition of this Section entitled "Covenants", and such breach continues for a period of thirty (30) days after written notice thereof to Borrower, or, if the breach is of such a nature that it cannot be reasonably cured within said thirty (30) day period, the Borrower does not commence to cure such default within said thirty (30) day period and fails to reasonably prosecute the same to completion thereafter, the entire unforgiven amount of the Secured Grant as evidenced by Exhibit "C", and the entire outstanding principal advanced and all accrued interest under the terms of the Loan as evidenced by Exhibit "C-1", 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 Contract entitled "Events of Default."

V. EVENTS OF DEFAULT

A. City has the right to accelerate the payment of the Secured Grant and Loan, as evidenced by Exhibits "C" and "C-1", respectively, upon breach of this Contract by Borrower, and City further has the right to declare that the entire unforgiven amount of the Secured Grant, and the entire outstanding principal advanced and all accrued interest under the terms of the Loan immediately due and payable by Borrower to City at the time of the contract breach. The City's right to accelerate the Secured Grant and Loan shall apply to all events as specifically designated in Sections III. and IV. of this Contract, 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 Borrower;

(2) Borrower's failure to perform any of the covenants or conditions precedent as stated in this Contract;

(3) any unstayed judgment or unsatisfied lien against Borrower 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 Contract;

(4) failure to pay principal on time;

(5) Borrower's timely payment of principal by check for which insufficient funds exist;

(6) Borrower's failure to comply with the Covenants and Restrictions Running with the Land; or

(7) Borrower's failure to meet the timelines for completion of the rehabilitation work as outlined in the Community Development Construction Contact, Exhibit "A".

Notwithstanding anything in this Contract or any of the loan documents to the contrary, Borrower shall not be considered in default and City may not exercise any of its remedies unless City has first given a written notice of such breach to Borrower and Borrower has failed to cure such default within: (i) ten (10) days from Borrower's receipt of such notice if such breach relates to the failure to make a regularly scheduled payment hereunder; or (ii) thirty (30) days from the date of Borrower's receipt of such notice if such default relates to any other breach by Borrower hereunder. Provided, however, if such default cannot reasonably be cured within such thirty (30) day period, Borrower shall not be in default hereunder provided Borrower commences the cure of such default within said thirty (30) day period and diligently prosecutes the same to completion thereafter.

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

VI. BORROWER'S LIABILITY

Borrower understands and agrees that if Borrower 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 Contract, or any other term or condition of any document incorporated by reference herein, that City is entitled to withhold payment of funds under the terms and conditions of this Contract. Borrower will bear sole liability for all obligations in any way related to the rehabilitation of the property described herein and City shall be entitled to all rights and remedies reserved herein.

VII. NOTICES

Any communications or notices regarding this Contract shall be effective if sent postage prepaid, certified mail, return receipt requested to the following addresses, unless either party notifies the other in writing of an 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

BORROWER: Opportunity Center for the Homeless
1208 Myrtle
El Paso, Texas 79902

VIII. ENTIRE AGREEMENT

This Contract embodies 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.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lee Ann B. Koehler
Assistant City Attorney

APPROVED AS TO CONTENT:

Nathalie Prise, Interim Director
Community and Human Development

BORROWER:
Opportunity Center for the Homeless

By: _____
RAY TULLIUS
(printed name and title)
EXECUTIVE DIRECTOR

(Acknowledgments on following page)

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2004, by _____ as _____ of **THE CITY OF EL PASO**.

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 26th day of March, 2004, by RAY TULLIUS as EXECUTIVE DIRECTOR of **OPPORTUNITY CENTER FOR THE HOMELESS**.

Notary's Commission Expires:
10-7-05

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

JAIME HERRERA
NOTARY PUBLIC
In and for the State of Texas
My commission expires
OCTOBER 07, 2005