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City of Las Cruces[®]
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Council Action and Executive Summary

Item # 3 Ordinance/Resolution# 10-225 Council District: 3

For Meeting of March 15, 2010
 (Adoption Date)

TITLE: A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND LA CASA INC. TO PROVIDE REHABILITATION AND OTHER ELIGIBLE IMPROVEMENTS TO THE DOMESTIC VIOLENCE SHELTER, PRIMARILY THROUGH UPGRADES AND ADA ACCESSIBILITY TO THE SHARED LAUNDRY FACILITIES WITHIN THE SHELTER.

PURPOSE(S) OF ACTION: Approve a CDBG Grant Agreement between the City of Las Cruces and La Casa Inc. for the rehabilitation of the Domestic Violence Shelter Laundry Facilities.

Name of Drafter: Raymond Burchfield <i>RB</i>		Department: Community Development <i>RD</i>		Phone: 528-3094	
Department	Signature	Phone	Department	Signature	Phone
Community Development	<i>DW</i>	528-3060	Budget	<i>Richard Y. ...</i>	541-2300
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The City of Las Cruces is an entitlement community as defined by the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) program. Entitlement communities are required to adopt and implement a Consolidated Plan. Through the approval of the City's 2006-2010 Consolidated Plan including Resolution 09-259 for the approval of the 2009 Action Plan, La Casa Inc. applied for and was awarded funding in the amount of \$23,920.00 for the rehabilitation of the shared laundry facility at the Domestic Violence Shelter.

The Domestic Violence Shelter is owned by the City of Las Cruces, with La Casa Inc. as the operator, under a 25-year lease from the City of Las Cruces. The Domestic Violence Shelter is used to provide temporary housing for individuals who are victims of domestic violence in Las Cruces, New Mexico. In 2008, La Casa provided shelter for 509 individuals with an average stay of 34 days. In order to comply with the CDBG program requirements, La Casa will report to the City for the next five (5) years on clients served and client eligibility.

The project funds for the La Casa Laundry Room project will be used for the purchase of 6 commercial grade washing machines and 4 commercial grade dryers. The funds will also be used to replace the floor with more durable vinyl tiles and to re-vent the dryers and to purchase a new folding table.

(Continued on page 2)

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
Community Development Fund/ Fund 2000 2000-20184200-722190-10405	\$23,920.00	\$23,920.00

1. Resolution
2. Exhibit "A" – CDBG Grant Agreement
3. Attachment "B" – Resolution 09-259

OPTIONS / ALTERNATIVES:

1. Vote YES and approve the Resolution authorizing the CDBG Grant Agreement between the City of Las Cruces and La Casa Inc. providing funds for the renovation of the shared laundry facilities at the Domestic Violence Shelter.
2. Vote NO and deny the Resolution not authorizing the CDBG Grant Agreement between the City of Las Cruces and La Casa Inc., which will not allow for the renovation of the shared laundry facilities at the Domestic Violence Shelter.
3. Modify the Resolution and vote YES to approve the modified Resolution.
4. Table/Postpone the Resolution and direct staff accordingly.

RESOLUTION NO. 10-225

A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND LA CASA INC. TO PROVIDE REHABILITATION AND OTHER ELIGIBLE IMPROVEMENTS TO THE DOMESTIC VIOLENCE SHELTER, PRIMARILY THROUGH UPGRADES AND ADA ACCESSIBILITY TO THE SHARED LAUNDRY FACILITIES WITHIN THE SHELTER.

The City Council is informed that:

WHEREAS, from the annual entitlement from the U.S. Department of Housing and Urban Development (HUD), the City of Las Cruces will receive in FY2010 Federal Community Development Block Grant (CDBG) funds in the amount of \$1,010,435.00 plus program income in the amount of \$125,000.00; and

WHEREAS, in the approved 2009 Action Plan under Resolution 09-259 at the May 4, 2009 City Council meeting, a grant was proposed to La Casa, Inc. to provide for the rehabilitation of the shared laundry facility at the Domestic Violence Shelter at 800 S. Walnut St. in the City of Las Cruces; and

WHEREAS, in order to formally commit the funds to this project, the City Council must approve a grant agreement between the City and La Casa, Inc. in order to utilize this funding and in order to comply with the CDBG regulations.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the Grant Agreement between the City and La Casa, Inc., as shown in Exhibit "A," attached hereto and made a part of this Resolution, is hereby approved.

(II)

THAT the City Manager is hereby authorized to sign said Agreement on the City's behalf.

(III)

THAT City staff is hereby authorized to do all other deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2010.

(SEAL)

APPROVED:

Mayor

ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

John *Kay Stubbins*
City Attorney

**AGREEMENT BETWEEN THE CITY OF LAS CRUCES
AND LA CASA, INC, FOR THE
REHABILITATION OF THE SHARED LAUNDRY FACILITIES AT THE DOMESTIC
VIOLENCE SHELTER AT 800 S. WALNUT ST. UNDER THE COMMUNITY
DEVELOPMENT BLOCK GRANT PROGRAM**

THIS AGREEMENT is entered into between the City of Las Cruces (herein called the "Grantee") and La Casa, Inc. (herein called the "Sub-recipient") under CDBG Grant Number B-09-MC-35-0002;

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383, Title 24 of the Code of Federal Regulations (CFR) and Catalogue of Federal Domestic Assistance No. 14.218;

WHEREAS, the Grantee has received approval of the City's 2006-2010 Consolidated Plan including the 2009 Action Plan from HUD, which includes funding of \$23,920 for FY 2010 for this project;

WHEREAS, the Grantee wishes to engage the Sub-recipient to assist the Grantee in utilizing project funds; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency and receipt whereof being hereby acknowledged, the Grantee and the Sub-recipient agree and follow hereto that;

I. SCOPE OF SERVICE

A. National Objective

In accordance with 24 CFR 570.208 (a) (2) (A); to benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, 51 percent of whom are low- and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers.

