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

Item # 17

Ordinance/Resolution#: 10-11-394 Council District: N/A

For Meeting of January 3, 2011

(Adoption Date)

TITLE: A RESOLUTION AWARDING A CONTRACT FOR THE DEVELOPMENT OF THE 2011-2015 CONSOLIDATED PLAN AND ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE FOR THE CITY OF LAS CRUCES, NM, TO BBC RESEARCH & CONSULTING OF DENVER, CO, FOR THE CONTRACT AMOUNT OF \$99,760 PLUS \$7,544 FOR NEW MEXICO GROSS RECEIPTS FOR A TOTAL PROJECT AUTHORIZATION OF \$107,304. THE RESOLUTION INCLUDES A BUDGET ADJUSTMENT TO THE CITY'S FY2011 ADOPTED BUDGET TO CORRECT ACCOUNT BALANCES FOR CDBG FUNDS TO PAY FOR THIS PROJECT.

PURPOSE(S) OF ACTION: Authorize a contract award to BBC Research and Consulting of Denver, CO for the development of the City's 2011-2015 Consolidated Plan and Analysis of Impediments to Fair Housing Choice.

Drafter and Staff Contact: David Dollahon <i>[Signature]</i>		Department: Community Development		Phone: 528-3060	
Department	Signature	Phone	Department	Signature	Phone
Community Development	<i>[Signature]</i>	528-3067	Budget	<i>[Signature]</i>	541-2107
			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 for the Community Development Block Grant (CDBG) Program funds and a participating jurisdiction for the HOME Investment Partnerships (HOME) Program funds from the U.S. Department of Housing and Urban Development. As a continuing requirement for both the CDBG and HOME Programs, the City must develop, adopt, and implement a three- or five-year Consolidated Plan and Analysis of Impediments of Fair Housing Choice (or AI). The Consolidated Plan requires a detailed housing market analysis, a community development needs assessment as it relates to the use of CDBG funds, a special needs assessment, a homeless populations needs assessment, and a Strategic Plan for the City's use of both CDBG and HOME funds. The AI requires an analysis of city residents' knowledge of fair housing laws (federal, state, and local laws), and methods and actions the City may take to remove any barriers to fair housing or to improve fair housing choice within the City's capabilities. The current Consolidated Plan and AI is for the period between 2006-2010 (through to the end of the City's Fiscal Year 2011 or June 30, 2011) and staff is proposing that a new five-year plan be developed for the period of 2011-2015 (which would end on June 30, 2016).

The City of Las Cruces solicited request for proposals from qualified firms for the development of the City's 2011-2015 Consolidated Plan and AI starting on September 24, 2010 and closing

on October 19, 2010. The Neighborhood Services Section received reference information on the five firms that submitted compliant proposals by the deadline. The five firms were evaluated by the Selection Advisory Committee (SAC). Interviews were conducted by the SAC for the top three on December 2, 2010. The SAC recommended and the user department has negotiated with BBC Research and Consulting of Denver, CO for this project. The final project amount is \$99,760 with allowances for NM gross receipts tax in the amount of \$7,544 for a total project cost of \$107,304. Due to budget constraints no contingency is proposed for the project.

Due to the use of federal funds, no local preference was allowed for this project's procurement. Additionally, the federal funds require that any change order must be approved through a detailed cost analysis and negotiation; therefore, the City Manager's authorization to allow for change orders on this project is subject to the applicable federal procurement requirements.

A budget adjustment is included with the Resolution for the City's FY2011 adopted budget to correct the beginning balance for the 2009 CDBG Administrative Funds that will be used to pay for a portion of the contract with BBC. The available amount of 2009 funds should be lower than what is currently within the adopted FY2011 budget and staff is using this opportunity to correct that funding amount. This will also ensure that HUD's accounting of our grants match the City's adopted budget for the current fiscal year.

