

TO: James App, City Manager

FROM: Ron Whisenand, Community Development Director

SUBJECT: Habitat for Humanity: CalHome Loan to Purchase Property to Develop Five Homes for Very Low Income First-Time Homebuyers

DATE: May 17, 2011

Needs: For the City Council to consider approving a loan of \$225,000 in CalHome Funds to Habitat for Humanity of the County of San Luis Obispo (Habitat) to purchase property on which to develop five homes for very low income first-time homebuyers.

Facts:

1. In August 2010, Habitat requested that the City provide financial assistance to help them purchase property at 2811 Vine Street (a vacant lot) on which develop five homes for lower and very-low income first-time homebuyers.
2. Habitat originally sought to build six single-family detached homes. However, there is a large oak tree with a critical root zone that occupies the site of the sixth home. Consequently, Habitat revised its plans to build only five homes.
3. At its meeting of November 16, 2010, the Council adopted Resolution 10-148 which reserved \$225,000 in CalHome Funds to be used as a loan to Habitat to purchase the subject property. A copy of that resolution is attached (Attachment 2).
4. Resolution 10-148 set forth conditions for approval of the requested loan. These will be discussed in the Analysis Section of this report.
5. At its meeting of April 26, 2011, the Planning Commission approved applications for a development plan and tentative tract for this project. In its approval, the Planning Commission found that the proposed project was consistent with the General Plan and both the prior R-2 Zoning and the new T-3F Zoning (Uptown/Town Centre Specific Plan).
6. Habitat has entered an agreement to purchase the property for \$225,000. That agreement was originally set to expire on April 30, 2011. Habitat obtained the sellers agreement to a 30 day extension.
7. Habitat has provided an appraisal dated March 11, 2011, which estimated the market value of the property to be \$245,000.
8. In 2001, the City was awarded a grant of \$500,000 in CalHome funds for the purpose of making deferred-payment second mortgage loans to low income first-time homebuyers. Three of the six CalHome loans made by the City have been repaid. The City has a balance of about \$246,000 in the CalHome "Re-Use" Account.

Analysis and
Conclusion:

State regulations governing the CalHome Program provide for the following:

- That funds in the “Re-Use” Account may be loaned, but not granted, to builders of affordable housing for the purpose of purchasing land.
- Such loans shall accrue interest at 6 percent simple.
- Habitat may incrementally reconvey the principle of their loan to individual low income first-time home-buyers as deferred-payment second mortgage loans and then receive forgiveness of the 6 percent interest.
- The new second mortgage loans may be interest free and have payments deferred for 30 years.

Resolution 10-148 indicated that, as a prerequisite to approval of a CalHome loan, Habitat would be required to submit evidence that full financing for the Project has been approved by the appropriate authorities for each source of financing. Habitat has since informed the City that they cannot secure all of their construction financing until they own the property. This “condition” is not required by code or regulation, but was a practice of the City. However, the CalHome regulations that require that the loan bear interest at 6 percent simple plus a proposed loan term of five years appear to provide the City with adequate protection.

Resolution 10-148 also required that Habitat obtain approval of a development plan prior to approval of the CalHome loan. As noted in Fact #5, above, the Planning Commission approved a development plan and tentative tract on April 26.

Attached is an agreement between the City and Habitat setting forth the conditions of the loan. This agreement will meet the intent of the “Participation Agreement” referenced in Resolution 10-148. (The term, “Participation Agreement”, was incorrectly used in that resolution as a participation agreement is a particular form of agreement used in redevelopment financing.)

Reference: 2004 Housing Element; 2006 Economic Strategy; State regulations governing the CalHome Program

Fiscal Impact: Habitat’s request would have no effect on the General fund.

- Options:
- a. That the City Council adopt the attached Resolution Approving a Loan of \$225,000 in CalHome Funds to Assist the Development of Five Single Family Homes for Lower and Very-Low Income Households by Habitat for Humanity for San Luis Obispo County.
 - b. Amend, modify, or reject the above options.