B. Activities and Planned Increase of Service Levels

The Sub-recipient is responsible for administering a CDBG program to rehabilitate the laundry facilities at the domestic violence shelter at 800 S. Walnut St., which currently has 52 beds, and an estimated maximum capacity of 80 adults and children; limited to qualifying scope. The Scope of activities for the project is as follows: for the purchase of 6 new commercial grade washers and 4 commercial grade dryers, installing a new floor, re-venting the room to provide adequate lint removal, and painting the room and installing a new folding table. The Scope of activity includes contract procurement, construction, managing oversight and completion, and all reporting requirements.

The renovated space in this building (hereinafter known as the "premises,") is intended to be used by the Sub-recipient in a manner that complies with HUD CDBG Regulations at Sections 570.201, 202, 206, 208 and Grantee requirements.

The rehabilitation includes a total cost of \$23,920.00, all of which is CDBG funding. The renovated premises will continue to serve the current and any future number of new and continuing clients in the City of Las Cruces. Reporting to the Grantee is to be scheduled with La Casa Inc. below, during construction and annually thereafter for five years.

C. Performance Monitoring

The Grantee will monitor both the financial and the programmatic performance of the Sub-recipient regularly during the rehabilitation period through to completion. Annual reports will also be required to be submitted to the Grantee for five (5) years after the completion of rehabilitation/construction. Substandard performance during the rehabilitation period and during any annual reviews as will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Sub-recipient within 30 calendar days after being notified by the Grantee, Agreement suspension or termination procedures may be initiated during rehabilitation. Repair or Repayment may result from scheduled or unscheduled reviews.

D. General Safety

The Grantee retains the right to request the Sub-recipient to close off any portion of the rehab work area during construction from normal day-to-day activities (if not already closed off), to ensure safety.

II. TIME OF PERFORMANCE

A. Term of the Agreement

This Agreement shall start on July 1, 2009, or the date on which the United States Department of Housing and Urban Development releases funds to the Grantee for Grant B-09-MC-35-0002, whichever is later. The period of performance will continue for at least twenty-four (24) months after the beginning date, but end no later than July 31, 2011. The

Grantee retains the option of changing the term of this agreement depending on the completion of the rehabilitation to the premises.

B. Eligible Payment Period

All eligible expenses and purchases approved by this Agreement and incurred during the grant period may be reimbursed. Time extensions are covered in Section IV, following.

C. Disbursement

All grant funds must be disbursed within the term of this Agreement. This period shall not be amended unless the Sub-recipient requests such in writing, prior to and subject to the terms of Section IV, following.

The Grantee shall disburse grant proceeds for property rehabilitation only after the Grantee has approved the Sub-recipient's rehabilitation plans, reviewed and approved of both procurement and contracting award procedures, and ascertained that all the necessary and proper permits have been obtained by the Sub-recipient at each phase prior to the beginning of construction. Other documents may be needed during construction specified in writing by the Grantee to the Sub-recipient, including all phases of the competitive bid process (see Attachment "A," Section II). Disbursement of funds will be to the Sub-recipient or directly to the involved Contractor for payment of approved invoices submitted and verified by the Sub-recipient in accordance with applicable CDBG regulations, including Davis-Bacon and Related Acts. Notwithstanding anything in this Agreement, the Grantee also reserves the right to request and approve documentation supporting any requests for disbursement to verify reasonableness and validity of such costs and the Sub-recipient's budget may be modified by the Grantee accordingly.

Funds expected to be spent during the last 30 days of the grant will be presented for payment consideration to the Grantee within 60 days of the end of the grant period. Any funds that are not expended by the end of the 60-day period after the end of the grant will be held by the Grantee and not be available to the Sub-recipient.

III. BUDGET

Payments will be made only for the line items listed below:

TOTAL BUDGET

DESCRIPTION OF ITEM	APPROVED BUDGET
Construction, including gross receipts tax	\$6,660.00
Equipment, including sales tax	\$17,260.00
TOTAL	\$23,920.00

All changes to approved budgets will require written requests for change, to be submitted on the form provided, "Budget Line Item Revision." Any budget changes must be limited to comply with the administrative scope of the program of the projects as defined in Scope of services as defined in Part I, Scope of Services, and the line items listed therein. Adjustment between the individual line items above may be approved by the City's Neighborhood Services Administrator. Any adjustments or amendments in excess of 25% or any change to the scope must be approved by the Las Cruces City Council and the Sub-recipient in writing, excluding adjustments between budget line items and/or projects.

IV. AMENDMENTS

Indirect costs cannot be charged to this agreement.

The Grantee or Sub-recipient may amend the total amount of the budget, scope of work or this Agreement at any time, provided that such amendments make specific reference to the Agreement and are executed in writing, signed by a duly authorized representative of both organizations and approved by the Grantee's governing body except as provided in Section III, prior.

Extensions of time as needed to complete the renovation process may be granted. Such extensions and/or transfer of funds (without exceeding total project budget for the Agreement) must be requested in writing by the Sub-recipient, approved by the Grantee and be signed by the Grantee's Neighborhood Services Administrator, provided that it is for cause beyond the Sub-recipient's control, and in accordance with the same terms and conditions of the original Agreement.