SUPPORT INFORMATION:

1. Resolution
2. Exhibit "A" - Purchasing Managers Request to Contract
3. Exhibit "B" - Budget Adjustment
4. Attachment "C" - Draft contract between the City and BBC Research & Consulting - draft for information only, final terms, conditions, and format subject to change

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
<input type="checkbox"/>		Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Community Development (Fund 2000)	20184240-722190-10109	\$31,981.47	\$41,713.00 (part of Budget Adjustment)	\$9,731.53	Other CDBG Expenses
General Fund (Fund 1000)	10184080-722190-20401	\$75,322.53	\$130,614	\$55,291.47	Other planning efforts

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution; thereby awarding the contract to BBC Research and Consulting of Denver, CO for the development of the City's 2011-2015 Consolidated Plan and Analysis of Impediments to Fair Housing Choice.
2. Vote "No"; this will not approve the Resolution; thereby not awarding the contract to BBC Research and Consulting of Denver, CO for the development of the City's 2011-2015 Consolidated Plan and Analysis of Impediments to Fair Housing Choice. Without the development of the next Consolidated Plan, and due to limited staff capacity to undertake the effort in house, the City could jeopardize the receipt and use of future CDBG and HOME funds.
3. Vote "Yes" with modifications to approve the Resolution. Modifications would be based on the direction provided by the City Council.
4. Vote to "Table" and direct staff accordingly. This could delay the overall project and could jeopardize the use of available grant funds committed to the completion of the CP and AI.

REFERENCE INFORMATION

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. N/A

RESOLUTION NO. 10-11-394

A RESOLUTION AWARDED A CONTRACT FOR THE DEVELOPMENT OF THE 2011-2015 CONSOLIDATED PLAN AND ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE FOR THE CITY OF LAS CRUCES, NM, TO BBC RESEARCH & CONSULTING OF DENVER, CO, FOR THE CONTRACT AMOUNT OF \$99,760 PLUS \$7,544 FOR NEW MEXICO GROSS RECEIPTS TAX, FOR A TOTAL PROJECT AUTHORIZATION OF \$107,305. THE RESOLUTION INCLUDES A BUDGET ADJUSTMENT TO THE CITY'S FY2011 ADOPTED BUDGET TO CORRECT ACCOUNT BALANCES FOR CDBG FUNDS TO PAY FOR THIS PROJECT.

The City Council is hereby informed that:

WHEREAS, the City of Las Cruces is an entitlement community for the Community Development Block Grant (CDBG) Program and a participating jurisdiction for the HOME Investment Partnerships Program (HOME) from the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the continued implementation of both CDBG and HOME by the City requires the development, adoption, and implementation of a Consolidated Plan and Analysis of Impediments (AI) for Fair Housing Choice every three to five years per HUD's regulations; and

WHEREAS, the City's last Consolidated Plan and AI was for the 2006-2010 program years which ends on June 30, 2011 (end of City FY2011); and

WHEREAS, the Consolidated Plan consists of a detailed housing market analysis, a community development needs assessment, a homeless and special needs assessment, and a strategic plan on how the City plans to use the allocation of HUD funds for both CDBG and HOME; and

WHEREAS, the AI is a tool that outlines the general public's understanding of fair housing laws (federal, state, and local), and any actions that the City may take to improve residents' opportunity for improved fair housing choice; and

WHEREAS, five (5) firms submitted compliant proposals within the prescribed deadline, and the Selection Advisory Committee (SAC) evaluated all five and interviewed the top two most qualified firms (the third qualified firm withdrew from consideration prior to SAC interviews), for developing the 2011 – 2015 Consolidated Plan and AI; and

WHEREAS, the SAC has recommended and City staff have negotiated with the highest ranking firm to undertake this effort; and

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

(I)

THAT the contract for 2011-2015 Consolidated Plan and Analysis of Impediments to Fair Housing Choice is hereby awarded to BBC Research and Consulting, of Denver, CO in the amount of \$107,304 (total project authorization).

(II)

THAT the total project authorization of \$107,304 includes an allowance of \$7,544 for New Mexico Gross Receipts Tax.

(III)

THAT the Purchasing Manager is authorized to contract with BBC Research and Consulting, of Denver, CO as outlined within the Purchasing Manager's Recommendation to Contract, as shown in Exhibit "A," attached hereto and made part of this Resolution.

