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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 5 Ordinance/Resolution# 13-137

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of April 15, 2013
 (Adoption Date)

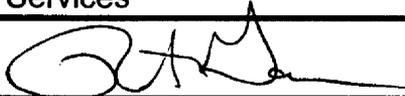
Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY HABITAT FOR HUMANITY (MVHFH) FOR THE ACQUISITION OF VACANT LAND PARCELS FOR THE DEVELOPMENT OF AFFORDABLE HOUSING UNITS. THE RESOLUTION ALSO APPROVES A HOME INVESTMENT PARTNERSHIPS (HOME) RECOVERABLE GRANT AGREEMENT FOR THE ACQUISITION AND CONSTRUCTION OF AFFORDABLE HOUSING UNITS.

PURPOSE(S) OF ACTION:

Approve CDBG and HOME agreements for affordable housing development.

COUNCIL DISTRICT: 5		
<u>Drafter/Staff Contact:</u> Jan Lauterbach	<u>Department/Section:</u> Community Development / Planning & Neighborhood Services	<u>Phone:</u> 528-3134
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City has applied for and received funds from the United States Government under Title 1 of the Housing and Community Development Act of 1974 which is Public Law 93-383, Title 24 of the Code of Federal Regulations (CFR) and Catalogue of Federal Domestic Assistance No. 14.218. The CDBG Program provides the City of Las Cruces the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs.

The Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships Program (HOME). The HOME Program provides the City of Las Cruces the opportunity to administer a federally funded program also in accordance with the goals of the City's Consolidate plan.

Annual Action Plans presented to and adopted by City Council outline how the HOME and CDBG funds for each Program Year (PY) will be spent in accordance with the strategic goals as outlined in the Consolidated Plan. On May 2, 2011, City Council Approved Resolution 11-217, adopting the 2011 Action Plan which allocated CDBG funds in the amount of \$84,633.00 to MVHFH, a Community Housing Development Corporation (CHDO) partnering with the City to increase affordable housing opportunities for land acquisition, of which \$37,465.33 remains available for use. The 2011 Action plan, as amended, also allocated a total of \$288,733.00 (\$248,633.00 Non-CHDO, \$40,100.00 CHDO) in HOME funds to MVHFH. HOME funds in the amount of \$98,733.00 (\$5,100.00 CHDO, \$93,633.00 Non-CHDO) remain available for acquisition and new construction expenses.

On May 7, 2012, City Council approved Resolution 12-181 supporting the PY 2012 Action Plan allocating HOME funding in the amount of \$71,007.00 (\$36,500.00 CHDO, \$34,507.00 Non-CHDO) to MVHFH for acquisition and new construction of affordable housing.

MVHFH is proposing to utilize all remaining funds as outlined above in the amount of \$207,205.33 (2011 CDBG -\$37,465.33, 2011 HOME - \$98,733.00, 2012 HOME - \$71,007.00) for the acquisition and new construction of 4 lots in the Del Rey Estates Subdivision Phase 1 for single family owner-occupied affordable housing units. The homes will be sold to low-income households working through MVHFH's homeownership qualifying process. The HOME and CDBG funds will provide for a direct reduction in the sales price of the units, offering an affordable mortgage to the individual households. The City will file a Deed Restriction and Covenants Agreement against each unit at closing to maintain the property's affordability during the 15-year affordability period as per HOME program parameters.

In order to comply with CDBG and HOME regulations, a CDBG Grant Agreement and a HOME Program Recoverable Grant Agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity, as shown in Exhibits "A" and "B," are required to be executed.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", CDBG Agreement.
3. Exhibit "B", HOME Agreement.

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

N/A

FUND EXPENDITURE SUMMARY

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds Current FY	Remaining Funds	Purpose for Remaining Funds
Community Development (Fund 2000)	20184330-722190-10412	\$37,465.33	\$37,465.33	\$0.00	N/A
Community Development (Fund 2000)	20184340-722190-11212	\$5,100.00	\$5,100.00	\$0.00	N/A
Community Development (Fund 2000)	20184340-722190-11418	\$93,633.00	\$150,994.48	\$57,361.48	Previously committed to housing units in Sierra Norte
Community Development (Fund 2000)	20184360-722190-11212	\$36,500.00	\$36,500.00	\$0.00	N/A
Community Development (Fund 2000)	20184360-722190-11419	\$34,507.00	\$34,507.00	\$0.00	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the CDBG and HOME agreements providing funding to Mesilla Valley Habitat for Humanity for acquisition of vacant land and new construction of affordable housing units.
2. Vote "No"; this will deny the approval of CDBG and HOME funding to Mesilla Valley Habitat for Humanity for affordable housing development.
3. Vote to "Amend"; further direction would come from City Council.
4. Vote to "Table"; further direction would come from City Council.

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
2. Resolution No. 12-181

RESOLUTION NO. 13-137

A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY HABITAT FOR HUMANITY (MVHFH) FOR THE ACQUISITION OF VACANT LAND PARCELS FOR THE DEVELOPMENT OF AFFORDABLE HOUSING UNITS. THE RESOLUTION ALSO APPROVES A HOME INVESTMENT PARTNERSHIPS (HOME) RECOVERABLE GRANT AGREEMENT FOR THE ACQUISITION AND CONSTRUCTION OF AFFORDABLE HOUSING UNITS.

The City Council is informed that:

WHEREAS, the City has applied for and received funds from the United States Government under Title 1 of the Housing and Community Development Act of 1974 which is Public Law 93-383, Title 24 of the Code of Federal Regulations and Catalogue of Federal Domestic Assistance No. 14.218; and

WHEREAS, the CDBG Program provides the City of Las Cruces the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs. The Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME Investment Partnerships Program (HOME) providing the City of Las Cruces the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan; and

WHEREAS, annual Action Plans presented to and adopted by City Council outline how the HOME and CDBG funds for each Program Year (PY) will be spent in accordance with the strategic goals as outlined in the Consolidated Plan; and

WHEREAS, on May 2, 2011, the Las Cruces City Council approved Resolution No. 10-217, adopting the 2011 Action Plan, as amended, allocated CDBG funds of \$84,633.00, with a remaining amount of \$37,465.33 to MVHFH, a Community Housing

Development Organization (CHDO) partnering with City of Las Cruces in affordable housing development. The 2011 Action Plan, as amended, also approved \$288,733.00 (\$248,633.00 Non-CHDO, \$40,100.00 CHDO) with a remaining amount of \$98,733.00 (\$5,100.00 CHDO, \$93,633.00 Non-CHDO) available for use to MVHFH; and

WHEREAS, on May 7, 2012 the Las Cruces City Council approved Resolution No. 12-181, approving the 2012 Action Plan allocating HOME funds of \$71,007.00 (\$36,500.00 CHDO, \$34,507.00 Non-CHDO) to MVHFH; and

WHEREAS, MVHFH desires to utilize all remaining HOME and CDBG funds in the amount of \$207,205.33 (PY 2011 CDBG-\$37,465.33, PY 2011 HOME-\$98,733.00. PY 2012 HOME- \$71,007.00) for the acquisition and new construction of 4 lots in the Del Rey Estates Subdivision Phase 1 for single family owner-occupied affordable housing units; and

WHEREAS, the HOME and CDBG funds granted will provide for a direct reduction in the sale price of the units to qualified low-income households working through MVHFH's homeownership qualifying process; and

WHEREAS, in order to comply with CDBG and HOME regulations, a CDBG Grant Agreement and a HOME Program Recoverable Grant Agreement between the City of Las Cruces and MVHFH is required to be executed.

