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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 10      Ordinance/Resolution# 2631

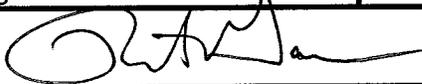
For Meeting of August 15, 2011  
 (Ordinance First Reading Date)

For Meeting of September 19, 2011  
 (Adoption Date)

**TITLE:** AN ORDINANCE REPEALING SUBDIVISION VII, MUNICIPAL HOUSING AUTHORITY, SECTIONS 2-646 THROUGH 2-649 OF CHAPTER 2 OF THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, AND AMENDING SECTION 2-737 TO REFLECT THE NEW NAME OF THE MESILLA VALLEY PUBLIC HOUSING AUTHORITY FOR THEIR APPOINTEES TO THE CITY'S AFFORDABLE HOUSING LAND BANK AND TRUST FUND ADVISORY COMMITTEE.

**PURPOSE(S) OF ACTION:**

Update the Las Cruces Municipal Code to reflect the new Mesilla Valley Public Housing Authority and to reflect appointees to the City's Affordable Housing Land Bank and Trust Fund Advisory Committee.

<b>COUNCIL DISTRICT:</b> N/A		
<b><u>Drafter/Staff Contact:</u></b> David Dollahon	<b><u>Department/Section:</u></b> Community Development / Neighborhood Services	<b><u>Phone:</u></b> 528-3060
<b><u>City Manager Signature:</u></b>		

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

The City of Las Cruces has adopted a unified board ordinance within the Administration Chapter (Chapter 2) of the Las Cruces Municipal Code, 1997, as amended. Within this unified ordinance, the City adopted a specific subdivision for the non-standard Municipal Housing Authority Board of Commissioners (henceforth "Board"). The Board is non-standard in that it is comprised of only 5 members and all appointees are made by the Mayor, per State Statute.

The staff and current Board of the Housing Authority have proposed a formal merger with the Housing Authority of Doña Ana County to improve efficiency in the operation of the two entities. This merger is allowed by State Statute and only requires approval of a resolution approving an Intergovernmental Agreement between the City Council and the Board of County Commissioners. The proposed Intergovernmental Agreement is scheduled for consideration at the Council meeting on Monday, September 19, 2011 (draft copy attached). The Intergovernmental Agreement proposes that the composition of the new merged Housing Authority would consist of three representatives each from the City and the County, along with a resident commissioner, bringing the total Board size to seven. However, in order to avoid any overlap and/or duplication, the City must also repeal the section with the Las Cruces Municipal



**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will amend the City's Municipal Code, Chapter 2, to repeal the sections that create the Municipal Housing Authority Board of Commissioners while allowing a separate Resolution to be adopted to create a merged Housing Authority with the County's, including a new Board of Commissioners, and properly reflecting the new Housing Authority's membership on the Affordable Housing Land Bank & Trust Fund Advisory Committee.
2. Vote "No"; this will not amend the City's Municipal Code, Chapter 2, thus maintaining the City's Municipal Housing Authority Board of Commissioners and potentially creating conflict should a merged Housing Authority resolution be approved.
3. Vote to "Amend" and vote "Yes"; this may allow Council to modify the Ordinance by adding conditions as they deem appropriate. Direction provided would need to be consistent with state statutes and other City ordinances.
4. Vote to "Table"; Council may table/postpone the Ordinance 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. N/A

COUNCIL BILL NO. 12-009  
ORDINANCE NO. 2631

**AN ORDINANCE REPEALING SUBDIVISION VII, MUNICIPAL HOUSING AUTHORITY, SECTIONS 2-646 THROUGH 2-649 OF CHAPTER 2 OF THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, AND AMENDING SECTION 2-737 TO REFLECT THE NEW NAME OF THE MESILLA VALLEY PUBLIC HOUSING AUTHORITY FOR THEIR APPOINTEES TO THE CITY'S AFFORDABLE HOUSING LAND BANK AND TRUST FUND ADVISORY COMMITTEE.**

The City Council is informed that:

**WHEREAS**, the City of Las Cruces has established various boards, committees, and commissions through the adoption of a unified board ordinance that is contained within the Las Cruces Municipal Code, 1997, as amended; and

**WHEREAS**, the Municipal Housing Authority staff and commission have proposed a merger between the City's Housing Authority (aka the Housing Authority of the City of Las Cruces or HACLC) and the Housing Authority of Doña Ana County (or HADAC); and