(IV)

THAT the City's adopted FY2011 Budget, as shown in Exhibit "B," attached hereto and made part of this Resolution, is hereby amended and adopted.

(V)

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

DONE and APPROVED this ____ day of _____, 2011.

(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:

City Attorney

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: January 3, 2011

Resolution No.: 10-11-394

Contract Purchase For Consolidated Plan and Analysis of Impediments to Fair Housing Choice

The Las Cruces City Council is provided the following information concerning this request:

RFP SOLICITATION INFORMATION:

1. RFP No./ Due Date: RFP No. 10-11-394/October 19, 2010
2. Description: Consolidated Plan and Analysis of Impediments to Fair Housing Choice
3. Using Department: Community Development
4. Number of Responses Accepted: Five (5)
5. Award Recommendation To: BBC Research and Consulting of Denver, CO
6. Total Award Amount (including any tax and contingency): \$107,304.00
7. Contract Duration: 178 days

LOCAL PREFERENCE FACTOR

Local Preference Factor Applied Per LCMC §24-100	No	X	LCMC §24-100 not applicable to this solicitation
	Yes		Made A Difference To Awards(s) Made No Difference To Bid Award(s)

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-92**.


 Purchasing Manager 1/12/10/2010
Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION or PURCHASE ORDER NUMBER:	11102180
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**CITY OF LAS CRUCES
ADOPTED BUDGET FY 2010/2011**

FUND	DIVISION		FUND TYPE	
Community Development Fund 2000	Comm Dev		Special Revenue	
	FY 2009/10 Preliminary*	FY 2010/11 Adopted	Adjustment	FY 2010/11 Adjusted
RESOURCES				
Beginning Balance	\$ 62,496	36,953		36,953
REVENUES				
HR Non-Refunding Perf Bond 20180060-542301	\$ 2,809	10,000		10,000
CDBG Grant PY2010 20180320-551011	0	1,096,221		1,096,221
CDBG Grant PY2009 20180270-551011	28,808	538,720	(22,428)	516,292
CDBG Grant PY2008 20180230-551011	736,244	289,045		289,045
CDBG Grant PY2007 20180210-551011	56,678	100,001		100,001
CDBG Grant PY2006 20180050-551011	0	156,093		156,093
HOME Grant PY2010 20180330-551013	0	535,186		535,186
HOME Grant PY2009 20180280-551013	78,947	270,563		270,563
HOME Grant PY2008 20180240-551013	388,170	70,488		70,488
HOME Grant PY2007 20180220-551013	383,942	63,526		63,526
HOME Grant PY2006 20180120-551013	271,414	29,739		29,739
HOME Grant PY2004 20180100-551013	59,150			0
Interest Revenue CDBG 20180060-570115	14,600	15,000		15,000
Interest Revenue HOME 20180060-570116	1,886	18,000		18,000
Interest Revenue Home Rental Proj 20180060-570121	9,806	9,000		9,000
CDBG Pgm Inc (Principal) 20180060-581010	108,760	85,000		85,000
HOME Pgm Inc (Principal) 20180060-581011	42,137	15,711		15,711
Other Revenue - CDBG 20180060-592110	2,138	0		0
Other Revenue - HOME 20180060-592111	10	0		0
Total Revenues	\$ 2,185,499	3,302,293	(22,428)	3,279,865
Total Resources	\$ 2,247,995	3,339,246	(22,428)	3,316,818
EXPENDITURES				
HR Bond 20184130-722190	\$ 0	10,000	0	10,000
2010/11 CDBG				
Administration 20184300-XXXXX-10110	\$ 0	239,244	0	239,244
Rehab Administration 20184300-XXXXX-10210	0	357,977	0	357,977
Property Acq. HFH 10 20184300-722190-10410	0	100,000	0	100,000
La Casa-Emer Shelter 20184300-722190-10305	0	39,898	0	39,898
MVCH-Homeless Oper 20184300-722190-10306	0	38,298	0	38,298
St. Lukes HMLS Oper 20184300-722190-10317	0	5,738	0	5,738
Jardin de los Ninos-on site Medical 722190-10307	0	20,698	0	20,698
MV Casa-Vol Coor 20184300-722190-10314	0	20,298	0	20,298
CAAS - Sr. Theraputic Mis 20184300-722190-10315	0	10,298	0	10,298
CAASNM - Backpack 20184300-722190-10318	0	11,498	0	11,498
Tresco - Flex Prog 20184300-722190-10319	0	7,964	0	7,964
DA ACT4YTH - CH OBES 20184300-722190-10320	0	6,412	0	6,412
ABODE - HOPE HSG 1st 20184300-722190-10321	0	3,898	0	3,898
Property Acq. ABODE 20184300-722190-10405	0	84,000	0	84,000
Sr. Kitchen Prop 20184300-853100-10406	0	190,000	0	190,000
Sect. 108 Loan Repayment 20184300-722190-10409	0	0	0	0

