ADOPTED BY THE RIO NUEVO
MULTIPURPOSE FACILITIES DISTRICT
BOARD OF DIRECTORS
September 14, 2005

RESOLUTION NO. 2005-10

AUTHORIZING THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT TO ENTER INTO A MEMORANDUM OF UNDERSTANDING AND AN APPLICATION AND PROGRAM DEVELOPMENT AGREEMENT WITH CHICANOS POR LA CAUSA RELATIVE TO THE NEW MARKETS TAX CREDIT PROGRAM.

WHEREAS, the New Markets Tax Credit (NMTC) Program is a tool to finance economic development whereby investors receive a credit against federal income taxes for making qualified investments in certified entities; and

WHEREAS, Chicanos Por La Causa (CPLC), Inc. has offered to partner with the District in preparing and submitting an application for a tax credit allocation that can advance the City of Tucson and the District's downtown revitalization goals and objectives; and

WHEREAS, the District would benefit from an allocation of tax credits that can be used by the private sector for a variety of purposes on commercial redevelopment projects, including by way of example: equity, loans, and refinancing; and

WHEREAS, CPLC proposes to enter into a Memorandum of Understanding and an Application and Program Development Agreement that essentially define mutual roles and responsibilities of the District and CPLC, draft copies of which are attached hereto; and

WHEREAS, CPLC is among a very select group of applicants to have applied for and received tax credit allocations in the past, including a $15 million allocation in program year 2003-2004, in partnership with the City of Tempe, to support commercial real estate development; now therefore, be it

RESOLVED, by the Board of Directors, that District staff is authorized and directed to finalize the terms and conditions of the draft agreements attached hereto and, with the approval of same by the District's legal counsel, to execute said agreements and to make expenditures as contemplated therein.

PASSED, ADOPTED, AND APPROVED by the Board of Directors of the Rio Nuevo Multipurpose Facilities District on September 14, 2005.

APPROVED:

Chair
Rio Nuevo Multipurpose Facilities
District Board

ATTEST:

Secretary
Rio Nuevo Multipurpose Facilities
District Board

APPROVED AS TO FORM:

Counsel
Rio Nuevo Multipurpose Facilities
District Board

REVIEWED BY:

Director
Rio Nuevo Multipurpose Facilities
District

Rio Nuevo District
New Markets Tax Credit Application
Agreement

THIS CONTRACT between the Rio Nuevo Multipurpose Facilities District (the "District"), and Chicanos por La Causa, Inc., for itself and on behalf of Prestamos CDFI, LLC, ("CPLC") (each a "Party", and collectively the "Parties") is for the purpose of memorializing a joint application to the U.S. Treasury Department for New Markets Tax Credits and implementation of the same into a successful economic program (the "Program").

WHEREAS, the Program is designed to stimulate job creation, economic and community development within low-income communities throughout eligible census tracts; and

WHEREAS, successful implementation of the Program will enhance the District's ability to meet its strategic goals;

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the Parties hereto, the Parties agree as follows:

1. Scope.

The Program is broken down into two major activity phases. These phases consist of Phase I: 2006 application and preliminary development; and Phase II: development and implementation. The scope of this Agreement is initially limited to Phase I. Conditional upon notification of an allocation award the District and CPLC will enter into an additional agreement regarding Phase II, including provisions regarding the Parties' roles and responsibilities, Program development and Program implementation. If no allocation award is made, then the Parties agree that Phase I and Phase II will be repeated for the 2007 allocation.

The Parties recognize and acknowledge that Phase I involves the submission of a viable, competitive application; implementation of the Program cannot occur without an awarded NMTC allocation. Phase I is intended to permit the successful implementation of the Program in a cost-effective manner and consists of distinct activities. During Phase I, CPLC will create an NMTC Application inclusive of broader strategies and partnerships focused on job creation, economic and community development within qualified low-income communities in eligible census tracts, one or more of which must include all or part of the District. In addition, CPLC will address the specific tactical requirements necessary to successfully utilize and deploy an allocation of NMTCs by developing major Program components based on its past experience, empirical research, and assessment of practices across a universe of the District's peer organizations.

2. Objectives and Deliverables.

CPLC's Phase I objectives reflect the requirements outlined by the CDFI Fund to apply for and receive an allocation of NMTCs and the District's strategic goals. In addition, the Phase I objectives reflect pre-implementation planning requirements necessary to successfully implement the Program upon notification of an allocation award by the CDFI Fund. Phase I Objectives are as follows:

Objective 1: Identify and secure financial commitments from investors seeking to utilize the NMTC benefits and to capitalize qualified projects.

Objective 2: Identify within its application for NMTCs a strategy for creating project specific Community Development Entities ("CDEs") responsible for utilizing an allocation of NMTCs within eligible census tracts, one or more of which must include all or part of the District.

Objective 3: Develop and submit, in conjunction with District staff, an application for NMTCs by 2:00pm Arizona time on September 21, 2005.

