



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 10Ordinance/Resolution# 13-169For Meeting of _____
(Ordinance First Reading Date)For Meeting of June 17, 2013
(Adoption Date)

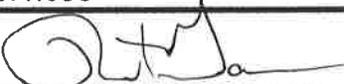
Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A MASTER AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY COMMUNITY OF HOPE (MVCH), A NEW MEXICO NON-PROFIT ORGANIZATION, FOR USE OF THE PROPERTY PURCHASED THROUGH THE CITY'S NEIGHBORHOOD STABILIZATION PROGRAM (NSP). THE RESOLUTION ALSO APPROVES THE TRANSFER OF DEED FOR THE PROPERTY FROM THE CITY OF LAS CRUCES TO MVCH INCLUDING THE FILING OF A LAND USE RESTRICTION AGREEMENT AGAINST THE PROPERTY.

PURPOSE(S) OF ACTION:

Approve a master agreement and additional documents and transfer of property to MVCH.

COUNCIL DISTRICT: 2		
<u>Drafter/Staff Contact:</u> Kevin Wilson	<u>Department/Section:</u> Community Development/ Planning & Neighborhood Services	<u>Phone:</u> 528-3177
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Mesilla Valley Community of Hope (MVCH) approached Community Development, Planning and Neighborhood Services staff with a need for a home for affordable rental housing for chronically homeless persons. MVCH is an eligible participant of the Neighborhood Stabilization Program (NSP) and the only organization requesting this type of assistance at this time. MVCH requested a home with four bedrooms that could be easily retrofitted to meet residential accessibility requirements.

The City of Las Cruces has received special funding through the Department of Housing and Urban Development to implement the Housing and Economic Recovery Act of 2008 (HERA) creating a national program called the NSP. Pursuant to the City's NSP, program income has been received from the sale of previous homes and as per applicable guidelines, a home that is intended to be rehabilitated and returned to the affordable housing inventory has been

purchased to aid MVCH efforts. Background information for the City of Las Cruces' NSP can be found in Attachment "A" memo.

The property located at 405 W. College Avenue was a foreclosed property meeting the criteria to be purchased with NSP funds and also meeting the desired needs of MVCH to house qualified individuals. The property was purchased by the City on April 18, 2013, for this purpose.

In order to comply with the regulatory requirements of the NSP, the City must execute a master agreement with MVCH. The master agreement provides a program description and obligations for the use and management of the property according to program regulations. The resolution also authorizes the transfer of property purchased to MVCH for purposes of complying with City and NSP directives. The City will file a Land Use Restriction Agreement against the purchased property to ensure use requirements under the Community Development Block Grant program are met. Upon completion of transfer of the property, MVCH will then rehabilitate the property using NSP funds not to exceed \$50,000, consistent with City and NSP procedures, and utilize the property as affordable rental, single-family housing. The rehabilitation project will be supervised by City Home Rehabilitation staff to ensure quality workmanship and adherence to the applicable sections of the Home Rehabilitation Handbook, Version 2.3, adopted February 4, 2013.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Master Agreement between the City of Las Cruces and MVCH.
3. Exhibit "B", Warranty Deed from City of Las Cruces to MVCH.
4. Exhibit "C", Land Use Restriction Agreement between the City of Las Cruces and MVCH.
5. Attachment "A", Memo providing NSP background information.

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

Funding for the majority of the purchase and rehabilitation of this project is from program income derived from the sale of other NSP homes and the remainder will come from the remainder of the original grant funds.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
HUD Special Projects - Fund	20184230-722190-12005	\$50,000.00	\$204,678.11	\$154,678.11	To be used to continue program objectives

OPTIONS / ALTERNATIVES:

1. Vote "YES"; this will approve the master agreement between with City of Las Cruces and MVCH and authorize the transfer of this property to MVCH under the City's Neighborhood Stabilization Program including the filing of the Land Use Restriction Agreement. This will allow the property to be used by MVCH for affordable rental, single-family housing.
2. Vote "NO"; this will not approve the master agreement between the City of Las Cruces and MVCH nor the transfer of property to MVCH for affordable housing. Staff may or may not be able to complete the City's obligations under the NSP grant from the State of New Mexico.
3. Vote to "Amend"; this modification will be at the Council's discretion and direction to staff will be required.
4. Vote to "Table"; this action is not an option due to the NSP's expenditure deadline for the State NSP Grant.

