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

Item # 16 Ordinance/Resolution# 10-315 Council District: 4

For Meeting of June 21, 2010
 (Adoption Date)

TITLE: A RESOLUTION APPROVING A NEW FIVE-YEAR LEASE FOR THE OPERATIONS AND MANAGEMENT OF THE COMMUNITY OF HOPE CAMPUS AT 999 WEST AMADOR AVENUE. THE AGREEMENT IS BETWEEN THE CITY OF LAS CRUCES AND THE MESILLA VALLEY COMMUNITY OF HOPE, INC.

PURPOSE(S) OF ACTION: Action is needed to approve the new lease beginning July 1, 2010 and expiring June 30, 2015.

Name of Drafter: <i>Jerry Nachison</i>		Department: Community Development		Phone: 528-3208	
Department	Signature	Phone	Department	Signature	Phone
Community Development	<i>[Signature]</i>	528-3066	Assistant City Manager	<i>[Signature]</i>	541-2271
Public Works		528-3125	Facilities	<i>[Signature]</i>	541-2651
Budget	<i>[Signature]</i>	541-2300	City Manager	<i>[Signature]</i>	541-2076
Legal	<i>[Signature]</i>	541-2128			

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The original lease between the City and MVCH for the operation of the Campus of Hope, as amended, updated and renewed expires in its current form on July 17, 2010. The City and MVCH have mutually negotiated a new lease that improves and clarifies both roles and operational responsibilities for both parties. The new lease takes effect on July 1, 2010 and replaces the existing document for its remaining 17 day term. The new lease, as executed, will expire on June 30, 2015.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution
2. Exhibit "A" – New Lease

(Continued on Page 2)

OPTIONS / ALTERNATIVES:

1. Vote YES and approve the new lease for five years. This action will authorize the City Manager to sign the agreement and for staff to do all work necessary to so implement.
2. Vote NO and deny the Resolution for the City of Las Cruces to enter into this lease to continue the operation of the MVCH campus. City staff would be required to find another way to operate and manage the MVCH campus.
3. Modify the Resolution and vote YES to approve the modified Resolution. This action may change the terms and conditions of the lease. City Council may change terms and conditions of the proposed lease, resulting in delay or non-acceptance by MVCH.
4. Table/Postpone the Resolution and direct staff accordingly.

RESOLUTION NO, 10-315

A RESOLUTION APPROVING A NEW FIVE-YEAR LEASE FOR THE OPERATIONS AND MANAGEMENT OF THE COMMUNITY OF HOPE CAMPUS AT 999 WEST AMADOR AVENUE. THE AGREEMENT IS BETWEEN THE CITY OF LAS CRUCES AND THE MESILLA VALLEY COMMUNITY OF HOPE, INC.

The City Council is informed that:

WHEREAS, Mesilla Valley Community of Hope (MVCH) is a non-profit corporation consisting of a consortium of several local agencies which deliver services to the homeless in the Las Cruces urban area; and

WHEREAS, by previous agreements entered into on January 18, 2005, and amended as necessary, between the City of Las Cruces and Mesilla Valley Community of Hope, which expires on July 17, 2010; and

WHEREAS, the City of Las Cruces and MVCH have worked together to revise the expiring lease to clarify aspects of management, maintenance, and control in the new five-year lease; and

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

(I)

THAT the new five-year lease from July 1, 2010 through June 30, 2015 between the City of Las Cruces and Mesilla Valley Community of Hope, as shown in Exhibit "A" attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT the City Manager, as the official representative of the City of Las Cruces, is hereby authorized to sign said lease on the City's behalf.

(III)

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

DONE AND APPROVED this _____ day of _____, 2010

APPROVED:

Mayor

(SEAL)

ATTEST:

City Clerk

VOTE:

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

Moved by: _____

Seconded by: _____

Approved as to Form:

[Handwritten Signature]

City Attorney

**LEASE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND
THE MESILLA VALLEY COMMUNITY OF HOPE FOR PREMISES
LOCATED AT 999 W. AMADOR, LAS CRUCES, NM 88005**

This lease agreement is made by and between City of Las Cruces, whose address is PO BOX 20000, Las Cruces, NM 88004 (herein after referred to as "City"), and Mesilla Valley Community of Hope (MVCH), whose address is 999 West Amador, Building 3, Las Cruces, NM 88005 (herein after referred to as "MVCH").