Objective 4: Define and assess organizational capacity and needs required to implement the activities outlined in the application.

Objective 5: Define and assess industry-wide best practices among similarly sized NMTC allocation recipients from past allocation cycles.

Objective 6: Recommend major NMTC Program components, funding levels, and strategies necessary to successfully implement the activities outlined in the application.

3. District's Role and Responsibilities.

A. The District will be responsible for overall implementation of the Program in working with CPLC.

B. The District shall cooperate with CPLC about the NMTC Application and preliminary Program development keeping CPLC advised and facilitating supporting conversations with partners directed at implementation of the Program and strategies.

C. The District shall make available resources necessary for successful discharge of CPLC's work on the District's behalf, including time, relationships, documents, and materials necessary for the completion of Phase I.

D. The District shall negotiate with CPLC regarding the Parties' respective roles and responsibilities for Phase II of the Program, consistent with the application as approved by the District, upon notification of an allocation.

4. CPLC's Roles and Responsibilities.

A. The primary role of CPLC is to achieve the six objectives set forth in Section 2 of this Agreement, for both a 2006 allocation application and, if necessary, a 2007 allocation application.

B. CPLC shall serve as external advisors to the District on matters determined, in consultation with District staff, to be related to the implementation of the Program.

C. CPLC's specific NMTC allocation request for the District shall be in the amount of Twenty Million Dollars ($20,000,000). CPLC intends to request Sixty Million Dollars ($60,000,000) for its own use, for a total application amount of Eighty Million ($80,000,000) dollars.

D. CPLC provides no guarantee of receipt of a successful allocation of NMTCs from the United States Department of Treasury.

E. CPLC agrees to have majority representation from the District on its NMTC Advisory Board.

F. CPLC shall negotiate with the District regarding the Parties' respective roles and responsibilities for Phase II of the Program, consistent with the application as approved by the District, upon notification of an allocation.

5. Allocation.

Upon notification of an allocation, the District and CPLC will negotiate the roles, responsibilities and authority for disbursement of the 25% share of the proceeds from the allocation designated to the District.

A. In the event that the application results in an award allocation of NMTCs, the District's 25% share of the proceeds from the allocation shall be disbursed directly or indirectly by a newly formed CDE operating on behalf of the District within the State of Arizona.

B. The allocation designated for the District will target investments being made within the District's boundaries which qualify as low-income communities for purposes of the NMTC program.

C. In the event of an allocation award less than the requested amount, the allocation shall be designated twenty-five percent (25%) to the District and seventy-five percent (75%) to CPLC.

D. Administrative fees allowed under the Program will be the subject of future good faith negotiation between the Parties, and no allocation shall be spent until such negotiations are finalized.

E. In the event that the application results in an award allocation of NMTCs, any funds disbursed by the District under terms of this contract shall be reimbursed to the District upon Program capitalization.

6. Costs

A. The costs for Phase I shall be One Hundred Thousand Dollars ($100,000), which amount shall include CPLC staff time, consultants, materials, and travel expenses.

B. Such fee shall be paid as follows:

1. Upon execution of this Agreement, Fifty Thousand Dollars ($50,000);

2. Twenty-Five Thousand Dollars ($25,000) within ten (10) days of the successful transmission of the 2006 NMTC application to the United States Department of Treasury's Community Development Financial Institutions Fund.

3. Twenty-Five Thousand Dollars ($25,000) within ten (10) days of notification by the United States Department of Treasury's Community Development Financial Institutions Fund of an allocation award.

No additional fee shall be paid in the event that a 2006 allocation is not awarded and the Parties are required to submit a 2007 allocation application. The Parties hereby agree that the fee set forth above contemplates the risk that a 2007 allocation application may be required.

7. Term of Agreement and Termination

This Agreement will terminate if neither a 2006 nor a 2007 allocation is awarded. The Parties acknowledge that this Agreement is subject to cancellation by the District pursuant to A.R.S. Sec. 38-511.

8. Standards Terms and Conditions.

A. Compliance With Laws. CPLC agrees to carry out its responsibilities under this agreement in compliance with all applicable local, state and federal laws and in compliance with all laws which are applicable to submitting the Application.

B. Independent Contractor Relationships. CPLC, its subcontractors, employees, agents or representatives, in the performance of all work, services, and activities under this Agreement or any subcontract, are independent, and are not employees, agents or servants of the District or the State of Arizona. CPLC's relationship and the relationship of its employees to the District and the State of Arizona shall be that of an independent contractor and not as employees or agents.

The District and State of Arizona, their subcontractors, employees, agents or representatives, in the performance of all work, services, and activities under this Agreement or any subcontract, are independent and are not employees, agents or servants of CPLC.

