

34
City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 3 Ordinance/Resolution# 12-196

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of June 4, 2012
 (Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION AUTHORIZING A BUDGET ADJUSTMENT FOR THE HOMELESS SERVICES PROGRAM OPERATED BY MESILLA VALLEY COMMUNITY OF HOPE UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.

PURPOSE(S) OF ACTION:

Allow City staff to process and approve a budget adjustment.

COUNCIL DISTRICT: ALL		
<u>Drafter/Staff Contact:</u> Natalie Green	<u>Department/Section:</u> Community Development/ Planning & Neighborhood Services	<u>Phone:</u> 528-3086
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (CLC) entered into an agreement with Mesilla Valley Community of Hope (MVCH) to provide Homeless Services as eligible under the Community Development Block Grant Program (CDBG) in the amount of \$27,330.00. In Part III of the Agreement, the City's Neighborhood Services Administrator (now known as Chief Planning Administrator) can approve budget adjustment requests between approved line items, in which the combined total is less than 25% of the entire budget. City Council approval is required if a budget adjustment request is in excess of 25% of the total budget. This budget adjustment request is **not** to increase the total budget for the grant program by MVCH, but to only allow them to move funds between line items more than 25% of the total budget.

The need for the budget adjustment is because a change in administration at MVCH and the need to re-allocate line items to cover program expenses above the 25% limit. A budget adjustment had been requested by the previous director at MVCH equal to 24% of the budget total and was approved administratively by City staff in accordance with the agreement terms. However, the additional budget adjustment requested by the new director exceeds the 25% limit and requires City Council approval. This budget adjustment is being requested to reduce full-time staff salaries and building utility expenses to cover part-time staff salaries.

Approval of this budget adjustment will allow MVCH to fully expend their allocation and continue to provide homeless services for the remainder of the fiscal year. If approved by this Resolution, this budget adjustment represents a total 32% adjustment between line items for all budget adjustments combined.

The 25% limit was incorporated into the agreement terms to reinforce the importance of proper budgeting and fiscal management.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Budget Amendment Request from MVCH.
3. Attachment "A", Agreement between CLC and MVCH.

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 \$ _____ for FY _____
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

This is already budgeted for in the FY 2012 budget and has no impact to the budget, it allows for a budget adjustment to occur internally to existing line items.

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	20184330-722190-10306	\$27,330.00	\$27,330.00	\$0	N/A- internal line item adjustments

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution. Such action would allow the Chief Planning Administrator to approve the line item adjustment in excess of 25% as requested by MVCH to provide Homeless Services as eligible under the CDBG Public Services Program.
2. Vote "No"; this will deny MVCH the opportunity to make line item adjustment in excess of 25%.
3. Vote to "Amend"; this could modify the Resolution based on Council's direction, and then vote "Yes" on the amended Resolution. Modification would be based on the Council's direction.
4. Vote to "Table"; this could postpone the Resolution. Council would need to provide direction to staff.

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 No. 11-217.

RESOLUTION NO. 12-196**A RESOLUTION AUTHORIZING A BUDGET ADJUSTMENT FOR THE HOMELESS SERVICES PROGRAM OPERATED BY MESILLA VALLEY COMMUNITY OF HOPE UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM.**

The City Council is hereby informed that:

WHEREAS, the City of Las Cruces received Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, as authorized by Council through the adoption of the 2011 Action Plan under Resolution No. 11-217 on May 2, 2011; Mesilla Valley Community of Hope received CDBG funds in the amount of \$27,330.00; and

WHEREAS, on August 4, 2011, the City entered into an agreement with Mesilla Valley Community of Hope to provide Homeless Services; and

WHEREAS, under the aforementioned agreement the Neighborhood Services Administrator (now known as Chief Planning Administrator) can approve budget adjustments between line items less than 25% of the total budget; and

WHEREAS, Mesilla Valley Community of Hope has requested a budget adjustment within approved line items in excess of 25% of the total budget, which requires City Council approval.

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

(I)

THAT the Chief Planning Administrator is hereby authorized to approve Mesilla Valley Community of Hope's budget adjustment in excess of 25%, as shown in Exhibit "A," attached hereto and made part of this Resolution.