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

(I)

THAT the CDBG Program Grant Agreement between the City of Las Cruces and MVHFH, as shown in Exhibit "A," attached hereto and made part of this Resolution, is

hereby approved.

(II)

THAT the HOME Program Recoverable Grant Agreement between the City of Las Cruces and MVHFH, as shown in Exhibit "B," attached hereto and made part of the Resolution, is hereby approved.

(III)

THAT the Assistant City Manager/Chief Operating Officer of the City of Las Cruces is hereby authorized to execute the CDBG Program Grant Agreement and the HOME Program Recoverable Grant Agreement with MVHFH on behalf of the City of Las Cruces.

(IV)

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

DONE AND APPROVED this _____ day of _____, 2013.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima:

Councillor Silva:

Councillor Smith:

Councillor Pedroza:

Councillor Small:

Councillor Sorg:

Councillor Thomas:

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

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

THIS AGREEMENT is entered into this ____ day of _____, 2013, between the City of Las Cruces (herein called the "City") and Mesilla Valley Habitat for Humanity. (herein called the "Sub-recipient"), under CDBG Grant Numbers **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 #20184330-722190-10412; CDBG/HOME Activity #'s ____, ____, ____, ____.

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 2011-2015 Consolidated Plan, including the 2011 Action Plan, which includes funding of \$89,446.00 for FY 2011 of which \$37,465.33 remains available for use; 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 Part 570.208 (a) (1) (i), Area benefit activities, an activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons.

____ In accordance with 24 CFR Part 570.208 (a) (2) (i), Limited clientele activities, an activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons.

X In accordance with 24 CFR 570.208 (a) (3), Housing activities, an eligible activity carried out for the purpose of providing or improving permanent

residential structures which, upon completion, will be occupied by low- and moderate-income household. This would include, but not be limited to, the acquisition of property by the sub-recipient as an eligible activity under §570.201 (a), acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, of real property subject to the limitations of §570.207.

____ In accordance with 24 CFR Part 570.208 (a) (4) (i), Job Creation or Retention activities, an activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low- and moderate-income persons.

B. Activities

The Sub-recipient will be responsible for CDBG Land Acquisition activities in a manner that complies with HUD Regulations at CFR Part 570.201(a) and City requirements.

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

1. Program Description:

The program includes: Mesilla Valley Habitat for Humanity's purchase of vacant lots located within the City limits of Las Cruces for the development and construction of owner-occupied Affordable Housing units. Upon completion of construction, Habitat will then offer the units for sale to qualified low-income households earning less than 80% of Area Medium Income (AMI).

- \$37,465.33 will be divided to purchase Lots 4, 5, 6, and 7 Block K, of Del Rey Estates Subdivision Phase 1.

C. Levels of Accomplishment

In addition to the normal administrative services required as part of this Agreement, the Sub-recipient acknowledges that funds will be disbursed for each program lot identified after receipt by the City of a fully executed purchase contract and completion of satisfactory environmental assessment and identified replat on the identified properties. All units shall be constructed according to local building code, receiving a certificate of occupancy upon completion. Habitat for Humanity will use the funds to purchase at least 4 vacant lots for the development and construction of affordable housing units.

Activity

Acquisition, 24 CFR Part 570.201 (a). Acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, long-term lease, donations, or otherwise, of real property (including air rights, water rights, rights-of-way, easements and other interests therein) for any public purpose, subject to the limitations of §570.207.

D. Performance Monitoring

The City will monitor the performance of the Sub-recipient against goals and performance standards required herein. The Sub-recipient is expected to complete the acquisition of vacant lots within one year from the date of execution of this agreement and complete development and construction of the dwelling units in a timely manner. At the end of the year any unexpended balance remaining will revert back to the City for allocation to other projects.

II. TIME OF PERFORMANCE

A. Term of the Agreement

This Agreement shall start on the Effective date of this Agreement which is the date of the last person to sign or May 1, 2013, or after HUD releases the funds, whichever is later. The period of performance will continue for Twenty-Four (24) months after the beginning date, but end no later than April 30, 2015.

B. Eligible Payment Period

All eligible expenses and purchases approved by this Agreement and incurred during the grant period from May 1, 2013, to April 30, 2015 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 100% of the funds within 12 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
801-001	Vacant Land Purchase	\$37,465.33
	TOTAL	\$37,465.33

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

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 **\$37,465.33**. 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
Jan Lauterbach, Housing Development Coordinator -HOME Community Development Department City of Las Cruces P.O. Box 20000 Las Cruces, NM 88004 Phone: (575) 528-3134 E-mail: jlauterbach@las-cruces.org	Marie Schwartz, Executive Director Mesilla Valley Habitat for Humanity Mailing: 720 Santa Fe St. Las Cruces, NM 88001 Phone: (575) 525-0475 E-mail: mariehfh@qwestoffice.net

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, disability status, and female head of household 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 the program. Such data shall include, but not be limited to: client name, address, income (as applicable), assets, 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 shall be submitted as part of the monthly report and also made available to the City monitors or their designees for review upon request. A Monthly Summary Progress Report of construction progress and client eligibility shall be submitted with each monthly billing (see chart of requirement, below).

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)
Income and Asset documentation used to determine household eligibility	*	X(original)
Monthly Summary Progress Report	X	
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.

SIGNATURES ON THE NEXT PAGE

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

MESILLA VALLEY HABITAT FOR HUMANITY.

Marie Schwartz
Signature

Marie Schwartz Marie Schwartz
Printed Name

Executive Director, Mesilla Valley Habitat for Humanity
Title

3/22/13
Date

CITY OF LAS CRUCES

Brian Denmark, Assistant City Manager/ COO

APPROVED AS TO FORM:

Date

City Attorney

ATTACHMENT "A"

I. GENERAL ITEMSA. 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 9 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 upon receipt of invoice and acceptable backup documentation from the sub-recipient. 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.

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 Sub-recipient. If such program income is collected or 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 authorizes the acquisition of real property; therefore, change in use or property standards/retention requirements in 570.504 are 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)

_____ 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.

X 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: **Property Acquisition.**

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 Habitat for Humanity

Program Name: Vacant Land Acquisition

Date: _____

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:

Physical Location:

720 Santa Fe, Las Cruces, New Mexico 88001 – Doña Ana County

Lot 4- 4730 Whitney Place

Lot 5- 4726 Whitney Place

Lot 6- 4722 Whitney Place

Lot 7- 4718 Whitney Place

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

ATTEST:

By: *Marie Schwart*
Date: 3/22/13

ATTACHMENT "C"

**EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION CLAUSE FOR
CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246**

In carrying out this Agreement, the Sub-recipient and its contractors and subcontractors, if any, shall not discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The Sub-recipient shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Sub-recipient shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Sub-recipient shall state in all solicitations or advertisement for employees placed by or on behalf of the Sub-recipient that it is an Equal Opportunity or Affirmative Action employer.

