

CONSTRUCTION TRADE EDUCATIONAL OPPORTUNITY AGREEMENT
BETWEEN ODESSA HOUSING FINANCE CORPORATION
AND ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT

This Agreement is made this ____ day of _____, 2004, by and between Odessa Housing Finance Corporation, a Texas non-profit corporation ("Corporation") and the Ector County Independent School District, a political subdivision of the State of Texas ("District").

I. RECITALS

WHEREAS, Corporation and District desire to provide quality education and enhanced learning experiences for students enrolled in the District's Career and Technology Education Center ("the Center"), and particularly those student enrolled in construction trade courses; and

WHEREAS, the parties hereto desire to further develop a community partnership between Corporation and the Center that will result in the provision of additional affordable housing units within the boundaries of the District while at the same time affording students enrolled at the Center practical, hands-on experience building a new home that might not otherwise be obtained outside of this partnership; and

WHEREAS, the District finds that it is in the public interest and will be a benefit to the public to enhance the education of the students enrolled at the Center with the type of experience that this Agreement will afford them;

NOW THEREFORE, for and in consideration of the promises made to one another and the conditions set forth in this Agreement, Corporation and District agree as follows:

II. PROJECT DESCRIPTION

Corporation intends to have constructed one or more new single family residential units on property located within the boundaries of the District that is owned by Corporation ("the Project"). In conjunction with the Project, District, through the Center, will perform certain construction related services by making available students enrolled at the Center in its Construction, Cabinet-making, and Electrical Technology programs to perform certain construction services in relation to construction of the Project as well as the Center faculty and staff necessary to supervise the students assigned to the Project.

III. TERM; TERMINATION

This Agreement shall be effective upon the signature of all parties hereto and shall be without term. Either party may terminate this Agreement by providing written notice to the other party not later than fifteen (15) days prior to the proposed date of termination; provided, however, Center's students shall complete its work on the residential unit on which it is currently working.

IV. CORPORATION'S OBLIGATIONS

In furtherance of the Project, Corporation agrees to perform the following obligations:

- A. Have prepared at its sole cost and expense by a licensed architect all necessary plans, specifications, drawings, and other documents related to the design and construction of the Project with sufficient copies provided to the Center's faculty to use in conjunction with the Project;
- B. Provide at its sole expense the property on which the Project will be constructed, which property must be located within the boundaries of the District;
- C. Provide at its sole expense all building materials, supplies, and fixtures, including on-site delivery of same, necessary for the Center's students to perform their obligations under the Project as set forth below;
- D. Contract with third-parties at Corporation's sole costs for performance of the following work necessary for construction of the Project:
 - 1. All grading, excavation, and other site preparation work;
 - 2. All concrete work including, but not limited to, slab/foundation construction, driveways, sidewalks, porches, and patios;
 - 3. All plumbing work including, but not limited to, installation of all water, sanitary sewer, and gas lines, and installation of all plumbing fixtures and hardware related thereto;
 - 4. All masonry work, regardless of the type of material (i.e. brick, rock, CMU's, etc.);
 - 5. All HVAC and other mechanical work, including all installation of all equipment, fixtures, and duct work;
 - 6. All floor covering installations, regardless of material;
 - 7. All landscaping material installation;
 - 8. All exterior landscape irrigation, if desired by Corporation;
 - 9. Disposal of all construction debris;
 - 10. Job-site material pick-up, delivery, and storage; and

11. Location of portable on-site sanitation facility;
- E. Obtain and/or pay for all federal, state, or local permits or licenses required by any of said authorities to construct the Project; including, but not limited to, building, electrical, mechanical, and plumbing permits, and permits required under any applicable federal or state law or regulation regulating storm water pollution and drainage.