REFERENCE INFORMATION:

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

1. Resolution 09-139
2. Resolution 10-009
3. Resolution 10-160

RESOLUTION NO. 13-169

A RESOLUTION APPROVING A MASTER AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY COMMUNITY OF HOPE (MVCH), A NEW MEXICO NON-PROFIT ORGANIZATION, FOR USE OF THE PROPERTY PURCHASED THROUGH THE CITY'S NEIGHBORHOOD STABILIZATION PROGRAM (NSP). THE RESOLUTION ALSO APPROVES THE TRANSFER OF DEED FOR THE PROPERTY FROM THE CITY OF LAS CRUCES TO MVCH INCLUDING THE FILING OF A LAND USE RESTRICTION AGREEMENT AGAINST THE PROPERTY.

The City Council is hereby informed that:

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) is charged with implementing the Housing and Economic Recovery Act of 2008 (HERA); and

WHEREAS, HERA funds are a special allocation of Community Development Block Grant (CDBG) funds, of which the City of Las Cruces is an entitlement community, and HERA created a national program henceforth called the Neighborhood Stabilization Program (NSP) focused on neighborhood stabilization due to rising foreclosure and abandonment of properties; and

WHEREAS, Resolution 09-139 approved the City of Las Cruces NSP plan (NSP Substantial Amendment) and the acceptance of future program grant funds including guidance for NSP income, stating funds received from the sale of previously purchased properties may be recycled into other properties. Resolution 10-009 as approved and amended through Resolution 10-160, setting higher purchase limits, delegated authority to the City to purchase only those eligible, foreclosed properties; and

WHEREAS, Mesilla Valley Community of Hope (MVCH), a New Mexico non-profit organization, approached the Planning and Neighborhood Services staff with a need for a home for affordable rental housing due to overcrowding in one of their existing facilities; and

WHEREAS, the City of Las Cruces' NSP has received \$202,741.27 in program income and in accordance with program guidelines allows for the use of program income funds to purchase other eligible properties meeting the City of Las Cruces and NSP national objective, which allowed for the purchase of the property located at 405 W. College Avenue on April 18, 2013; and

WHEREAS, in order to comply with the regulatory requirements of the NSP and City program directives, the City must execute a master agreement with MVCH and transfer the property purchased to MVCH including the filing of a Land Use Restriction Agreement against the property to ensure use requirements, and property restrictions and protections under the Community Development Block Grant program guidelines; and

WHEREAS, MVCH will rehabilitate the property consistent with City and NSP procedures using NSP funds not to exceed \$50,000, per NSP guidelines, and utilize the property as affordable rental, single-family housing.

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

(I)

THAT the master agreement between the City and Las Cruces and MVCH as shown in Exhibit "A," attached hereto and made part of this Resolution, is hereby approved.

(II)

THAT the warranty deed from the City of Las Cruces to MVCH, as shown in Exhibit "B," attached hereto, and made part of this Resolution, is hereby approved.

(III)

THAT the Land Use Restriction Agreement between the City of Las Cruces and MVCH, as shown in Exhibit "C," attached hereto, and made part of this Resolution, is hereby approved.

(IV)

THAT the City Manager is hereby authorized, on behalf of the City, to execute all necessary documents and is the City's designated signatory for this and all future NSP actions.

(V)

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

DONE AND APPROVED this _____ day of _____, 2013.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

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

APPROVED AS TO FORM:



City Attorney

EXHIBIT "A"

MASTER AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY COMMUNITY OF HOPE FOR PROGRAM OVERSIGHT, REHABILITATION, PROPERTY OWNERSHIP, QUALIFYING AND SUPPORTING RENTERS AND ONGOING PROPERTY MANAGEMENT UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP)

THIS AGREEMENT is entered into between the City of Las Cruces (herein called the "Grantee") and Mesilla Valley Community of Hope. (herein called the "MVCH") under a State-issued NSP Grant; the MVCH is a non-profit organization.

