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**City of Las Cruces**  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # \*1 Ordinance/Resolution# 09-282 Council District:     

For Meeting of June 1, 2009  
 (Adoption Date)

**TITLE: A RESOLUTION REQUESTING THE CITY OF LAS CRUCES ACCEPT GRANT FUNDING FROM THE STATE OF NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT (CYFD), REQUEST FOR CAPITAL FUNDING APPLICATION #7150, DOMESTIC VIOLENCE CAPITAL FUND, FY 2009 IN THE AMOUNT OF \$635,384 THROUGH THE CITY OF LAS CRUCES AS FISCAL AGENT ON BEHALF OF LA CASA, INC.**

**PURPOSE(S) OF ACTION:** The purpose of this action is to allow La Casa Inc., a non-profit agency to accept funding through the City acting as fiscal agent for capital funding currently available to be utilized in the renovation of La Casa's domestic violence facility.

Name of Drafter: Auguie Henry III		Department: OMB/Grants		Phone: (575) 541-2281	
Department	Signature	Phone	Department	Signature	Phone
Finance Department		(575) 541-2050	Budget		(575) 541-2300
			Assistant City Manager		(575) 541-2271
Legal		(575) 541-2128	City Manager		(575) 541-2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

1. Funding under this RFP will require that funds be expended by FY 2012.
2. The application must be submitted by a local unit of government. The City of Las Cruces was approved as Fiscal Agent for La Casa, Inc. by Resolution #09-123.
3. The applying agency (La Casa, Inc.) is responsible for the 1:1 required match in in-kind services equivalent to the amount of capital outlay funding received. La Casa will provide an in-kind match minimum in the amount of \$220,000 each year for the duration of the grant.
4. Funding will provide for the site work, construction costs for renovation of the HVAC and ducting upgrade to the existing facility.

**SUPPORT INFORMATION:**

Fund Name / Account Number	Amount of Expenditure	Budget Amount
40120100-552002-60912		
40803130-852100-60912	\$635,348	\$635,348

(Continue on additional sheets as required)

1. Resolution
2. Exhibit A – Contract between CYFD and the City of Las Cruces, #09-690-9704-0
3. Exhibit B – Contract between the City of Las Cruces and La Casa, Inc.

**OPTIONS / ALTERNATIVES:**

1. Approve accepting funds. Funding will provide for an upgraded HVAC system on the current housing/administrative facility. The City of Las Cruces will act as the Fiscal Agent for La Casa Inc. as approved by Resolution 09-123.
2. Disapprove accepting funds. The City of Las Cruces will inform CYFD that the City will not be signing the contract, no contract with La Casa will be signed, and the project will not be completed.

**RESOLUTION NO. 09-282.**

**A RESOLUTION REQUESTING THE CITY OF LAS CRUCES ACCEPT GRANT FUNDING FROM THE STATE OF NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT (CYFD), REQUEST FOR CAPITAL FUNDING APPLICATION #7150, DOMESTIC VIOLENCE CAPITAL FUND, FY 2009 IN THE AMOUNT OF \$635,384 THROUGH THE CITY OF LAS CRUCES AS FISCAL AGENT ON BEHALF OF LA CASA, INC.**

The City Council is informed that:

**WHEREAS**, the State of New Mexico, Children, Youth and Families Department (CYFD), announced the award of a Request for Capital Funding, Contract #09-690-9704-0, FY 2009 Domestic Violence Capital Fund issued August 25, 2008; and

**WHEREAS**, the La Casa, Inc., a 501(3)c non-profit organization has requested the City of Las Cruces to act as Fiscal Agent and was approved, Resolution 09-123; and

**WHEREAS**, the funding awarded, \$635,384.00 will provide for renovation of the HVAC system and replacement of necessary ducting. La Casa, Inc. will be responsible to provide the required match, minimum of \$220,000, of in-kind services for three (3) years of the grant duration terminating June 30, 2012; and

**WHEREAS**, these grant funds will be renovate and upgrade the existing La Casa, Inc. Transitional Housing facility.

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

**(I)**

**THAT**, the City of Las Cruces has been awarded the grant funds as specified by the CYFD contract, Exhibit A, with the City of Las Cruces on behalf of the La Casa, Inc. in the amount of \$635,384.00.

**(II)**

**THAT**, the City of Las Cruces will act as Fiscal Agent as approved by Resolution 09-123 for La Casa, Inc. for all matters regarding this capital funding allocation.

**(III)**

**THAT**, the grant application required match is to be provided by La Casa, Inc. through in-kind services as specified by the contract, Exhibit B, between La Casa, Inc. and the City of Las Cruces. The City of Las Cruces, acting as Fiscal Agent has no match responsibility for this funding.