Prepared By: Ed Gallagher, City Planner

ATTACHMENTS:

1. Resolution Approving a Loan of CalHome Funds (with Loan Agreement as Exhibit A)
2. Resolution 10-148 Reserving CalHome Funds

RESOLUTION NO. 11-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING AND AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT WITH HABITAT FOR
HUMANITY FOR SAN LUIS OBISPO COUNTY FOR PURCHASE OF PROPERTY ON WHICH TO BUILD
FIVE SINGLE FAMILY DETACHED HOMES FOR LOWER INCOME RESIDENTS

WHEREAS, Habitat for Humanity for the County of San Luis Obispo ("Habitat") is a California Non-Profit Organization that builds ownership housing for lower income, first-time homebuyers; and

WHEREAS, In August 2010, Habitat submitted a letter requesting that the City of El Paso de Robles ("City") provide \$225,000 in financial assistance to enable them to purchase a vacant parcel at 2811 Vine Street ("Property") on which to develop five single family homes for lower income first-time homebuyers; and

WHEREAS, Habitat has provided an appraisal dated March 11, 2011, which estimated the market value of the Property to be \$245,000; and

WHEREAS, in 2001, the City was awarded a grant of \$500,000 from the State of California in CalHome funds for the purpose of making deferred-payment second mortgage loans to lower income first-time homebuyers; and

WHEREAS, the terms of the grant of CalHome funds requires the City to deposit repaid CalHome loan funds into a "Re-Use" Account from which new loans to assist the development of ownership housing for lower income first-time homebuyers may be made; and

WHEREAS, the City has a balance of about \$246,000 in the CalHome "Re-Use" Account; and

WHEREAS, Sections 7715 et seq. of Title 2 of the California Code of Regulations, which govern the use of CalHome funds, provide that such funds may be loaned to developers of ownership housing for lower income first-time homebuyers for the purpose of purchasing property on which to build such housing, and that the loaned CalHome funds may be reconveyed to individual homebuyers for the purpose of deferred-payment second mortgage loans; and

WHEREAS, at its meeting of November 16, 2010, the City Council adopted Resolution 10-148 which reserved \$225,000 in CalHome Funds to be used as a loan to Habitat to purchase the Property; and

WHEREAS, Resolution 10-148 required that Habitat obtain approval of a development plan prior to approval of the CalHome loan; and

WHEREAS, at its meeting of April 26, 2011, the Planning Commission approved applications for a development plan and tentative tract for the Project;

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. The City Council hereby approves the Loan Agreement in substantially the form attached hereto as Exhibit "A," and authorizes the City of Manager to execute said Loan Agreement, subject to any minor, technical and clarifying changes approved by the City Attorney, and any other documents necessary to implement the Loan Agreement.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles on this 17th day of May, 2011 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Duane Picanco, Mayor

Caryn Jackson, Deputy City Clerk

Exhibit A

**LOAN AGREEMENT REGARDING ACQUISITION
OF REAL PROPERTY BY HABITAT FOR HUMANITY
FOR SAN LUIS OBISPO COUNTY**

THIS AGREEMENT is made and entered into this ____ day of _____, 2011, by and between **HABITAT FOR HUMANITY FOR SAN LUIS OBISPO COUNTY**, a California nonprofit corporation (hereinafter referred to as “Habitat”), and the **CITY OF EL PASO DE ROBLES**, a municipal corporation (hereinafter referred to as “the CITY”).