ATTEST:

By: Mani Schwan
Date: 3/22/13

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: *Marie Schwab*
Date: 3/22/13

ATTACHMENT "E"

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, subject to Attachment "A" Section II.D (8) to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement..
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant and contracts under grants, and cooperative agreements) and that the Sub-recipient shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transactions was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ATTEST:

By: Marie Schwart
Date: 3/22/13

**PY 2011 & PY12 HOME PROGRAM RECOVERABLE GRANT
AGREEMENT BETWEEN
THE CITY OF LAS CRUCES
AND
MESILLA VALLEY HABITAT FOR HUMANITY**

This **HOME PROGRAM RECOVERABLE GRANT AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a principal address of 700 N Main St., Las Cruces, New Mexico 88001 (hereinafter referred to as "City") and Mesilla Valley Habitat for Humanity, a non-profit agency, and Community Housing Development Organization (CHDO), whose DUN's number is 123198751 and whose address is 720 Santa Fe St., Las Cruces, New Mexico 88001 (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, the City is an entitlement recipient of the federal HOME Investment Partnerships Program (hereinafter referred to as "HOME") in furtherance of its goal of encouraging the production of decent, safe, sanitary affordable housing for the citizens of Las Cruces;

WHEREAS, the recipient has submitted a proposal to utilize Ninety-Eight Thousand Seven Hundred Thirty-Three Dollars and No Cents (\$98,733.00) Program Year (PY) 2011 (\$5,100.00 CHDO, \$93,633.00 Non-CHDO) plus Seventy-One thousand Seven Dollars and No Cents (\$71,007.00) PY 2012 (\$36,500.00 CHDO, \$34,507.00 Non-CHDO) HOME funds for the acquisition and new construction of 4 lots in the Del Rey Subdivision, located more specifically as described on the attached Attachment "A" (hereinafter referred to as "Property");

WHEREAS, acquisition and new construction of single-family owner-occupied affordable housing units are eligible activities under the HOME Program; and

WHEREAS, the parties desire to enter into this Agreement in order to ensure compliance with the requirements of the HOME Program and to secure other covenants and promises from the Developer regarding the use of funds to benefit low-income persons, as defined under the standards of eligibility established by the United States Department of Housing and Urban Development (hereinafter referred to as "HUD"), a copy of which document for the current year is attached hereto as Attachment "B" and is incorporated herein by this reference.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the

sufficiency and receipt whereof being hereby acknowledged, the City and the Developer agree as follows:

SECTION 1. DEFINITIONS

As used herein, the following words and terms, whether capitalized or not, shall have the following meanings, unless the context demands otherwise:

1. Adjusted for Family Size – adjusted in manner which results in an income eligibility level that is lower for households having fewer than four people, or higher for households having more than four people, than the base income eligibility based upon a formula established by HUD for the Las Cruces Metropolitan Statistical Area (MSA).
2. Affordable or Affordability – as defined in Section 3, Paragraph 2 of this Agreement.
3. Affordability Period – if the subsidy per lot is \$1 to \$14,999, then the Affordability Period is five (5) years; if the subsidy per lot is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years; or if the subsidy per lot is greater than \$40,000, then the Affordability Period is fifteen (15) years; if the subsidy is provided on lots which are also receiving other assistance with HOME funds for acquisition, then the affordability period will be added to the Affordability Period from the initial HOME assistance for a combined period not to exceed 25 years. The Affordability Period will begin at the point of time which each individual unit contemplated under this Agreement has been closed out in HUD's Integrated Disbursement and Information System (IDIS) as authorized in 24 CFR Part 92.502(d)(1).
4. Annual Gross Income – the annual anticipated income for a household, or more specifically, the gross amount of wages, income from assets, regular cash or non-cash contributions, and any other resources and benefits determined to be income by HUD, as defined in 24 CFR §5.609.
5. Displaced Person – a person (family or individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds, and as further defined in 24 CFR Part 92.
6. Eligible Person or Eligible Household – one or more natural persons or a family who are determined by the City to be of Extremely Low, Very Low, or Low Income according to the income limits Adjusted to Family Size published annually by HUD based upon the Annual Gross Income

of the household. All homebuyers receiving HOME assistance or purchasing units developed with HOME funds are required to receive housing counseling by a HUD approved housing counseling agency.

7. Extremely Low Income Person or Extremely Low Income Household – one or more natural persons who has a total Annual Gross Income for the household that does not exceed thirty percent (30%) of the median annual income adjusted for family size for households with the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.
8. HUD – the United States Department of Housing and Urban Development, its successors or assigns.
9. Recoverable Grant Documents – this Agreement, the Deed Restrictions and Covenants Agreement and all agreements, certificates, schedules, notes, statements and opinions, and exhibits or attachments to each of the foregoing, referenced therein or executed or delivered pursuant hereto or in connection with or arising under the grant contemplated hereby.
10. Low Income Housing – housing that is Affordable to Low Income Persons.
11. Low Income Person or Low Income Household – one or more natural persons or a family who has a total Annual Gross Income for the household that does not exceed eighty percent (80%) of the median annual income adjusted for family size for households within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.
12. Owner-Occupied – Upon completion of construction and during the Affordability Period, the Developer/Subrecipient is required to annually confirm all units remain owner-occupied and provide supporting documentation annually to City staff. During the affordability period, the Developer/Subrecipient/Owner agree that the Property may not be sold, transferred or title to the Property conveyed without Lender's prior written consent, and Lender is under no obligation to provide such consent. If, at any time during the term of the Affordability Period, the Property ceases to be principal residence of Owner, whether through sale of the Property or otherwise, the Owner agrees to make the Property available for purchase only to a buyer whose family qualifies as a low-income family earning between 45-80% of Area Median Income (AMI) and will use the property as their principal residence. The Owner and/or Subrecipient further represents and warrants that the

owner(s) met income eligibility requirements at the time the Contract(s) to build the unit(s) was executed..

13. Project – the acquisition of and new construction of four owner occupied, single-family units within the Property, in which all units shall be exclusively occupied by Extremely Low, Very Low or Low Income Persons.
14. Project Completion – that the necessary title transfer requirements and construction work have been performed; the project complies with the requirement of this part (including the property standards under § 92.251); the final drawdown has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD. All units contemplated under this Agreement must be completed within 4 years from the effective date of this Agreement.
15. Sale of Homebuyer Units – All units contemplated under this Agreement must be sold within 6 months of completion date of the project(s) individual HOME-assisted units. Sold units are defined as units that:
 - 1) have a “ratified sales contract” or
 - 2) actual “permanent closing” that includes completion of title transfer and execution of warranty deed to an income qualified household that will occupy the unit as their primary residence.
 - 3) Maximum sales price of the individual units cannot exceed 95% of area median purchase price as defined by HUD at the time of sale. Proceeds from the sale may be retained by the CHDO for activities that benefit low-income families..
16. Property - All that certain real property located in the county of Dona Ana, State of New Mexico, described as Lots 4, 5, 6, and 7 of Del Rey Subdivision. Also known at 4730, 4726, 4722 and 4718 Whitney Place, Las Cruces, N.M. See attached **Attachment “A”** for full legal description.
17. Very Low Income Person or Very Low Income Household – one or more natural persons or a family whose has a total Annual Gross Income for the household that does not exceed fifty percent (50%) of the median annual income Adjusted for Family Size for households within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.

Other terms herein which have not been defined shall have the definition, meaning, and intent given them in the HOME regulations, or 24 CFR Part 92, or

as cross-referenced therein, or their ordinary dictionary meaning as the context so requires.

SECTION 2. RECOVERABLE GRANT AMOUNT AND USE OF FUNDS

1. **Recitals:** The recitals set forth are true and correct and are incorporated herein and made a part of this Agreement.
2. **The Recoverable Grant:** The City has applied for and received funds from the United States Government under the Cranston-Gonzales National Affordable Housing Act (NAHA) of 1990, Title 24 CFR 92, and Catalog of Federal Domestic Assistance (CFDA) No. 14.239.

Under the terms and conditions of this Agreement, the City agrees to grant the Developer a total of One Hundred Sixty-Nine Thousand Seven Hundred Forty Dollars and No Cents (\$169,740.00) for the acquisition and new construction of the Property. The grant funds to the Developer shall be in the form of a recoverable grant on the terms set forth in this Agreement and the owners' Deed Restriction and Covenants Agreement, as required by the City. The Owners' shall secure a Deed Restrictions and Covenants Agreement on the Property (the "Deed Restrictions") substantially in the form attached hereto and incorporated herein by reference as **Attachment "C"**.