C. Indemnifications. To the extent permitted by law, each Party (as "indemnitor") agrees to indemnify, defend and hold harmless the other Party (as "indemnitee") from and against all claims, losses, liability, costs or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of any services performed under this Agreement, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers

D. Professional Liability Insurance. CPLC will maintain Professional Liability Insurance covering errors and omissions performed by CPLC or any persons employed by CPLC, with an unimpaired limit of not less than $500,000 for each claim and $1,000,000 for all claims. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two years past termination of this Agreement. Evidence of such insurance must be provided annually on a timely basis to the District Board.

E. Time of Essence. The Parties agree that time shall be of the essence in this Agreement and the representations and warranties made are all material and of the essence of the Agreement.

F. Right to Assurance. Whenever a Party to this Agreement in good faith has reason to question another Party's intent to perform, he may demand that the other Party give a written assurance of his intent to perform. In the event that a demand is made and no written assurance is given within ten (10) days, the demanding Party shall treat this failure as an anticipatory repudiation or default of the Agreement.

9. Cancellation for Default.

A. Each Party reserves the right to cancel the whole or any part of this Agreement in the Event of Default by the other Party, subject to payment by the District to CPLC for all services performed through the date of termination.

B. An "Event of Default" by CPLC shall be for failing to submit a 2006 New Markets Tax Credit application, as approved by the District, by 2:00. PM September 21, 2005. A further "Event of Default" by CPLC shall be for failing to submit a 2007 New Markets Tax Credit application, as approved by the District, by the deadline then applicable, in the event that such application is required pursuant to this Agreement. The "Event of Default" by the District shall be for failing to make payments per this Agreement.

10. Spirit of Support.

The District and CPLC agree to provide cooperation and proactive support of all mutually agreed upon actions and decisions relating to the Program.

11. Entire Agreement.

This Agreement incorporates and includes all prior negotiations and understandings applicable to the matters contained herein. The Parties agree that this Agreement constitutes entire understanding between the parties and supersedes previous agreements and representations whether written or oral.

12. Amendments in Writing.

This Agreement may not be changed, altered or modified except by an instrument in writing signed by all the Parties.

13. Provisions Severable.

In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

Except for payment of sums due, no Party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is prevented by reason of force majeure.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective September 26, 2005, as shown by the signatures below.

Rio Nuevo District

By: _____
Gregory Shelko, Director

Chicanos por La Causa, Inc.

By: _____
~~Edmundo E. Hidalgo~~, Chief Operating Officer

Martin Quintana CFO

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Memorandum of Understanding Between
The Rio Nuevo Multipurpose Facilities District
And
Chicanos por La Causa

THIS MEMORANDUM OF UNDERSTANDING is entered into this _____ of September, 2005, by and between the Rio Nuevo Multipurpose Facilities District (the "District") and Chicanos por La Causa, Inc. for itself and on behalf of Prestamos CDFI, LLC ("CPLC") (each a "Party" and collectively the "Parties").

WITNESSETH:

WHEREAS, on September 26, 2005, the Parties entered into a New Markets Tax Credit Application Agreement (the "Agreement"); and

WHEREAS one of the objectives of the Agreement was to identify with the application for the New Market Tax Credit ("NMTC") a strategy for creating a Community Development Entity ("CDE"); and

WHEREAS, CPLC has already formed a CDE, Prestamos CDFI, LLC; and

WHEREAS, the District and CPLC recognize the importance in working together to utilize the expertise of each other in order to fully maximize the benefit of NMTC projects; and

WHEREAS, the District is interested in cooperating with and utilizing Prestamos CDFI, LLC.

NOW THEREFORE, the Parties do hereby agree as follows:

1. In the event that an allocation is awarded, pursuant to the Agreement, such allocation shall be managed by Prestamos CDFI, LLC as follows:

    A. Any such allocation of NMTCs shall be distributed in a manner that twenty-five percent (25%) of the allocation shall be invested in qualified businesses located within eligible census tracts under direction and advice of the District. The remaining seventy-five percent (75%) of the allocation shall be used under the direction of CPLC.

    B. The District shall provide recommendations as to suitability and priority of Tucson based NMTC projeccts based on these general concepts and consistent with the application Agreement.

    C. The District shall have a minimum of three representatives (out of five) on an Advisory Board of Prestamos CDFI, LLC or a wholly owned CDE of Prestamos CDFI, LLC that is responsible for the distribution of the allocation, providing expertise in Small Business Lending and Commercial Development.

2. Once an allocation is awarded, the determination of administrative fees, insurance and indemnification will be mutually agreed upon by the parties, and no allocation shall be made to any entity until such agreement has been reached.

[Remainder of page intentionally left blank.]

IN WITNESS HEREOF, the Parties have first set their hands on the date first mentioned above.

Rio Nuevo District

By: _____
Gregory Shelko, Director

Chicanos por La Causa, Inc.

By: _____
~~Edmundo E. Hidalgo~~, Chief Operating Officer

Martin Quintana, CFO

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