WHEREAS, the Grantee has applied for and received funds from the State of New Mexico through the United States Government under Title III of Division B of the Housing and Recovery Act of 2008, Public Law 110-289, Title 24 of the Code of Federal Regulations (CFR) and Catalogue of Federal Domestic Assistance No. 14.256.

WHEREAS, the Grantee wishes to engage the MVCH to assist the Grantee in utilizing project funds;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of mutual comprehensibility contained herein, and for other good and valuable consideration under Grant No. _____, the sufficiency and receipt whereof being hereby acknowledged, the Grantee and the MVCH agree and follow hereto that;

I. SCOPE OF SERVICE

A. National Objective

The Grantee and MVCH certify that the activities carried out with the funds provided under this Agreement meet the CDBG Program's National Objective 570.208(a)(3) – Housing Activities as amended by the Housing and Economic Recovery Act of 2008. That is, acquisition and rehabilitation for the purpose of providing rental opportunities in perpetuity primarily for low-income families.

B. Definitions

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

1. Annual Gross Income (AGI) - means 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. AGI is used to determine potential applicant/tenant's initial and ongoing program and income eligibility.
2. Adjusted Annual Gross Income for Family Size – means annual anticipated income for a household 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). Income contains gross amount of wages, income from assets, regular cash and non-cash

contributions and other resources and benefits determined to be income by HUD as defined in 24 CFR Part 5.609 with adjustments as defined in 24 CFR Part 5.611.

3. Eligible Person or Eligible Household – means one or more natural persons or a family who are determined by the Grantee to be of Low Income or Moderate Income according to the income limits Adjusted to Family Size published annually by HUD based upon the Annual Gross Income of the household.
4. Energy Efficiency: Each property rehabilitated with NSP funds must have energy star labels on all replaced appliances, heating and cooling equipment, doors and windows. All accessible piping and ductwork should be insulated.
5. Grant Documents – means this Agreement, the Mortgage and Restrictive Covenant 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.
6. Location of Rental Units – All housing units funded through this NSP Grant must be within the limits of the City of Las Cruces.
7. Low-Income Person or Low-Income Household – means one or more natural persons who have a total Annual Gross Income for the household that does not exceed fifty percent (50%) of the Annual Median Income (AMI adjusted for Family Size for households with the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD. This households are the priority for rentals under this Grant, consistent with 24 CFR Part 5.653.
8. Moderate Income Person or Moderate Income Household – means 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.
9. Program Costs – Program costs under this grant are composed of three major items: (a) Costs of each dwelling – acquisition, appraisal, site assessment, inspections and other fees and rehabilitation (up to \$50,000 per unit). The total cost limit per dwelling is \$239,000.00 (b) all costs of qualifying and supporting with appropriate classes tenants living in a unit; and (c) ongoing costs of management and maintenance of each unit.
10. Project – means the acquisition by the Grantee of one or more dwellings within the city limits of the City of Las Cruces, that will be transferred to the MVCH and rehabilitated/re-developed by the MVCH and held as rental units for qualifying individuals and families in perpetuity, subject to the requirements at 24 CFR Part 982.