(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 _____, 2012.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

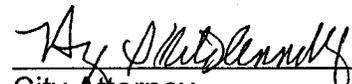
Moved by: _____

Seconded by: _____

VOTE:

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

APPROVED AS TO FORM:



City Attorney

BUDGET ADJUSTMENT REQUEST



To: David Dollahon, Neighborhood Services Administrator
 Community Development Department
 City of Las Cruces
 P.O. Box 20000, Las Cruces NM 88004

CDBG PUBLIC SERVICES

Mesilla Valley Community of Hope
 Homeless Shelter Program

Attention: Jean Barnhouse-Garcia, Neighborhood Programs Specialist
 jbarhouse-garcia@las-cruces.org 575-528-3048

Submitted by:	<u>Nicole Martinez</u>	Executive Director:	<u>Nicole Martinez</u>
Project #:	<u>10306</u>	IDIS #:	<u>12200540</u>
Sub-recipient or Contractor:	<u>MESILLA VALLEY COMMUNITY OF HOPE</u>		Date of BAR: <u>05/10/12</u>
Street, City, State, Zip	<u>P O BOX 6875, LAS CRUCES, NM 88004 PHYSICAL: 999 WEST AMADOR, LAS CRUCES, NM</u>		
Email:	<u>hope@zianet.com</u>	Telephone:	<u>575-523-2219</u>
Authorized Signature:			Date: <u>05/10/12</u>

BUDGET ADJUSTMENT REQUEST

PY 2011 CDBG PUBLIC SERVICES EXPENDITURE CLASSIFICATION		APPROVED BUDGET	REVISION + OR -	REVISED BUDGET
501-001	Permanent Position, Full Time	\$15,169.71	(\$893.82)	\$14,275.89
502-001	Permanent Position, Part Time	\$8,235.12	\$2,246.38	\$10,481.50
502-007	Other Employee Benefits	\$182.16	\$0.00	\$182.16
602-001	Office Supplies	\$0.00	\$0.00	\$0.00
602-002	Operating Supplies	\$66.72	\$0.00	\$66.72
603-001	Postage & Federal Express	\$134.71	\$0.00	\$134.71
604-001	City Service (water, waste, etc.)	\$1,357.00	(\$491.53)	\$865.47
604-002	Electricity	\$2,047.00	(\$861.03)	\$1,185.97
604-003	Telephone	\$122.08	\$0.00	\$122.08
605-002	Auditing Services	\$0.00	\$0.00	\$0.00
708-001	Transportation (in-state only)	\$15.50	\$0.00	\$15.50
708-002	Per Diem (in-state only)	\$0.00	\$0.00	\$0.00
		\$27,330.00	\$0.00	\$27,330.00

Justification: To use the remaining allocation of money to continue helping the homeless of Las Cruces for the remainder of this Fiscal Year.

Amount of Increase: \$ 2,246.38
 Amount of Decrease: \$ (2,246.38)
 NET ADJUSTMENT: \$ - **MUST BE ZERO NET ADJUSTMENT**
 Percentage of Total Budget: 8%

BAR #1	Date: 02/14/12	24%
BAR #2	Date: 05/10/12	8%
BAR #3	Date:	
Total %:		32%

Approval: ()
 Denial: ()

Signature: _____ (Neighborhood Services Administrator) _____ (Date)

**AGREEMENT BETWEEN
THE CITY OF LAS CRUCES AND
MESILLA VALLEY COMMUNITY OF HOPE
FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

THIS AGREEMENT is entered into this 4th day of August, 2011, between the City of Las Cruces (herein called the "City") and Mesilla Valley Community of Hope (herein called the "Sub-recipient"), under CDBG Grant Number B-11-MC-35-0002.

WHEREAS, the City has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383, Title 24 of the Code of Federal Regulations (CFR) and Catalogue of Federal Domestic Assistance No. 14.218; Munis Project #20184330-722190-10306; CDBG Activity #872.

WHEREAS, the City will have performed all of the steps necessary to obtain U.S. Department of Housing and Urban Development (HUD) approval of the City's 2006-2010 Consolidated Plan, including the 2011 Action Plan, which includes funding of \$27,330.00 for FY 2011-12; and

WHEREAS, the City wishes to engage the Sub-recipient to assist the City in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. National Objectives

The Sub-recipient certifies that the activities it carries out with funds provided under this Agreement will meet the CDBG Program's National Objective (check one):

In accordance with 24 CFR 570.208 (a) (1) of benefiting all census blocks with the highest proportion of low and moderate persons, specifically census tract: block group(s) of _____ (i.e. Area Benefit); or