WITNESSETH:

WHEREAS, Habitat is a non-profit organization that provides ownership housing for lower and very-low income households, as defined by Sections 50079.5 and 50105 of the California Health and Safety Code; and

WHEREAS, Habitat desires to develop five (5) single family homes for occupancy by lower and very-low income households (the Project”) on real property at 2811 Vine Street, Paso Robles, California, as legally described in Exhibit “A” (the “Property”); and

WHEREAS, Habitat has requested that the City provide financial assistance in the amount of \$225,000 to acquire the Property for the purpose of developing five (5) single-family homes; and

WHEREAS, on May 12, 2003, the City entered into a Standard Agreement with the California Department of Housing and Community Development (“HCD”) for a grant of \$500,000 in CalHome Funds for the purpose of making mortgage assistance loans to lower income first-time homebuyers (the “CalHome Grant”); and

WHEREAS, as a condition of the CalHome Grant, City was to deposit repaid first-time homebuyer loan funds into a Re-Use Account for re-lending to eligible households; and

WHEREAS, the City has a balance of more than \$225,000 in the CalHome Re-Use Account; and

WHEREAS, State Regulations governing the CalHome Program (Title 25, California Code of Regulations, Sections 7715 et seq.) provide that CalHome Funds may be used for acquisition of property to be developed with housing that is affordable to lower income households; and

WHEREAS, City desires to loan money in the CalHome Re-Use Account to Habitat to assist in the acquisition of the Property.

NOW, therefore, in consideration of the mutual promises, recitals and other provisions hereof, the parties agree as follows:

1. Scope of Activities

(a) Habitat shall acquire the Property within 120 days of the execution of this Agreement.

(b) Habitat shall use the Property for the development and construction of five (5) single-family homes for households who qualify as lower- or very-low-income households, as defined by California Health and Safety Code Sections 50079.5 and 50105.

(c) Habitat shall ensure that homebuyers qualify as being of lower- or very-low-income households income households, as defined by Sections 50079.5 and 50105 of the California Health and Safety Code based on gross income as defined by Section 6914 of Title 25 of the California Code of Regulations and that monthly housing cost payments for the total package of financing for each home conform with Sections 6920 and 6924 of Title 25 of the California Code of Regulations;

(d) Habitat shall ensure that homebuyers qualify as being “first-time homebuyers” as defined by Section 50068.5 of the California Health and Safety Code.

(e) Habitat shall complete construction of these homes and obtain final permit approval within sixty (60) months of the date of this Agreement. This completion schedule may be amended upon written agreement between the City Manager and Habitat.

(f) Upon completion of construction of each home, each homebuyer shall execute a promissory note, in the principal amount of FORTY-FIVE THOUSAND DOLLARS (\$45,000), secured by a deed of trust against the property, in favor of the City. The promissory note shall bear interest at zero percent (0%), with payments deferred for thirty (30) years. Payments on the note shall thereafter be made in equal monthly installments for the next ten (10) years, with the note being fully repaid on the 40th anniversary of the date of the note.

(g) Habitat shall provide each homebuyer the training and education that meet the requirements of the CalHome Program as set forth in Section 7722 of Title 25 of the California Code of Regulations, which shall consist of the following topics:

- (1) preparing for homeownership;
- (2) available financing and credit analysis;
- (3) available financing and homebuyer responsibilities;
- (4) home maintenance and loan servicing.

A certificate of successful completion of the homebuyer education shall be issued to each homebuyer and a copy of this certificate shall be submitted to the City, which shall forward a copy to the State Department of Housing and Community Development.

2. Reporting

(a) During the term of this Agreement, Habitat shall submit quarterly progress reports to CITY describing the progress made toward accomplishing the above-listed Activities.

(b) CITY shall prepare and submit all CalHome reports required under the Standard Agreement for the CalHome Grant.

3. CITY Responsibilities

CITY shall be responsible for fulfilling responsibilities of the Contractor pursuant to the Standard Agreement for the CalHome Agreement.

4. Relationship to Subrecipient and Grant Agreements.

Habitat acknowledges and agrees that this Agreement is subject to the obligations and limitations imposed on the CITY and the State of California the CalHome Agreement and all future amendments to said agreements and is intended to be in conformance and harmony with them. Habitat further acknowledges that if the CalHome Agreement is terminated by the State of California, prior to its implementation by appropriation and/or funding, the CITY shall have the right to terminate or amend this Agreement by giving written notice of the termination or amendment of this Agreement to Habitat. Habitat hereby expressly agrees to the provisions of the CalHome Agreement and further expressly agrees that nothing in this Agreement shall be deemed to require the CITY to perform an obligation in conflict with the CalHome Agreement. Habitat further agrees that the CITY's right to enter into amendments to the CalHome Agreement is not, and shall not be restricted or impaired, in any way, by this Agreement.

