

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**THE INCLUSIVE COMMUNITIES  
PROJECT, INC.**

**Plaintiff,**

**v.**

**THE CITY OF MCKINNEY, TEXAS and  
THE HOUSING AUTHORITY OF THE  
CITY OF MCKINNEY, TEXAS,**

**Defendants.**

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**Civil Action No. 4:08-CV-00434-MHS-ALM**

**MODIFIED CONSENT DECREE**

INCLUSIVE COMMUNITIES PROJECT, INC. (“ICP”) has sued Defendants for violating the Fair Housing Act. The parties desire to avoid further litigation and have reached an agreement which is memorialized by this Consent Decree. Defendant THE HOUSING AUTHORITY OF THE CITY OF MCKINNEY, TEXAS (“MHA”) does not admit any liability or wrongdoing and this Consent Decree shall not constitute the admission on its part of any liability or wrongdoing.

ICP and MHA have agreed, subject to the prior written approval of the Department of Housing and Urban Development (“HUD”) that:

- 1. ICP will provide MHA \$1,000,000 in loan funds in exchange for MHA’s agreement to participate in ICP’s local political subdivision program as set forth in this decree.
- 2. ICP shall pay MHA the sum of twenty-four thousand and no/100 dollars (\$24,000.00) to administer MHA’s obligations under this Consent Decree within thirty (30) days after the date the Court signs this Consent Decree.

3. Neither ICP nor MHA shall contest the validity of this Consent Decree of the jurisdiction of the federal district court to enforce this Consent Decree and its term or the right of any party to the Consent Decree to bring an enforcement action upon breach of any term of the decree.

4. In consideration for the relief set forth in this Consent Decree, no further action will be brought by ICP against MHA with respect to ICP's claims against MHA set forth in *The Inclusive Communities Project, Inc. v. The City of McKinney, Texas and the Housing Authority of the City of McKinney*, Civil Action No. 4:08-CV-00434 (E.D. Tex.). ICP and its successors and assigns hereby release and forever discharge MHA and any component, division, agency, or establishment of MHA, and all MHA officials, administrators, employees, agents, attorneys or successors thereof, from any and all claims and causes of action, known or unknown, which MHA has asserted, or could have asserted, by reason of, or with respect to, or in connection with, or which arise out of, any events or transactions occurring before the Effective Date of this Consent Decree including, without limitation, any claim of race-based discrimination in housing by MHA, and any of the matters alleged in Plaintiff's Complaint or in any other pleading, motion or other paper served or filed by ICP.

5. Any dispute between ICP and MHA regarding the Consent Decree or its implementation shall be subject to the following dispute resolution process:

- a. If ICP or MHA has reason to believe that a dispute exists, prompt written notice shall be provided to the other party.
- b. Within thirty (30) days of receipt of the notice provided by the preceding paragraph, ICP and MHA will meet or confer by telephone and attempt to resolve the dispute.

- c. If the meet/confer process does not resolve the dispute within ten (10) business days of the meeting described in the preceding paragraph, the matter will be mediated before a neutral third party mutually agreed to by ICP and MHA, which mediation shall occur within four months or receipt of the notice provided above. Any mediation fee will be borne equally by ICP and MHA.
- d. If Mediation does not resolve the dispute, the matter will be submitted forthwith by either party to a district court judge in the Eastern District of Texas assigned to hear this matter under the Court's continuing jurisdiction. The prevailing party shall be entitled to payment from the other party of its attorneys' fees and costs.

6. MHA shall pay ICP the sum of Twenty-Six Thousand Two Hundred Fifty and no/100 Dollars (\$26,250.00) as attorney's fees, litigation costs and expenses within thirty (30) days after the date the Court signs this Consent Decree. All other fees and expenses incurred by ICP or MHA will be paid by the party incurring them.

7. ICP and MHA represent that each has the power and authority to execute and perform the obligations in this Consent Decree. MHA's Board of Commissioners approved this Consent Decree at a properly-noticed meeting at which a quorum was present.

8. ICP and MHA are the only parties to this Consent Decree and the only parties who have the authority to enforce this decree. Neither clients nor potential clients of the Housing Authority of the City of Dallas, Texas ("DHA") or ICP have any right to bring any action to enforce this decree.

9. This decree may be modified only by court order.

10. If any provision of this Consent Decree is held to be unlawful, inconsistent with applicable law, or unenforceable, the remainder of the decree shall remain effective and binding to the fullest extent possible.

11. This Consent Decree contains the entire understanding between ICP and MHA regarding the matters set forth herein. No representations, warranties or promises have been made or relied upon by any party hereto other than those set forth. This document supersedes any other prior agreements between ICP and MHA regarding the matters set forth herein.

12. Nothing contained in this Consent Decree shall:

- a. Impose on MHA any duty, obligation or requirement to produce any particular result other than to perform the specific obligations that are imposed on MHA by the express terms of this Consent Decree; or
- b. Impose on MHA any duty, obligation or requirement to award, grant or otherwise make available to ICP or any other party any benefits under any program administered by MHA except as specifically and expressly set forth herein.

13. If HUD does not provide prior written approval for MHA's entry into this Consent Decree within sixty (60) days of approval of this Consent Decree by MHA's Board, then this Consent Decree is null and void and has no force or effect unless otherwise agreed by the parties. None of the provisions set forth in this Consent Decree shall take effect, including the release of claims in paragraph 3, and the case will continue to proceed in the Eastern District of Texas.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

**A. MHA's Obligations**

14. MHA shall issue annually for the next five (5) years requests for proposal for qualified developers to submit applications to TDHCA's LIHTC program to develop non-elderly multi-family rental property in the following census tracts: 306.01, 305.02, 305.03, or 303.