*Preliminary Projection as of Sept. 21, 2010

**CITY OF LAS CRUCES
ADOPTED BUDGET FY 2010/2011**

FUND	DIVISION		FUND TYPE	
Community Development Fund 2000	Comm Dev		Special Revenue	
	FY 2009/10 Preliminary*	FY 2010/11 Adopted	Adjustment	FY 2010/11 Adjusted
2009/10 CDBG				
Administration 20184240-722190-10109	\$ 178,176	64,141	(22,428)	41,713
Rehabilitation Administration 20184240-722195-10209	178,551	160,548		160,548
Public Services:				
La Casa-Laundry Fac Rehab 20184240-722190-10408	0	23,920		23,920
La Casa-Emer Shelter 20184240-722190-10305	36,068	0	0	0
MVCH-Homeless Oper 20184240-722190-10306	33,876	0	0	0
Jardin de los Ninos-on site Medical 722190-10307	13,876	0	0	0
Casa de Peregrinos-Food Bank 722190-10313	13,855	0	0	0
MV Court Appt Spec Advocates-Vol 722190-10314	20,276	0	0	0
Comm. Act. Agc - Sr. Theraputic Mis 722190-10315	10,276	0	0	0
Comm. Act. Agc - Teen Parent Prog 722190-10316	11,876	0	0	0
FYI - Emerg Shelter Oper 20184240-722190-10312	5,469	0	0	0
Public Facilities/ADA/Public Improvements:				
Jefferson Road 20184240-722190-70M70	\$ 3,637	73,704	0	73,704
Jefferson Road 20184240-854121-70M70	100,000	216,407	0	216,407
2008/09 CDBG				
Administration 20184200-XXXXX-10108	\$ 39,648	0	0	0
Rehabilitation Administration 20184200-722195-10208	(1,179)	218,567	0	218,567
Home Rehabilitation 20184200-722196-10518-10531	264,114	0	0	0
Public Services:				
CAA - IDA 20184200-10310	10,000	0	0	0
Public Facilities/ADA/Public Improvements:				
MV Comm of Hope - Trns Hsg 20184200-722190-10405	0	65,478	0	65,478
Jefferson Road 20184200-854121-70M70	0	5,000	0	5,000
2007/08 CDBG				
Home Rehabilitation 20184160-722195-10207	0	1	0	1
Home Rehabilitation 20184160-722196-10520-23	29,576	0	0	0
Public Facilities/ADA/Public Improvements:				
Community of Hope 20184160-852100-61411		100,000		100,000
MVCommunity of Hope Ph I 20804080-852100-61411	0	0	0	0
2006/07 CDBG				
Public Facilities/ADA/Public Improvements:				
CLC Central Kitchen 20184110-722190-10406	5,000	156,093	0	156,093
2004/05 CDBG				
Public Facilities/ADA/Public Improvements:	\$			
Branigan Library ADA Imp 20804020-854122-60Q03	0	0	0	0
Transit Shelters/Benches 20184030-730210-60401	10,185	0	0	0
Total CDBG	\$ 963,280	2,230,080	(22,428)	2,207,652