**(IV)**

**THAT**, La Casa, Inc. will be subject to the Fiscal Agency Fee as approved by Resolution 09-158 in the amount of \$3,176.92 due in full upon execution of the contract between La Casa, Inc. and the City of Las Cruces.

**(V)**

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

**DONE AND APPROVED** this 1st day of June, 2009.

APPROVED:

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Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Approved as to Form:

  
\_\_\_\_\_  
City Attorney

**DOMESTIC VIOLENCE CAPITAL IMPROVEMENTS PROJECTS****AN INTERGOVERNMENTAL AGREEMENT****COPY****BETWEEN****THE CHILDREN YOUTH AND FAMILIES DEPARTMENT****AND****CITY OF LAS CRUCES**

**THIS INTERGOVERNMENTAL AGREEMENT** is entered into by and between the **CHILDREN YOUTH AND FAMILIES DEPARTMENT**, hereafter called CYFD, acting through its cabinet secretary, and the **CITY OF LAS CRUCES**, a local government entity, hereinafter called the Contractor, acting through its duly elected officers.

**RECITALS:**

**WHEREAS**, CYFD contracts with Domestic Violence Providers for services; and

**WHEREAS**, the Human Services Department (HSD), a state department, has transferred Two Million Dollars (\$2,000,000.00) of Temporary Assistance for Needy Families (TANF) funds to CYFD for the purpose of funding capital improvement projects in the facilities of Domestic Violence Service Providers, and

**WHEREAS**, the Contractor, a local government entity, has inherent power to enter into formal agreements with Domestic Violence Service Providers within its jurisdiction; and

**WHEREAS**, CYFD and the Contractor desire to enter into this Intergovernmental Agreement to exercise their common powers to facilitate and promote the provision of Domestic Violence Services in accordance with the intent of the TANF regulations; and

**WHEREAS**, the Contractor has submitted an application for capital funding for a Domestic Violence Service program within its jurisdiction, which proposal has been reviewed by CYFD and has been determined to have met the criteria established by CYFD for the use of these funds, and

**WHEREAS**, the Contractor has entered into an agreement with the La Casa, Inc., hereafter called the Provider, to provide Six Hundred Thirty Five Thousand Three Hundred Eighty Four Dollars (\$635,384.00) to fund renovations to improve the HVAC systems at the Provider's domestic violence facility; and

**WHEREAS**, the Provider has agreed with the Contractor to provide in-kind services equal to or greater than the funding provided to the Contractor as a condition of receiving the funds; and

**WHEREAS**, CYFD and the Contractor will provide for strict accountability of all receipts and disbursements, will maintain an accurate accounting of expenditures, and will preserve such records for at least three (3) years following the final expenditure under this Agreement;

**NOW, THEREFORE**, the parties agree as follows:

**I. Purpose**

CYFD agrees to reimburse the Contractor for approved expenditures for services and costs specified in Attachment 2.

**II. Period of Agreement**

This Agreement shall become effective when signed by both parties and shall terminate on June 30, 2012, unless terminated pursuant to Article VI, *infra*.

**III. Funding and Payment**

Funding for this Domestic Violence Facility Capital Improvement project shall not exceed \$635,384.00. The Contractor shall submit certified and documented invoices monthly for actual work performed and expenses incurred to the CYFD. The Contractor's failure to submit such invoices and supporting documentation within thirty (30) days after they are due may result in the non-availability of funds for payment and/or the denial of payment by CYFD.

**IV. Statement of Work**

The Contractor shall provide the program of services as set forth in the scope of work that is attached hereto as "Attachment 1 – Statement of Work" and incorporated herein by reference, unless amended or terminated pursuant to Article VI, *infra*.

**V. Return of Funds**

Upon termination of this Agreement, or after the services provided for herein have been rendered, surplus money, if any, shall be returned by the Contractor to the DFA.

**VI. Termination of Agreement**

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to intended date of termination. **By such termination, neither party may nullify obligations already incurred for**

performance or failure to perform prior to the date of termination.

**THE PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE STATE IN SUCH CIRCUMSTANCES AS CONTRACTOR'S DEFAULT/BREACH OF CONTRACT.**

**VII. Funds Accountability**

The parties shall provide for strict accountability of all monies made subject to this Agreement. The Contractor shall maintain fiscal records, follow generally accepted accounting principles, and account for all receipts and disbursements of funds transferred to the Contractor pursuant to this Agreement. The Contractor will include all monies made subject to this Agreement in the annual audit and will provide CYFD with a copy of the annual audit.

**VIII. Maintenance of Records**

CYFD shall maintain records as required of any administering state agency pursuant to applicable state law and regulation. The Contractor shall maintain fiscal and programmatic records relative to those funds and activities that have been made subject to this Agreement for a minimum of three (3) years.

**IX. Confidentiality**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of CYFD.

**X. Amendments**

This Agreement shall not be altered, changed, or amended except by an instrument, in writing, executed and approved by both parties.