3. **Disbursement:** PY 2011 and PY 2012 grant funds, the initial disbursement of funds must occur within 12 months of the date of Agreement. Subsequent disbursements may take place monthly with the final disbursement to be taken no sooner than 30 days prior to project completion.

The City shall disburse the grant proceeds for eligible expenses only after approval by the City of invoices submitted and verified in accordance with this Agreement and applicable HOME regulations. Notwithstanding anything to the contrary in this Agreement, the City also reserves the right to request and approve documentation supporting any requests for disbursement to verify reasonableness and validity of such costs and said Budget may be modified by the City accordingly.

4. **Use of Grant Money:** The Developer shall use the grant proceeds for eligible acquisition and new construction expenses permitted under applicable HOME regulations and as set forth in 24 CFR §92.206, as the same may from time to time be amended and in accordance with the Scope of Work, Project Schedule, and Budget attached hereto as **Attachment "D"** and incorporated herein by this reference. The Developer shall not use any HOME funds for prohibited purposes as set forth in 24 CFR §92.214 or other HOME regulations, as the same may

from time to time be amended. The Developer acknowledges and agrees that any funds not used in accordance with permitted HOME regulations must be repaid to the City. The Developer acknowledges and agrees if this Project is terminated before completion, either voluntary or otherwise, the Developer must repay any HOME funds invested in the Project to the City. The Developer shall keep all financial records for the Project, including source documentation to support how HOME funds were expended, which includes, but is not limited to, cancelled checks, paid bills, payrolls, time and attendance records, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the City to support the expenditures for this Project.

5. Layering Review: As applicable, it is the City's responsibility under HOME regulations, and more specifically 24 CFR §92.250, to evaluate the use of other local, state, or federal assistance in HOME-assisted projects to ensure that it does not invest any more HOME funds than are necessary to provide Low Income Housing. The Developer must submit revised Sources and Uses Statements and Pro-forma if any of the original funding sources, amounts or financial conditions change from the time this application was submitted.
6. Program Income: Any program income generated from the proceeds of the HOME grant shall be returned to the City in accordance with 24 CFR §92.503(a) and 24 CFR §92.504(c)(2)(ii).
7. Term: The term of this Agreement shall commence on the effective date of this Agreement which is the date of the last party to sign this Agreement (the "Effective Date"), and shall continue through the end of the Affordability Period. Notwithstanding any of the foregoing, all record-keeping requirements, audit, and use and maintenance of the Property requirements set forth in this Agreement or any record-keeping or use requirements mandated by HOME regulations shall survive termination of this Agreement.
8. Payment: It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$169,740.00. Payment requests are due by the fifteenth (15th) day of each month. If no payment request is needed for a particular month, the Developer must submit in writing that no payment request is required for that particular month. The Developer agrees to use the Payment Request form as referenced in **Attachment "E."** Payments may be contingent upon certification of the Developer's financial management system in accordance with the standards specified in 24 CFR Part 84, Subpart C, "Financial and Program Management."

9. HOME Match Requirement: The Grantee and the Developer are exempt from HUD's matching requirements in 24 CFR §92.220 per CPD notice 07-05 issued July 11, 2007 and expiring July 11, 2008; however the exemption from the match requirement is applicable in the subsequent year from the date of the notice. According to HUD's website the City is exempt from match for program years 2009, 2010, 2011, and 2012.
10. Deadline for Sale of Homebuyer Units: for each unit contemplated under this Agreement, the unit(s) must be sold to an eligible household within 6 months of project completion. Any unit not sold to an eligible homebuyer within 6 months of project completion must be converted to a HOME rental units, or repay the HOME investment. If unit is converted to a rental unit, the unit would remain a rental unit through the affordability period, unless sold to the existing tenant during the affordability period, and is subject to HOME monitoring requirement throughout the term of the affordability period.

SECTION 3. GENERAL TERMS AND CONDITIONS

1. Applicable Laws: The Developer shall comply with all applicable federal and state laws, rules, and regulations dealing with the Property, whether presently existing or hereafter promulgated. The Developer agrees to comply with all of the HOME Program regulations, HUD regulations, 42 U.S.C. §§12701-12839, 24 CFR Part 92 as amended from time to time, whether set forth herein or not, and agrees to execute or amend documents as necessary to be in compliance therewith. The Developer, as a CHDO, shall comply with the Uniform Administrative Requirements at 24 CFR Part 84.21. The Developer shall follow procedures as outlined in their Procurement Manual for construction activities. The Developer also shall comply with all other applicable federal, state, and local statutes, ordinances, rules and regulations, including, but not limited to, all applicable provisions of the City's Municipal, Building, and Zoning Codes.
2. Period of Affordability/Restrictive Covenant: All HOME-assisted units shall be maintained as affordable housing for the individual unit Affordability Period. To be classified as affordable housing, it is required that the owner shall maintain the Property as Owner Occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period. If the HOME assistance/subsidy is from \$1 to \$14,999, then the Affordability Period is five (5) years from the project completion date; if the HOME assistance/subsidy is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years from the project completion date; if the HOME assistance/subsidy is greater than \$40,000, then the Affordability Period is ten (10) years from

the project completion date; or if the subsidy is for new construction or acquisition of rental housing, then the Affordability Period is twenty (20) years. The Affordability Period will begin on the effective project completion date. In order to ensure compliance with the Affordability Period, the owner(s) of the Property, shall execute a Deed Restriction and Covenants Agreement, a copy of which is attached hereto as **Attachment "C"** and incorporated herein by this reference, which shall be recorded in the office of the County Clerk of Dona Aña County. The Affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. The Developer acknowledges that failure to meet the Affordability requirements stated herein is a breach of this Agreement and a default under the Mortgage which requires resale of the HOME unit to another eligible person or household, if the Project does not meet the Affordability requirements for the Affordability Period. These resale provisions conform to 24 CFR Part 92.254 (a)(5)(i) and are detailed in the Deed Restrictions and Covenants Agreement as shown in Attachment "C" , Restrictive Covenants Section C, executed between the City of Las Cruces and the individual owner(s).

3. Property Standards: The Developer shall comply with the property standards requirements set forth in 24 CFR §92.251. The Developer shall keep records to document compliance with these property standards. At Project Completion, the Property must meet all applicable local codes, ordinances, and zoning ordinances. The Property must also meet the accessibility requirements in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973, as applicable.
4. Four-Year Project Completion: HOME funds provided for the project and units proposed under this Agreement that have not been completed within four years of the commitment date, as determined by a signature of each party to the written Agreement, must be repaid to the City. HUD may grant a one-year extension to the completion deadline upon a request from the City that is submitted to the local HUD Field Office at least 90 days before the project's four-year deadline. The Developer must coordinate the extension request with the City by providing the following: documentation that the project will not be completed by the four-year deadline due to circumstances beyond the City's control, a detailed project completion schedule, with milestones, that will ensure the project is completed within one year or less, proof that adequate financing has been secured to ensure project completion.
5. Household Qualifying: The Developer shall qualify each household purchasing a HOME-assisted unit under the guidance of the HUD Final Rule as may be revised, and in accordance with 24 CFR 5.609 including HUD's Technical Guide for Determining Income and Allowances for the HOME Program with annual income determinations based on HUD's Part

5 definition of annual income. Generally, households shall be qualified at the time of contract, to purchase housing to be constructed, or at the time of purchase in the case of a contract to purchase existing housing. In the case of a lease-purchase agreement for existing housing or for housing to be constructed, the household must be qualified at the time the agreement is signed. All qualifying documentation shall be provided to City HOME staff for review prior to occupancy and/or permanent closing.

