

AGREEMENT

This Agreement is made and entered into by and between the Redevelopment Agency of the City of San Diego [the Agency], and the San Diego Housing Commission [the Commission].

RECITALS

A. WHEREAS, the Linda Vista Redevelopment Project Area [Project Area] is a redevelopment project area adopted by the Agency pursuant to the California Community Redevelopment Law (California Health and Safety Code Section 33000 et seq.); and

B. WHEREAS, the Agency is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Project Area; and

C. WHEREAS, pursuant to Health and Safety Code section 33334.2, the Agency must set aside twenty percent of tax increment monies generated in a project area to be used for the purposes of increasing, improving, and preserving the community's supply of low- and moderate - income housing available at affordable housing cost to persons and families of low or moderate income and very low income households; and

D. WHEREAS, the Linda Vista Redevelopment Project Area does not include a residential component; and

E. WHEREAS, the Linda Vista Redevelopment Project Area Housing Rehabilitation Loan Program will use the Housing Set-Aside Funds from the Linda Vista Redevelopment Project Area as a benefit to the Project Area; and

F. WHEREAS, in order to maximize the Housing Set Aside for the loan program, the Agency will use non-housing tax increment for administration fees; and

G. WHEREAS, the provision of homeownership and housing rehabilitation opportunities for low- and moderate-income households are eligible uses of housing set-aside funds; and

H. WHEREAS, by this Agreement, the Agency is committed to allocating certain housing set-aside funds for the Program; and

I. WHEREAS, the Program would offer a one-time only Rehabilitation Loan to owner-occupants of properties in the Linda Vista Community Planning Area [Area], whose gross household income is no greater than 100% of the Area Median Income (AMI), as adjusted annually; and

J. WHEREAS, the attached map (Exhibit A), incorporated by this reference, illustrates the boundaries of the Area.

K. WHEREAS, the Project Area will benefit from additional homeowner rehabilitation opportunities and increased neighborhood and community stability provided by the Program; and

L. WHEREAS, the Commission is a public entity established by the City of San Diego City Council in an effort to provide quality, affordable housing opportunities for the City of San Diego's elderly, disabled, moderate and lower income populations; and

M. WHEREAS, the Agency seeks to retain the services of the Commission to market and administer the Program as set out in greater detail below;

NOW THEREFORE, in consideration of the terms and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties mutually agree as follows:

ARTICLE 1: SCOPE OF AGREEMENT

1.1 Purpose: The purpose of this Agreement is to provide a cooperative program to increase the ability of very-low, low and moderate-income homeowners occupying properties in the Area to rehabilitate their existing homes. These homeowners are those whose gross household income is no greater than 100% of the Area Median Income (AMI), as adjusted annually.

1.2 Administration: Through this Agreement, the Agency retains the Commission to market and administer the Program for qualifying homeowners in the Area.

ARTICLE 2: AGENCY RESPONSIBILITIES

2.1 Approvals: The Agency agrees to prepare the necessary documentation for any action by the Agency or City Council required to implement this Agreement. The Agency agrees to use its best efforts to obtain any necessary approvals from the City Council or the Agency for the appropriate use of funds and resources pursuant to this Agreement.

2.2 Program Review: The Agency shall have the right but not the obligation to review the Commission's year-end report with respect to the implementation of the Program by the Commission to determine the Commission's compliance with this Agreement.

2.3 Staff Assistance: Agency staff members shall provide assistance, where feasible, in the development of final procedures for the Program and related marketing strategies

2.4 Meetings: Agency staff shall assume the responsibility of convening, planning, evaluating, and coordinating meetings on an as-needed basis for the Program.

ARTICLE 3: COMMISSION RESPONSIBILITIES

3.1 Program Administration: The Commission agrees to administer all Agency Funds pursuant to the terms of this Agreement and the Linda Vista Redevelopment Project Area Housing Rehabilitation Loan Program Guidelines as detailed within Exhibit B, except as otherwise provided in this Agreement, the Commission using the fifteen percent (15 %) administrative fee as provided in Article 8 of this Agreement, agrees to secure all necessary personnel to implement such programs.