5. Loan

Subject to the terms and conditions of this Agreement (including the availability of CalHome funds to the CITY), CITY agrees to loan to Habitat the amount of TWO HUNDRED TWENTY THOUSAND DOLLARS (\$225,000) (hereinafter referred to as the "Acquisition Loan") to enable Habitat to acquire the Property. In no instance shall the CITY be liable for any costs for the Property or the Project in excess of \$225,000, nor for any unauthorized or ineligible costs. Habitat shall not obligate or expend these Acquisition Loan funds for any purpose other than the

acquisition of the Property. Payment for the foregoing shall be in accordance with the following procedure:

(a) Payment to Habitat shall be by way of deposit of the Acquisition Loan proceeds into an escrow account established for purchase of the Property. Said payments shall be as approved by the CITY Director of Administrative Services.

(b) The Acquisition Loan proceeds shall be disbursed according to escrow instructions provided by the CITY in compliance with CalHome regulations.

(c) Habitat shall execute a promissory note (the "Promissory Note") and a deed of trust (the "Deed of Trust") in favor of the CITY in the principal amount of \$225,000. The Deed of Trust will be recorded against the Property at the close of the escrow. The Promissory Note and Deed of Trust shall be in a form approved by CITY.

(d) If escrow does not close within 120 days of the date of this Agreement, the \$225,000 will be returned to CITY.

(e) The terms of the Promissory Note shall be at six percent (6%) simple interest with principal payments deferred. Upon execution of the note by an individual qualified homebuyer as set forth in Section 1.(f) above, the principal amount of the Promissory Note shall be reduced by FORTY-FIVE THOUSAND DOLLARS (\$45,000) and any accrued interest on such principal in the Promissory Note shall be forgiven, and City shall execute a partial reconveyance to release the affected property from the Deed of Trust.

(f) In the event construction of any of the residential units does not begin by the third (3rd) anniversary of the date of the close of escrow, the Promissory Note shall be due and payable in full.

6. Repayment of CalHome Funds

After acquisition of the Property, Habitat will parcelize and sell individual lots from the Property to eligible households for the purpose of constructing primary residences for those families. Each homebuyer shall execute a promissory note and deed of trust, as set forth in Section 1.(f) above, as well as documents to be recorded regarding covenants on affordability and restrictions on transfer. All documents shall be in a form approved by CITY. The City agrees that its deed of trust shall be subordinate to that of homebuyer's primary permanent lender.

7. Term of Agreement

The term of this Agreement shall commence on the date first above written and shall terminate one (1) year after occupancy of the last unit constructed, unless sooner terminated as hereinafter provided.

8. Termination of Agreement for Cause

If CITY determines that Habitat has incurred obligations or made expenditures for purposes other than the acquisition of the Property, or if CITY determines that Habitat has failed to fulfill its obligations under this Agreement in a timely and professional manner, or if Habitat is in violation of any of the terms or provisions of this Agreement, or if CITY is given notice by HCD that HCD is terminating its CalHome Agreement, or if Habitat should be adjudged to be bankrupt, or if Habitat makes a general assignment for the benefit of Habitat's creditors, or if a receiver should be appointed in the event of Habitat's insolvency, then CITY shall have the right to terminate this Agreement effective immediately upon giving written notice thereof to Habitat and the note shall be immediately due and payable. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to effective date of such termination. If CITY's termination of Habitat for cause is defective for any reason, including but not limited to CITY's reliance on erroneous facts concerning Habitat's performance, or any defect in the notice thereof, CITY's maximum liability shall not exceed the amount payable to Habitat under Section 5. of this Agreement.