6. **Monitoring:** The City will monitor both the financial and programmatic performance of the Developer throughout the development and construction process including a one year period after the sale of the unit(s). The City reserves the right to monitor the project records for a period of no less than five (5) years after the Affordability Period. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Developer within 30-days of time after being notified by the City, Agreement suspension or termination procedures will be initiated.
7. **Records:** The Developer shall comply with 24 CFR §92.508 regarding records that must be maintained for this Project. The Developer shall maintain all records pertaining to the Project at its principal place of business for a period of no less than five (5) years after the Affordability Period. The Developer shall make all records available to the City, HUD, and to their respective representatives during normal business hours. The Developer shall maintain all mortgages and Project financial records, including source documentation to support how HOME funds were expended, which includes, but is not limited to invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the City to support the expenditures for this Project. All supporting documents shall be maintained in accordance with the requirements of 24 CFR §84.53. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of this required 5-year period, the Developer must maintain the records until completion of the action and resolution of all issues which arise from it, or until the end of the 5-year period, whichever is later. This section shall survive the termination of this Agreement.
8. **Reports:** The Developer shall submit monthly reports with such reports due by the 15th of each month. These reports shall include information on status of participants in the /Developer's Program, status of construction progress, and status of identifying land for future affordable housing development.

9. Beneficiary Data: The Developer shall maintain beneficiary data demonstrating beneficiary eligibility for services provided. Such data shall include, but not be limited to, beneficiary name, address, and income level. The Developer will use 24 CFR Part 5 for determining income eligibility. Such information shall be maintained in a beneficiary file by the Developer and shall be made available to the City's monitors and/or their designees for review upon request.
10. Uniform Administrative Requirements: The Developer and the City shall comply with 24 CFR §92.505 regarding uniform administrative requirements. The Developer shall provide the City with such documentation and records to satisfy the City's requirements under these various provisions. The Developer also agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
11. Audits and Inspections: The Developer's 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 Developer's reporting package shall be submitted to the City 30 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 Developer within 30 days after receipt by the Developer. Failure of the Developer to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Developer hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Developer audits and OMB Circular A-133 (Audits of States, Local Governments and Non-profit Organizations), as applicable.

12. Compliance with Davis-Bacon Act: The Developer, as applicable, shall comply with 24 CFR §92.354 and all applicable provisions of the Davis-Bacon Act (40 U.S.C. §276a, et seq.) and implementing labor regulations contained in 29 CFR Part 5. The Developer shall also comply with the

Contract Work and Hours and Safety Standards Act (40 U.S.C. §§327-332), and other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1, as applicable. The Developer shall maintain records demonstrating compliance with 24 CFR §92.354, including contract provisions and payroll records.

13. Copeland "Anti-Kickback" Act: As applicable, the Developer shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. §874), as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.
14. Debarment and Suspension: The Developer shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 24 CFR Part 24. The Developer shall not enter into a contract with any person, agency, or entity that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689, "Debarment and Suspension," which is made a part of this Agreement by reference. In the event that the Developer has entered into a contract or subcontractor with a debarred or suspended party, no HOME funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor. The Developer shall keep copies of the debarment and suspension certifications required by 24 CFR Parts 24 and 91.
15. Drug-Free Workplace: The Developer shall comply with the Drug Free Workplace Act of 1988 and implementing regulations in 24 CFR Part 24, Subpart F regarding maintenance of a drug-free workplace. The Developer agrees to complete and comply with the "Certification Regarding Drug-Free Workplace Requirements" attached hereto as **Attachment "F"** and incorporated herein by reference. The Developer will complete this certification, and a copy will be kept in the files of each party.
16. Utilization of Minority/Women's Business Enterprises: The Developer shall, to the greatest extent feasible, ensure that Minority/Women's Business Enterprises are included for consideration for participation in all construction, supply or service contracts, if any. The Developer shall comply with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises); Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138, as amended by Executive Order 12608 (Women's Business Enterprise). The Developer shall keep such records necessary to comply with 24 CFR §92.508(a)(7).

17. Section 3 Economic Opportunity: The Developer shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) and implementing regulations at 24 CFR Part 135 regarding economic development opportunities for Low and Very Low Income Persons. The Developer shall comply with the "Section 3" requirements attached hereto as **Attachment "G"** and incorporated herein by this reference. In essence, Section 3 provides that opportunities for training and employment arising from the use of HOME funds shall be provided to Very Low and Low Income Persons residing in the Project Area. Contracts for all types of work to be performed in connection with the Project shall be awarded to business concerns that are located in or owned by persons residing in the area. The Developer shall keep records documenting compliance with these requirements as required by 24 CFR §92.508 (a)(7).
18. Equal Employment Opportunity: The Developer shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR Part 60, and the Equal Employment Opportunity Clause attached hereto as **Attachment "H"** and incorporated herein by this reference. Any contracts entered into by the Developer shall include a provision requiring compliance with these regulations. The Developer shall keep records and documentation demonstrating compliance with these regulations.
19. Conflict of Interest: The Developer shall comply with the conflict of interest provisions in 24 CFR §92.356. No person who is any employee, agent, consultant, officer, or elected official or appointed official of the City or of the Developer who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. The Developer shall also keep records supporting requests for waivers of conflicts prohibited in 24 CFR §92.356.
20. Anti-Lobbying Provision: The Developer shall comply with the disclosure requirements and prohibitions of 31 U.S.C. §1352 and implementing regulations at 24 CFR Part 87 and shall so certify to the City. The Developer shall complete and comply with the "Certification Regarding Lobbying," attached hereto as **Attachment "I"** and made a part hereof by this reference. A copy of this document will be kept in each of the party's

files. The Developer shall also comply with the requirements for funding competition established by 42 U.S.C. §3531 et seq.

21. Displacement and Relocation: The Developer shall comply with the provisions of 24 CFR §92.353, "Displacement, relocation, and acquisition." It is anticipated that no displacement and relocation will occur as the result of new construction.
22. Lead-Based Paint Prohibited: The Developer shall not use lead-based paint in the Project or anywhere on the Property and shall comply with 24 CFR §92.355, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856), and implementing regulations in 24 CFR Part 35, Subparts A, B, J, K, M, and R. The Developer shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).
23. Non-Discrimination and Equal Opportunity: The Developer shall not exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination, with respect to the rehabilitation, rental, or operation of the Project, on the grounds of race, color, national origin, religion, ancestry, sex, sexual orientation, gender identity, spousal affiliation, or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation. The Developer shall fully comply with the requirements of 24 CFR §92.350, including the federal requirements set forth in 24 CFR Part 5, Subpart A, the nondiscrimination requirements at Section 282 of the HOME Investment Developers Act, and the unlawful discriminatory practice set forth in NMSA 1978 Section 28-1-7 (2003) of the New Mexico Human Rights Act and keep record of its compliance. The Developer shall at all times comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.) and implementing regulations contained in 24 CFR Part 1. The Developer shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et seq.) and implementing regulations in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973 and implementing regulations contained in 24 CFR Part 8. The Developer shall also comply with Title II of the Americans with Disabilities Act (42 U.S.C. §12101, et seq.). Any contracts entered into by the Developer shall include a provision requiring compliance with these regulations. The Developer shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).
24. Fair Housing Act: The Developer shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and implementing regulations at 24 CFR Part

100, et seq., Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing Programs) and implementing regulations in 24 CFR Part 107, the City's Municipal Code 13-62, et. seq., and shall keep all records demonstrating compliance.