The Commission is expected to provide marketing and outreach specialists; inspectors familiar with the City of San Diego codes and permit process; contract and subcontract administration, and; loan processing. There will also be a requirement to monitor compliance with the Linda Vista Housing Rehabilitation Loan Program contract and eligibility requirements (e.g.: Median Area Income eligibility, ownership, occupancy, health and safety inspections,) for any breaches of the clients= contractual obligations. The Commission will be required to process all required financial documents, liens, lien releases, trust deeds, contracts and inspection records and to keep these records in an organized manner and provide progress reports to the Redevelopment Agency. Commission shall provide the reports to the Agency and Linda Vista Redevelopment Project Area Project Manager as provided in Section 3.4, below.

3.2 Separate Account: The Commission agrees to establish and maintain a separate accounting for the Agency Funds identified in this Agreement [the Agency Account]. The Agency Account will include funds transferred directly from the identified Housing Set-Aside Fund, interest earned on those funds, and any funds repaid to the Commission on loans made pursuant to the Program.

3.3 Accounting Procedures: The banking and accounting procedures used by the Commission shall be satisfactory to the Agency and the City Auditor and Comptroller, and shall clearly track and account for the use of Agency Funds. Interest earned on funds in the Agency Account, shall be returned to the Agency Account.

3.4 Reporting Requirements: Within thirty days of the end of each fiscal year, the Commission shall prepare annual reports outlining the progress of the Program during the previous fiscal year. Within 30 days of the end of each quarter, the Commission shall also prepare reports outlining the progress of the Program during the previous quarter. The reports shall be in a format approved by the Agency and shall include the following information by Redevelopment Project Area:

- Number of loans made and applications processed to date and within the previous quarter;
- Amount of interest earned to date, and within the previous quarter;
- Any funds returned to the Agency Account as a result of repayment of the Agency's share of loans made pursuant to the Program;
- Amount of funds transferred, if any from Agency Account to the Commission's accounts;
- Amount of Agency Funds expended to date and within the previous quarter;
- Amount of Administrative Fees paid to Commission pursuant to Section 8 of this Agreement, i.e., earned on loans funded under the Program
- The Agency Account balance;
- Number of units, including number of bedrooms per unit, participating in the Program;
- Projects funded (under rehabilitation) and projects completed;
- Income levels of homeowners (i.e. Very Low, Low, Moderate);
- Supplemental funds (other Commission loans, grants, owner funds) used in each project;
- Brief description of rehabilitation work completed; and
- Marketing effort results and needs.

3.5 Inspection and Audit of Records: Any and all books, statements, documents, records and financial data of the Commission pertaining to the Program shall be made available to

the Agency, the City Auditor and Comptroller, or the Agency's designee, within five (5) working days after receipt of a written request from the Agency to the Commission for inspection or audit by the Agency. The Agency shall have the right to make copies or excerpts of any or all such documents at its own cost.

3.6 Equal Employment Opportunity Outreach Program: The Commission acknowledges and agrees that it is aware of, and will comply with, the City's Equal Employment Opportunity Outreach Program and San Diego Municipal Code sections 22.2701 through 22.2707. The Commission will not discriminate against any employee or applicant for employment on any basis prohibited by law. The Commission will provide equal opportunity in all employment practices. The Commission will ensure that its subcontractors, if any, comply with this program. Nothing in this section shall be interpreted to hold the Commission liable for any discriminatory practice of its subcontractors. The Commission has submitted and the Agency acknowledges receipt of a current Work Force Report or, if required, a current Equal Employment Opportunity (EEO) Plan.

3.7 Non-Discrimination in Contracting Ordinance: The Commission shall comply with the City's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code sections 22.3501 through 22.3517.

3.8 American With Disabilities Act: The Commission acknowledges and agrees that it is aware of and will comply with Council Policy 100-04, incorporated herein by this reference, adopted by Resolution No. R-282153, relating to the federally-mandated Americans with Disabilities Act [ADA]. The Commission will be solely responsible for ensuring that all activities engaged in pursuant to this Agreement are in compliance with all applicable ADA law.