In accordance with 24 CFR Part 570.208 (a) (2) (i) (A), of benefiting clientele who are generally presumed to be principally low and moderate income persons in specific presumed groups, singularly or in combination of categories approved by the City and qualifying under this Section. Presumed benefit group to be served: _____ (i.e. Presumed Benefit); or

In accordance with 24 CFR Part 570.208 (a) (2) (i) (B) of benefiting low/moderate income persons by requiring information on family size and income so that at least 51 percent of the clientele are low and moderate income families, but only low and moderate income families will be qualified for the CDBG funds (i.e. Low/Mod Limited Client, Income Verification Required); or

___ In accordance with 24 CFR Part 570.208 (a) (2) (i) (C) have income eligibility requirements which limit the activity exclusively to low- and moderate-income persons, (i.e. Low-Mod Income Clientele, Income Verification Required, Exclusive Activity): or

X In accordance with 24 CFR Part 570.208 (a) (2) (i) (D) be of such nature and be in such location that it may be concluded that there is presumed benefit and the activity's clientele will primarily be low and moderate income persons. The nature and location of the activity must be officially documented by the City in advance of services (i.e. nature and location).

B. Activities

The Sub-recipient will be responsible for administering a CDBG Public Services program in a manner that complies with HUD Regulations and City requirements.

The program will include the following activities eligible under the Community Development Block Grant Program:

1. Program Description:

The program includes: Provision of a wide range of services to the homeless, including case management, day time outreach services (laundry, shower, clothing), housing programs and transportation. Housing programs include Veterans Transitional Housing, Hope Housing First, Community Housing Connection, emergency and homeless prevention. City funds help pay some of the basic operating expenses, and help fund much needed administrative expenses, such as accounting and data.

2. Program Type: Homeless Services Program Title: Homeless Services

C. Levels of Accomplishment

In addition to the normal administrative services required as part of this Agreement, the Sub-recipient agrees to provide the following level of program services during FY 2010-2011:

Activity

Public Services, 24 CFR Part 570.201 (e). Total Units/ Year (fill in one):

- (a.) Number New Units this year (new projects only): n/a
- (b.) Increased levels of service from 340 units provided last year to 362 units this year (projects operating/having a grant in 2009-2010).

Unit Definition: Each unit represents one unduplicated individual served at the Mesilla Valley Community of Hope, or equivalent facility, as provided by the Sub-recipient. Each individual will be qualified benefit recipient as defined in 24 CFR Section 570.208 and City requirements (if applicable).

D. Performance Monitoring

The City will monitor the performance of the Sub-recipient against goals and performance standards required herein on a quarterly basis. The Sub-recipient is expected to complete the projected "units of service" listed in "C. Levels of Accomplishment" in a timely manner. If, at the end of each quarter, the Sub-recipient's performance provided to the City is 25%, or more, below that projected, the Sub-recipient will be considered to be in default of this Agreement and will receive written notice of the default from the City. The Sub-recipient shall submit a written plan to the City within 15 days of the City's notice correcting the default by undertaking such efforts to either increase the number of units served to those planned or propose an increase of related services for eligible clients that are within the available funds. The City shall provide a written response to the Sub-recipient within 15 days.

If the plan is not approved and agreement cannot be reached between the Sub-recipient and the City on how to rectify the default, the Sub-recipient will receive formal notice of non-compliance with this Agreement.

If, by the end of the third quarter of this Agreement, the total number of units of provided service remains 25%, or more, below the projected number, the City shall either provide an administrative amendment to the Agreement to implement a corrective plan or alter the amount of funding awarded the Sub-recipient. This authorization is in addition to any administrative authority contained in "III. Budget" in this Agreement. The performance measures contained herein are in addition to the requirements for timely expenditure of funds in "Section III. Budget," contained elsewhere in this Agreement.

Continued or on-going substandard performance, as determined by the City above, will constitute default with this Agreement and suspension or termination procedures may be initiated.

II. TIME OF PERFORMANCE

A. Term of the Agreement

This Agreement shall start on **July 1, 2010**, or the date on which the United States Department of Housing and Urban Development releases funds to the City for **Grant B-11-MC-35-0002**, whichever is later. The period of performance will continue for twelve (12) months after the beginning date, but end no later than **June 30, 2012**.

B. Eligible Payment Period

All expenses and purchases approved by this Agreement and incurred during the grant period from **July 1, 2011**, to **June 30, 2012** are eligible for reimbursement. The term of this Agreement and the provisions herein shall not be extended unless a one-time extension for less than six (6) months is requested in writing by the Sub-recipient and approved by the City. Such an extension may be granted by the City's Neighborhood Services Administrator, provided that such an extension is for cause beyond the Sub-recipient's control, and in accordance with the same terms and conditions of the original agreement.