**WHEREAS**, the merger of HACLC and HADAC is allowed under New Mexico State Statutes, 1978 annotated, and would present a more efficient operation of the two entities; and

**WHEREAS**, in order to facilitate the merger of the two housing authorities, the Sections related to the HACLC Board of Commissioners within Chapter 2 (Administration), Article IV (Boards, Commissions and Committees), Division 3 (Non-Standard Boards, Subdivision VII (Municipal Housing Authority) must be repealed and those sections reserved; and

**WHEREAS**, the merged entities shall have its own board comprised of representatives from both the City and the County, along with a resident commissioner that will be established under an agreement between the City Council and the Board of County Commissioners that shall be adopted by separate resolution; and

**WHEREAS**, once the merged housing authority is created (to be called the Mesilla Valley Public Housing Authority or MVPHA), the City must also update the membership representatives from MVPHA on the City's Affordable Housing Land Bank and Trust Fund Advisory Committee, as provided for within Section 2-737 of the Las Cruces Municipal Code, 1997, as amended.

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

**(I)**

**THAT** Subdivision VII, Municipal Housing Authority, Sections 2-646 through 2-649 of Chapter 2 of the Las Cruces Municipal Code, 1997, as amended, are hereby repealed.

**(II)**

**THAT** Section 2-737 (a) (11) is renamed to: "Mesilla Valley Public Housing Authority, and limited to representation from City appointees only."

**(III)**

**THAT** Section 2-737 (b) is hereby repealed and replaced to read as follows: "The mayor shall also appoint an alternate member for each of those represented in subsections (a)(1) through (8) in the event that the regular appointee should have a conflict of interest with an application that is before the committee. The appointees from the Planning and Zoning Commission, the Health and Human Services Advisory Committee, and the Mesilla Valley Public Housing Authority shall be selected by the respective board, commission, or committee from within their own membership and shall also appoint an alternate member in the event that the regular appointee should have a conflict of interest with an application that is before the committee."

(IV)

THAT Section 2-739 is hereby repealed and replaced to read as follows: "The members appointed to the Affordable Housing Land Bank and Trust Fund Advisory Committee from the Planning and Zoning Commission, the Health and Human Services Advisory Committee, and the Mesilla Valley Public Housing Authority Board are exempt from the provision of serving on more than one board at a time under subsection 2-188(a)(5) of this chapter."

(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.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

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

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

APPROVED AS TO FORM:

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

VOTE:

- Mayor Miyagishima: \_\_\_\_\_
- Councillor Silva: \_\_\_\_\_
- Councillor Connor: \_\_\_\_\_
- Councillor Pedroza: \_\_\_\_\_
- Councillor Small: \_\_\_\_\_
- Councillor Sorg: \_\_\_\_\_
- Councillor Thomas: \_\_\_\_\_

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF LAS CRUCES  
AND  
DOÑA ANA COUNTY  
TO ESTABLISH THE  
MESILLA VALLEY PUBLIC HOUSING AUTHORITY**

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**WHEREAS**, the City of Las Cruces ("City" or "Party") has, under its authority, caused to be established and operated the Housing Authority of the City of Las Cruces ("HACLC") which is a public body corporate operated under the powers granted to it by the City in accordance with the City of Las Cruces Municipal Code, 1997, as amended, and the State of New Mexico Municipal Housing Law §3-45-1 *et seq.* NMSA 1978, as amended ("Municipal Housing Law"), and

**WHEREAS**, the HACLC has a principal place of business located at 926 South San Pedro Street, Las Cruces, NM 88001, and

**WHEREAS**, the Housing Authority of Doña Ana County ("HADAC") is a department within the County of Doña Ana ("County" or "Party"), and

**WHEREAS**, on July 13, 1999, the County contracted with HACLC for HACLC to operate and provide housing for residents in the County for HADAC, and

**WHEREAS**, the City and County have determined that a multi-jurisdictional housing authority, as authorized and allowed by the Municipal Housing Law under §3-45-4B NMSA 1978 is in the best interest of both the City and County to serve the needs of the public as set out in the Municipal Housing Law, and

**WHEREAS**, the City and County, for their mutual benefit, for the improvement in efficiencies to the operation and maintenance of both the HACLC and HADAC, for the purpose of more efficiently addressing the shortage of safe or sanitary dwelling accommodations available at rents which persons of low and moderate income can afford within the geographical limits of the County, including the corporate limits of the City, but excluding any other incorporated municipality within the County where there is an established housing authority or housing agency unless such municipality consents, desire to join HADAC into HACLC, and