9. Sources and Availability of Funds

It is understood by the parties hereto that the funds being used for the purposes of this Agreement are funds furnished to CITY through HCD pursuant to the provisions of the CalHome Agreement. Notwithstanding any other provision of this Agreement, the liability of CITY shall be limited to CalHome funds available for the Project. CITY shall incur no liability to Habitat, its officers, agents, employees, suppliers, or contractors for any delay in making any such payments.

10. Reimbursement of Improper Expenditures

If at any time within applicable statutory periods of limitation it is determined by CITY or by HCD or its duly authorized representatives that funds provided for under the terms of this Agreement have been used by or on behalf of Habitat in a manner or for purposes not authorized or prohibited by CalHome regulations, Habitat shall, at CITY's request, pay to CITY an amount equal to One Hundred Percent (100%) of the amount improperly expended.

11. Employment Status

Habitat shall, during the entire term of this Agreement, be construed as a contractor, and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship or a joint venture relationship. Neither Habitat nor any of Habitat's agents, employees or contractors are or shall be considered to be agents or employees of the CITY or HCD in connection with the performance of Habitat's obligations under this Agreement.

12. Inspections

The CITY reserves the right to inspect any work performed hereunder to ensure that the Project is being and has been performed in accordance with the applicable state and/or local requirements, and this Agreement. Habitat agrees that all work found by such inspections not to conform to the applicable requirements shall be corrected and that CITY may withhold payment to Habitat until such corrections are completed.

13. Records

(a) All records, accounts, documentation and all other materials relevant to a fiscal audit or examination, as specified by HCD, shall be retained by Habitat for a period of not less than three (3) years from the date of termination of this Agreement.

(b) If so directed by the CITY or HCD upon termination of this Agreement, Habitat shall cause all records, accounts, documentation and all other materials relevant to the Project to be delivered to the CITY or HCD as depository.

(c) Habitat understands that Habitat shall be the subject to the examination and audit of the CITY Director of Administrative Services and/or an auditor appointed by the State of California for a period of three (3) years after the final payment under this Agreement.

14. Audit

(a) All records, accounts, documentation and other materials deemed to be relevant to the Project by the CITY or HCD shall be accessible at any time to the authorized representatives of the state government, on reasonable prior notice, for the purpose of examination or audit.

(b) An expenditure which is not authorized by this Agreement or which cannot be adequately documented shall be disallowed and must be reimbursed to the CITY or its designee by Habitat. Expenditures for activities not described in Section 1. of this Agreement shall be deemed authorized if the performance of such activities is approved in writing by the CITY and HCD prior to the commencement of such activities.

(c) Absent fraud or mistake on the part of the CITY or HCD, the determination by the CITY and HCD of allowability of any expenditures shall be final.

15. Indemnification

Habitat shall defend, indemnify and save harmless the CITY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgments, or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of this Agreement, including, but not limited to, (a) those predicated upon theories of violation of statute, ordinance or regulation, violation of civil rights, (b) any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board with respect to Habitat that would establish a CITY liability for failure to make social security and income tax withholding payments, (c) inverse condemnation, (d) equitable relief, or (e) any wrongful act or any negligent act or omission to act on the part of Habitat or of agents, employees, or independent contractors directly responsible to Habitat; providing further that the foregoing obligations to defend, indemnify and save harmless shall apply to any wrongful acts, or any actively or passively negligent acts or omissions to act, committed jointly or concurrently by Habitat, their agents, employees, or independent contractors and the CITY, its agents, employees, or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require indemnification for claims, demand, damages, costs, expenses or judgments resulting solely from the conduct of the CITY.

16. Insurance

Habitat shall obtain and maintain for the entire term of this Agreement and Habitat shall not perform any work under this Agreement until Habitat has obtained comprehensive general liability insurance, in companies acceptable to the CITY, and authorized to issue such insurance in the State of California. Said insurance shall consist of the following:

(a) Liability Insurance - Habitat shall maintain in full force and effect, for the period covered by this Agreement, comprehensive liability insurance. This comprehensive general and automobile liability insurance shall include, but not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property, resulting from any act or occurrence arising out of Habitat's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amount of insurance shall be not less than one million dollars (\$1,000,000) combined single limit coverage for bodily and personal injury, including death resulting therefrom, and property damage.