All other extensions or changes in scope, performance, or approved responsibility to this Agreement shall be by the City's governing body and the Sub-recipient in writing.

III. BUDGET

Sub-recipient is required to expend funds in a timely manner. Sub-recipient should expend a minimum of 40% of the funds within six months of the Agreement start date. Funds that are not expended by the end of the term of the Agreement will be held by the City and will not be available to the Sub-recipient.

Payments will be made for the line items listed below:

EXPENDITURE CLASSIFICATION	DESCRIPTION OF ITEM	APPROVED BUDGET
501-001	Permanent Position, Full Time	\$ 13,778.00
502-001	Permanent Position, Part Time	6,361.00
502-007	Other Employee Benefits	668.00
602-001	Office Supplies	322.00
602-002	Operating Supplies	322.00
603-001	Postage & Federal Express	667.00
604-001	City Service (water, waste, etc.)	1,357.00
604-002	Electricity	2,047.00
604-003	Telephone	668.00
605-002	Auditing Services	668.00
708-001	Transportation (in-state only)	322.00
708-002	Per Diem (in-state only)	150.00
	TOTAL	\$ 27,330.00

A detailed description of each line item above may be requested of the Sub-recipient as a condition of contract execution and will be included as Attachment F.

Detailed description requested: Yes No

If necessary, up to 25% of the total funding of the grant may be moved within already approved line item categories during the course of the grant. All changes to approved budget lines will require written requests for change, to be submitted on the provided Budget Line Item Revision Request by the Sub-recipient. Any budget changes must be limited to comply with the administrative scope of the program/project as defined by Part I, Scope of Service of this Agreement and the line items listed in this section. Adjustments between the individual line items above may be approved by the City's Neighborhood Services Administrator. All other adjustments or amendments in excess of 25% or any change to the scope must be approved by the Las Cruces City Council and the Sub-recipient in writing, excluding the adjustments between budget line items.

Indirect costs cannot be charged to this Agreement.

IV. AMENDMENTS

The City or Sub-recipient may amend the budget, scope of work, or this Agreement at any time, provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body except as provided in Section III. Such amendments shall not invalidate nor relieve or release the City or Sub-recipient from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of the Agreement, such modifications will be incorporated only by a written amendment signed by both City and Sub-recipient.

V. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$27,330.00. The payment of eligible expenses shall be made for only the line item budgets specified in Section III herein and in accordance with the scope of service. Payments are contingent upon adherence to all administrative requirements as specified in Section VII of this Agreement.

VI. COMMUNICATIONS

Communication and details concerning this Agreement shall be directed to the following Agreement representatives:

CITY	SUB-RECIPIENT
Jean Barnhouse-Garcia, Neighborhood Programs Specialist-Public Services Community Development Department City of Las Cruces P.O. Box 20000 Las Cruces, NM 88004 Phone: (575) 528-3048 E-mail: jbarnhouse-garcia@las-cruces.org	Pamela Angell, Executive Director Mesilla Valley Community Hope P.O. Box 6875 Las Cruces, NM 88006 Phone: (575) 523-2219 Fax: (575) 523-8684 E-mail: hope@zianet.com

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

The Sub-recipient agrees to comply with the standards specified in 24 CFR Part 84, Subpart C, Financial Program Management, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The Sub-recipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," and A-133, "Audits for States, Local Governments and Non-Profits."

B. Documentation and Record-Keeping

1. Records to be Maintained

The Sub-recipient shall maintain all records required by Federal regulations, State law, local ordinances and City requirements that are pertinent to the activities to be funded under this Agreement, including 24 CFR Part 570 and 24 CFR Part 5. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken and demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program;
- b. Records necessary to determine the eligibility of activities;
- c. Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973;
- d. Financial records as required by 24 CFR Part 570.502 and 24 CFR Part 84, Subpart C, Financial and Program Management;
- e. Other records necessary to document compliance with 24 CFR 570 Subpart K;
- f. Records of the ethnicity, race, gender and disability status of all eligible clients;
- g. For those Sub-recipients not covered by 24 CFR part 570.208 (a) (2) (i) (A) or (D), disclosure of family income, individual income, annual income and as adjusted income.