**WHEREAS**, this joined housing authority would be an independent public agency having all the powers of a public body corporate that would provide affordable housing and related services in the City of Las Cruces and the County except the areas where there is an established housing authority or housing agency, and

**WHEREAS**, the Board of County Commissioners and the Las Cruces City Council, in order to facilitate the joinder mutually consent, agree and approve the enlargement of HACLC's area of operation to include the geographical limits of the County except where there is an established housing authority or housing agency unless such municipality consents and the enlargement of

the HADAC's area of operation to include the municipal limits of the City, as authorized by the New Mexico Municipal Housing Law, and

**WHEREAS**, the joined housing authority will now be known as the Mesilla Valley Public Housing Authority ("MVPHA") in order to more accurately reflect its area of operation, and

**WHEREAS**, this Agreement sets out the general principles concerning responsibility for operation of the MVPHA.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the parties hereto do agree and establish as follows:

**I. AGREEMENT, TERMS, AND CONDITIONS**

A. **Purpose** – The purpose of this Agreement is to establish a mechanism for financing, operating and maintaining a multi-jurisdictional housing authority in accordance with the New Mexico Municipal Housing Law.

B. **Cooperation** - The Parties jointly and severally pledge, one to the other, to cooperate in all respects as is necessary to ensure the purpose of this Agreement is implemented and fulfilled, and in the event this Agreement is terminated, the obligation to cooperate shall survive the termination to the extent necessary to minimize the impact such termination may have on the availability of safe and sanitary dwelling accommodations at rents which persons of low and moderate income can afford within the City and the County.

C. **Establishment** – The Parties hereby establish the Mesilla Valley Public Housing Authority to exercise in accordance with the New Mexico Municipal Housing Law, and other stipulations as set forth in this Agreement the powers common to each of the Parties. The MVPHA shall be a public body corporate separate from the Parties.

D. **Joinder** -The term Joinder as used herein means the receipt of final approval of transfer of assets and the consolidation of governmental powers.

E. **Third-Party Beneficiaries** - By entering into this Agreement, the Parties do not intend to create any right, title or interest in, or for the benefit of, any person other than the MVPHA. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third-party beneficiary of the Agreement.

F. **Service Area** – The service area of the MVPHA shall be the City of Las Cruces and the County of Doña Ana, except the areas where there is an established housing authority or housing agency. The Parties may change the MVPHA's service area as it deems necessary, as allowed by law, and as authorized by amendment to this Agreement as outlined below.

G. **MVPHA Organization and Facilities**

1. **Commission** – The joined housing authority shall be governed by a Commission, to be henceforth known as the “Mesilla Valley Public Housing Authority Commission” (or “Commission”). After the effective date of the Joinder, MVPHA will operate under the existing policies of the HACLC. The Commission may subsequently amend the existing policies to carry out the purposes of this Agreement.

2. **Commissioners** - The Commission shall consist of five (5) commissioners. As allowed for under §3-45-5C and agreed to by the Parties, two (2) commissioners shall be appointed by the Mayor, and two (2) commissioners shall be appointed by the Board of County Commissioners. The Mayor shall appoint citizens residing within the municipal limits of the City. The Board of County Commissioners shall appoint citizens residing in the County, excluding residents residing within the municipal limits of the City of Las Cruces. The two commissioners from the City and the two commissioners from the County shall then nominate a fifth (5<sup>th</sup>) commissioner that qualifies as a Resident Commissioner in accordance with rules established by the US Department of Housing and Urban Development (HUD). The Resident Commissioner may be a resident of either the City or the County. The Resident Commissioner shall be appointed by both the Mayor and the Board of County Commissioners. The City Manager and/or the County Manager or their designees may attend all meetings of the Commission.

(A) Pursuant to §3-45-5(B) NMSA 1978, a MVPHA commissioner’s term shall be five (5) years. The length of the initial MVPHA commissioners’ terms shall be drawn by lot to serve terms of one year, two years, three years, four years, and five years. A commissioner’s term shall expire when his or her official term in office is completed. Commissioners may be reappointed.

(B) Attendance is required for all Commission meetings. A commissioner may be removed for failure to attend more than 25% of the regular meetings in any twelve (12) month period, and such failure shall be considered neglect of duty.

(C) **Voting and Quorum** – A majority (3 or more) of the membership of the Commission shall constitute a quorum for the transaction of business and shall be required to take any official action. One City-appointed commissioner and one County-appointed commissioner must be present as part of the minimum requirements that constitute a quorum.