V. CENTER'S OBLIGATION

In furtherance of the Project, Center agrees to perform the following obligations:

- A. Utilizing students enrolled at the Center and their supervising faculty as an extension of the classroom, perform the following work necessary for construction of the Project in a workman-like manner in accordance with all plans, specifications, and drawings provided to the Center by Corporation or its architects:
1. Construct all structural framing for the Project;
 2. Install temporary electrical utility pole;
 3. Install exterior roof and sheathing;
 4. Install composition roofing materials;
 5. Install interior and exterior doors;
 6. Install exterior siding used for gable ends, fascia, soffits, and brick pockets;
 7. Install all electrical equipment, devices, fixtures, and wiring;
 8. Install all wall and ceiling installation;
 9. Install all drywall, including taping, floating, and finishing;
 10. Install all baseboard, cabinet, counter, door and window casement treatment;
 11. Fabricate and install custom-built kitchen and bath cabinets; and
 12. Prime and paint all interior and exterior exposed paintable surfaces.
- B. Provide all tools and equipment necessary to perform the construction services described in Paragraph A, above;

- C. Provide, at District's cost, Center employees to supervise the work performed pursuant to Center's students;
- D. In the case of electrical work performed for the Project, perform all work under the direct supervision of a faculty member who is a Master Electrician licensed in the City of Odessa; and
- E. Perform all work in accordance with applicable local and state construction codes.

VI. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION ACT

Corporation and District acknowledge and understand that the Project will be subject to the provisions of the Texas Residential Construction Commission Act (Tex. Prop. Code §§401.001, et.seq.) and agree as follows:

- A. To the extent required by state law and regulation, prior to commencement of the Project, Corporation shall:
 - 1. obtain a certificate of registration as a “builder” as required by Chapter 416 of the Texas Property Code; or
 - 2. contract with a third party who is a registered builder with the Texas Residential Construction Commission;
- B. As between Corporation and District, Corporation shall be responsible for registering, or providing for the registration of, each residential unit constructed pursuant to the Project to the extent required by Chapter 426 of the Texas Property Code;
- C. As between Corporation and District, Corporation shall be responsible for providing, or ensuring the provisions of, such statutory warranties to the ultimate owner of the residential unit constructed as part of the Project to the extent required by Chapter 430 of the Texas Property Code; and
- D. Corporation agrees to indemnify, defend, and hold District, its trustees, officers, employees and students harmless against any claims arising from:
 - 1. the breach of any statutory warranty that Corporation is required to provide to the ultimate buyer of the residential unit constructed pursuant to this Agreement, his heirs, successors, or assigns;
 - 2. the failure of Corporation to provide any statutory warranty required by Chapter 430 of the Texas Property Code or any regulations promulgated thereunder;

3. if Corporation hires a third party to serve as the builder of a residential unit constructed pursuant to this Agreement, the breach of any statutory warranty that said third party builder is required to provide to the ultimate buyer of the residential unit his heirs, successors, or assigns;
4. if Corporation hires a third party to serve as the builder of a residential unit constructed pursuant to this Agreement, the failure of said third party to provide any statutory warranty required by Chapter 430 of the Texas Property Code or any regulations promulgated thereunder; and
5. **personal injury, including death, or damages to property, arising from defects in the design and/or construction of the residential units, regardless of whether or not such defects arise from the negligent acts or omissions of District, its trustees, officers, employees, or students.**

For the purpose of this Agreement, the word “builder” shall have the same meaning as set forth in Texas Property Code §401.003, as amended.

VII. PROJECT SCHEDULE

Corporation understands and acknowledges that the construction tasks performed by Center's students and employees are being conducted as part of a regular academic program of the District and that the work will generally be performed during the regular school day. Consequently, Corporation agrees that the work performed by Center's employees and students shall not be subject to a specific completion date. Furthermore, while Center's faculty will make reasonable efforts to coordinate the timing of work to be performed by Center's students with work to be performed by third-party contractors, Corporation agrees to release and hold harmless District, its trustees, employees, and students from claims made by third-party contractors as the result of the failure of Center's students to complete the work within the time requested or required by said third-party contractor, including, but not limited to, claims made for increase contract price resulting from such delays.