All other extensions or changes in scope, performance, funding or approved responsibility to this Agreement shall be in writing with approval by the Grantee's governing body and the Sub-recipient. Any such amendment shall not invalidate nor relieve the Grantee or Sub-recipient from its obligations under this Agreement.

The Grantee may, at its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments by the Grantee result in a change in the funding or the Scope of Services undertaken as part of this Agreement, such modifications will be incorporated by a written amendment signed by both Grantee and Sub-recipient.

Any amendments to this Agreement are subject to 24 CFR Part 570.505.

V. Payments

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$23,920 for eligible expenses and is only for items in the budget specified in Section III, and in accordance with the Scope of Service and approved modifications thereto. Payments are contingent upon compliance with all administrative

requirements of Section VII. It is also understood that all requests for payment or advances shall be in writing.

VI. COMMUNICATIONS

Communication and details concerning this Agreement shall be directed in writing, hand delivered, or sent by regular mail to the following Agreement representatives:

Grantee

Raymond Burchfield, Neighborhood
Program Specialist (Infrastructure,
Environment and Labor)
Community Development Department
City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004
Phone: (575) 528-3094
E-mail: rburchfield@las-cruces.org

Sub-recipient

Mrs. Gina Orona-Ruiz, Executive Director
La Casa, Inc.
P.O. Box 2463
Las Cruces, NM 88004
Phone: (575) 526-2819
Fax: (575) 526-8542
E-mail: gruiz@lacasainc.org

VII. ADMINISTRATIVE REQUIREMENTS

A. Applicable Laws

The Sub-recipient shall comply with all applicable federal, state and local laws, rules, and regulations dealing with property rehabilitation and quality standards whether they are presently or subsequently promulgated. The Sub-recipient agrees to comply with any and all the CDBG regulations, as amended from time to time whether set forth herein or not, and agrees to execute or amend documents as necessary to be in compliance forthwith. The Sub-recipient shall also comply with all other applicable federal, state or local statutes, ordinances, rules and regulations including, but not limited to, all applicable provisions of the City's Municipal, Building and Zoning Codes and the New Mexico State Environmental Requirements for rehabilitation of offices and community services spaces.

B. Financial Management

The Sub-recipient agrees to comply with 24 CFR 570.502, 570, 610, and 24 CFR Part 84, Subpart C, "Financial and Program Management," and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred in conformance with OMB Circulars A-122, "Cost Principle" for Non-Profit Organizations," 24 CFR Part 85 and OMB Circular A-133, "Audits of States, Local Governments and Non-Profits."

C. Documentation and Record-Keeping

1. Records to be Maintained

The Sub-recipient shall maintain all bids, contracts and other records required by federal regulations, state law, local ordinances and Grantee requirements that are pertinent to the activities funded under this Agreement, including 24 CFR Parts 570.506 and 610. The minimum construction-related records shall be: (i) requests for proposals and/or bidding document and any amendments thereto; (ii) written selection process; (iii) all the responses thereto and the rating, ranking and selection documents; (iv) any modifications of bids asked by the Sub-recipient or required by the Grantee; (v) final approval of the Grantee after the Sub-recipient's approval; (vi) accepted architectural designs, amendments thereto, construction papers, final record drawings and final construction approval by both the Grantee and the Sub-recipient (vii) "Notice to Proceed" by the Grantee to the Sub-recipient; (viii) all invoices and records of payment; and (ix) all necessary permits.

Additional records shall include but not be limited to those:

- a. Providing a full description of each activity undertaken and demonstrating that each activity undertaken helps meet the National objective stated in Section I.A;
- b. Documenting compliance with Property Standards set forth for project construction completion that must meet all applicable local codes, ordinances and zoning requirements, bidding and selection process, contracts, drawings, amendments thereto and approvals, thereof;
- c. Documenting compliance with Davis-Bacon and other applicable labor laws;
- d. Documenting compliance with the fair housing and equal opportunity components of the CDBG Program in 24 CFR, Part 8, which implements Section 504 of the Rehabilitation Act of 1973;
- e. Financial records as required by 24 CFR Part 570.502, 24 CFR 570.610, and 24 CFR Part 84, Subpart C, "Financial and Program Management;"
- f. Monthly reporting about the fifteenth (15th) of each month on construction issues concerning the status of construction and Requests for Payment; and,
- g. Other records necessary to document compliance with 24 CFR 570 Subpart K.

2. Retention

The Sub-recipient shall retain all records pertinent to expenditures and for any acquired, no-expendable property incurred under this Agreement for a period of five

(5) years after the termination of all funded Agreement activities (completion and acceptance).

Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

VIII. GOVERNANCE AND SEVERABILITY

- A.** This agreement shall be governed by the laws of the State of New Mexico.
- B.** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.
- C.** All Attachments are part and parcel of this Agreement and have the same weight and importance as the initial Paragraphs I through VIII.
- D.** All certifications at Attachments A to D shall be signed by the Sub-recipient as of this Agreement.

SIGNATURES TO AGREEMENT ON THE NEXT PAGE

IN WITNESS WHEREOF, the parties hereto do mutually execute the Agreement as of the date first written:

LA CASA, INC.