(1) Removal of Commissioners - Pursuant to the Municipal Housing Law Section at §3-45-7 NMSA 1978, a commissioner may be removed by the Mayor or the Board of County Commissioners, but only for inefficiency, neglect of duty (including failure to attend Commission meetings listed in Section (B) immediately above) or misconduct in office and only after the commissioner has been given a copy of the charges at least ten

days prior to the hearing on the charges and has had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner by the Mayor or the Board of County Commissioners, a record of the proceedings, together with the charges and findings, shall be filed in the office of the City or County Clerk. Commissioners may be removed for cause based on noncompliance with housing program regulations.

(D) Meetings – Meetings of the Commission shall be conducted in accordance with the State of New Mexico Open Meetings Act with Robert's Rules of Order used as a guide.

(1) Regular Meetings – The Commission shall hold regular meetings pursuant to the MVPHA Bylaws.

(2) Special and Emergency Meetings – Special meetings and emergency meetings of the Commission may be called by the chairperson or at least two members of the Commission.

(3) Notice of Meetings – All meetings of the Commission shall be held in accordance with the Commission's annual resolution affirming compliance with the New Mexico Open Meetings Act.

(4) Minutes – A copy of draft minutes shall be prepared within 10 working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Copies of approved Commission meeting minutes shall be filed with the City Clerk of the City and the County Clerk of the County.

3. Director – Day to day operations, including personnel administration, of the MVPHA shall be the responsibility of a Director who shall be hired by the Commission pursuant to §3-45-5 (D) NMSA 1978 as amended. Upon request, the Director shall provide reports to the City and/or County on all matters relating to the operation of the MVPHA.

4. Facilities – The County shall transfer ownership of any public housing (real property and all improvements) and personal property owned or administered by HADAC located in Las Cruces or the County to HACLC or MVPHA for the purpose of implementing this Agreement.

5. Powers – The MVPHA is hereby authorized to exercise all powers common to each of the Parties under the Municipal Housing Law, including but not limited to the following:

(A) within its area of operation, prepare, carry out, acquire, purchase, lease, construct, reconstruct, improve, alter, extend or repair, operate and maintain any housing project or any part of a housing project, and for any of those purposes, the governing body of the City or the County may, but is not required to, appropriate money and authorize the use of any property of the City or County;

(B) purchase bonds issued pursuant to the Municipal Housing Law at a

price not more than the principal amount thereof and accrued interest--all bonds so purchased to be canceled;

(C) lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project, and subject to the limitations contained in the Municipal Housing Law, establish and revise the rents or charges therefor; own, hold and improve real or personal property; purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest in real or personal property; acquire by the exercise of the power of eminent domain any real property; sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest in real or personal property; and procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts of any bonds issued pursuant to the Municipal Housing Law, including the power to pay premiums on any such insurance;

(1) Exemption of property from execution sale and from taxation -

a. All real property owned or held by MVPHA for the purposes of the Municipal Housing Law shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall be issued against the same nor shall any judgment against the parties or MVPHA be a charge or lien on such real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given to them on rents, fees or revenues.

b. The real property of a housing project, as defined in Section 3-45-3 NMSA 1978, is declared to be public property used for essential public and governmental purposes and is property of MVPHA and is exempt from taxation until a deed conveying that property to a nonexempt entity is executed and delivered by MVPHA.

(D) enter on any lands, buildings or property for the purpose of making surveys, soundings and examinations in connection with the planning or construction or both of any housing project;

(E) insure or provide for the insurance of any MVPHA housing project against such risks as MVPHA may deem advisable;

(F) arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for or in connection with a housing project or the occupants of a housing project; and include in any construction contract let in connection with a housing project stipulations requiring that the contractor and any subcontractors comply with employment requirements, including those in the constitution and laws of this state, as to minimum wages and maximum hours of labor and comply with any conditions that the federal government may have attached to its financial aid of the project;

(G) within its area of operation, investigate the living, dwelling and housing conditions and the means and methods of improving the conditions;

where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low and moderate income, make studies and recommendations relating to the problem of providing dwelling accommodations for persons of low and moderate income and cooperate with the state or any political subdivision of the state in action taken in connection with the problems; and engage in research, studies and experimentation on the subject of housing and affordable housing programs;

(H) establish a mission statement;

(I) sue and be sued in its own name;

(J) adopt resolutions necessary to carry out the purposes of this

Agreement;

