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

Item # 7 Resolution# 11-206 Council District: 4
 For Meeting of April 4, 2011
 (Adoption Date)

TITLE: A RESOLUTION AUTHORIZING THE CITY TO EXERCISE THE PURCHASE AGREEMENT FOR THE 1.687 ACRE PROPERTY AT 905 S. CAMPO STREET FROM THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES FOR \$221,000.00 USING COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR THE FUTURE SITE OF THE SENIOR PROGRAMS CENTRAL KITCHEN PROJECT.

PURPOSE(S) OF ACTION: To allow the purchase of real property for the purpose of building a new Central Kitchen for the Senior Programs Meals on Wheels Program.

Drafter and Staff Contact: <i>Raymond Burchfield</i> Raymond Burchfield		Department: Community Development		Phone: 528-3094	
Department	Signature	Phone	Department	Signature	Phone
Department Director	<i>DW</i>	528-3066	Budget	<i>Richard Johnson</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 is an entitlement community with the U.S. Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG). Resolution 09-146 approved the site selection and preliminary design for the new Central Kitchen for the Senior Programs Meals on Wheels Program. Also, Resolution 10-177 was approved to enter into an Exclusive Option Agreement for the purchase of the selected site at 905 S. Campo Street owned by the Housing Authority of the City of Las Cruces.

Staff has completed the environmental review process with HUD and has received the release of funds necessary to complete the purchase of the parcel for \$221,500.00, less the \$5,000.00 that was paid at the execution of the option to purchase agreement, for a remainder of \$216,500.00 on the property. This Resolution is necessary to complete the property purchase.

SUPPORT INFORMATION:

1. Resolution
2. Exhibit "A" – Agreement for Purchase of Real Estate

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)	20184110-853100-10406	\$31,500	\$31,500	\$0	N/A
	20184300-853100-10406	\$185,000	\$190,000	\$5,000	Closing and other eligible expenses.

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution. Such action will direct staff to complete the purchase of real property.
2. Vote "No"; this will deny the Resolution. The land will not be purchased.
3. Vote to "Table"; and direct staff accordingly.

REFERENCE INFORMATION

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

1. Resolution 09-146
2. Resolution 10-177

RESOLUTION NO. 11-206

A RESOLUTION AUTHORIZING THE CITY TO EXERCISE THE PURCHASE AGREEMENT FOR THE 1.687 ACRE PROPERTY AT 905 S. CAMPO STREET FROM THE HOUSING AUTHORITY OF THE CITY OF LAS CRUCES FOR \$221,000.00 USING COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR THE FUTURE SITE OF THE SENIOR PROGRAMS CENTRAL KITCHEN PROJECT.

The City Council is informed that:

WHEREAS, the City of Las Cruces has identified the need for the creation of a Senior Program Central Kitchen Project to assist with current overcrowding at current Senior Program Food Kitchens; and

WHEREAS, the City of Las Cruces has completed the site selection and preliminary design for a new Senior Programs Central Kitchen under Resolution 09-146; and

WHEREAS, the City staff has executed an Exclusive Option Agreement for the Purchase of Real Property at 905 S. Campo Street with the Housing Authority of the City of Las Cruces through Resolution 10-177; and

WHEREAS, the City Staff has completed the environmental review process and has received a Release of Funds from the U. S. Department of Housing and Urban Development for the Central Kitchen project; and

WHEREAS, the City is now in the position to execute a Purchase Agreement for the property and to proceed with closing.

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

(I)

THAT the Purchase Agreement of the 1.687 acre parcel of land at 905 S. Campo from the Housing Authority of the City of Las Cruces, as shown in Exhibit "A," attached hereto and made part of the Resolution, is hereby approved.