15. MHA agrees to provide evidence of a commitment approved by MHA's governing body to TDHCA for development funding from proceeds of loans made by ICP to MHA as set forth in this decree.

16. MHA will loan proceeds of loans made by ICP to MHA as provided herein to one or more developers of multi-family rental housing eligible for low income housing tax credits pursuant to 26 U.S.C. 42 and which housing is not for older persons as defined by U.S.C. 3607(b)(2). MHA will make such loans pursuant to Texas Government Code Section 2306.6710(b)(1)(E) and the relevant section of the Qualified Allocation Plan ("QAP") for the year in which the loan is made to a developer that is awarded tax credits. No loan made by MHA shall exceed Twenty Thousand and no/100 Dollars (\$20,000) per dwelling unit or be of an amount less than the amount required under the QAP to receive maximum points.

17. MHA shall make a loan to a developer only if the following requirements are satisfied:

- a. The developer agrees to screening and admission policies that do not have the purpose or effect of limiting occupancy by participants in the Section 8 Housing Choice Voucher Program.
- b. The developer agrees to comply with the civil rights requirements of the Fair Housing Act, Title VI of the 1964 Civil Rights Act, Section 504 of the 1973 Rehabilitation Act, the Americans with Disabilities Act, and the Texas Fair Housing Act.

- c. The developer discloses on the application for assistance any pending civil rights complaints involving the project sponsor, the developer and any participant in the development or ownership of the project.
- d. The developer certifies that no participant in the development or ownership of the project violated any civil rights laws in the preceding three (3) years or is currently debarred or pending debarment from HUD.
- e. The developer agrees to develop the project in any of the following census tracts: 306.01, 305.02, 305.03, or 303.

**B. ICP's Obligations**

18. ICP shall provide funds in an amount that, combined with any TDHCA funds awarded, will satisfy the QAP requirements for the maximum number of points available under the local political subdivision provisions of the QAP for each qualified developer selected by MHA. The amount of funds provided by ICP shall not exceed the limit in paragraph 1, page 1 of this Consent Decree without ICP's express approval. ICP shall make the loan unless the developer does not receive an award of nine percent (9%) low income housing tax credits from TDHCA.

19. ICP will make the funds available to MHA as a loan to be repaid by MHA to ICP only when the developer repays the loan to MHA. Repayments by the developer to MHA shall be the sole source of repayment by MHA to ICP. MHA shall be obligated to repay only the principal amount of the loan and shall be entitled to retain any interest earned on the loan from MHA to the developer.

20. MHA will fund a loan to a developer when the developer closes the limited partnership agreement and syndication of the tax credits. The developer must be obligated to

repay the loan in full if the property is not completed and occupied as a low income housing tax credit project. A developer must be obligated to accept referrals from ICP or DHA during the term of the loan and the loan will provide that failure to do so will constitute an event of default. ICP will fund the loan at closing of MHA's loan to the developer selected by MHA. MHA shall have the right to approve the terms of all agreements. ICP has the right to approve the terms of the loan between MHA and the developer. ICP will not unreasonably withhold its approval.

**C. General Provisions**

21. The parties' obligations under this Consent Decree will terminate the earlier of: (1) the construction of four hundred (400) additional LIHTC units; or (2) repeal of the state program providing for local government participation set out in Texas Government Code Section 2306.6710 (b)(1)(E) or its omission from the qualified allocation plan; or (3) five (5) years from the date of the execution of the original consent decree; or (4) the construction and occupancy of at least 200 additional non-elderly multifamily rental LIHTC units using the TDHCA 4% LIHTC program in 2000 U.S. census tracts 306.01, 305.02, 305.03 or 303. This provision does not require the provision of any funding by ICP or MHA under the other provisions of this decree because the TDHCA 4% LIHTC program does not operate under the local political subdivision set out in provisions 1, 15, 16, 17, 18, 19, and 20.

22. This decree will expire upon the filing of written notice to the Court of full compliance signed by both parties or the expiration of five (5) years from its date, whichever occurs first.

23. Nothing in this decree precludes MHA from participating in any program or taking any action otherwise authorized by law.

24. All relief sought against MHA and not granted herein is denied. Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, this action against MHA is dismissed with prejudice except as specifically set forth herein. This Consent Decree does not affect ICP's action against the City of McKinney.

25. This Court shall retain jurisdiction over this matter to enforce this decree.



AGREED AS TO FORM AND SUBSTANCE:



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Michael M. Daniel  
State Bar No. 05360500  
DANIEL & BESHARA, P.C.  
3301 Elm Street  
Dallas, Texas 75226-1637  
Telephone: (214) 939-9230  
Facsimile: (214) 741-3596  
Email: [daniel.michael@att.net](mailto:daniel.michael@att.net)

Laura B. Beshara  
State Bar No. 02261750  
DANIEL & BESHARA, P.C.  
3301 Elm Street  
Dallas, Texas 75226-1637  
Telephone: (214) 939-9230  
Facsimile: (214) 741-3596  
Email: [laurabeshara@swbel.net](mailto:laurabeshara@swbel.net)  
Attorneys for Plaintiff



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William B. Short, Jr.  
State Bar No. 18301000  
Mattye Gouldsby Jones  
State Bar No. 08235525  
COATS | ROSE P.C.  
Two Lincoln Centre  
5420 LBJ Freeway, Suite 1300  
Dallas, Texas 75240  
(972) 982-8450  
(972) 982-8451 (fax)  
[wshort@coatsrose.com](mailto:wshort@coatsrose.com)  
[mjones@coatsrose.com](mailto:mjones@coatsrose.com)

Attorneys for Defendant McKinney Housing Authority