11. Project Completion – means that the rehabilitation work on each unit contemplated under this Agreement has been completed, the unit has met all CDBG and NSP Program regulations, meets the rental standards for the Americans with Disabilities Act, received the Certificate of Occupancy by the Grantee, and is made available and rented to qualifying families. Additionally, the final drawdown has been disbursed for the Project, and Project Completion information has been provided to the State for entry into the project completion system established by HUD.
12. Property Amendments – means all qualified property transferred to the MVCH from the Grantee under this Agreement, Identified in Attachment “A” and a Restrictive Covenant Agreement, identified as Attachment “B” of this Agreement
13. Rental Requirements – Every dwelling unit is subject HUD’s Fair Market Rent (FMR) limits to ensure that they are affordable to low income persons or households. This rental limits are re-determined by HUD on a regular basis.
14. Rental Unit – A dwelling unit has a minimum of one (1) bedrooms, one (1) full bath. Living Room, Dining Area, Kitchen and storage with at least 650 square feet of living space. If dwelling unit is single family, the property should have a minimum of 150 square feet of outside space front or rear. Each unit must meet the Housing Quality Standards at 24 CFR Part 982.401 at initial occupancy and regular Grantee inspections
15. Tenant Selection and Re-Certification – The MVCH shall do an initial review of income eligibility for each prospective tenant. In determining eligibility, the MVCH acknowledges that the City may examine the source documents evidencing the prospective tenant’s AGI, per 24 CFR Part 5.609. The MVCH shall adopt written tenant selection policies consistent with 24 CFR Parts 5.655 and 92.253. All documentation including, but not necessarily limited to, a tenant’s application, verifications, proposed rent and lease terms may be reviewed by the City’s Neighborhood Services Section, its Successors or Assigns, for final approval before a lease is signed and per City monitoring requirements during tenancy (at least every other year).
16. Area Median Income(AMI) - The dollar amount where half the population earns less and half earns more.

Other terms herein which have not been defined shall have the definition, meaning, and intent given them in the CDBG regulations, or 24 CFR Part 570 (or as cross-referenced therein), or their ordinary dictionary meaning as the context so requires. Please note that the terms “dwelling” and “unit” are used interchangeably throughout.

II. RENTAL PROGRAM DESCRIPTION

The Grantee will purchase, under a separate process, one residential property that has been abandoned or foreclosed upon, or are blighted or unused (with owners willing to sell) in order to deed it to the MVCH in perpetuity for use in this rental program for clientele primarily at or below 50% of AMI.

The major features of this award are:

- A. The MVCH must organize a team evidencing at least the following: (i) overall management and leadership; (ii) construction with appropriate trades; (iii) consulting real estate brokerage (optional); (iv) case management and renter support with appropriate supportive services; (v) rental subsidy provider(s), as appropriate; and (vi) property management, as appropriate.
- B. The Grantee will purchase one (1) property (unit), in consultation with the MVCH. The property will be a single family detached house.
- C. The Grantee will transfer the Title for the property to the MVCH prior to rehabilitation, who will own the property outright and in perpetuity and operate it as a rental unit. The MVCH may partner with subsidized rental program(s) that may be available for this unit. It has the option of establishing a special purpose entity to own and operate this property.
- D. The MVCH shall sub-contract appropriate activities, consistent with 24 CFR Part 85 and carry out the rehabilitation/redevelopment, subject to appropriate design standards and City code and a per unit maximum of \$50,000 in hard rehabilitation costs. Costs associated with design, permits, fees, appraisals, etc., are not counted towards the \$50,000 rehabilitation cap. This will be paid directly by the Grant or by Grantee NSP Administrative funds and/or Project Income generated from previous NSP activities. In rehabilitation, the MVCH must follow the energy efficient guidance in Section I.B (4), prior. The Grantee will pay the Design/Build contractor(s) on behalf of the MVCH as needed and will provide all construction oversight to ensure compliance with all Local, State and Federal codes and regulations.
- E. At the time of rehabilitation completion (after completion of rehabilitation to code) the property will be appraised by the Grantee. The appraised value must be in the "affordable housing" range, which currently (2012) is not-to-exceed \$239,000.00 per unit in Las Cruces. Rental charges before rent subsidy are capped at fair market rents established by HUD. Exceptions and special circumstances will be considered.
NOTE: At the time of completion, before rental, each property must be re-appraised. The appraisal must be completed no more than 60 days after the completion of the rehabilitation, so a rental level can be established in relation to value, so coordination with the Grantee is necessary.
- F. The MVCH must provide the Grantee with a management plan for approval, to oversee the operation and cash flow of the property prior to of the signing of this Grant Agreement and no later than 30 days prior to the first occupancy of the completed rental dwelling, whichever is later. The MVCH also has the option of hiring a professional management firm to operate this property. Such contract must be approved in advance of its signing, by the Grantee, and incorporating Sections II.G-J, following.
- G. The MVCH must establish separate accounts for rents collected on the property for: (i) a utilities escrow (paid into monthly @ 1/12 annual estimate); (ii) an insurance escrow (same); (iii) on-going maintenance, management and related costs at an amount to be determined by the Grantee; (iv) a case management and direct supportive services fund at an amount to be determined); (v) a tax escrow (1/12 annual estimate) , and (vi) a major maintenance and repair escrow (7% monthly rent