**XI. Assignment**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of CYFD.

**XII. Applicable Law**

This Agreement shall be governed by the laws of the United States and the State of New Mexico.

**XIII. Acquisition of Property**

The parties agree that neither party shall acquire any property as the result of this Agreement.

**XIV. Liability**

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation or requirements applicable to the performance of the Agreement. Each party shall be liable for its actions according to this Agreement subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et. seq., NMSA 1978, as amended.

**XV. Execution of Documents**

CYFD and the Contractor agree to execute any document(s) necessary to implement the terms of this Agreement.

**XVI. Sub-Contracts**

The Contractor shall be ultimately responsible for all items enumerated in Attachment 1 of this Agreement. The Contractor shall seek advance approval from CYFD of all sub-contracts, including qualifications and job descriptions for any professional service sub-contract.

**XVII. Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws and rules and regulations and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, sexual orientation, age, or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If the Contractor is found to not be in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

**XVIII. Workers' Compensation**

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by CYFD.

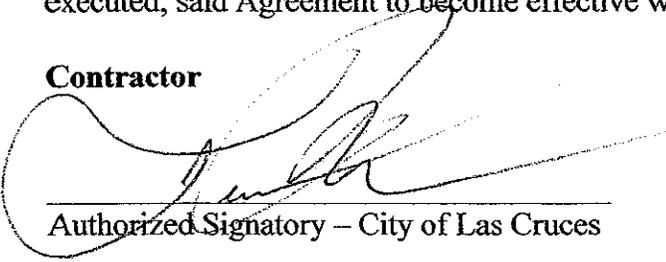
**XIX. Lobbying Certification**

The Contractor, by signing below, certifies to the best of his/her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid by or on the behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. 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 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 a Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of facts 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. (United States Code). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

**IN WITNESS WHEREOF**, CYFD and the Contractor have caused this Agreement to be executed, said Agreement to become effective when signed by both parties.

**Contractor**

  
\_\_\_\_\_  
Authorized Signatory – City of Las Cruces

Date: 5/5/09

Terrence Moore, City Manager  
Printed Title of Authorized Signatory

**Agency**

\_\_\_\_\_  
Secretary or Designee, CYFD

Date: \_\_\_\_\_

**Approved as to legal form and sufficiency.**

\_\_\_\_\_  
Office of General Counsel, CYFD

Date: \_\_\_\_\_

**Attachment 1 - Scope of Work  
City of Las Cruces**

**Performance Measures**

Percent of adult victims receiving domestic violence services living in a safer, more stable environment

**Goal:**

Complete construction and or renovations to the shelter to improve the safety of the living situation

**Objective:**

Meet facility health and safety standards

**Activities:**

**The Contractor Shall:**

1. The Contractor shall enter into an agreement with the Provider that includes:
  - a. The City of Las Cruces will use the \$635,384.00 provided by CYFD to pay for renovations to the Provider's facility to upgrade the HVAC system.
  - b. The Provider will provide the City of Las Cruces with in-kind services in an amount equal to or greater than the funds provided
2. Construction funded by this award is for removing the current evaporative cooling units and hot water heating system, installing new packaged rooftop gas heating and electric cooling rooftop units and modifications to duct work as necessary.
3. All renovations must be completed by a licensed and bonded contractor and all construction must comply with all state and local building codes, rules and regulations. All required permits and inspections of the renovation are the responsibility of the City of Las Cruces.

**Attachment 2 - Budget  
City of Las Cruces**

Renovation Costs – La Casa

\$635,384.00

**AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE LA CASA, INC.  
FOR DOMESTIC VIOLENCE CAPITAL IMPROVEMENTS PROJECTS**

THIS AGREEMENT, effective MAY 15, 2009, is made by and between, the City of Las Cruces, hereinafter referred to as the "City" and the La Casa, Inc., hereinafter referred to as the "Contractor."

In consideration of the mutual promises and covenants contained herein, the City and the Contractor agree as follows:

**I. RECITALS**

The La Casa, Inc. a non-profit organization providing comprehensive services to diminish domestic violence and abuse of all forms in Las Cruces and Doña Ana County, New Mexico.

A. Services include, but are not limited to:

- Emergency Shelter Program
- Non-Resident Programs: Children's Program & Men's Program
- Transitional Housing
- Satellite Outreach Program
- Parenting
- Education and Prevention
- Civil Legal Services

B. The City has obtained a \$635,384.00 grant award from the Children Youth and Families Department (CYFD), to fund renovations for improves to the HVAC systems at the Contractor's domestic violence facility.

C. The Contractor in order to expend the legislative appropriation has requested that the City becomes its fiscal agent for the purpose of distributing the grant funding to provide for victims of domestic abuse in the Las Cruces Metropolitan Statistical Area.