The following endorsements shall be attached to the policy:

(1) If the insurance policy covers an "accident" basis, it must be changed to "occurrence".

(2) The policy must cover personal injury as well as bodily injury.

(3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

(4) The CITY, its officers, agents, and employees shall be named as additional insured under the policy, and the policy shall provide that insurance will operate as primary insurance and that no other insurance affected by the CITY will be called upon to contribute to a loss hereunder.

(b) Workers' Compensation Insurance - In accordance with the provisions of Labor Code Section 3700, Habitat is required to be insured against liability for workers' compensation or to undertake self-insurance for any individuals working as employees of Habitat. Habitat agrees to comply with such provisions before commencing the performance of the Project under this Agreement.

(c) The following requirements apply to all insurance to be provided by Habitat:

(1) A certified copy of each insurance policy and a certificate of insurance shall be furnished CITY within sixty (60) days after execution of this Agreement. A certificate alone is not acceptable. Provided, however, a certificate of insurance shall be furnished CITY prior to the approval of any advances by the Auditor-Controller of the CITY pursuant to this Agreement.

(2) Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to CITY.

(3) Approval of the insurance by CITY shall not relieve or decrease the extent to which the Habitat may be held responsible for payment of damages resulting from Habitat's services or operations pursuant to this Agreement.

(d) If Habitat fails or refuses to procure or maintain the insurance required by this paragraph, or fails or refuses to furnish CITY with required proof that insurance has been procured and is in force and paid for, CITY shall have the right, at CITY's election, to forthwith terminate this Agreement.

17. Equal Employment Opportunity

During the performance of this Agreement, Habitat agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

18. Entire Agreement and Modification

This Agreement sets forth the full and entire understanding of the parties regarding the matter set forth herein, and any other prior or existing understandings or agreements by the parties, whether formal or informal, regarding any matters are hereby superseded or terminated in their entirety. Except as are provided in the Promissory Note and Deed of Trust, no changes, amendments, or alterations shall be effective unless in writing and signed by all parties hereto. Habitat specifically acknowledges that in entering into and executing this Agreement, Habitat relies solely upon the provisions contained in this Agreement and no others.

19. Funding for Additional Services

Funding of any programs, projects, or services beyond the term of this Agreement, by any new agreement or amendment or extension of this Agreement, have not been authorized and will depend upon CITY's determination of satisfactory performance of this Agreement by Habitat and upon the availability to CITY of additional grant funds allocated for such purposes. Neither CITY nor any employee of CITY has made any promise or commitment, express or implied, that any additional funds will be paid or made available to Habitat for the purpose of this Agreement over and above the funds expressly allocated under the terms of this Agreement.

20. Contractors and Subcontractors

Habitat agrees to, and shall require its subcontractors to agree to:

(a) Perform the Project and construct the residential units in accordance with state and local housing and building codes as applicable.

(b) Comply with the provisions of the California Labor Code, as applicable.

(c) Maintain at least the minimum state-required workers' compensation insurance for those employees who will perform the Project or any part of it.

(e) Maintain, if so required by law, unemployment insurance, disability insurance and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by Habitat or any subcontractor in performing the Project or any part of it.

21. Compliance with CITY and State Laws and Regulations

Habitat agrees to comply with all CITY and state laws and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity and all other matters applicable to Habitat, its subcontractors, and the Project.

22. Compliance with State Laws and Regulations

Habitat agrees to comply with all state laws and regulations applicable to the CalHome program and to the Project.

23. No Assignment Without Consent

Inasmuch as this Agreement is intended to secure the specialized services of Habitat, Habitat shall not have the right to assign or transfer this Agreement, or any part hereof or monies payable hereunder, without the prior written consent of CITY, and any such assignment or transfer without the CITY's prior written consent shall be considered null and void.