VIII. RISK OF LOSS

As between Corporation and District, Corporation agrees that it shall bear all risk of loss regarding damage or destruction occurring to residential units constructed pursuant to the Project, regardless of the cause for the loss. While not required to do so by this Agreement, Corporation shall be solely responsible for obtaining Builder's Risk insurance coverage to protect against damage or loss to the property during the course of construction of any portion of the Project.

IX. TITLE TO MATERIALS AND RESIDENTIAL UNITS

Title to the property on which the residential units are constructed, and all materials incorporated or stored on site to be incorporated into the construction of the residential units by Center's student, shall at all times remain with Corporation.

X. ACTIVITY FUND GIFT

In its desire to further enhance the Center's construction trade programs and provide the Center's students the opportunity to attend construction trade education fairs, contests, and other educational activities, or to purchase tools, equipment, and/or materials used in the Center's construction trade programs for which budgeted funds may not be available, Corporation intends to donate to the District an amount equal to 20% of the Corporation's cost of materials provided to Center in the performance of the work performed pursuant to Paragraph V.A., above, generally in accordance with the following schedule:

- A. 30% of the amount of the gift will be paid upon 30% completion of the residential unit as determined by Corporation's architect;
- B. 30% of the amount the gift will be paid upon 60% completion of the residential unit as determined by Corporation's architect; and
- C. The remaining 40% of the amount due shall be paid upon reaching substantial completion of the residential unit as determined by Corporation's architect.

It is the desire of Corporation that the gift be allocated to the Center's Activity Fund for the benefit of the Technology Education Center. In no case shall any gift to the Center's Activity Fund with respect to any single residential unit be equal to or greater than \$20,000.00. The parties hereto agree that the payments made pursuant to this section are intended to be a gift and not as the payment of any fixed price, commission, fee, wage, or other compensation to the District, any of District's employees, or any other individual for the work performed by Center's students and employees pursuant to this Agreement. District agrees that the sole consideration received by the District for this Agreement is the privilege granted by Corporation to District's students to participate in the Project and receive practical training in various construction trades consistent with the students' course of study at the Center.

XI. CONTACT PERSON

District hereby designates _____ to serve as Corporation's primary contact person with respect to the daily operations of the Project. Corporation hereby designates _____ to serve as District's primary contact person with respect to the daily operations of the Project.

XI. NOTICES

Notices sent pursuant to this Agreement shall be delivered in writing to the following:

For Corporation:

President

Odessa Housing Finance Corp.
3801 N. Dixie Blvd.
Odessa, Texas 79762

For ECISD:

Dr. Wendell Sollis, Superintendent
802 N. Sam Houston
Odessa, Texas 79761

With Copy to:

Mr. Curtis W. Britt, Director
ECISD Career Center
P.O. Box 3912
Odessa, Texas 79760

Mr. Bruce Revell
Asst. Supt. for Business & Finance Operations
802 N. Sam Houston
Odessa, Texas 79761

Either party may change where to send notices by providing written notice to the other party at any time during the term of this Agreement.

XII. MISCELLANEOUS

- A. The waiver by any party hereto of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by the breaching party. No waiver shall be valid unless in writing and approved by non-breaching party.
- B. Venue for any dispute between the parties to this Agreement arising from or related to this Agreement shall be in Ector County, Texas.
- C. This Agreement may be executed in two or more counterparts or originals, each of which counterparts shall be deemed an original, but all of which counterparts or originals together shall constitute one and the same instrument.
- D. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, permitted successors and permitted assigns.
- E. This Agreement may not be altered, amended or modified except by a written instrument executed by the parties hereto.
- F. If any one or more of the provisions hereof shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- G. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings of written or oral agreements between the parties with respect to the subject matter hereof.
- H. This Agreement shall not be valid and effective until approved by the District's Board of Trustee.

ACCEPTED AND AGREED this ____ day of _____, 2004.

ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT

By: _____
Randy Rives, President, Board of Trustees

ODESSA HOUSING FINANCE CORPORATION

By: _____

Its: _____