Signature

Printed Name

Title

Date

CITY OF LAS CRUCES

Terrence Moore, City Manager

Date

APPROVED AS TO FORM:

City Attorney

REQUIRED CERTIFICATIONS FOR EXECUTION AS PART OF THIS AGREEMENT:

- 1 Attachment A. General Items.
2. Attachment B. Drug-Free Workplace for both properties.
3. Attachment C. EEO/AA Clause.
4. Attachment D. Required City and Federal Clauses and Certifications.
Protest Procedures
Conflicts of Interest
Breaches and Dispute Resolution
Rights and Remedies
Contracting with Small and Minority Firms, Women's
Business Enterprise and Labor Surplus Area Firms
Bidder's Certification of Energy Conservation, Air Quality
and Clean Water Compliance
Certification of Restrictions on Lobbying
Retention and Inspection of Records
No Government Obligation to Third Parties
False or Fraudulent Statements of Claims
Certification Regarding Debarment, Suspension, Ineligibility,
and Voluntary Exclusion Lower Tier Covered
Transactions
Instructions for Certification
Privacy Act
Termination
State and Local Law Disclaimer
Civil Rights Requirements
Age Discrimination Act
Copeland "Anti-Kickback" Act
Davis-Bacon Act
Contract Work Hours and Safety Standards Act

I. GENERAL ITEMS**A. General Compliance**

The Sub-recipient agrees to comply with the requirements of 24 CFR 570 (the Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)). The Sub-recipient also agrees to comply with all other applicable federal, state and local laws, regulations and policies governing the funds provided under this Agreement. The Sub-recipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Audits and Inspections

All Sub-recipient records with respect to any matter covered by this Agreement shall be made available to the Grantee, their designees or the Federal government at any time during normal business hours, as often as the grantee deems necessary, to audit, examine and make excerpts or transcripts of all relevant data. One copy of the Sub-recipient's reporting package shall be submitted to the Grantee 30 days after receipt of an auditors report or 120 days after the end of the audit period, whichever occurs first. The reporting package shall include:

- a. Financial statements,
- b. Schedule of prior year Audit findings,
- c. Auditors report, and
- d. Corrective action plan that addresses audit finding.

Any deficiencies noted in audit reports must be fully cleared by the Sub-recipient within 30 days after receipt by the Sub-recipient. Failure of the Sub-recipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Sub-recipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Sub-recipient audits at 24 CFR Part 570.502(b) and OMB Circular A-133 (Audits of States, Local Governments and non-Profit Organizations), as applicable. It also agrees to allow the City's Community Development Department, Financial Services Department, the Internal Auditor or HUD, upon request, to conduct any audits the City or HUD feels necessary at any time during the term of this Agreement or during the period of the covenants.

C. Suspension or Termination

Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial termination of the approved Scope of Service may only be undertaken with the prior approval of the Grantee. In the event of any termination for convenience, all finished or unfinished construction, reports or other materials prepared by the Sub-recipient under this Agreement shall become the property of the Grantee and the Sub-recipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such construction and documents prior to the termination.

The Grantee may also suspend or terminate this Agreement, in whole or in part, if the Sub-recipient materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein. The Grantee may declare the Sub-recipient ineligible for further participation in the Grantee's Agreements, in addition to other remedies as provided by law. In the event there is probable cause to believe the Sub-recipient is in noncompliance with any applicable rules or regulations, the Grantee may withhold up to fifteen (15) percent of said Agreement's funds or such amount that the Grantee may determine, as appropriate. Such suspension will last until such time as the Sub-recipient is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

D. Insurance and Bonding

1. General

The Sub-recipient shall carry sufficient insurance coverage to protect Agreement Assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering the Board of Directors and all employees working on this project in an amount equal to cash advances from the Grantee.

2. Insurance Requirements

The Sub-recipient shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Certificates with valid and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the City thirty (30) days prior to commencement of construction and for each year during the period of the Agreement. The Grantee shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of

insurance. The Grantee, its officers and employees, shall be named as an additional named insured on all policies of liability insurance.

The Sub-recipient shall comply with the bonding and insurance requirements of 24 CFR Part 84, Subpart C, Financial and Program Management, Bonding and Insurance.

- (a) Such policy shall provide that the coverage shall be primary for losses arising out of the Sub-recipient's performance of the Agreement. Neither the Grantee nor any of its insurers shall be required to contribute to any such loss. The required certificate shall be furnished by the Sub-recipient within 30 days of execution of this Agreement or it shall be automatically terminated per the terms of this Attachment, Section I.C.
- (b) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the Sub-recipient shall provide the Grantee with evidence of the renewal of said insurance policies in a form satisfactory to the Grantee.
- (c) The Policies of Insurance which must be secured are:
 - (i) Commercial General Liability Insurance: The Sub-recipient must secure commercial property liability insurance to include, but not be limited to, bodily injury and property damage coverage. The policy's limit of liability shall not be less than One Million Dollars (\$1,000,000) per person/per occurrence for bodily injury, or death to one or more than one person and not less than Two Hundred Thousand Dollars (\$200,000) per occurrence for property damage.
 - (ii) Worker's Compensation Coverage: All employees of the Sub-recipient must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
 - (iii) Flood Insurance: The Sub-recipient shall provide Flood Insurance as required under applicable HUD regulations, if necessary.
 - (iv) Construction Insurance: The Sub-recipient shall provide Construction Insurance.

E. Reporting and Payment Procedures

1. Payment Procedures and Monthly Reports

The Grantee will pay to the Sub-recipient funds available under this Agreement based upon information submitted by the Sub-recipient and consistent with any approved budget and Grantee policy concerning payments. Expense summaries, bids and contracts and payroll record payment requests, approved invoices, monthly reports and other support documentation will be submitted to the Grantee every month. Normally this will be the middle of the month, depending on the progress of the rehabilitation, following the month reported, effective from the date of this Agreement through one month after the period of performance.