D. The contractor agrees to pay the City an amount of \$3,176.92 for Fiscal Agency services as provided by City Resolution 09-158. Fee is due when the contract is executed.

**II. SCOPE OF SERVICES**

In accordance with the terms of the CYFD contract with the City, the Contractor agrees to use the awarded funds for renovations to improve the HVAC systems at the Contractor's domestic violence facility.

A. The Contractor further agrees to:

1. Provide documentation of in-kind services equal to or greater than the funding provided by the City as a condition of receiving funds;
2. Provide for strict accountability of all receipts and disbursements, maintain an accurate accounting of expenditures, and will preserve such records for at least three (3) years following the final expenditure reimbursement request;
3. Have a designated representative attend a training session, presented jointly by the City of Las Cruces Finance and Legal Departments, if requested to do so by the City. The City of Las Cruces Finance Department will contact the Contractor if required with the training session date.
4. Use funding connected with this Agreement to pay only expenses directly related to removing the current evaporative cooling units and hot water heating system, installing new packaged rooftop gas heating and electric cooling rooftop units and modifications to duct work as necessary.
5. Ensure all renovations will be completed by a licensed and bonded contractor and all construction must comply with all state and local building codes, rules and regulations. All required permits and inspections of the renovation are the responsibility of the Contractor.
6. Provide the following documentation and reports:
  - (a) Quarterly Reports consisting of:
    1. Summary statistical data. Data shall indicate services provided under this agreement; and
    2. Receipts of expenditures. The Contractor will provide certified and documented invoices monthly for actual work performed and expenses incurred to the City. Contractor's failure to submit such invoices and supporting documentation within ten (10) days after they are due may result in the non-availability of funds for payment and/or the denial of payment by the City
  - (b) Final Report, containing all of the information called for in the Monthly Reports, combined to reflect data for the duration of the contract period. The Final Report must be submitted no more than ten (10) days after the completion date of the award: June 30, 2012.

(c) Monthly Reports and Final Reports shall be sent to:

City of Las Cruces  
OMB/Grants  
P.O. Box 20000  
Las Cruces, NM 88004

7. Make available at the office of the Contractor at all reasonable times during the term of this Agreement, and for a period of three (3) years from the date of the Contract, all financial and program records for inspection, audit or reproduction by any authorized representative of the City.
8. Make available at the office of the Contractor at all reasonable times during the term of this Agreement, proof of New Mexico nonprofit corporate status, a copy of the organization's most recent IRS Form 990 Tax Return, as well as its IRS (501(c)(3) ruling letter.

### **III. PAYMENT**

- A. The City will pay the Contractor for services as outlined in this document through June 30, 2012, up to the total amount of \$635,384.00.
- B. The City will pay the Contractor within sixty (60) days of receipt of invoice based upon information submitted by the Contractor.
- C. Payments will be made no more than monthly, and only after receipt of required reports as referenced in the foregoing Agreement.

### **IV. GENERAL**

- A. This Contract contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing by the parties hereto. The Contractor, its employees, and its agents are not to be construed as employees of the City throughout the performance of services under this Contract. No benefits of employment by the City shall accrue to the Contractor, its employees, and agents as a result of this Contract.
- B. The Contractor shall secure and maintain during the term of this Agreement, at its own expense, comprehensive and general liability insurance and secure and maintain, at its own expense, workers' compensation insurance. The Contractor agrees to indemnify, defend and hold harmless the City, its officers, agents, and employees from any and all claims and losses accruing or resulting from the performance of this Contract.

C. This agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. The provision is not exclusive and does not waive other legal rights and remedies afforded the City in such circumstances as Contractor's default/breach of contract.

D. Americans with Disabilities Act

Contracts to Conduct Programming

The Contractor shall ensure that all programs, services and activities are accessible to and usable by persons with disabilities in accordance with the Americans with Disabilities Act, 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 city upon request, a record of all such requests received, granted and/or denied and the reason for any denials.

Bid Specifications for Products, Design and/or Construction

The Contractor shall ensure all proposed products, services, or activities contained as a part of this contract comply with the requirements of the Americans with Disabilities Act (ADA), the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) requirements, the American National Standards Institute (ANSI) Accessibility Guidelines and the New Mexico Building Code (NMBC) Accessibility Requirements (when applicable) to ensure accessibility to persons with disabilities.

E. This agreement shall not become effective until the agreement for Grant No. 09-690-9704-0 is approved by the Local Government Division of the Department of Finance and Administration, State of New Mexico.

LA CASA, INC.

BY: *Dina Chona-Ruy*  
TITLE: *Executive Director*

DATE: *5/5/09*

CITY OF LAS CRUCES

BY: *[Signature]*  
TITLE: City Manager

DATE: *5/5/09*

APPROVED AS TO FORM:

*[Signature]*  
City Attorney