ARTICLE I – GRANT OF LEASE

The City, in consideration of the covenants and agreements to be performed and observed by the named parties herein, does hereby lease to MVCH and MVCH does hereby lease and take from the City the property described in Exhibit "A" attached hereto and by reference made a part hereof (the leased premises), together with, as part of the parcel all improvements located thereupon. There is no rent associated with this lease, per the New Mexico Constitution, Article IX, Section 14, whereby the City provides the lease at no rent in exchange for services to the sick, indigent, homeless, low income and abused and/or neglected children in Dona Ana County.

ARTICLE II – LEASE TERM

The term of this Lease begins on July 1, 2010 and shall terminate upon June 30, 2015; lease term is five years. This Agreement shall become effective upon signature by both parties.

ARTICLE III – EXTENSIONS

The parties hereto may extend this Agreement upon such terms and conditions agreed upon in writing and signed by the parties at the time of any such extension. All extensions are subject to the review and approval of the Las Cruces City Council.

ARTICLE IV - AMENDMENTS

The parties hereto may amend this Agreement upon such terms and conditions agreed upon in writing and signed by both parties at the time of any such amendment. All amendments are subject to the review and approval of the City Council.

ARTICLE V – INDEMNITY AND NON-LIABILITY

Basic Indemnity: MVCH shall defend, identify and hold the City harmless from all proceedings, claims, demands, costs, damages, attorney's fees, and all other liability and expenses of any kind, from any source that may arise out of this agreement or any amendment thereto caused by the negligence of MVCH or any contractor, its employees, agents, or clients and excluding therefrom any negligence of the City or its officers or employees.

ARTICLE VI – USE OF PROPERTY BY MVCH

a. **Use:** The leased premises are to be occupied and used by MVCH for the provision of appropriate services for, not limited to, but including sick, indigent homeless, low income, and/or abused and/or neglected children in Dona Ana County.

b. **Sub-leases:** MVCH has the responsibility of issuing, requiring and executing subleases for any other organization providing services for the homeless and/or other populations, subject to City approval, that occupy any portion of the premises. All sub-leases must insure that MVCH responsibilities as stated herein are passed through as appropriate to all organizations signing subleases under this lease. A draft sublease for all sub-lessees under this lease must be approved by the City's Facilities Department prior to use.

All subleases for current occupants shall be signed by MVCH and sub-lessee within one hundred and twenty (120) days of execution of this lease, with copies provided to the Facilities Department of the City.

Future organizations coming onto the leased premises must sign a sublease with MVCH before moving on-site.

c. **Use Limitation:** Nothing herein shall give MVCH the right to use the premises for any other purpose or to sublease, assign, or license the use of the property to any sub-lessee, assignee, or licensee, which or who will use the premises for any other use than providing appropriate services to the sick, indigent, homeless, low income and neglected and/or abused children, or as approved by the City.

ARTICLE VII – THE CITY'S RESPONSIBILITIES

a. City owns the land, buildings and any fixtures permanently attached thereto for the entire premises. The City shall work in cooperation with MVCH in the development of a long-term management strategy and a master plan.

b. The City is the fiscal manager and contract manager for any new construction or major remodeling exceeding twenty five thousand dollars

(\$25,000) excluding items construed as routine maintenance as defined in Article VIII(b), below.

c. City shall designate in writing a single point of contact for all matters for discussion with MVCH.

d. The City shall participate in regular bi-monthly meetings with MVCH as described in Article VIII(a), below.

e. City is responsible for capital improvements and major maintenance items including roofs, parking lot repair and repaving, boiler replacement, and maintenance and replacement of heating and cooling systems, plumbing systems including landscaping irrigation systems, lighting systems for interior and exterior of buildings and parking lot, power distribution equipment and built-in refrigerators and freezers.

The City at its discretion, should MVCH fail to maintain the property in accordance with Article VIII, may waive its obligations to make capital improvements and major maintenance in the event that MVCH's lack of action or maintenance results in the need for such capital improvement or major maintenance. The City shall act in accordance with Article VIII(b)(2) and MVCH may be charged for capital improvements and major maintenance due to lack of action by MVCH.