Payments will be made no more than once per month and only after receipt of a current monthly report during construction period, including, but not limited to, Federal Labor Standard provisions, as described in this section. With the exception of certain advances, payments may be made for eligible expenses actually incurred by the Sub-recipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance funds (if any), in Sub-recipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this Agreement for costs incurred by the Grantee on behalf of the Sub-recipient.

2. Monthly Reports

These shall contain the status of construction and expenses with appropriate explanatory detail including, during the construction period, Federal Labor Standards provisions, as expanded in Section VII.C of the Agreement. The monthly report shall be submitted each month even if there is no monthly billing. For reports without a payment request, indicate in writing "no billing this month."

3. The Final Report

This shall be submitted in stages containing: (1) a narrative summary of the grant's activities and must include the bidding, construction and the completion and start-up processes, both positive and negative items. This report shall be submitted to the Grantee no later 12 months after completion of the Agreement period, and (2) a short narrative summary report at the completion of each of the first five years after completed renovation to the Grantee. Also, see Sections VII.C, prior and Attachment A, Section I.E.

4. Payments for Equipment

The Sub-recipient will use a design/build process in which certain items and installation are part of construction. Payments for items of equipment will be made by means of direct payment to the vendor(s) upon written request (on the form or format furnished by the Grantee) from the Sub-recipient and upon a receipt of proper documentation from the vendors in the form of original

bills, invoices or request for payment accepted and approved by the Sub-recipient.

The Sub-recipient may request that the Grantee's Purchasing Department procure bids for equipment purchases and purchase the equipment from the lowest responsive bidder on behalf of the Sub-recipient. The Sub-recipient further agrees to insure any said purchases against all risk of loss for its full replacement value. Insurance will be maintained for the expected life of the equipment or until the equipment is disposed of. *Equipment* means tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

The total grant amount that may be received by the Sub-recipient will be reduced by any direct payments to vendors or subcontractors.

F. Close-Outs

The Sub-recipients obligations to the Grantee shall not end until all closeout requirements are completed. The close-out period will have two phases:

1. Activities during the construction and completion of modifications to premises, including but are not limited to: (i) making final payments; (ii) submission of Final Narrative and Expense information; (iii) disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee); and (iv) determining custodianship of record, and
2. Compliance with the Final Report Requirements, Paragraph I.E (3), above.

G. Lead-Based Paint

The Sub-recipient shall not use lead-based paint in the project or anywhere on the property and shall comply with 24 CFR Part 570.608 and the Lead Based Paint Poisoning Prevention Act (42 U.S.C. Section 5421-4846), as applicable.

H. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the two parties. The Sub-recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's Compensation Insurance, as the Sub-recipient is an "independent contractor."

I. Hold Harmless

The Sub-recipient agrees to defend, indemnify and save harmless the Grantee and its officers, agents and employees from any and all suits, actions and claims of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from negligence of the Sub-recipient under this Agreement, however, this hold harmless clause shall not extend to liability claims, damages, losses or expenses, including attorney fees arising out of:

1. The preparation or approval of drawings, opinions, reports, change orders, designs and specifications by the Grantee, or its agents or employees, or
2. The giving of or failure to give directions or instructions by the Grantee, or its agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily harm to persons or damages to the property.

In the event the Grantee, or its officers, agents or employees, actively participates in such negligence: (a) the Sub-recipient is relieved of its obligation to defend the Grantee, and (b) the Sub-recipient's obligation to indemnify and save harmless is limited to the actual amount representing the Sub-recipient's comparative share of negligence as between the Sub-recipient and the Grantee.

J. Grantee Recognition

The Sub-recipient shall insure recognition of the role of the Grantor agency in providing services through this Agreement. All activities, facilities and items utilized pursuant to this agreement shall be prominently labeled as to funding source. In addition, the Sub-recipient will include a reference to the support, provided herein, in any publications made possible with funds made available under this Agreement.

K. Use of Real Property

The standards described in this section apply to real property within the sub-recipients control which was acquired in whole or in part using CDBG funds in excess of \$25,000.

L. Reversion of Assets

Upon its expiration, the Sub-recipient shall transfer to the Grantee any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Sub-recipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 may remain in the possession of the Sub-recipient subject to Section I.K.

In the event the property is not used in accordance with the National Objective, Section I.A, page 1 of the Agreement, the Sub-Recipient shall pay to the Grantee \$23,920 or such other amount determined by the Grantee. Any such payment is program income to the Grantee.

M. Travel

Travel by the Sub-recipient outside the metropolitan area of Las Cruces is not permitted with funds provided under this Agreement.

N. Religious Organizations

The Sub-recipient agrees that all funds and/or programs under this agreement which includes faith-based organizations are subject to the requirements specified in 24 CFR Part 570.200(j), as amended.

II. Procurement

A. Compliance

The Sub-recipient shall comply with current Grantee policy concerning the purchase of equipment, the stipulations of this Agreement and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement, subject to Paragraph I.L, above.

B. Standards

The Sub-recipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR Part 84 Subpart C, Procurement Standards (84.40-84.48), and shall subsequently follow 24 CFR Part 84 Subpart C, Property Standards (84.30-84.37), Property Management Standards, as modified by 24 CFR 570.502 (b)(3)(v)), covering utilization and disposal of property.