(K) obtain necessary public liability and property insurance coverage in compliance with the New Mexico Tort Claims Act and which insurance shall include coverage for civil rights claims;

(L) create from time to time *ad hoc* committees or advisory committees of suitable membership, scope and duration for the purpose of providing advice and recommendations on particular matters of interest to the Commission; and

(M) Use of Eminent Domain- MVPHA shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under the Municipal Housing Law after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. MVPHA may exercise the power of eminent domain hereunder in the manner provided by the laws of the state of New Mexico, and acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain hereunder in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Title to property so acquired shall be taken in the name of MVPHA; and

(N) Aid from state or federal government - In addition to the powers conferred upon MVPHA by other provisions of the Municipal Housing Law, MVPHA is empowered to borrow money or accept contributions, grants or other financial assistance from the state or federal government for, or in aid of, any housing project or affordable housing program within its area of operation, and to these ends, shall comply with such conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable; MVPHA is authorized to do any and all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any housing project or affordable housing program of MVPHA.

6. Limitation on Powers. This Agreement does not convey to MVPHA those powers and programs maintained by the Parties associated with other federal aid or other federal housing programs, such as Community Development Block Grant, Home Investment Partnership Programs, or Colonias funding from the State of New Mexico or the U.S. Department of Housing and Urban Development. The Parties may cooperate with MVPHA on such mutually

beneficial programs on terms established by the City or the County as they relate to these funds or programs. Such cooperation shall be executed in writing and adopted by resolution or ordinance, as applicable, by the respective governing body of the Parties. Such cooperative resolution or ordinance shall not be considered a part of, nor an amendment to, this Agreement.

7. Transfer of Property, Purchase, and Ownership of Assets. Upon the Joinder, as defined herein, the City and County shall execute or cause to be executed such instruments as may be necessary or advisable to establish title or ownership in the name of MVPHA of all HADAC and HACLC property. All current and future assets of the MVPHA, whether real or personal property, including those assets transferred to it by the City and the County, shall be owned in the name of the MVPHA.

8. Transfer of Funds. Upon the Joinder, all funds controlled by HACLC and HADAC and all receivables due HACLC and HADAC shall become funds or receivables of MVPHA to be used solely for exercising its powers and fulfilling its responsibilities under this Agreement and pursuant to its Bylaws. It is the intent of the parties that any aid from the local, state or federal government to or intended for use by HACLC or HADAC be available for and be used by MVPHA.

9. Disclaimer of Liability. Upon the effective date of the Joinder, MVPHA, as a public body corporate, shall be solely responsible for its acts or omissions, and neither the City nor the County shall be liable for such acts or omissions of MVPHA; each Party shall be solely responsible for fiscal or other sanctions, penalties, or fines occasioned as a result of its own violation or alleged violation of requirements applicable to performance of this Agreement, and each Party shall be liable for its acts or failure to act in accordance with this agreement, subject to the immunities and limitations of the New Mexico Tort Claims Act.

10. Execute all Necessary Documents MVPHA, the City and HACLC, and the County shall sign such instruments as may be necessary to effectuate the transfer of money or property to MVPHA, and MVPHA shall be strictly accountable for all funds received by it from whatever source and for disbursement of any of those funds, and MVPHA shall be responsible for all budgeting, accounting, record keeping, and reporting required by, and consistent with, all applicable federal, state, and local laws.

H. Term, Dispute Resolution and Termination

1. Term. This Agreement becomes effective January 1, 2012 in order to coincide with HUD annual contributions contract(s) renewals, and shall remain in effect in perpetuity or until termination as provided herein.

2. Dispute Resolution. If any dispute arises concerning this Agreement, the Parties agree to attempt to resolve such dispute in an amicable manner at the least

possible expense. If such dispute cannot be resolved, then the dispute shall be submitted for mediation in compliance with the New Mexico Mediation Procedures Act.

3. Termination and Return of Surplus Property.

(A) The Agreement may be terminated by either Party and the MVPHA dissolved by resolution of either Party specifying the effective date of the termination, which shall not be less than 180 days from the date the resolution is adopted.

(B) If the Agreement is terminated, thereby dissolving the MVPHA, then all property, rights and assets of the MVPHA shall be equitably divided between the Parties.

I. Entire Agreement - This Agreement incorporates all the agreements, covenants and understandings among the Parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings, verbal or otherwise, of the Parties or their agents shall not be valid or enforceable unless embodied in this Agreement. This Agreement supersedes any prior agreements between the Parties concerning the Municipal Housing Law.