(II)

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

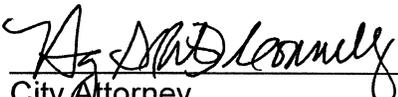
VOTE:

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

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

EXHIBIT A**AGREEMENT FOR PURCHASE OF REAL ESTATE**

THIS AGREEMENT, entered into this _____ day of _____, 2011, between the HOUSING AUTHORITY OF THE CITY OF LAS CRUCES, (hereafter called the Seller), whose address is 926 S. San Pedro Street, Las Cruces, NM 88001 and the CITY OF LAS CRUCES, a New Mexico Municipal Corporation, P.O. Box 20000, Las Cruces, NM 88004 (hereafter called the City).

The Seller, in consideration of the mutual covenants herein contained, agree to sell and convey, and the City agrees to purchase parcel of land as described, with all buildings and improvements thereon, in any, and all rights, hereditaments, easements and appurtenances thereunto belonging, located at 905 S. Campo St. in the City of Las Cruces, County of Dona Ana, State of New Mexico more particularly described as follows:

A tract of land situate within the Corporate Limits of the City of Las Cruces, Dona Ana County, New Mexico, located in Section 18, T.23S., R.2E., N.M.P.M. of the U.S.R.S., being part of U.S.R.S. Tract 11C-1, and being more particularly described as shown on Exhibit "A" attached hereto and made a part hereof, (hereinafter called the Property).

TERMS AND CONDITIONS

1. **Purchase Price.**
Pursuant to the "EXCLUSIVE OPTION AGREEMENT FOR PURCHASE OF REAL PROPERTY"(hereafter called the Option Agreement) executed on the 27th day of January, 2010 by and between the Seller and the City, the purchase price for the Property shall be Two Hundred Twenty-one Thousand, Five Hundred Dollars and No Cents (\$221,500.00), minus the option sum payment of Five Thousand Dollars and No Cents (\$5,000.00) that was paid by the City to the Seller on the date of the Option Agreement, leaving a final purchase price of Two Hundred Sixteen Thousand, Five Hundred Dollars and No Cents (\$216,500.00) payable in cash or equivalent at closing of the Property.
2. **Closing Date.**
Closing for the sale of the Property shall occur on a mutually agreeable date, at least (60) days after the adoption of the resolution authorizing the purchase by the City. The Parties may extend the Closing Date by mutual agreement, not to exceed 365 days following the date of the resolution.
3. **Review of Title and patent Reservations.**
 - a) As soon as reasonably possible following the execution of this Agreement, the City shall obtain a commitment of Owner's Policy of Title Insurance ("Commitment") for the Property together with full copies of all exceptions set

forth therein, including but not limited to covenants, conditions, restrictions, reservations, easement, rights of way, assessments, liens and other matters of record. City shall have ten (10) days, from receipt of the Commitment and copies of said exceptions, within which to notify the Seller of the City's disapproval of any exceptions shown in the Commitment.

- b) The Seller shall have until the date of closing to eliminate any disapproved exception(s) or reservations, except patent reservations(s) from the policy of title insurance to be issued in favor of the City, and if not eliminated, unless the City then elects to waive its disapproval. Failure of the City to disapprove any exception(s) or patent reservations(s) within the aforementioned time limit shall be deemed an approval of such exception or patent reservation. The policy of title insurance shall be a standard coverage policy in the amount of the total purchase price and shall be paid for by the City.
- c) In the event this contingency or any other contingency to this Agreement has not been eliminated or satisfied within the time limits and pursuant to the provisions herein, and unless the City elects to waive the specific contingency by written notice to the Seller, this Agreement shall be deemed null and void, the earnest money deposit shall be returned to the City, and neither party shall have any rights or liabilities under this Agreement.
- d) At closing, the Seller shall execute and deliver a Warranty Deed conveying the Property to the City and/or its assigns, in fee simple, subject to all patent reservations and to all other existing liens, encumbrances and other exceptions of record except those exceptions and reservations which are disapproved by the City and eliminated by the Sellers pursuant to this Agreement. The place of closing shall be mutually agreed upon by the parties.