ARTICLE VIII – MVCH'S COVENANTS AND RESPONSIBILITIES

a. Meetings: To plan with and to meet with the City on at least a bi-monthly beginning within 60 days after lease execution. Either party may request a meeting at any time when the need arises. These meetings shall include at least one member from each on-campus agency and two members designated by the City. There will be a walk-through of the campus to discuss operations and issues of the premises and an on-site meeting to move ahead within the term of this lease to complete planning for a long-term management strategy and a master plan for the entire premises for approval and acceptance by the City Council of the City of Las Cruces.

b. Operations: To manage and operate the premises consistent with the terms of the lease and applicable building and public safety codes. Duties are as follows:

1. Carry out all custodial and landscaping services as necessary
2. Maintain the interior of the facility and all improvements thereto, including fixtures or equipment. Work shall be done in a workmanlike manner and keep in good repair and condition at MVCH's expense. MVCH is responsible for interior flooring, walls, ceiling vent and duct cleaning, paint,

carpet, light fixtures, windows, doors, security and fire systems, clogged drains and lavatories. Also, the maintenance and replacement as necessary of all kitchen and laundry equipment and the repair and replacement of other equipment owned by tenant, clients or visitors. MVCH shall also be responsible for exterior plumbing associated with the community garden. This clause excludes any built-in refrigerators and freezers.

If problems with above interior items occur and MVCH fails to make such repairs or replacements within 30 calendar days after such an instance, the City, in cooperation with MVCH, shall make such repairs or replacements and bill MVCH as appropriate.

3. MVCH shall not commit waste or cause damage to the leased premises, nor shall MVCH permit the appearance of the premises to deteriorate.

c. Reports: The City may request from MVCH an annual report covering listings of member's organizations, their professional staff and all contact information for their Boards, as appropriate.

d. Payments and assessments: MVCH shall pay all assessments or taxes that may become due in respect to the facility operations during the term of this lease, as appropriate and applicable.

ARTICLE IX – INSURANCE

MVCH shall maintain and keep in full force and effect a commercial general liability insurance policy covering personal injury and property damage. The City is to be named as an additional insured in a minimum amount of the sum of one million dollars (\$1,000,000) for personal injury and damage to or destruction of property arising out of a single occurrence. The required certificate shall be furnished by MVCH to the City within thirty (30) days of execution of this agreement or it shall be immediately terminated.

At least thirty (30) days prior to the expiration of any such policy(ies) above, MVCH shall provide the City with evidence of renewal in such form satisfactory to the City. Lack of such provision may mean immediate termination of this lease.

ARTICLE X – UTILITIES

MVCH and its sub-lessees shall secure all necessary utility services for the premises in its name and shall promptly pay all bills for such utility services. This includes all sub-lessees, who will have their own specific arrangements with MVCH.

ARTICLE XI - SIGNAGE

Exterior signs: MVCH shall have the right, at its sole risk and expense and in conformity with applicable laws and ordinances, to erect and thereafter repair or replace if it shall erect signs on any portion of the leased premises, providing that MVCH shall remove any such signs on any portion of the leased premises, and repair any damage occasioned to the leased premises as necessary at the time of termination of lease. MVCH retains full responsibility over proposed signs of all sub-lessees.

Interior signs: MVCH shall have the right, at its sole risk and expense and in conformity with applicable laws and ordinances, to erect, maintain, place and install its usual and customary signs and fixtures in the interior of the leased premises. MVCH shall repair any damage occasioned to the leased premises as necessary at the time of termination of lease. MVCH retains full responsibility over proposed signs of all sub-lessees.

ARTICLE XII – DAMAGE TO DEMISED PREMISES

a. The City agrees that it shall provide property insurance on the facility and city-owned contents, so that in the event the damage or destruction of the leased premises, above and beyond normal wear and tear, as stated in Article VIII(b)(2), the City may proceed to repair, restore, replace or rebuild the premises, excluding MVCH's leasehold improvements, to the condition in which the same were prior to such damage or destruction, in consultation between MVCH and the City. The City may, in consultation with MVCH initiate repairs within a reasonable number of days notification by MVCH, or as appropriate, depending on the extent of damage. The decision to replace the property may depend upon the economics of the situation and the City and MVCH will consult in good faith to the benefit of both MVCH, the City, and the community; however, the ultimate decision to replace the structure will reside with the City.

b. Any MVCH insurance proceeds in excess of such proceeds necessary for such repair, restoration, rebuilding, replacement or any combination thereof shall be the sole property of MVCH and if the proceeds necessary for such work as stipulated above shall be inadequate to pay the cost thereof, MVCH is responsible for the deficiency.