per unit). These funds will be maintained through a local lending institution for the life of the property ownership. All expenses paid from rental income are limited to direct operations of this property.

- H. The priority for the Grantee's Rental NSP is to identify and target those persons making less than 50% of Area Median income (AMI) at the time of occupancy. The MVCH may charge a tenant rent of no more than 30% monthly adjusted gross income (AGI). An individual unit may rent for no more than the maximum fair market rent established for that size unit in Las Cruces by HUD.
- I. If the established rent for a unit is greater than 30% of tenant's adjusted monthly gross income, the MVCH may partner with/or accept Section 8 Housing Choice Vouchers, Transitional Housing, Supportive Housing, Emergency Shelter and/or Tenant-Based Rental Assistance (TBRA) under HOME, or other sources as appropriate, to make up the difference between tenant-paid and unit rent. In such cases, Monthly Gross income will be adjusted and utilized for the tenant rent calculation, as appropriate to the subsidy program.

NOTE: A prospective renter may not qualify for rent subsidy. In such cases, the rental charge between the tenant's 30 percent of adjusted monthly gross income and the rent level set for that unit must be absorbed by the MVCH or a designated third party agency.

- J. Tenants will have their income recertified at least annually, or consistent with the rules of the subsidy program(s) utilized. For rent-subsidized individuals and families, continued occupancy for individuals and families shall be consistent with subsidy program rules. For non-subsidized individuals and families, continued occupancy is allowed until such time as their income exceeds 120% of AMI at a subsequent annual recertification, at which time they must find other residences within 60 days of said recertification.
- K. If the unit is sold or otherwise disposed of at any time after initial title is granted to the MVCH, it, or its successor agencies, must refund to the Grantee all funds originally expended for purchase and rehabilitation for reuse under the NSP, its successors or Assigns, the Community Development Block Grant Program, or for return to the State, as appropriate.

III. GRANT AMOUNT AND USE OF FUNDS

A. Recitals

The recitals set forth are true and correct and are incorporated herein and made a part of this Agreement.

B. The Grant

Under the terms and conditions of this Agreement, the Grantee agrees to grant the MVCH full authority, subject to Grantee oversight, for the redevelopment of the transferred property, housing counseling, other services as appropriate and all direct costs associated with the additional property transactions to eligible renters. The grant to the MVCH shall be on the terms set forth in this Agreement and Restrictive Covenants, as required by the Grantee and all other documents in the progressive chain of transfers illustrated by Section II.C, prior.

D. Payments

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement to the MVCH shall not exceed \$213,608.53 directly or indirectly on the MVCHs behalf and is expected to be eligible expenses as specified in the budget in Section II.C, above, herein in accordance with the Scope of Service and any approved modifications thereto. Payments are contingent upon compliance with all administrative requirements of Section VII and Attachment "C." It is also understood that all requests for payment or advances shall be in writing and must be submitted by the MVCH to the Grantee.

E. Disbursements

The Grantee shall disburse the grant proceeds only after receipt of invoices and certification from the MVCH that the portion of work then being billed has been satisfactorily completed. Disbursement of grant proceeds will be to the MVCH or by the Grantee on their behalf only after approval by the Grantee of invoices submitted and verification of work completed in accordance with this Agreement and applicable CDBG and NSP guidance and regulations. Notwithstanding anything to the contrary in this Agreement, the Grantee 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 Grantee accordingly. All NSP funds for the project must be disbursed within four years of the start of the Grantees NSP, June 20, 2013. Any funds, recycled or otherwise neither obligated nor expended 60 days after the end of the grant period (June 20, 2013) will be held by the Grantee and not be available to the MVCH.