4. Costs and Fees.

- a) The closing costs shall all be paid by the City including Title Insurance, Title Commitment, Title Closing Fee, Recording Fees, except for pro-rata taxes to the date of closing which shall be paid by the Seller.
- b) If either is found by a court to have breached this Agreement, the other party may recover reasonable attorney's fees and cost of litigation. Prior to the initiation of any litigation, however, the parties have the contractual duty to, in good faith, attempt to resolve any controversy hereunder at the least possible expense.

5. Compliance with Ordinances.

- a) The City states that it has complied with the requirements of City Ordinance and has authorization to purchase the Property.

b) The City of Las Cruces as owner will execute a Land Use Restriction Agreement (LURA), and will be recorded immediately subsequent to deed transfer.

6. **Governing Laws.**

This Agreement shall be subject to the laws of the State of New Mexico.

7. **Risk of Loss**

All risk of loss or damage to the Property will pass from the Seller to the City at closing. In the event that material loss or damage, or material adverse change occurs prior to closing, City may, without liability, refuse to accept the conveyance of title, and terminate this Purchase Agreement. Possession of the Property will be released to the City 30 days from the day of closing to allow the seller sufficient time to relocate. It is the responsibility of the Seller to provide Homeowners Insurance coverage for the extended 30-day period or until the property is formally released to the City.

8. **Counterparts.**

This Agreement may be executed in one or more identical counterparts, and all counterparts so executed, shall constitute one agreement which shall be binding on all of the parties.

9. **Termination**

This agreement shall be terminated on the closing date for sale of the Property.

10. **Notice.**

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by certified mail, postage prepaid, to the City of Las Cruces, ATTN: Raymond Burchfield, Neighborhood Programs Specialist / Community Development Department, P.O. Box 20000, Las Cruces, NM 88004 and to Seller, ATTN: Thomas Hassell, Executive Director, Housing Authority of the City of Las Cruces, 926 S. San Pedro Street, Las Cruces, NM 88001 or to such address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

Done and approved on the date first written above,

CITY OF LAS CRUCES

SELLER:

By: _____
Brian Denmark, Asst. City Manager

By: _____
Thomas Hassell

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

EXHIBIT "A"

A tract of land situate within the Corporate Limits of the City of Las Cruces, Dona Ana County, New Mexico, located in Section 18, T.23S., R.2E., N.M.P.M. of the U.S.R.S., being part of U.S.R.S. Tract 11C-1, and being more particularly described as follows, to wit:

BEGINNING at a ½" iron rod found on the Easterly line of the Campo Street Extension for the Northwest corner of this tract, WHENCE the Northeast corner of Lot 4, Vargas Subdivision No. 1, plat filed November 12, 1998, in Book 19, Pages 201-202, of the Dona Ana County Records, bears S.34 deg., 43' 18" W., 74.28 feet;

THENCE, from the point of beginning, leaving the Campo Street Extension, and along the arc of a curve to the right, with a radius of 25.00 feet, an arc length of 41.75 feet, a central angle of 95 deg., 40' 51", and a long chord bearing N.31 deg., 46' 16"E., a distance of 37.06 feet to a mark set on the Southerly line of Colorado Street for a point of tangency;

THENCE, along the Southerly line of Colorado Street, N. 78 deg., 48'51"E., a distance of 124.13 feet to a capped (#8081) 1/2" iron rod found for the Northeast corner of this tract;

THENCE, leaving Colorado Street, S.13 deg., 28' 34"E., a distance of 528.86 feet to a concrete monument found on the Northerly line of Arizona Street for the Southeast corner of this tract;

THENCE, along the Northerly line of Arizona Street, S.79 deg., 52' 48"W., a distance of 66.58 feet to a mark set on the Easterly line of the Campo Street Extension for the Southwest corner of this tract;

THENCE, leaving Arizona Street, and along the Easterly line of the Campo Street Extension the following four courses and distances; along the arc of a curve to the right, with a radius of 25.00 feet, an arc length of 32.98 feet, a central angle of 75 deg., 35' 31", and a long chord bearing N. 62 deg., 19' 27"W., a distance of 30.64 feet to a mark set at a point of reverse curvature;