C. Contract Provisions

As the Sub-recipient will Contract the Scope of Work for this Agreement, it must get prior written authorization from the Grantee. The Sub-recipient also must include the provisions of all Attachments in every contract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own contractors. HUD form 4010; Federal Labor Standards Provisions, must be included in the bidding and contract documents. HUD Section III does not apply to this contract.

The Sub-recipient will not Contract with any entity where it has notice or knowledge that the latter is on HUD's or any other governmental entities (Federal/state/local) list "debarred" list (See Section III.D (4), following), or has been or has been found in violation or regulations under 24 CFR 135 and will not let any Contract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

The Sub-recipient shall furnish and cause each of its own contractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal Officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions as stated herein.

1. Approvals

The Sub-recipient shall not enter into any Contracts with any agency or individual in the performance of this Agreement without the approval of the Grantee prior to the execution of such a Contract.

A Contractor may not engage a sub-contractor without the approval of the Sub-recipient prior to the execution of such a contract. Any sub-contractors are responsible for all appropriate sections of this Agreement, subject to their provision from the Sub-recipient/Contractor.

2. Monitoring

The Sub-recipient will monitor any contracted services on a regular basis to assure Agreement compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct any area of non-compliance. These reports will be submitted to the Grantee within 45 calendar days of completed correction of the non-compliance matter.

3. Content

The Sub-recipient shall cause all of the provisions of this Agreement in its entirety to be included in and made part of any contract's executed in the performance of this Agreement.

4. Selection Process

The Sub-recipient shall undertake to ensure that any contracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Such provisions also apply to any sub-

contractors of Contractors. Once the documented selection process and the Contracts have been approved by the Grantee, the Contracts shall be executed a copy of all such Contracts shall be forwarded to the Grantee.

D. Compliance with Labor Requirements:

The Sub-recipient shall comply with all applicable provisions of the Davis-Bacon Act (40 U.S.C. 201, et. Seq.) and its implementing labor regulations at 29 CFR Part 5. The Sub-recipient shall also comply with the Contract and Work Hours and Safety Standards Act (40 U.S.C. Section 327-332), Fair Labor Standards Act (29 U.S.C. 201, et seq.) and other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.2, as applicable.

III. PERSONNEL AND PARTICIPANT CONDITIONS

A. Civil Rights Compliance

The Sub-recipient agrees to comply with local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964, as amended; Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063; and with Executive Order 11246, as amended by Executive Orders 11375 and 12086.

B. Section 504/Americans with Disabilities Act (ADA)

1. General – Section 504

The Sub-recipient agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in employment, any Federally assisted program and states general architectural accessibility standards.

2. General – ADA

The Sub-recipient agrees to comply with any Federal regulations issued pursuant to compliance with the Americans with Disabilities Act of 1990 which expands Section 504 by adding discrimination against the handicapped in any public areas, employment, state and local governmental areas and public and private transportation.

(i) ADA Contracts to Conduct Programming

The Sub-recipient shall ensure that all programs, services and activities are accessible to and useable by persons with disabilities including but not limited to, equal opportunity to participate and benefit, equally effective communication for persons with speech, hearing or cognitive disabilities, integrated seating and the provision of reasonable modifications and/or accommodations and to maintain, and provide to the Grantee upon request, a record of all such requests received, granted and/or denied and the reason for any denials.

(ii) **Operational Duties and Responsibilities**

The Sub-recipient shall post one or more signs containing the facility hours, rules, warning signs and emergency telephone numbers, Anti-drug policy, EEO, New Mexico Workforce and Fair Housing Posters, as appropriate. The Sub-recipient shall make such postings available in alternate formats upon request. The Sub-recipient shall adhere to the City of Las Cruces Communication Policy when publicizing events, activities, programs or services.

(iii) **Bid Specifications for Products, Design, and/or Construction**

The Sub-recipient shall insure all proposed products, services, or activities contained as a part of this Agreement comply with the requirements of the ADA and ADAAG requirements, ANSI Accessibility Guidelines and NMBC Accessibility Requirements (when applicable) to ensure accessibility to persons with disabilities.

C. Affirmative Action Plan (AAP)

1. Approved Plan

The Sub-recipient shall prepare and provide to the Grantee an approvable AAP within 60 days of the signing of this agreement.

2. Women/Minority Business Enterprise

The Sub-recipient will use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native American. The Sub-recipient may rely on written representations by businesses regarding their status as

minority and female business enterprises in lieu of an independent investigation.

D. Employment Restrictions

1. Prohibited Activity

The Sub-recipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities; lobbying; political patronage; and nepotism activities, except as provided for in accordance with Attachment D.

2. Notifications

The Sub-recipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the Sub-recipients commitments hereunder and shall post copies of the notice in conspicuous, easily accessible places available to employees and applicants for employment.

3. Assignability

The Sub-recipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Sub-recipient from the Grantee under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

4. Debarment and Suspension

No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

5. Hatch Act

The Sub-recipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V, United States Code.

6. Copeland “Anti-Kickback” Act

As applicable, the Sub-recipient shall comply with the Copeland “Anti-Kickback Act” (18 U.S.C. Section 874), as supplemented by the Department of Labor regulations contained at 29 CFR Part 3.

7. Conflict of Interest (COI)

The Sub-recipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Sub-recipient further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Sub-recipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Grantee, or of any designated public agencies or Sub-recipients which are receiving funds under the CDBG Entitlement program. The Sub-recipient is required to keep records supporting requests of waivers of COI and submit COI statements to the Grantee, as so specified.

a. Applicability

In the procurement of supplies, equipment, construction, and services by Sub-recipient and by contractors of the Sub-recipient, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.