ARTICLE 4: MUTUAL RESPONSIBILITIES

4.1 Conflict of Interest: The Commission and the Agency each represent and covenant that neither it, nor its members or employees presently have any interest, nor shall it nor its members or employees acquire any interest, direct or indirect, which conflicts in any manner or degree with the performance of services required to be performed under this Agreement.

The Commission and the Agency each further represent that it has established appropriate safeguards to prohibit its members and employees from using their positions for any purpose that is, or gives the appearance of being, motivated by desire for private gain for themselves or those with whom they have family, business, or other relationships. The Commission's employees shall not accept gratuities or any other favors from subcontractors or potential subcontractors, nor shall the Commission employees be or seek to become subcontractors of the Commission.

The Commission shall not use funds, personnel, subcontractors, or materials paid for out of this Agreement to advocate or support any particular position on any matter that is being proposed by a vote of the people, or is being considered for enactment by any legislative body of the City or County of San Diego, State of California, or the federal government except insofar as this Agreement or a matter pertaining to its performance is properly the subject of such vote or enactment.

4.2 Recognition of Parties in Documents: Both parties agree and acknowledge that

the work undertaken pursuant to this Agreement is due to the efforts of both parties. Each party agrees to acknowledge the other party's support in all documents prepared for a project subject to this Agreement, including contracts, brochures, press releases, reports, onsite signage, or other written or oral communications promoting the project. Each party agrees to obtain the review and approval of the content, form, and location of all acknowledgments from the other party prior to their use, which approval shall not be unreasonably withheld. The following credit lines shall be used: "This program is funded by the Redevelopment Agency of the City of San Diego" and "This program is administered by the San Diego Housing Commission."

4.3 Mutual Indemnification: The Commission and the Agency each agree to defend, indemnify, protect, and hold the others' officers, agents, and employees harmless from any and all actions, suits, proceedings, liability, claims, demands for, damages or injuries to any person, including injury to their officers, agents, and employees, and all claims which arise from or are directly connected with the negligence or failure to perform services or other obligations of this Agreement, or are caused or claimed to be caused by the negligence of their officers, agents, or employees, and all expenses of investigating and defending against same; provided, however, that this indemnification and hold harmless shall not include any claim arising from the established sole negligence or willful misconduct of the other party, its officers, agents, employees, or attorneys.

ARTICLE 5: TIME OF PERFORMANCE

This Agreement and the performance of responsibilities hereunder shall commence upon the later of the date of its execution by the Agency or by the Commission and shall continue in full force and effect until terminated as provided herein. If the Agency does not appropriate funds to the Program in any given fiscal year and neither party has terminated this Agreement, this Agreement shall continue in effect with respect to the Program Funds then in the program.

ARTICLE 6: TERMINATION OF AGREEMENT

6.1 Right to Terminate for Convenience: Either party may, at its sole option and for its convenience, terminate all or any portion of the Agreement by giving written notice of such termination to the other party. Such notice shall be delivered by certified mail with return receipt for delivery to the Agency. The termination of the Agreement shall be effective upon receipt of the notice by the non-terminating party. After termination of this Agreement, the Commission shall complete any and all additional work necessary for the orderly filing of documents and closing of the Agency Account under this Agreement and notwithstanding the termination of this Agreement Agency shall pay the Commission for such work in accordance with the Section 8 of this Agreement. The Commission shall deliver to the Agency all reports, letters, calculations, and other documents or records related to the Program.

6.2 Agency's Right to Terminate for Default: If either party fails to perform or adequately perform any obligation required by this Agreement, such failure constitutes a Default. If the defaulting party fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the non-defaulting party specifying the nature of the Default, the non-defaulting party may immediately cancel and/or terminate this Agreement, and terminate each and every right of the defaulting party, and any person claiming any rights by or through the defaulting party under this Agreement. The rights and remedies enumerated in this paragraph are cumulative and shall not limit either party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or enacted or established at a later date.

ARTICLE 7: SUBCONTRACTORS, ASSIGNMENTS AND DELGATIONS

The Commission shall not subcontract, assign, or delegate any of the rights, duties or responsibilities contained in this Agreement, without the advance written consent of the Agency. If the Commission does subcontract, assign, or delegate any of the rights, duties or responsibilities in violation of this Agreement, such subcontract, etc., shall be null and void and this Agreement may immediately be terminated by the Agency.