F. Use of Grant Funds

The MVCH shall use the grant proceeds for eligible expenses permitted under applicable CDBG regulations and NSP guidance, and as the same may from time to time be amended, and in accordance with the Scope of Work, Project Schedule and Budget. The MVCH shall not use any NSP funds for prohibited purposes as set forth in 24 CFR §570.207 or other CDBG regulations, as the same may from time to time be amended. The MVCH does acknowledge and agree that any funds not used in accordance with permitted CDBG regulations must be repaid to the Grantee. The MVCH does acknowledge and agree if this Project is terminated before completion, either voluntary or otherwise; the MVCH must repay any NSP funds invested in the Project to the Grantee.

G. Program Income

There is little expected prospect for Program Income (PI) in this Grant. In the event that any Program Income is generated from the rental proceeds of the NSP grant, it may be retained by the MVCH for use within its own programs as approved by the Grantee in accordance with 24 CFR §570.500(a) and 24 CFR §570.504. The MVCH must demonstrate that its financial management system will track all proceeds of the NSP grant into its programs, as noted above.

The Grantee reserves the right to disallow the retention of program income by the MVCH with an administrative amendment to this Agreement upon review of required operational procedures to track income accrual.

V. TIME OF PERFORMANCE

A. Term of the Agreement

The term of this Agreement shall commence on its effective date, which is the date of the last party to sign this Agreement (the "Effective Date"), and shall continue through such time that circumstances require that this agreement be terminated. 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 CDBG regulations shall survive termination of this Agreement.

VI. AMENDMENTS

The Grantee may amend, and the MVCH can propose to amend the scope of work of this Agreement at any time, when appropriate. Any budget changes must be limited to comply with the administrative scope of the project as defined in Scope of Services in Part I. Any adjustment or amendment of any change to the scope must be in writing, approved and signed by a duly authorized representative of both organizations and by the Grantee's governing body. Any such amendment shall not invalidate nor relieve the Grantee or MVCH from its obligations under this Agreement.

The Grantee may, at 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 by the Grantee result in a change in the funding or the scope of services undertaken as part of this Agreement, such modifications will be incorporated by a written amendment that is signed by the Grantee and the MVCH.

Any amendments to this agreement are subject to 24 CFR Part 84.25 and the Covenants at Attachment "B."

VII. COMMUNICATIONS

Communication and details concerning this Agreement shall be directed in writing, hand delivered, and/or sent by regular mail to the following Agreement representatives:

Grantee

Kevin Wilson,
Home Rehabilitation Coordinator
City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88001
Phone: (575) 528-3177
E-mail: kwilson@las-cruces.org

MVCH

Ms. Nicole Martinez
Executive Director
Mesilla Valley Community of Hope
999 W. Amador
Las Cruces, NM 88005
(575) 523-2219
hope@zianet.com

VIII. ADMINISTRATIVE REQUIREMENTS

A. Applicable Laws

The MVCH shall comply with all applicable Federal, state and local laws rules and regulations dealing with property acquisition rehabilitation and resale and quality standards whether they are presently or subsequently promulgated. The MVCH agrees to comply with any and all the CDBG regulation and NSP guidance, 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 forthwith. The MVCH shall also comply with all other applicable Federal, state or local statutes, ordinances, rules and regulations including but not limited to all applicable provisions of the Las Cruces' Municipal, Building and Zoning Codes.

B. Financial Management

The MVCH agrees to comply with the stipulations of this Agreement and with 24 CFR 570.610, 24 CFR Part 84, Subpart C, Financial and 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 in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," 24 CFR Part 85 and OMB Circular A-133, "Audits of States, Local Governments and Non-Profits."

C. Documentation and Record-Keeping

The Grantee shall keep all financial records for the Project, including source documentation to support how NSP 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 Grantee to support the expenditures for this Project.