2. Data Collection

The Sub-recipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to: client name, address, income (as applicable), identity and verification of Las Cruces residency, verification in accordance with 24 CFR Part 5 or other City required documentation for determining eligibility, and description of service provided. Such information shall be maintained in a client file by the Sub-recipient and made available to the City monitors or their designees for review upon request. A listing of clients by name and/or identifying numbers, including each client's ethnicity, race, disability status, and whether female head of household shall be submitted along with a Monthly Summary Progress Report of clients served with each monthly billing on a form provided by the City (see chart of requirement, below).

Additionally, the Sub-recipient is required to participate in a survey of all clients for a one week period specified by the City. Such survey shall query clients on their homelessness and income category and other information as needed to determine the continued Mesilla Valley Community of Hope campus status as a "nature and location" concluded activity. The City shall provide the survey instrument. Both City and Sub-recipient personnel shall conduct the survey.

3. Required Documents for Client Files and Regular City Submissions:

REPORTS and/or DOCUMENTATION	SUBMITTED TO CITY	RETAINED IN CLIENT FILES
Client Verification (Intake) Forms	*	X (original)
Verification of Las Cruces residency	*	X (original)
Monthly Expenditure Report	X	
Client List	X	
Monthly Summary Progress Report	X	
Monthly Request for Payment w/back-up documentation	X	
Final (Annual) Report	X	

4. Retention

The Sub-recipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final disposition of such property. Records for any displaced person must be kept for three (3) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

5. Disclosure

The Sub-recipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Sub-recipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

C. Training

From time to time, the City may provide training to Sub-recipients and contractors. Such courses, when scheduled, will be identified as to mandatory or voluntary status. Training may also be available or required from HUD or other Federal and/or State Agencies.

VIII. GOVERNANCE AND SEVERABILITY

- A. This agreement shall be governed by the laws of the State of New Mexico.
- B. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

- C. All attachments are part of this Agreement have the same weight and importance as the initial Sections I through VIII.
- D. All certifications in Attachments "B" through "E" shall be signed by the Sub-recipient as part of this Agreement.

IN WITNESS WHEREOF, the parties hereto do mutually execute the Agreement as of the date first written:

MESILLA VALLEY COMMUNITY OF HOPE

Susan Wells

Signature

Pamela Angell

Susan Wells

Printed Name

Executive Director

President MVCOH

Title

7/18/11

Date

CITY OF LAS CRUCES

[Signature]

Brian Denmark, Assistant City Manager

APPROVED AS TO FORM:

7/18/11

Date

[Signature]
City Attorney

ATTACHMENT "A"

I. GENERAL ITEMS**A. Audits and Inspections**

All Sub-recipient records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

One copy of the Sub-recipient's reporting package shall be submitted to the City 30 days after receipt of an auditor's report or 13 months after the end of the audit period, whichever occurs first. The reporting package shall include:

1. Financial statement,
2. Schedule of prior year audit findings,
3. Auditor's report, and
4. Corrective action plan that addresses each audit finding.

Any deficiencies noted in audit reports must be fully cleared by the Sub-recipient within 30 days after receipt by the Sub-recipient. Failure of the Sub-recipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Sub-recipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Sub-recipient audits and OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations), as applicable.

B. Suspension or Termination

Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. Partial terminations of the approved Scope of Service may only be undertaken with the prior approval of the City. In the event of any termination for convenience in accordance with 24 CFR 85.44, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Sub-recipient under this Agreement shall become the property of the City, and the Sub-recipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

In accordance with 24 CFR 85.43, the City may also suspend or terminate this Agreement, in whole or in part, if the Sub-recipient materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the City may declare the Sub-recipient ineligible for any further participation in the City's Agreements, in addition to other remedies as provided by law. In the event there is probable cause to believe the Sub-recipient is in noncompliance with any applicable rules or regulations, the City may withhold up to fifteen (15) percent of said Agreement's funds or

such amount that the City may determine as appropriate. Such suspension will last until such time as the Sub-recipient is found to be in compliance by the City, or is otherwise adjudicated to be in compliance.

C. Workers' Compensation

The Sub-recipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

D. Insurance and Bonding

The Sub-recipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud, and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City.

All Sub-recipients located within or providing services within a City of Las Cruces-owned facility are required to include the City as an additional insured with the same coverage as the Sub-recipient on the Sub-recipient's liability insurance policies.

The Sub-recipient shall comply with the bonding and insurance requirements of 24 CFR Part 84, Subpart C, Financial and Program Management, Bonding and Insurance.