25. Affirmative Marketing: As applicable the Developer and the City shall exercise affirmative fair housing marketing and shall comply with the provisions of 24 CFR §92.351. The Developer and the City shall keep records necessary to comply with 24 CFR §92.508(a)(7).
26. Miscellaneous Federal Requirements: The Developer shall comply with the federal requirements set forth in 24 CFR Part 5 as applicable.
27. Religious Organizations: The Developer shall comply with 24 CFR §92.257 regarding religious organizations. The Program must be used exclusively for secular purposes, available to all persons regardless of religion, and there must be no religious or membership criteria for participants in the Program.
28. Financial Accountability: The Developer shall have financial accountability standards that conform to the requirements detailed in 24 CFR §84.21, "Standards for Financial Management Systems" and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
29. Environmental Review: Prior to any disbursement of funds, the Project will be assessed and comply in accordance with the National Environmental Policy Act of 1969 (NEPA) (U.S.C. §4321) and implementing regulations contained in 24 CFR Parts 50-58.
30. Reversion of Assets: Upon the Agreement's expiration, the Developer shall transfer to the City any HOME funds on hand and any accounts receivable attributable to the use of HOME funds.

SECTION 4. DEFAULTS AND REMEDIES

1. Events of Default: The following shall constitute an Event of Default under this Agreement:
 - a) If the Developer fails to comply with any regulations governing HOME Program awards, including, but not limited to, 42 U.S.C. §§12701-12839, 24 CFR Part 92, or fails to comply with any of the terms contained in this Agreement and such failure continues for a period of thirty (30) days following written notice thereof given by the City to the Developer;

- b) If the Developer is deemed in default under the terms of other financing or mortgages used for the Project and said defaults extends beyond the applicable cure period provided in said documents;
- c) If at any time any material representation made by the Developer in any written certification or communication submitted by the Developer to the City in an effort to induce the making of this grant or the administration thereof is determined by the City to be false, misleading, or incorrect in any material manner;
- d) If the Developer does not disclose to the City, upon demand, the names of all persons with whom the Developer has contracted or intends to contract with for the construction or management of any portion of the Project, including contracts for services and/or labor; and
- e) If any default shall occur under the Mortgage and Restrictive Covenants, or any Grant Documents executed in connection with this grant by the City (herein in the "Grant Documents") which is not elsewhere specifically addressed herein and such default is not cured within the applicable cure period set forth in the Grant Documents, or if there is no cure period set forth, then within thirty (30) days following the date of written notice to the Developer thereof.

Notwithstanding any of the foregoing provisions to the contrary, if the Developer has failed to cure any default within five (5) days prior to the expiration of any applicable cure period, the City may, at its sole option, cure such default, provided, however, that the City shall be under no duty or obligation to do so.

2. **No Waiver:** Failure of the City to declare a default shall not constitute a waiver of any rights by the City. Furthermore, the waiver of any default by the City shall in no event be construed as a waiver of rights with respect to any other default, past or present.
3. **Remedies:** Upon the occurrence of any uncured Event of Default or any other breach of this Agreement, the City shall be free to terminate this Agreement, withhold all funding and/or exercise all rights and remedies available to it under the terms of this Agreement, or other Grant Documents, statutory law, equity, or under common law. The City may also exercise any one or more of the actions contained in 24 CFR §85.43(a)(1-5). All remedies shall be deemed cumulative and, to the extent permitted by law, the election of one or more remedies shall not be construed as a waiver of any other remedy the City may have available to it.

SECTION 5. INDEMNIFICATION

1. **Environmental Indemnification**: The Developer shall indemnify and hold the City harmless from any claim arising from, or in any way related to, the environmental condition of the Property, including, but not limited to, the cost of investigating, defending, and/or negotiating to a satisfactory conclusion claims made by environmental regulatory agencies, as well as all cleanup and property maintenance requirements imposed by any agency with lawful jurisdiction over the Property. This indemnification shall run from the time of initial discovery of any such adverse environmental condition and shall not be construed to commence only upon realization by the City of an actual pecuniary loss as a result of such adverse environmental condition. The existence of this indemnification agreement shall not be construed as an indicia of ownership, management or control of the Property by the City, and the Developer hereby recognizes and acknowledges that the City is not an owner or manager of the Property and does not exert any control thereupon. Notwithstanding anything herein, or in the Deed Restrictions and Covenants, or other Grant Documents to the contrary, this indemnification provision shall survive closing.

SECTION 6. INSURANCE

1. **Insurance**: Without limiting the Developer's indemnification, the Developer shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Certificates valid and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the City thirty (30) days prior to commencement of construction. The City shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The City, its officers and employees, shall be named as an additional named insured on all policies of liability insurance.
 - a) All policies of insurance shall be in a company or companies authorized by law to transact insurance business in the State of New Mexico. In addition, such policy shall provide that the coverage shall be primary for losses arising out of the Developer's performance of the Agreement. Neither the City nor any of its insurers shall be required to contribute to any such loss. The required certificate shall be furnished by the Participation prior to execution of this Agreement.
 - b) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the Developer shall provide the City with

evidence of the renewal of said insurance policies in a form satisfactory to the City.

c) The Policies of Insurance which must be secured are:

- i. Commercial General Liability Insurance: The Developer must secure commercial property liability insurance to be included, but not be limited to, bodily injury and property damage coverage. The policy's limit liability shall not be less than Five Hundred Thousand Dollars (\$500,000) per person/per occurrence for bodily injury, or death to one or more than one person and not less than One Hundred Thousand Dollars (\$100,000) per occurrence for property damage.
- ii. Worker's Compensation Coverage: All employees of the Developer must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
- iii. Flood Insurance: The Developer shall provide Flood Insurance as required under applicable HUD regulations and where applicable.

SECTION 7. MISCELLANEOUS PROVISIONS

1. Assignment: This Agreement may not be assigned to any other entity without the prior written consent of the City.
2. No Developer or agency: The City shall not in any way or for any purpose be considered to be or to have become a partner of the Developer with respect to the Program. The Developer is not, and shall not be, the agent of the City for any purpose, nor shall the City be the agent of the Developer for any purpose.
3. Severability: If any court of competent jurisdiction finds any part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement. If the rights and obligation of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effected, this Agreement is declared severable.
4. Entire Agreement/Modification: This Agreement, together with **Attachments "A" through "I"** attached hereto, constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, representations, and agreements as to the items herein contained. The City or the Developer may amend this Agreement at any time provided that such amendments make specific reference to this

Agreement, are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or the Developer 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, scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and the Developer.

5. **Notices:** Whenever by the terms of this Agreement, notice shall be given to either party, such notice shall be in writing and shall be hand delivered, sent by regular mail, or sent electronically to:
 - A. Housing Development Coordinator (HOME)
Community Development Department
City of Las Cruces
P.O. Box 20000
Las Cruces, New Mexico 88004
(575) 528-3134
 - B. Marie Schwartz, Executive Director
Mesilla Valley Habitat for Humanity
720 Santa Fe St.
Las Cruces, New Mexico 88001
(575) 525-0475
6. **Compliance With All Laws:** Notwithstanding anything to the contrary, the Program shall be operated consistent with all applicable federal, state, and local laws and regulations.
7. **Governing Law:** This Agreement shall be construed in accordance with the laws of the State of New Mexico.

IN WITNESS WHEREOF the parties have executed this Agreement, each upon the date set forth next to his/her name.