THENCE along the arc of a curve to the left, with a radius of 202.50 feet, an arc length of 85.64 feet, a central angle of 24 deg., 13' 54", and a long chord bearing N.36deg., 38' 38"W., a distance of 85.00 feet to a mark set at a point of reverse curvature;

THENCE along the arc of a curve to the right, with a radius of 147.50 feet, an arc length of 90.83 feet, a central angle of 35 deg., 17' 01", and a long chord bearing N.31 deg., 07' 05"W., a distance of 89.40 feet to a mark set for a point of tangency;

THENCE N.13 deg., 31' 34"W., a distance of 320.32 feet to the point of beginning, enclosing 1.687 acres of land, more or less.

COMMUNITY DEVELOPMENT BLOCK GRANT LAND USE RESTRICTION

THIS LAND USE RESTRICTION, dated as of the _____ day of _____, 2011, is by the City of Las Cruces, a New Mexico municipal corporation, as owner.

WITNESSETH:

WHEREAS, the City of Las Cruces, as Owner of 905 S. Campo St., Parcel #02-26591, a facility (the Project), which is used for the Central Kitchen for the City's Senior Programs Meals on Wheels Program, located on lands in the City of Las Cruces, County of Dona Ana, State of New Mexico;

A tract of land situate within the Corporate Limits of the City of Las Cruces, Dona Ana County, New Mexico, located in Section 18, T.23S., R.2E., N.M.P.M. of the U.S.R.S., being part of U.S.R.S. Tract 11C-1, and being more particularly described in Exhibit "A" attached hereto and made a part hereof: and

WHEREAS, the City of Las Cruces has invested Community Development Block Grant (CDBG) funds from Program Year 2006/08/10 in the amount of \$439,950.09 for the specific use of Land Acquisition, and other eligible expenses for the City's Senior Programs Central Kitchen for the Meals on Wheels Program for the project and has made certain representations as to the nature of the project, including the number of Low-Income clients to be served and what the property shall be used for during the time period of the grant which is in perpetuity; and

WHEREAS, the CDBG regulations at 24 CFR 570.505, Use of Real Property, require that standards of the use of the property apply from the date CDBG funds are first spent for the property; and

WHEREAS, the City of Las Cruces as Owner, intends, declares and covenants the use and occupancy of the Project shall be and are covenants running with the Project land for the term stated herein and shall be binding upon all subsequent owners of the Project for such term.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, the City of Las Cruces as Owner, states the following:

Representations, Covenants and Warranties of the Owner

- (a) The City as Owner, may not change the use or planned use of any such property including beneficiaries of such use from that for which the acquisition or improvement was made unless, through coordination with the Community Development Department, affected citizens are provided with reasonable notice of, and opportunity to comment on, and proposed change, and either:

- (1) The new use of such property qualifies as meeting one of the national objectives in §570.208 (formerly §570.901) and is not a building for the general conduct of government; or
- (2) The requirements in paragraph (b) of this section are met.
- (b) If the City as Owner, determines after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the City's CBDG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to the property.
- (c) If the change in use occurs after closeout, the provisions governing income from the disposition of the real property in §570.504 (b)(4) or (5), as applicable, shall apply to the use of the funds reimbursed.
- (d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of the section, the property no longer will be subject to any CDBG requirements.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their respective duly authorized representatives, as the day and year first written above.

CITY OF LAS CRUCES

(SEAL)

By: _____

Its: Assistant City Manager

State of New Mexico)
 City of Las Cruces) ss.
 County of Dona Ana)

This instrument acknowledged before me this _____ day of _____, 2011 by Brian Denmark, Assistant City Manager of the City of Las Cruces, NM, a New Mexico corporation, on behalf of said corporation.

My commission expires:

(Seal)

Notary Public

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