E. Reporting and Payment Procedures

1. Payment Procedures and Monthly Reports

The City will pay to the Sub-recipient funds available under this Agreement based upon information submitted by the Sub-recipient and consistent with any approved budget and City policy concerning payments. Expense summaries, payment requests, monthly reports and support documentation will be submitted to the City every month, no later than the fifteenth day (15th) following the month reported, effective from the date of this Agreement through one month after the period of performance.

Payments will be made no more than once per month and only after receipt of a currently monthly program and fiscal report as described in this section. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Sub-recipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance funds and program income balances available (if any) in Sub-recipient accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Sub-recipient.

Monthly Reports shall contain the Monthly Summary Progress Report as specified in Section VII.B.3. of the Agreement. The Monthly Reports shall be submitted each month even if there is no monthly billing. For reports with no payment requested, an indication shall be made in writing "no billing for this month."

2. Final Report

The Final report shall contain client data/statistics summarized from the Monthly Reports and a narrative summary of the grant year, both positive and negative. This report shall be submitted to the City no later than July 15 after completion of the Agreement Period or Program Year.

F. Close-Outs

The Sub-recipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: Making final payments, submission of Final Report, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records.

G. General Compliance

The Sub-recipient agrees to comply with the requirements of 24 CFR, Part 570 (the Housing and Urban Development regulations concerning Community Development Block Grants.) The Sub-recipient also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this Agreement.

H. "Independent Contractor"

Nothing contained in this Agreement is intended to, nor shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Sub-recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Sub-recipient is an "independent contractor."

I. Hold Harmless

The Sub-recipient agrees to defend, indemnify and save harmless the City and its officers, agents and employees from any and all suits, actions and claims of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from negligence of the Sub-recipient under this Agreement; however, this hold harmless clause shall not extend to liability, claims, damages, losses or expenses, including attorney fees arising out of:

1. The preparation or approval of maps, drawings, opinion, reports, surveys, change orders, designs or specification by the City, or its agents or employees; or

2. The giving of or failure to give directions or instructions by the City, or its agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

In the event the City, or its officers, agents or employees actively participate in such negligence, (a) the Sub-recipient is relieved of its obligation to defend the City, and (b) the Sub-recipient's obligation to indemnify and save harmless is limited to the amount representing the Sub-recipient's comparative share of negligence as between the Sub-recipient and the City.

J. Grantor Recognition

The Sub-recipient shall insure recognition of the role of the Grantor agency in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Sub-recipient will include a reference to the support, provided herein, in all publications made possible with funds made available under this Agreement.

K. Program Income

In accordance with 24 CFR 570.504, no program income is anticipated by this Agreement by the Subrecipient. If such program income is collected/awarded, said program income shall be paid to the City.

L. Reversion of Assets

Upon its expiration, the Sub-recipient shall transfer to the City any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. This Agreement does not authorize the acquisition of real property; therefore, change in use or property standards/retention requirements in 570.504 are not applicable.

M. Procurement

1. Compliance

The Sub-recipient shall comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

2. Standards

The Sub-recipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR Part 84 Subpart C, Procurement Standards (84.40-84.48) and shall subsequently follow 24 CFR part 84 Subpart C, Property Standards (84.30-84.37), Property Management Standards, as modified by 24 CFR 570.502 (b) (6) covering utilization and disposal of property.

N. Travel (Check one)

 X The Sub-recipient shall obtain written approval from the City for any travel outside the State of New Mexico, excepting El Paso County, Texas, with funds provided under this agreement.

 Travel is NOT included as part of this Agreement.

O. Sub-contract Provisions

If the Sub-recipient decides to sub-contract part of the scope of work in this Agreement, it must get prior written authorization from the City. The Sub-recipient also must include the provisions of Attachment "C" (Equal Employment Opportunity/Affirmative Action Clause) in every sub-contract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own sub-contractors.

Additionally, the Sub-recipient will include the Section 3 Clause (see Attachment "D"), following, in any sub-contract and will take appropriate action pursuant to the sub-contract upon a finding that the sub-contractor is in violation of regulations issued by the grantor agency. The Sub-recipient will not sub-contract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any sub-contract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

The Sub-recipient shall furnish and cause each of its own sub-contractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

1. Approvals

The Sub-recipient shall not enter into any sub-contracts with any agency or individual in the performance of this Agreement without the written consent of the City, prior to the execution of such agreement.