In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this paragraph shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the Sub-recipient or its contractors to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to Sec. 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to Sec. 570.203, 570.204, 570.455, or 570.703(i)).

b. Conflicts Prohibited

The general rule is that no persons described in Paragraph III.D(7)(c) in its entirety who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part; or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity; either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

c. Persons Covered

The conflict of interest provisions of Paragraph III.D(7)(b) herein, apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Sub-recipient, or of any designated public agencies, or Sub-recipient that is receiving funds under this part. Specifically this applies only to employees who actually work on this project.

The Sub-recipient shall provide to the Grantee a current list of Board of Director members with names, addresses, telephone numbers and positions and of staff who will work on this Agreement. The Sub-recipient shall also provide signed COI statements dated no earlier than 180 days prior to the effective date of this Agreement for Board members and appropriate staff so identified.

ATTEST:

By: _____

_____ **Date**

By: _____

_____ **Date**

ATTACHMENT "B," PART-1

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The certification set out below is a material representation upon which reliance is placed by the City of Las Cruces and the U.S. Department of Housing and Urban Development (HUD) in awarding the Grant as stated in Exhibit A. If it is later determined that the Sub-recipient knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the City's Community Development Department and/or HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. The Sub-recipient will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION**1. The Sub-recipient certifies that it will provide a drug-free workplace by:**

- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Sub-recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- B. Establishing an ongoing drug-free awareness program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The Sub-recipient's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- C. Making it a requirement that each employee be engaged in the performance of the grant is given a copy of the statement required by paragraph "A."
- D. Notifying the employee in the statement required by paragraph "A" that, as a condition of employment under the Grant, the employee would:
 - 1. Abide by the terms of the statement; and
 - 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
- E. Notify the City's Community Development Department and/or HUD in writing within ten (10) calendar days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of

such notices. Notice shall include the identification number(s) of each affected grant.

- F. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement or other appropriate agency.
 - G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).
2. The Sub-recipient shall insert in the space provided on the attached "Place of Performance" form the site(s) for the performance of work to be carried out with the Grant funds (including street address, city, county, state, zip code and total estimated number of employees). The Sub-recipient further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the Agreement; it shall notify the City's Community Development Department and/or HUD immediately upon the decision to use such additional sites by submitting a revised "Place of Performance" form.

ATTACHMENT "B," PART-2

**PLACE OF PERFORMANCE FOR CERTIFICATION REGARDING DRUG-FREE
WORKPLACE REQUIREMENTS**

Name of Sub-recipient: _____

Program Name: _____

Date: _____

The Sub-recipient shall insert in the space provided below the site(s) expected to be used for the performance of work under the Grant covered by the certification:

Place of Performance (includes street address, city, county, state, zip code for each site):

Check if there are work places on file that are not identified here.

ATTEST:

By: _____

Date

By: _____

Date

ATTACHMENT "C"

**EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION CLAUSE FOR
CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246**

In carrying out this Agreement, the Sub-recipient and its contractors and subcontractors, if any, shall not discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual preference, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The Sub-recipient shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Sub-recipient shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. The Sub-recipient shall state in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient that it is an Equal Opportunity or Affirmative Action employer.

ATTEST:

By: _____ **Date** _____

By: _____ **Date** _____

ATTACHMENT "D"

PROTEST PROCEDURES

Protests concerning this proposal can be filed as per Las Cruces Municipal Code Section 24-286 and 24CFR85.36 (b) (12) (i) (ii). A protestor must exhaust all administrative remedies with the City before pursuing protest with a Federal agency. Reviews of protests by the Federal agency will be limited to:

1. Violations of the City's protest procedures for failure to review a complaint or protests.
2. Violations of Federal law or regulations and the standards of 24CFR85.36

Protests received by a Federal agency other than those specified above will be referred to the City.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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CONFLICTS OF INTEREST

Based in part on federal regulations (24CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or
- (iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

(a) The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Proposers, or parties to sub-agreements. Grantees and subgrantee's may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and sub grantee's officers, employees, or agents or by Proposers or their agents.

(b) The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest. Neither the Owner nor any of its proposers or their subproposers shall enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the Owner, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the Owner was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect.

1. If any such present or former member, officer, or employee of the Owner, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the Owner and such disclosure is entered upon the minutes of the Owner, the Owner, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

BREACHES AND DISPUTE RESOLUTION

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the City. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City is located.

Remainder of this Certification is continued on the next page.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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**CONTRACTING WITH SMALL AND MINORITY FIRMS,
WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS.**

(1) The Prime Contractor will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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BIDDER'S CERTIFICATION OF ENERGY CONSERVATION
AIR QUALITY AND CLEAN WATER COMPLIANCE

Company/Organization Name: _____

The third party Contractor named above hereby certifies compliance with the requirements listed below and regulations issued by the Environmental Protection Agency (EPA), Federal Highway Administration, Federal Transit Administration (FTA) and other agencies of the Federal Government as well as future regulations, guidelines, standards, orders, directives or other requirements that may affect this procurement contract.