J. Assignment - No Party shall assign or transfer any interest in the Agreement or assign any claims for money due or to become due under this Agreement without the prior approval of all the Parties to this Agreement.

K. Accountability - During the term of this Agreement and for a period of three (3) years thereafter, MVPHA shall maintain accurate and complete records of all disbursements made and monies received by MVPHA under this Agreement; and, upon receipt of reasonable written request, MVPHA shall make such records available to the Parties and to any federal, state or local authority.

L. Amendments - The Parties acknowledge and agree that this Agreement shall not be altered, changed, or amended except by instrument in writing upon approval of the governing bodies of each Party and that any such amendments shall not become effective until signed by the Parties.

M. Tort Claims Act - By entering into this Agreement, the Parties and their "public employees" as defined in the New Mexico Tort Claims Act, §41-4-1, *et seq.* NMSA 1978, do not waive sovereign immunity or any defense or limitation of liability pursuant to law. No provision of this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

II. FISCAL AGENCY

A. The MVPHA shall be its own fiscal agent for the term of this Agreement, including any State of New Mexico Capital Outlay.

B. The duties of the fiscal agent shall include but are not limited to the duty to

1. Bill and collect all financial contributions from both Parties as provided herein.
2. Maintain separate accounting designated specifically for the MVPHA revenue and operational accounts and related budgets.
3. Make all revenue or budget transfers and all disbursements for the MVPHA as directed by its Director or the Director's designee consistent with the authority granted by the Commission.
4. Charge, in its discretion, monthly interest that accrues when MVPHA operations result in a negative cash position based upon completely updated transaction processing.
5. Prohibit any department of the fiscal agent to charge against any account unless the department submits an invoice with supporting documentation approved by the MVPHA Director or Commission, consistent with policies and procedures established by the Commission and Director and MVPHA's procurement policy.
6. Prepare financial reports for MVPHA on an annual basis and as requested by the MVPHA Commission from time to time, and present the reports to the MVPHA Commission for review and approval.
7. Strictly account for all receipts and disbursements made pursuant to this Agreement in accordance with all applicable laws and regulations and its own procurement policy.
8. Account for all transactions on behalf of the MVPHA, including those related to fixed assets, and provide for internal controls relating to the acquisition and disposal of fixed assets and proper recording of all liabilities.
9. Provide all accounting records necessary to prepare "stand alone" financial statements. The MVPHA's financial statements shall be audited by an independent Certified Public Accountant selected by the MVPHA, and all applicable reports shall be included in the annual audited financial statement referred to herein. Such audit shall be performed in accordance with government audit standards, including the annual audit requirements required by the Office of the State Auditor.
10. Procurement and Payment for Costs and Services – The MVPHA shall procure all goods and services in compliance with MVPHA's procurement policy.
11. Insurance - MVPHA shall maintain adequate comprehensive general liability, property and automobile liability insurance policies naming the City, the County, HACLC and HADAC as additional insureds under such policies.

### III. MISCELLANEOUS PROVISIONS

- A. Headings. The headings of the various sections of this Agreement are inserted only for convenience or reference, and are not intended nor shall they be construed to modify, define, limit or expand the intent of the Parties.
- B. Applicable Law. This Agreement shall be governed by the ordinances of the City of Las Cruces, Doña Ana County and the laws of the State of New Mexico. Insofar as the

provisions of the Municipal Housing Law are inconsistent with the provisions of any other law, the provisions of the Municipal Housing Law shall be controlling.

C. Conflict of Interest and Other Prohibited Actions – Neither MVPHA nor any of its contractors or their subcontractors may enter into any contract, subcontract or agreement in connection with a housing project under any contract in which any of the following persons has an interest, direct or indirect, during the person’s tenure or for one year thereafter:

1. any present or former member of the MVPHA Commission or any member of the member's immediate family as defined by §3-45-3(S) NMSA 1978;
2. any employee of MVPHA who formulates policy or who influences decisions with respect to a housing project, any member of the employee's immediate family or any partner of the employee; or
3. any public official, member of a governing body or state legislator, or any member of that person's immediate family, who exercises functions or responsibilities with respect to the housing project or the MVPHA.

Executed in duplicate on the dates indicated below.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as follows:

**CITY OF LAS CRUCES**

**DOÑA ANA COUNTY**

By: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
 Harry S. Connelly  
 City Attorney

\_\_\_\_\_  
 John Caldwell  
 County Attorney