Mesilla Valley Habitat for Humanity



Marie Schwartz, Executive Director

3/22/13

Date

CITY OF LAS CRUCES

Brian Denmark, Assistant City Manager/COO

Date

APPROVED AS TO FORM:

City Attorney

ATTACHMENT "A"**LEGAL DESCRIPTION**

All that certain real property located in the County of Dona Aña, State of New Mexico, described as follows:

Lots 4, 5, 6, and 7, Block K of Del Rey Estates Subdivision Phase 1 in the City of Las Cruces, Dona Ana County, New Mexico, as shown and designated on the plat thereof, filed in the office of the County Clerk of said County on October 25, 2007, in Book 22 page(s) 363-365 of Plat Records.

Lot 4- 4730 Whitney Place
Lot 5- 4726 Whitney Place
Lot 6- 4722 Whitney Place
Lot 7- 4718 Whitney Place

ATTACHMENT "B"

STANDARDS OF ELIGIBILITY - 2013 INCOME LIMITS**PERSONS ELIGIBLE AND QUALIFIED TO RECEIVE SAID SERVICES AS ESTABLISHED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) 2013**

HUD INCOME GUIDELINES LAS CRUCES MSA INCOME LIMITS Income Levels by Family Size				
EFFECTIVE DATE, December 11, 2012				
MEDIAN FAMILY INCOME (MFI): \$45,000				
FAMILY SIZE * # OF PERSONS	EXTREMELY LOW INCOME (30% of Median)	VERY LOW INCOME (50% of Median)	LOW INCOME (80% of Median)	MODERATE INCOME (100% of Median)
1	\$9,900	\$16,450	\$26,350	\$31,500
2	\$11,300	\$18,800	\$30,100	\$36,000
3	\$12,700	\$21,150	\$33,850	\$40,500
4	\$14,100	\$23,500	\$37,600	\$45,000
5	\$15,250	\$25,400	\$40,650	\$48,600
6	\$16,400	\$27,300	\$43,650	\$52,200
7	\$17,500	\$29,150	\$46,650	\$55,800
8	\$18,650	\$31,050	\$49,650	\$59,400

Source: The US department of Housing and Urban Development (HUD) Office of Policy Development and Research (PD&R), FY 2013 Income limits from website at <http://www.huduser.org/datasets/il/il11/index.html>

Income limits for families with more than eight-persons, 8% of the four person base should be added to the either person income limit.

Income limits are rounded to the nearest \$50. For simplicity, this is optional for income limits for nine-plus person families.

ATTACHMENT "C"

**CITY OF LAS CRUCES
HOME PROGRAM
DEED RESTRICTIONS AND COVENANTS AGREEMENT**

Date: _____, 2013

_____, a unmarried/married man/woman, ("Owner") for consideration paid, grants to the City of Las Cruces, a New Mexico municipal corporation, having a mailing address of P.O. Box 20000, Las Cruces, NM, 88004 ("Lender"), the following described real estate in Dona Ana County, New Mexico ("Property"), which has an address of _____, Las Cruces, NM 88001, and which is more particularly described as follows in Exhibit "A" attached hereto and made a part hereof. If there is a conflict between the legal description and the Property address, the legal description shall control.

Deed Restrictions

This Deed Restrictions and Covenants Agreement ("Agreement") secures; (1) the performance of all of Owner's obligations and agreements are contained within this Agreement; (2) the conditions and obligations imposed upon the use of the Property are contained herein; and (3) the performance of the following obligations and is upon the statutory Deed Restrictions condition for the breach of which it is subject to foreclosure as provided by law;

- (a) This instrument and these restrictions are subordinate to the rights and liens, if any, under any valid outstanding Mortgage/Deed of Trust, currently of record. Foreclosure of such prior recorded lien or transfer in lieu of foreclosure shall extinguish this instrument and these restrictions; However, if any time following foreclosure by a lender or other transfer in lieu of foreclosure, but still during the term of the Affordability Period, the owner of record prior to the foreclosure or deed-in-lieu of foreclosure, or any newly formed entity that includes the former owner, or those with whom the former owner has family or business ties, in the Property the Affordability Period shall be revived according to its original terms.
- (b) In the event of a refinancing during the Affordability Period, the Property must continue to be subject to these deed restrictions; however, the initial date hereof will continue as the baseline for the Affordability Period.
- (c) The provisions of this instrument are hereby declared covenants running with the land and are fully finding on any successors, heirs,

and assigns of Owner who may acquire any rights, title, or interest in or to the Property, or any part of it. Owner, its successors, heirs, and assigns hereby agree and covenant to abide by and fully perform the provisions of this instrument.

This Agreement secures all future advances of funds to Owner by Lender in connection with this Agreement, and the lien of each such advance will relate back to the date of recordation of this Agreement.

Restrictive Covenants

This Agreement restricts the use of the Property, and is in consideration of a subsidy from Lender to Owner, through the Agent, Mesilla Valley Habitat for Humanity in the amount of _____ Dollars and ____ Cents_ (\$_____) ("Grant and/or Loan") for development and construction costs. The Grant and/or Loan will be made to the Owner through the Lender's HOME Investment Partnerships Program pursuant to Title 24 of the Code of Federal Regulations Part 92, as amended from time to time, and can be made to Owner only if Owner agrees to the restrictions and requirements set forth herein.

In consideration of the Grant and of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lender and Owner agree as follows:

Affordability. Owner shall maintain the Property as Owner-occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period of ___ years. The Affordability Period will begin on the date of the execution of this Deed Restrictions and Covenants Agreement.

B. Owner Occupied. Annually during the Affordability Period, upon request from their agent Mesilla Valley Habitat for Humanity, the owner(s) is required to provide documentation to their agent confirming the owner is occupying the unit as their principal residence. If, at any time during the term of the Affordability Period, the Property ceases to be the principal residence of Owner, whether through sale of the Property or otherwise, the Owner agrees to make the Property available for subsequent purchase only to a buyer whose household qualifies as a low-income family, earning between 45-80% of area median income (AMI) as will use the property as their principal residence. The Owner further represents and warrants that his/her family, if any, and the Owner met income eligibility requirements at the time the Contract to build the unit was executed with the Agent, Mesilla Valley Habitat for Humanity.

Resale Provisions. During the affordability period, the Lender provided the Owner consent to sell the property to a another qualified low income buyer as outlined in Section D, Transfer of Property, of this Agreement, the Lender and Owner agree to the resale provisions as follows:

1. Ensuring Affordability to Subsequent Buyers: If during the affordability period the property is sold to a subsequent buyer, the price at resale must ensure the original HOME-assisted Owner a fair return on investment (ie., the homebuyer's downpayment plus capital improvements made to the house), while also ensuring that the property is sold at a price that is affordable to a reasonable range of low-income buyers. The Fair Return on Investment will be measured by the Consumer Price Index (CPI) for shelter over the period of ownership, for similarly sized cities, not seasonally adjusted. For purposes of calculating the fair return on investment, the types of capital improvements that the City will include in its basis for calculating fair return are limited to value added improvements such as kitchen remodel, bath remodel, new windows, new siding and the addition of living space. The homeowner must document the improvements with receipts for the improvement. The purchase price at subsequent sale during the Affordability Period is required to be at a price that is affordable to a family earning between 45-80% AMI that will not pay more than 30% of their gross income for principal, interest, taxes and insurance and that shall not exceed 95% of median purchase price limits as established by the Department of Housing and Urban Development (HUD). The percentage of AMI is based on income levels adjusted for family size established by the HUD, for the Las Cruces Metropolitan Statistical Area at the time of the proposed sale.

It is important to note that in certain circumstances, such as a declining housing market where home values are depreciating, the original homebuyer may not receive a return on his or her investment because the home sold for less or the same price as the original purchase price.