The above named Contractor will:

1. Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C., 7401 et seq.
2. Comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Act, as amended, 33 U.S.C., 1251 et seq.
3. Comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
4. Report any violation of these requirements by a sub recipient or itself, resulting from completing the required manufacturing and delivery of vehicles included with this contract to HUD and the appropriate United States EPA Regional Office.
5. Agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with assistance provided by HUD.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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**CERTIFICATION OF
RESTRICTIONS ON LOBBYING**

31 U.S.C. 1352; 49 CFR Part 19; & 49 CFR Part 20

I, _____, hereby certify on behalf of _____, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subgrants, loans, and cooperative agreement) which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. As required by 49 CFR part 20, "New Restrictions on Lobbying," I will disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on my behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, of 20__.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

RETENTION AND INSPECTION OF RECORDS

A. The HA (the City), HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Proposer's directly pertinent books, documents, papers or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

B. The Proposer agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above, "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

The periods of access and examination in paragraphs (A) and (B) above for records relating to appeals, litigation or settlement of claims arising from the performance of the contract to which the HA (the City), HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

ACCESS TO RECORDS

The Contractor agrees to provide the Purchaser, the HUD Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the contract for the purposes of making audits, examinations, excerpts and transcriptions.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable HUD regulations, policies, procedures and directives, including without limitation those listed directly or by reference by the Master Agreement between the City and HUD, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to so comply shall constitute a material breach of this contract.

COPYRIGHTS AND RIGHTS IN DATA

The HA (the City) shall have exclusive ownership of all proprietary interest in, and the right to full and exclusive possession of all information, materials, designs and documents discovered or produced by Proposer pursuant to the terms of the contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of the Contract.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The City of Las Cruces and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City of Las Cruces, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

The Remainder Of This Page Intentionally Left Blank

FALSE OR FRAUDULENT STATEMENTS OR CLAIMS.

The Contractor acknowledges and agrees that:

(1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by executing the Grant Agreement or Cooperative Agreement, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by the Grant Agreement or Cooperative Agreement. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.

(2) If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized for 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ ATTACHED INSTRUCTIONS WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Transportation (DOT) may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by HUD.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligible and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in the transaction, in addition to other remedies available to the Federal Government, the DOT may pursue available remedies, including suspension and/or debarment.

PRIVACY ACT

The Proposer agrees to comply with all applicable terms in the Privacy Act of 1974; will notify the government when the Proposer anticipates operating a system of records on behalf of the government in order to implement the bid if such system contains information about individuals retrievable by the individual's name or other identifier; and will include in any subcontract the Privacy Act notifications above.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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TERMINATION

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

a. Termination for Convenience (General Provision) The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.

b. Opportunity to Cure (General Provision) The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

c. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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STATE AND LOCAL LAW DISCLAIMER

Flow Down - The Disclaimer has unlimited flow down.

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000; 42 U.S.C. § 6102, 42 U.S.C. § 12112;
42 U.S.C. § 12132, 49 U.S.C. § 5332; 29 CFR Part 1630; & 41 CFR Parts 60 et seq.**

Flow Down - The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements HUD may issue.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.

(b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.

(c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements HUD may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by HUD, modified only if necessary to identify the affected parties.

The Remainder Of This Certification Continues on the Next Page

AGE DISCRIMINATION ACT

The Contractor shall comply with all the requirements of the Age Discrimination Act of 1975 42 U.S.C. 6101 et seq. or with respect to otherwise qualified handicapped persons as provided in section 504 of The Rehabilitation Act of 1973 29 U.S. C. 794.

Company Name: _____

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Signature: _____

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COPELAND "ANTI-KICKBACK"

Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (Applies to all contracts and subgrants for construction or repair)

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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DAVIS-BACON ACT

Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub-grantees when required by Federal grant program legislation)

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and sub-grantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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RESOLUTION NO. 09-259

A RESOLUTION APPROVING THE 2009 ACTION PLAN AS PART OF THE 2006-2010 CONSOLIDATED PLAN FOR THE CITY OF LAS CRUCES. THE RESOLUTION AUTHORIZES THE CITY STAFF TO SUBMIT THE 2009 ACTION PLAN TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND AUTHORIZES THE ACTION PLAN TO BE INCORPORATED INTO THE CITY'S BUDGET FOR FY 2009/2010.

The City Council is informed that:

WHEREAS, the City of Las Cruces is an Entitlement community as defined by the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Programs, and

WHEREAS, Entitlement communities are required to develop, adopt, and implement a Consolidated Plan every three to five years to address the City's housing and community development needs in order to continue to receive the CDBG and HOME funding, and

WHEREAS, for the 2009 Action Plan, the City will receive entitlement and program income for both the CDBG and HOME Programs from HUD in the amount of \$1,608,000.00 to address the City's affordable housing and community development needs for its low- and moderate-income areas and residents.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the 2009 Action Plan and all necessary support documentation, as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved and adopted.

(II)

THAT Staff is hereby authorized to secure necessary signatures and transmit the 2009 Action Plan to the U.S. Department of Housing and Urban Development on the City's behalf.

(III)

THAT the 2009 Action Plan is hereby authorized to be incorporated into the City's FY 2009/10 budget, once developed.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

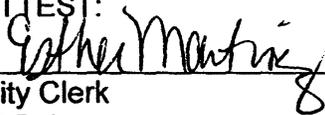
DONE AND APPROVED this 4th day of May, 2009.

APPROVED:



Mayor Ken Miyagishima

ATTEST:



City Clerk
(SEAL)

Moved by: Connor

Seconded by: Jones

APPROVED AS TO FORM:



City Attorney

VOTE:

Mayor Miyagishima:	<u>Aye</u>
Councillor Silva:	<u>Aye</u>
Councillor Connor:	<u>Aye</u>
Councillor Archuleta:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Jones:	<u>Aye</u>
Councillor Thomas:	<u>Aye</u>