2. Monitoring

The Sub-recipient will monitor any sub-contracted services on a regular basis to assure Agreement compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of non-compliance. These reports will be submitted to the City within 45 calendar days of completed correction of the non-compliance matter.

3. Content

The Sub-recipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any sub-contract executed in the performance of this Agreement.

4. Selection Process

The Sub-recipient shall undertake to insure that any sub-contracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all sub-contracts shall be forwarded to the City along with documentation concerning the selection process.

P. Copyright

If this Agreement results in any copyrightable material or inventions, the City reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

Q. Religious Organizations

The Sub-recipient agrees that all funds and/or programs under this Agreement, which includes faith-based organizations, are subject to the requirements specified in 24 CFR Part 570.200 (j), as amended.

II. PERSONNEL AND PARTICIPANT CONDITIONS

A. Drug-Free Workplace

The Sub-recipient shall maintain a drug-free workplace and so place signs in appropriate places indicating such to clients, staff, and applicants. Attachment "B" Certification is required of all Sub-recipients as part of the entire Agreement.

B. Civil Rights

1. Compliance

The Sub-recipient agrees to comply with local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964, as amend; Title VIII of the Civil Rights Act of 1968, as amended; Section 104 (b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; Executive Order 11063; and with Executive Order 11246, as amended by Executive Orders 11375 and 12086.

2. Non-discrimination/EEO-AA Statement

The Sub-recipient will not discriminate against any employee or applicant for employment as stated in Attachment "C." Attachment "C" Certification is required of all Sub-recipients as part of the entire Agreement.

3. Section 504

The Sub-recipient agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any Federally assisted program.

4. Americans with Disabilities Act.

a. Contracts to Conduct Programming

The Sub-recipient shall ensure that all programs, services and activities are accessible to and useable by persons with disabilities in accordance with the Americans with Disabilities Act, including but not limited to, equal opportunity to participate and benefit, equally effective communication for persons with speech, hearing or cognitive disabilities, integrated seating and the provision of reasonable modifications and/or accommodations and to maintain, and provide to the City upon request, a record of all such requests received, granted and/or denied and the reason for any denials.

b. Operational Duties and Responsibilities

The Sub-recipient shall post one or more signs containing facility hours, rules, warning signs and emergency telephone numbers, anti-drug policy, EEO, New Mexico Workforce and Fair Housing Posters as appropriate. The Sub-recipient shall make such postings available in alternate formats upon request. The Sub-recipient shall adhere to the City of Las Cruces Communication Policy when publicizing events, activities, programs or services.

c. Bid Specifications for Products, Design and/or Construction

The Sub-recipient shall insure all proposed products, services, or activities contained as a part of this Agreement comply with the requirements of the Americans with Disabilities Act and ADAAG requirements, ANSI Accessibility Guidelines and NMBC Accessibility Requirements (when applicable) to ensure accessibility to persons with disabilities.

C. Affirmative Action

1. Approved Plan

The Sub-recipient agrees to be committed to and carry out the City's specifications pursuant to an Affirmative Action Program in keeping with

the principles as provided in President's Executive Order 11246 of September 24, 1965. Each Sub-recipient must have an Affirmative Action Plan/Program filed with the City within 30 calendar days of the signing of this Agreement or certify that there is an AAP on file with the City from another activity undertaken by the Sub-recipient within the last five (5) years. State the activity:

HUD # CDBG Public Service grant for Homeless Services in PY 2011

If the Sub-recipient does not have an AAP, it must develop one. The Sub-recipient shall develop and submit a plan for approval within 60 calendar days of the signing of the Agreement.

2. Women/Minority Business Enterprises

The Sub-recipient will use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, a "minority group members" are African--Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native Americans. The Sub-recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

D. Employment Restrictions

1. Prohibited Activity

The Sub-recipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

2. "Section 3" Clause

The Sub-recipient to agree to comply with "Section 3," regulations set forth in 24 CFR 135. The Sub-recipient further agrees to comply with the "Section 3" requirements and to include the language of Attachment "D", Sections A, B, and D in all sub-contracts executed under this Agreement. The Sub-recipient certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements. Sub-recipients shall sign Attachment "D" as a condition of receiving this grant.

3. Notifications

The Sub-recipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Sub-recipient's commitments hereunder, and shall post copies of the notice in conspicuous, easily accessible places available to employees and applicants for employment.

4. Assignability

The Sub-recipient shall not assign or transfer any interest in this Agreement without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Sub-recipient from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

5. Debarment and Suspension

No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

6. Hatch Act

The Sub-recipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United State Code.