24. Law Governing and Venue

This Agreement has been executed and delivered in the State of California, and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the law of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

25. Enforceability

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

26. Binding on Successors in Interest

All provisions of this Agreement shall be binding on the parties and their heirs, assigns and successors in interest.

27. Effect of Waiver

CITY's waiver or breach of any one term, covenant or other provision of this agreement shall not be a waiver of a subsequent breach of the same term, covenant or provision of this Agreement or of the breach of any other term, covenant or provision of this Agreement.

28. Time; Waiver

Time is of the essence in this Agreement. No waiver of any default or breach by Borrower hereunder shall be implied from any omission by City to take action on account of such default, if such default persists or is repeated and no express waiver shall effect any default, other than the default specified in the waiver. Such waiver shall be in writing and shall be operative only for the time and to the extent therein stated.

29. Notices

Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to CITY shall be addressed as follows: City Manager, City of El Paso de Robles, 1000 Spring Street, Paso Robles, California, 93446. Notices required to be given to Habitat shall be addressed as follows: Executive Director, Habitat for Humanity for San Luis Obispo County, 187 Tank Farm Road, Suite 130B, San Luis Obispo, California, 93401.

Any party may change such address by notice in writing to the other parties and thereafter notices shall be transmitted to the new address.

30. Remedies Cumulative

No right, power or remedy given to City by terms of this Agreement, Note or Deed of Trust is intended to be exclusive of any other right, power or remedy, and each and every such right, power or remedy shall be cumulative in addition to every other right, power or remedy given to City by the terms of any such instrument, or by any statute or otherwise against Habitat and any other person.

31. Disputes

In the event of any controversy, claim or dispute relating to this Agreement or breach thereof, the prevailing party shall be entitled to recover reasonable expenses, attorney's fees and costs.

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

HABITAT FOR HUMANITY FOR SAN LUIS OBISPO COUNTY

By: _____
JULIA OGDEN
Executive Director

CITY OF EL PASO DE ROBLES

By: _____
JAMES L. APP
City Manager

STATE OF CALIFORNIA)

)
COUNTY OF _____)

On _____, 20__, before me, _____, Notary Public,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and
that by his/her/their signature on the instrument the person, or the entity upon behalf of which the
person acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (seal)

STATE OF CALIFORNIA)

)
COUNTY OF _____)

On _____, 20__, before me, _____, Notary Public,
personally appeared _____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and
that by his/her/their signature on the instrument the person, or the entity upon behalf of which the
person acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (seal)

EXHIBIT "A"

82479.04005\5876889.2

Exhibit A

RESOLUTION NO. 10-148

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES RESERVING UP TO \$225,000 IN CALHOME FUNDS TO ASSIST THE DEVELOPMENT OF SIX SINGLE FAMILY HOMES FOR VERY LOW INCOME HOUSEHOLDS BY HABITAT FOR HUMANITY FOR SAN LUIS OBISPO COUNTY

WHEREAS, in a letter dated August 25, 2010, Habitat for Humanity for San Luis Obispo County ("Habitat") requested that the City of El Paso de Robles (the "City") provide financial assistance in the amount of \$225,000 to acquire property at 2811 Vine Street (the "Property"), and a waiver of City building permit and development impact fees required for the construction of six single family residential units for very low income households on the Property (the "Project"); and

WHEREAS, the Property is located with the planning area for the draft Uptown/Town Centre Specific Plan; and

WHEREAS, the proposed land use and density of the Project is consistent with the General Plan, existing R-2 Zoning, and proposed zoning under the draft Uptown/Town Centre Specific Plan; and

WHEREAS, both the present Zoning Code and the proposed form-based code in the draft Uptown/Town Centre Specific Plan require approval of a discretionary development plan for development of five or more dwelling units on any property; and

WHEREAS, on May 15, 2007, the City Council adopted Resolution 07-100, which provided that the City would not approve any discretionary zoning applications in the Uptown area until the Uptown/Town Centre Specific Plan had been adopted; and

WHEREAS, Habitat is a non-profit organization and an affiliate to Habitat for Humanity International, which serves to build ownership housing for low and very-low income households; and

