

SAN ILDEFONSO HOUSING AUTHORITY
02 Tunyo Po, Santa Fe, New Mexico 87506
Telephone: (505) 455-4170



MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT (Agreement) is entered into by and between the San Ildefonso Housing Authority (SIHA), 02 Tunyo Po,, Santa Fe, New Mexico 87506 and _____ (Participant), [Certificate of Degree of Indian Blood][Enrollment] Number _____, living at (address)_____ with reference to the following.

RECITALS

WHEREAS the Participant occupies the above-referenced housing unit (Home) that SIHA has determined to be in need of rehabilitation;

WHEREAS the Participant has applied for, and his or her Home is eligible for, rehabilitation under the Housing Rehabilitation Program;

WHEREAS SIHA also wishes to be assured that, if the Participant sells, conveys, or otherwise transfers the Home, or any interest therein, to another person or entity within five years after the work is complete, SIHA will be reimbursed for its costs and labor on a *pro rata* basis, and if such a sale, conveyance or transfer is made, that SIHA will be given the right of first refusal; and

WHEREAS SIHA is responsible for ensuring compliance with this Agreement;

NOW THEREFORE, in consideration of the Recitals hereinabove mentioned and of the terms, conditions, covenants, and warranties hereinafter mentioned to be kept, honored, and performed by the parties, it is hereby agreed as follows:

TERMS AND CONDITIONS

I. Cost of Work; SIHA's Responsibilities. The rehabilitation will cost approximately \$_____, the final cost to be determined in writing by SIHA upon completion of the work to be done. This Agreement shall act as a lien against the Home in the final amount of the cost of the work and may be filed either with the Bureau of Indian Affairs or the County in which the property is located. The lien shall be released by SIHA five years after the work is completed, provided that the Participant observes and performs each and every promise and duty agreed to in this Agreement.

II. Participant 's Responsibilities.

A. Maintenance.

1. The Participant agrees to provide maintenance to the Home for five years after the work is complete. The Participant may arrange with SIHA to provide such maintenance, and costs accrued will be charged to the Participant. In the sole discretion of SIHA such cost may be divided into equal amounts and paid over a period of time not to exceed one year.

2. If the Participant fails to provide such maintenance, SIHA will terminate the Agreement, and the Participant shall reimburse SIHA for its costs and labor on a *pro rata* basis, based on the number of years of compliance.
- B. Access by SIHA.** The Participant shall provide SIHA reasonable access to the Home for the purpose of regular inspections.
- C. Right of First Refusal.** If the Participant wishes to sell, convey, or otherwise transfer the Home or any interest therein, SIHA shall have the right of first refusal to acquire the Participant's interest in the Home. The right of first refusal may be exercised at any time within thirty calendar days after the Participant has notified SIHA of the proposed sale, conveyance, or transfer of the Home or any interest therein in writing. A notice of SIHA's intent to exercise the right of first refusal shall be provided in writing from SIHA to the Participant.
- D. Conveyance of Home.** If the Participant sells, conveys, or otherwise transfers the Home, or any interest therein, to another person or entity within five years after the work is complete, SIHA shall terminate the Agreement, and the Participant shall on demand reimburse SIHA for its costs and labor on a *pro rata* basis, based on the number of years of compliance.
- E. Lease of Home.** If, during the term of the Maintenance Agreement, the Participant leases the Home, or any interest therein, to another person or entity, the lessee must qualify as Low- or Moderate-Income. Violation of this provision will be considered a violation of this Agreement.

III. Notice. Any instruction, notice, or demand (individually or together, Notice) required or permitted by this Agreement to be given must be in writing and (i) delivered by certified mail to the Postal Service of the United States of America, postage pre-paid or (ii) hand-delivered by courier or by a nationally recognized and reputable overnight delivery service. Each Notice shall, for all purposes, be deemed given and received: (i) if given by certified mail, return receipt requested, postage prepaid, when the return receipt is signed; or (ii) if given by a nationally recognized and reputable overnight delivery service, when the Notice is actually received by the party. The Notice shall be given to the party at its address first set forth above, or at such other address as the party may later specify for that purpose by Notice to the other party. The provisions in this paragraph governing the day on which a Notice is deemed to have been received shall mean and refer to the date on which the intended party, and not its counsel or other recipient to which a copy of the Notice may be sent, is deemed to have received the Notice. If Notice is tendered under the provisions of this paragraph and is refused by the intended recipient of the Notice, the Notice shall nonetheless be considered to have been given and shall be effective as of the date tendered. The contrary notwithstanding, any Notice given in a manner other than that provided above, but actually received by the party, shall be effective upon receipt.

IV. Construction. This Agreement shall be deemed to have been negotiated and written by the parties and to have been entered into on the Pueblo of _____, New Mexico. This Agreement shall be governed by and construed in accordance with the laws of the Pueblo of _____.

V. Attorneys' Fees. Upon determination of breach or default of this Agreement by the Participant, SIHA shall have the right to recover all reasonable attorneys' fees, expert witness fees, and court costs incurred in enforcing its rights hereunder or in successfully defending itself against the claims by the Participant.

VI. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties in reference to the rehabilitation of the Home, and it replaces in full all prior agreements or understandings of the parties.

VII. Severability. If any provision in this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

VIII. Delay or Omission. No delay or omission to exercise any right, power, or remedy accruing under this Agreement shall impair such right, power, or remedy, nor shall it be construed to be a waiver of or acquiescence in a breach of or default under the Agreement. ALL PARTIES SPECIFICALLY AND AFFIRMATIVELY AGREE NOT TO CONSTRUE THE CONDUCT, DELAY, OR OMISSION OF EITHER OF THE OTHER PARTIES AS ALTERING IN ANY WAY THE PARTIES' AGREEMENTS AS DEFINED IN THIS AGREEMENT. Any waiver, permit, or approval of any breach of or default under this Agreement must be in writing, and, because the language of this paragraph was negotiated and intended by all parties to be binding and is not a mere recital, all parties hereby agree that they will not raise waiver or estoppel as affirmative defenses so as to limit or negate the clear language and intent of this paragraph. All remedies, either under this Agreement, by law, or otherwise afforded to either party shall be cumulative, not alternative.

IX. Binding Provisions. The provisions of this Agreement shall be binding on the heirs, personal representatives, successors, and assigns of the parties in like manner as on the original parties unless modified by mutual written agreement.

X. Headings. The headings to the various paragraphs of this Agreement are inserted only for convenience of reference and are not intended, nor shall they be construed, to modify, define, limit, or expand the intent of the parties.

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

SAN ILDEFONSO HOUSING
AUTHORITY

Participant(s)

By _____
Executive Director