*Preliminary Projection as of Sept. 21, 2010

**CITY OF LAS CRUCES
ADOPTED BUDGET FY 2010/2011**

FUND	DIVISION		FUND TYPE	
Community Development Fund 2000	Comm Dev		Special Revenue	
	FY 2009/10 Preliminary*	FY 2010/11 Adopted	Adjustment	FY 2010/11 Adjusted
2010/11 HOME				
Administration 20184290-XXXXXXX-11110	\$ 0	53,505	0	53,505
HFH-CHDO SET ASD 10 20184290-722190-11209	0	28,900	0	28,900
TDS-CHDO SET ASD 10 20184290-722190-11210	0	28,900	0	28,900
CAA-CHDO SET ASD 10 20184290-722190-11211	0	28,900	0	28,900
HFH-CHDO OP 10 20184290-722190-11309	0	10,000	0	10,000
TDS-CHDO OP 10 20184290-722190-11310	0	10,000	0	10,000
CAA-CHDO OP 10 20184290-722190-11311	0	6,000	0	6,000
SF HSG - HFH 10 20184290-722190-11413	0	150,000	0	150,000
SF HSG - TDS 10 20184290-722190-11414	0	170,392	0	170,392
SF HSG - CAA 10 20184290-72190-11415	0	91,300	0	91,300
2009/10 HOME				
Administration 20184250-722190-11109	\$ 53,044	0	0	0
CHDO - Alta Tierra 20184250-722190-11208	85,934	0	0	0
Alta Tierra 20184250-722190-11410	164,066	0	0	0
TBRA 20184250-722190-11409	0	104,892	0	104,892
Habitat-CHDO 20184250-722190-11307	\$ 14,000	0	0	0
TDS - CHDO 20184250-722190-11308	10,000	0	0	0
Habitat-Property 20184250-722190-11411	0	65,369	0	65,369
Tierra del Sol 20184250-722190-11412	0	100,302	0	100,302
2008/09 HOME				
CHDO Set aside 2008- MV Habitat 11206	6,077	13,024	0	13,024
CHDO Set aside 2008- Tierra del Sol 11207	50,705	1,101	0	1,101
Property Acq - 2008- MV Habitat 11406	70,484	31,812	0	31,812
Property Acq - 2008- Tierra del Sol 11407	259,388	19,550	0	19,550
Property Acq - 2008- Tierra del Sol 11408	50,789	5,001	0	5,001
2007/08 HOME				
CHDO Set aside MV Habitat 20184170-722190-11205	44,747	44,989	0	44,989
FYI Transitional Housing 20184170-722190-11402	375,000	0	0	0
Tenant Based Rental Assist. 20184170-722190-11403	23,657	0	0	0
TBRA 20184170-722190-11409		18,537	0	18,537
2006/07 HOME				
Property Acquisition 20184120-722190-11401	39,871	29,739	0	29,739
Total HOME	\$ 1,247,762	1,012,213	0	1,012,213
Total Expenditures	\$ 2,211,042	3,242,293	(22,428)	3,219,865
OTHER FINANCING SOURCES (USES)				
Transfer to 3810 HUD Section 108 Loan Fund	0	(60,000)	0	(60,000)
Total Other Financing Sources (Uses)	\$ 0	(60,000)	0	(60,000)
ENDING BALANCE	\$ 36,953	36,953	0	36,953

*Preliminary Projection as of Sept. 21, 2010

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this _____, 2010, by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and BBC Research and Consulting, of 3773 Cherry Creek North Drive, Denver, CO 80209-3868 hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

The CONTRACTOR shall prepare the City of Las Cruces 2011-2015 Consolidated Plan and Analysis of Impediments to Fair Housing Choice for submission to the U.S. Department of Housing and Urban Development by May 15, 2011.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY'S RFP No. 10-11-394 incorporated herein by reference and as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount \$99,760.00, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a written Notice to Proceed for the 2011-2015 Consolidated Plan and Analysis of Fair Housing Choice from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of SERVICES that is required by the CITY and it will serve the CITY diligently and

faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on January 3, 2011 for a term of 178 calendar days through June 30, 2011, and, pending mutual written agreement, may be extended annually thereafter for up to 3 months through September 30, 2011.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR in Exhibit A.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended without a prior cost or price analysis as required by federal regulation and except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 24 (Dispute Resolution).