ARTICLE XIII – OWNERSHIP OF IMPROVEMENTS

MVCH shall obtain written permission through the City's Facilities Department, or as assigned by the City before making any alterations or improvements of a permanent nature to the grounds or buildings. Alterations and improvements made or placed on the premises by MVCH are and shall remain, its property, except as parties mutually agree otherwise in writing and if such alternatives can

be removed without undue damage to the premises and are, in fact, removed by MVCH prior to termination of this lease or within a reasonable time following termination at the discretion of the City. Alterations and improvements of a permanent nature which cannot be removed without undue damage to the premises shall immediately become the City's property except as the parties mutually agree otherwise in writing.

ARTICLE XIV – TERMINATION/EXTENSIONS/WAIVERS.

a. Termination: This lease may be terminated by either party upon failure of the other party to meet the terms of this agreement within 90 days of said occurrence. The defaulting party will be given fair notice of its failure to meet the terms of the agreement and will have the opportunity to remedy the default or violation within 90 days of notification. Termination is by mutual agreement of both parties.

b. Held over: In the event that MVCH or any sub-lessee shall continue occupancy of the premises after expiration of term or any renewal or extension thereof (see Article III) without written agreement between the City and MVCH, such occupancy is not a renewal of the lease. Such occupancy constitutes a month-to-month tenancy at will, with all provisions, covenants and conditions set forth herein remaining in full force and effect.

c. Waiver: Failure of either party to complain of any act or omission on the part of the other party, no matter how long, shall not be deemed a waiver by said party of any of its rights set forth herein.

ARTICLE XV - MISCELLANEOUS

a. Fixtures: All personal property, and building improvements to include furnishings equipment and fixtures installed by MVCH or its sub-lessees at their expense and not specifically paid for with City funds, shall remain the property of MVCH or its sub-lessees as long as such property and improvements can be removed from the premises without damage or can be removed with minimal damage that can be repaired by MVCH or its sub-lessees. MVCH may but shall not be obligated to remove the same or any part thereof at any time or times during the lease term, provided that MVCH, at its sole cost and expense, shall make any repairs occasioned by such removal.

b. Invalidity of a provision: If any term or provision of this lease or the application hereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this lease shall be valid and enforceable under the law.

c. Entire agreement: This lease contains the entire and only agreement between the parties. No oral statement, representation, or prior written matter not expressly stated in this instrument shall have any force and effect. This lease shall not be modified in any way unless by way of an executed amendment hereto that is signed by both parties.

d. Governing law: All matters pertaining to this agreement, including its interpretation, application, validity, performance and breach, in whatever jurisdiction may be brought, shall be governed by, construed and enforced in accordance with the laws of the State of New Mexico. The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a court with subject matter jurisdiction which shall be located in Dona Ana County, State of New Mexico.

e. Contractual procedures: Unless specifically disallowed by law, should litigation arise set forth herein, service of process therefore may be obtained through certified mail, return receipt requested; the parties hereto waive any and all rights they may have to object to the method by which service was provided.

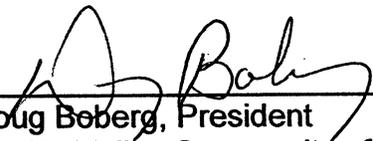
f. Binding on successors: This lease is binding on any successor organizations set forth herein of either party or sub-lessees to this lease.

IN WITNESS WHEREOF the parties hereto have executed this lease the day and year first above written or have caused this lease to be executed by their respective officers thereunto duly authorized.

Signed, sealed and delivered in the presence of

Terrence Moore, City Manager
City of Las Cruces

Date



Doug Beberg, President
Mesilla Valley Community of Hope

6/11/2010
Date

APPROVED AS TO FORM:

City Attorney

Date