2. Resale Provisions related to Net Proceeds- Provided that #1 immediately above is complied with, Net Proceeds due to the seller and HOME Funds prorations credited to the new buyer are applicable in the following scenarios:
 - i. Net Proceeds of new Sales Price in excess of 10% of the Original Sales Prices: If during the affordability period the property is sold to a subsequent buyer at a sales price that is an increase of more than 10% of the original HOME-assisted

Owner's sales price, the Owner/Seller shall provide a credit to the new buyer for the full amount of the HOME funds grant provided and must also provide a credit to the new buyer on the net proceeds in excess of 10% based on a prorated amount of the net proceeds due less the homeowner's investment and any capital improvements. Net proceeds defined is the amount of money received by the seller from the sales transaction after deducting the costs involved in making the transaction.

- ii. Net Proceeds of new Sales Price between 1% and 10% above the Original Sales Price: If during the affordability period the property is sold to a subsequent buyer at a sales price that is an increase of 10% or less than the original HOME-assisted Owners sales price, the Owner/Seller shall provide a credit to the new Homeowner for the full amount of the HOME funds grant provided and Owner/Seller may retain all other net proceeds from the sale.
- iii. New Sales Price that is equal to Original Sales Price: If during the affordability period the property is sold to a subsequent buyer at a sales price that is equal to the Owner's original sales price, the Owner/Seller shall provide a credit to the new buyer in an amount equal to the prorated amount of HOME funds provided over the affordability period and must also provide a credit to the new buyer based on a prorated amount of the net proceeds due.
- iv. New Sales Price that is less than the Original Sales Price: If during the affordability period the property is sold to a subsequent buyer at a sales price that is less than the Owner's original sales price, the Owner/Seller shall provide a credit to the new buyer in an amount equal to the prorated amount of HOME funds provided over the affordability period that is based upon the percentage of decrease between the original sales price and the sales price to the subsequent owner. The original owner is entitled to any remaining net proceeds.
- v. Net Proceeds – Pro-rata Calculations Defined: Net Proceeds and HOME Funds credits will be prorated to the subsequent buyer based on the term of the affordability period and the year during the affordability period that the property is being sold. For example, if the affordability period is five years, the proration is based on 20% per year. Likewise, if the affordability period is 10 years, the proration is based on 10% per year, and if the affordability period is 15 years, the proration is 6.67% per year. The time period for prorated amounts is calculated on the earliest whole year period from the sales date. For example, if the home is sold

at 4 years and 6 months, year 4 will be considered the sale year. The chart below is provided to outline the seller/buyer proration percentages for net proceeds and HOME funds due to seller and the subsequent buyer during the term of the affordability period:

Subsequent Sale Year	Affordability Period (years)		
	5	10	15
	Owner/Subsequent Buyer Proration (%)		
1	20/80	10/90	7/93
2	40/60	20/80	13/87
3	60/40	30/70	20/80
4	80/20	40/60	27/73
5	100/0	50/50	34/66
6		60/40	40/60
7		70/30	47/53
8		80/20	54/46
9		90/10	60/40
10		100/0	67/33
11			74/26
12			80/20
13			87/13
14			94/6
15			100/0

Transfer of the Property. Owner agrees that the Property may not be sold, transferred or title to the Property conveyed without Lender's prior written consent, and Lender is under no obligation to provide such consent. Lenders consent shall be granted only if new/subsequent owner meets the obligations specified within Section B above.

Exception to Transfer Restriction. Notwithstanding any other provision of this Agreement, the Grant will not be due on transfer of the Property if (1) a transfer of the Property is the result of the death of Owner and the transfer is by devise or operation of law, (2) the transfer is to a member of Owner's immediate family ("Heir") and for purposes of this Agreement the term "immediate family" means parents, siblings or children only, (3) the Heir qualifies for assistance under the federal regulations governing income eligibility for the Grant, and (4) the Heir covenants and agrees in writing to maintain the Property as the Heir's principal residence for the remainder of the term of the Grant and to otherwise comply with all the terms and conditions of this Agreement.

Default. Owner agrees that any default under the terms of the Grant, as those terms are set forth in this Agreement and executed

ATTACHMENT "D"**(SCOPE OF WORK, PROJECT SCHEDULE, AND BUDGET)**

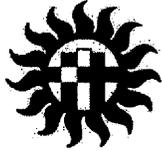
Mesilla Valley Habitat for Humanity proposes to use Program Year 2011 and 2012 HOME funds for acquisition and new construction of 4 vacant lots in the Del Rey Estates Subdivision Phase 1 for single family home ownership. The units will be sold to HOME income eligible households working through Mesilla Valley Habitat for Humanity's homeownership program. Program year 2011 CDBG funds will also be used to offset a portion of the acquisition price of the vacant lots. Construction is anticipated to begin in October 2013 with completion in approximately April 2014. The units will be sold at a price less than 95% of area median sales price for the City of Las Cruces.

The lots are identified as follows:

- Lot 4- 4730 Whitney Place
- Lot 5- 4726 Whitney Place
- Lot 6- 4722 Whitney Place
- Lot 7- 4718 Whitney Place

The sales price of the units to the households will be offset by the amount of HOME and CDBG funds provided to Mesilla Valley Habitat for Humanity with each unit receiving approximately \$51,801.34 in combined HOME and CDBG assistance. Mesilla Valley Habitat for Humanity will raise additional funding for construction costs.

(PAYMENT REQUEST FORM)



City of Las Cruces
PEOPLE HELPING PEOPLE

INVOICE

Date _____

Agency Name Mesilla Valley Habitat for Humanity
Property Address: _____

Original contract balance	\$
Balance as of end of previous month	
Invoice Expenses:	\$
GRAND TOTAL:	\$
Remaining Balance:	\$ _____

Certification:

I, _____, as _____
of _____,
hereby certify that the information provided on this invoice is for reimbursement
for eligible development and construction expenses incurred in the month of _____
for Mesilla Valley Habitat for Humanity, a Community Housing
Development Organization.

Printed Name

Signature

Date

ATTACHMENT "F"**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

The 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 the Grant. If it is later determined that the Developer 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 Developer will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION

1. The Developer 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 Developer's/Developer'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 Developer'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 number(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 Developer 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 Developer 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 Subgrantee: Mesilla Valley Habitat for Humanity

Program Name: Whitney Place Development PY 2011 and 2012

Date:

The Developer 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):

720 Santa Fe

4730 Whitney Place

4726 Whitney Place

4722 Whitney Place

4718 Whitney Place

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

**MESILLA VALLEY HABITAT FOR
HUMANITY**

By: Marie Stewart

3/22/13
Date

ATTACHMENT "G"**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 Developer 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 Developer will include this Section 3 Clause in every subcontract 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 Developer is in violation of the regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Developer 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 subrecipients, and its successors, and assigns to those sanctions specified by the HOME Agreement or contract through which Federal assistance is provided, 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.

MESILLA VALLEY HABITAT FOR HUMANITY

By: Monie Schwaef

3/22/13
Date

ATTACHMENT "H"

**EQUAL EMPLOYMENT OPPORTUNITY CLAUSE
FOR CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246**

In carrying out this Agreement, the Developer and its contractors and subcontractors shall not discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The Developer shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Developer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. The Developer shall state in all solicitations or advertisements for employees placed by or on behalf of the Developer that it is an Equal Opportunity or Affirmative Action employer.

**MESILLA VALLEY HABITAT FOR
HUMANITY**

By:

Moni Schwaig

3/22/13
Date

ATTACHMENT "I"

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant and contracts under grants, and cooperative agreements) and that the Developer shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**MESILLA VALLEY HABITAT FOR
HUMANITY**

By: Marie Schwatz

3/22/13
Date