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the SERVICES set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. CONTRACTOR'S DUTIES

The CONTRACTOR will verify the receipt of all materials, use of equipment, and the performance of all labor involved in the SERVICES, as applicable. The CONTRACTOR will retain all invoices, checks, and other records showing billing and payment for applicable materials, equipment usage and labor for the SERVICES for the period as specified in Article 14 (Records, Audits, Access to Books and Workspace) following the

date of completion. The Contractor will give the CITY notice and ample opportunity to inspect, copy (at the CONTRACTOR'S expense), or take possession of such records (at the CITY'S expense) before discarding them. CONTRACTOR will also maintain books of account with respect to the performance of the SERVICES for the same period

11. OWNER'S RIGHT TO INSPECT

The CONTRACTOR and all Subcontractors and insurance agent books, records, original estimates, estimating worksheets, correspondence, accounting records, written policies and procedures, subcontract files, Change Order or amendment files, and any other supporting evidence relating to this Agreement (all of the foregoing hereinafter shall be referred to as "Records") shall be open to inspection and subject to audit and reproduction, during normal working hours, in accordance with Article 14 (Records, Audits, Access to Books and Workspace) by the CITY or the CITY'S Representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments, or claims submitted by the CONTRACTOR or any of their payees pursuant to this Agreement. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs, including overhead allocations, as applicable to costs associated with this Agreement.

12. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 (Changes and Extra Services by the Contractor) including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

13. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the SERVICES have been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all SERVICES performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated

by CONTRACTOR in the performance of this Agreement, whether completed or in process.

14. RECORDS, AUDITS, ACCESS TO BOOKS AND WORKSPACE

CONTRACTOR will maintain records indicating dates, length of time, and services rendered for a period of three (3) years after completion of the SERVICES. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments.

The CITY, the CITY'S Representatives and/or subcontractors, HUD and/or its agents or representatives, and the Comptroller General of the United States, shall have access to the CONTRACTOR'S facilities, shall have access to all records related to the SERVICES, and shall provide adequate and appropriate work space in order to conduct audits in compliance with this Article. The CITY and the CITY'S Representatives shall give the CONTRACTOR reasonable advance notice of intended audits. Any reproduction/copy expenses for items needed by the CITY for the audit shall be at the CONTRACTOR'S sole cost and expense for any audits conducted at the CONTRACTOR'S place of work or office.

15. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

16. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR'S employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

17. WRITTEN CONTRACTS FROM SUBCONTRACTORS AND SUPPLIERS

CONTRACTOR shall require each of its Subcontractors to comply with the provisions of this Agreement by insertion of the requirements hereof in a written contract/agreement between Contractor and such Subcontractor. Failure to obtain such a written contract/agreement with each such Subcontractor including such provisions shall be reason to exclude some or all of the Subcontractor's charges from amount payable to the Contractor pursuant to this Agreement.

18. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

19. ASSIGNMENT.

CONTRACTOR shall perform all the SERVICES under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

20. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

- a. Professional Liability: \$1,000,000 per claim

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the SERVICES and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

21. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

22. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement.

23. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

24. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

25. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
PO Box 20000 Las Cruces, NM 88004
ATTENTION: David Dollahon, Neighborhood Services Administrator

With Copies to: City Attorney & Purchasing Manager

TO CONTRACTOR: BBC Research and Consulting
3773 Cherry Creek North Drive Suite 850
Denver, CO 80209-3868
ATTENTION: Heidi Aggeler, Managing Director

26. SCOPE OF AGREEMENT

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

BBC Research and Consulting
CONTRACTOR

THE CITY OF LAS CRUCES

BY: _____
Heidi Aggeler
Managing Director

BY: _____
PURCHASING MANAGER

DATE: _____

DATE: _____

APPROVED AS TO FORM:

CITY ATTORNEY