WHEREAS, in 2002, Habitat completed construction of three single family residential units for low and very low income households at 2929, 2947, and 2949 Vine Street; that project was assisted with a grant of \$35,000 in Redevelopment Low and Moderate Income Housing (LMIH) Funds for the purpose of offsetting a portion of City building permit and development impact fees; and

WHEREAS, at its meeting of November 16, 2010, the City Council considered Habitat's request for financial assistance and determined that acquisition of the Property would best be accomplished with CalHome funds, and that a waiver of City building permit and development impact fees for the Project would best be accomplished with a grant of LMIH funds to offset said fees; and

WHEREAS, in 2001, the State of California awarded the City a grant of \$500,000 in CalHome funds for the purpose of providing mortgage assistance loans to lower income, first-time homebuyers; from this grant, the City made six deferred-payment second mortgage loans; the total principal amount of that loan portfolio was \$489,500; and

WHEREAS, pursuant to the conditions of the CalHome Grant and CalHome regulations as set forth in Sections 7715 et seq of Title 25 of the California Code of Regulations, the City established a Re-Use Account into which proceeds from repaid CalHome Loans would be deposited and accrue interest; and

WHEREAS, as of the date of Habitat's request, three of the CalHome Loans have been repaid, and the Re-Use Account has a balance of \$246,000; and

WHEREAS, CalHome regulations permit CalHome funds to be loaned to developers of lower income housing (which includes very-low income households) in a manner that the loan proceeds can be converted into individual loans to the first-time homebuyers; and

WHEREAS, the Project would help the City meet its low-income housing needs, as set forth in the 2004 Housing Element of the General Plan, and the City's objective of housing its workforce, as stated in the 2006 Economic Strategy; and

WHEREAS, as of the date of Habitat's request, they have not acquired the Property, received approval of a development plan, submitted evidence of other pre-approved financing for the Project, nor has the Uptown/Town Centre Specific Plan been adopted;

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. The City Council hereby reserves up to \$225,000 in CalHome Funds to be a loan to Habitat for the purpose of acquiring the Property, subject to the following conditions:

1. This reservation shall expire six (6) months from the date of this resolution, unless the reservation period is extended by resolution of the Agency following a submittal of a written request by Habitat.
2. The form of financial assistance to the Project will be a loan to purchase the Property for the Project. Said loan shall be structured to be reconveyed to buyers who qualify as being "Very Low Income", as defined by Health and Safety Code Section 50105, and "first-time homebuyers", as defined by Health and Safety Code Section 50068.5.
3. The loan of \$225,000 to Habitat shall accrue interest at six (6) percent simple per annum. The principal and interest due on this loan shall be forgiven incrementally upon reconveyance of portions of said loan to qualified buyers.
4. The individual loans to homebuyers shall have payments deferred for thirty (30) years at zero (0) percent interest.
5. All loans shall conform with State Regulations for the CalHome Program as set forth in Sections 7715 et seq of Title 25 of the California Code of Regulations.
6. Prior to distribution of any loan funds, Habitat shall enter into a Participation Agreement (PA) with the Agency, which shall set forth the terms and conditions for the loan.
7. As a prerequisite to obtaining the loan, Habitat shall:
 - a. Submit to City evidence that full financing for the Project has been approved by the appropriate authorities for each source of financing;
 - b. Obtain approval of a development plan application for the Project. This condition will require that one of the two following events occur prior to said approval:
 - (1) The Uptown/Town Centre Specific Plan is adopted, and the development plan is found to be in conformance with said plan;
 - (2) The City Council grants Habitat permission to proceed with the development plan in advance of adoption of the Uptown/Town Centre Specific Plan.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles on this 16th day of November, 2010 by the following vote:

AYES: Steinbeck, Hamon, Strong
NOES: Gilman
ABSENT: Picanco
ABSTAIN:


Duane Picanco, Mayor

ATTEST:


Caryn Jackson, Deputy City Clerk