ARTICLE 8: COMPENSATION AND METHOD OF PAYMENT

The Commission shall be fully responsible for operating the Program. As compensation for this service, the Contractor shall receive fifteen percent (15 %) of Housing Rehabilitation Program Loans funded during the specific fiscal year to offset any and all costs incurred in the administration of the Housing Rehabilitation Programs in any program year. All revolving accrued program income obtained through interest bearing accounts or loan repayments which are available for providing additional grants and loans shall likewise be included for purposes of determining the fifteen percent (15%) administrative fee. This administrative fee will be paid from the non-housing tax increment funds.

ARTICLE 9: TRANSFER OF FUNDS

Following the execution of this Agreement and upon the request of the Commission's Chief Executive Officer, or his/her designee, the appropriated funds for the Program to initially fund the Program, in the amount of \$212,350, and all amounts budgeted by the Agency from time to time in any subsequent years, shall be transferred to the Commission by the Agency for deposit in the Agency Account. This initial funding will be combined with the remaining \$51,000 in the Linda Vista First Time Homebuyer's account on hand with the Commission to create a total of \$263,350. Of this amount, \$34,350 will be deposited into the trust fund for administration fees.

The Commission shall maintain these set-aside funds in the Agency Account for the Program. The banking procedures established by the Commission shall be satisfactory to the Agency and the City's Audit Department, and monitor the use of funds and see that it is clearly accounted for and identified. Interest earned on monies in the accounts, shall be returned to the Agency Account. The Commission shall account for the use and/or reinvestment of the set-aside funds and interest earned on the interest-bearing accounts in its quarterly and annual reports to the Agency pursuant to the provisions of Section 3.4 of this Agreement. Re-invested funds shall be used to finance additional loans made through the Program as provided in Section 8 of this Agreement.

Should this Agreement be terminated, the Commission shall transfer any unused funds in the Agency Account, including all interest earned and any money repaid to the accounts by the Program participants, less any administrative fees, to the Agency within thirty days of the notice of termination issued by the Agency pursuant to Article 6 of this Agreement. If any loans made from the Agency Account remain outstanding at the time that this Agreement is terminated, the Commission agrees to either continue to administer such loans on behalf of the Agency and forward repayments to the Agency upon receipt, or to assign the loan directly to the Agency or its designee.

ARTICLE 10: MISCELLANEOUS

10.1 Entire Agreement: It is expressly understood and agreed that this Agreement constitutes the entire agreement between the Agency and Commission and in no event shall the Commission be entitled to any compensation, benefits, reimbursements or ancillary services other than as expressly provided herein.

10.2 Amendments: All modifications to this Agreement, except for those that affect the total compensation or term of the Agreement, must be agreed to by both parties in writing and signed by the Agency's Executive Director and the Commission's Chief Executive Officer.

10.3 Signing Authority: The representative signing on behalf of each party represents that authority has been obtained to sign on behalf of the party.

IN WITNESS WHEREOF, this Agreement is executed by the Redevelopment Agency of the City of San Diego by and through its Executive Director or designee, and by the San Diego Housing Commission, by and through its Chief Executive Officer or designee.

**REDEVELOPMENT AGENCY OF
THE CITY OF SAN DIEGO**

Dated: _____

By: _____
Hank Cunningham
Assistant Executive Director

SAN DIEGO HOUSING COMMISSION

Dated: _____

By: _____
Elizabeth Morris
President & Chief Executive Officer

WE HEREBY APPROVE the form and legality of the foregoing Agreement on this _____ day of _____ 2005.

Michael J. Aguirre, General Counsel
Redevelopment Agency

Christensen Schwerdtfeger & Spath, LLP

By _____
Rachel H. Witt
Deputy General Counsel
Redevelopment Agency

By _____
Walter F. Spath III
General Counsel
San Diego Housing Commission

Exhibits:

- Exhibit A: Map of Loan Area
- Exhibit B: Program Guidelines