7. Conflict of Interest (COI)

The Sub-recipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Sub-recipient further covenants that in the performance of the Agreement no person having such a financial interest shall be employed or retained by the Sub-recipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, or of any designated public agencies or Sub-recipients which are receiving funds under the CDBG Entitlement program.

The Sub-recipient is required to submit conflict of interest statements to the City and as specified by the City.

a. Applicability

In the procurement of supplies, equipment, construction, and services by recipients and by Sub-recipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.

In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its Sub-recipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to Sec. 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to Sec. 570.203, 570.204, 570.455, or 570.703 (i)).

b. Conflicts Prohibited

The general rule is that no persons described in Paragraph (c) of this Section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, sub-contract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

c. Persons Covered

The conflict of interest provisions of Paragraph (b) of this Section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Sub-recipient, or any designated public agencies, or of Sub-recipients that are receiving funds under this part.

The Sub-recipient shall provide to the City a current list of Board of Directors, with names, addresses, telephone numbers and positions held. The Sub-recipient shall also provide signed COI statements dated no earlier than 180 days prior to the effective date of this

Agreement, within 30 days of signing this Agreement for all Board members and appropriate staff, so identified. COI statements must be renewed annually by all appropriate persons.

8. Lobbying

The Sub-recipient hereby certifies that federally appropriated funds have not been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence any award action. Attachment "E" Certification is required of all Sub-recipients as part of the entire Agreement.

ATTACHMENT "B"

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification set out below is a material representation upon which reliance is placed by the City of Las Cruces and the U.S. Department of Housing and Urban Development (HUD) in awarding this Grant. If it is later determined that the Sub-recipient knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the City's Community Development Department and/or HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. The Sub-recipient will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION

1. The Sub-recipient certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Sub-recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing an ongoing drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Sub-recipient's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - C. Making it a requirement that each employee be engaged in the performance of the grant is given a copy of the statement required by Paragraph "A."
 - D. Notifying the employee in the statement required by Paragraph "A" that, as a condition of employment under the Grant, the employee would:
 1. Abide by the terms of the statement; and
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
 - E. Notify the City's Community Development Department and/or HUD in writing within ten (10) calendar days after receiving notice under Subparagraph (D) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for

the receipt of such notices. Notice shall include the identification numbers(s) of each affected grant.

- F. Taking one of the following actions, within 30 calendar days of receiving notice under Subparagraph (D) (2), with respect to any employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or other appropriate agency.
 - G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).
2. The Sub-recipient shall insert in the space provided on the attached "Place of Performance" form the site(s) for the performance of work to be carried out with the Grant funds (including street address, city, county, state, zip code and total estimated number of employees). The Sub-recipient further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the Agreement, it shall notify the City's Community Development Department and/or HUD immediately upon the decision to use such additional sites by submitting a revised "Place of Performance" form.

**PLACE OF PERFORMANCE
FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

Name of Sub-recipient: MESILLA VALLEY COMMUNITY OF HOPE

Program Name: Homeless Services

Date: 7/18/11

The Sub-recipient shall insert in the space provided below the site(s) expected to be used for the performance of work under the Grant covered by the certification:

Place of Performance includes street address, city, county, state, zip code for each site:

999 W. Amador Ave, Suite E, Las Cruces, NM 88005
(Doña Ana County)

Check if there are work places on file that are not identified here.

ATTEST:

By:  Date: 7/18/11

By: _____ Date: _____

ATTACHMENT "D"

SECTION 3 CLAUSE

- A. The work to be performed under this contract is on a project providing direct Federal financial assistance from the Department of Housing and Urban Development ("HUD") and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns that are located in or owned in substantial part by persons residing in the area of the Project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this Agreement certify and agree that they are under no contractual agreement or other disability that would prevent them from complying with these requirements.
- C. The Sub-recipient will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship, and training positions, the qualifications for each, the name and location of the persons taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The Sub-recipient will include this Section 3 Clause in every sub-contract for work in connection with the Program and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Sub-recipient is in violation of the regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Sub-recipient will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the agency has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Sub-recipients, and its successors, and assigns to those sanctions specified by the CDBG Agreement or contract through which Federal assistance is provide, and to such sanctions as are specified by 24 CFR Part 135, which include termination of this Agreement for default and debarment and suspension from future HUD-assisted contracts.

ATTEST:

By: Susan Wells Date: 7/18/11

By: _____ Date: _____