1. Records to be Maintained

The MVCH shall comply with 24 CFR Part 570.506 regarding records that must be maintained for this Project. The MVCH 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 termination of the agreement. The MVCH shall make all records available to the City, State, HUD, and to their respective representatives during normal business hours. The MVCH shall maintain all Covenants and Land Use Restriction Agreement, , and other documentation as may be required by the Grantee to support the expenditures for this Project. All supporting documents shall be maintained in accordance with the requirements of 24 CFR §85.20. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of this required 5-year period, the MVCH 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.

2. Reports:

The MVCH shall submit bi-monthly reports with such reports due by the 15th of each target month. These reports shall show the status of participants in the

MVCH's program, status of construction progress and status of identifying rental applicants and qualifying them for occupancy and appropriate supportive services.

3. Client Data:

The MVCH shall maintain client data demonstrating eligibility for services provided. Such data shall include, but not be limited to, beneficiary name, address, and income level consistent with 24 CFR Part 5 which shall be used for determining eligibility. Such information shall be maintained in a client file by the MVCH and shall be made available to the City's monitors and/or their designees for review upon request.

4. Uniform Administrative Requirements:

The MVCH and the Grantee shall comply with 24 CFR §570.610 regarding uniform administrative requirements. The MVCH shall provide the Grantee with such documentation and records to satisfy its requirements under this various provisions. The MVCH 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.

D. Property Standards

The MVCH shall comply with the property standards requirements set forth in City and State Law. The MVCH shall keep records to document compliance with this property standards. At Project Completion, the property must meet all applicable local codes, ordinances, zoning ordinances, and HUD's Section 8 Housing Quality Standards (HQS), as per 24 CFR §982.401.

E. Performance Monitoring

The Grantee will monitor the programmatic and financial performance of the MVCH during the pre-occupancy portion of the project and annually to insure that design and construction documents and services provided to the rental applicants are consistent with CDBG rules and regulations and this grant document. There will also be required short annual reports and a certification from the MVCH to the Grantee annually during the ownership period delineating appropriate statistics on number of clients for each rental property consistent with Section VII.C.

The Grantee will also conduct on-site inspections of the subject property during the construction process and thereafter, in order to verify compliance with property standards.

IX. 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 and parcel of this Agreement and have the same weight and importance as the initial Sections I through VIII.
- D. All certifications in the Attachment Section of this Agreement shall be signed by the MVCH as part of the execution of the Agreement.

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

Mesilla Valley Community of Hope

Signature

Printed Name

Title

Date

CITY OF LAS CRUCES

Robert Garza, City Manager
City of Las Cruces

Date

APPROVED AS TO FORM:

City Attorney

Attachment A: Legal Description

Attachment B: Restrictive Real Estate Covenants for Property from Grantee to MVCH.

Attachment C: General Grant Requirements.

REQUIRED CERTIFICATIONS FOR EXECUTION AS PART OF THIS AGREEMENT:

Land Use Restriction Agreement

Drug-Free Workplace for all Property.

Attachment F - EEO/AA Clause.

Attachment G - Anti-Lobbying Clause.

Attachment H - Section 3; and

Attachment I - Required City and Federal Clauses and Certifications.

Attachment A**Legal Description**

Lot numbered 2 of Sanchez Addition to Mesilla Park, Las Cruces, Dona Ana County, New Mexico, as the same is shown and designated on the plat of said Sanchez Addition to Mesilla Park, filed in the Office the County Clerk of Dona Ana County, New Mexico on July 8, 1968 in Plat Book 10, Folio 29.

**RESTRICTIVE REAL ESTATE COVENANT
FOR
405 W. College Avenue, LAS CRUCES, NEW MEXICO, 88005**

Made in Las Cruces, New Mexico

Date: _____

This agreement is made by Mesilla Valley Community of Hope, a New Mexico non-profit organization (herein after referred to as Developer), whose address is 999 W. Amador, Las Cruces, New Mexico, 88005, in favor of the **City of Las Cruces**, a municipal corporation (hereinafter designated as "the City.") The premises discussed in this Covenant are at 405 W. College Avenue, Las Cruces, New Mexico 88005. This Covenant is a part of NSP Grant 09-NSP-2-G-02, dated April 6, 2009, (herein called the "Agreement.") At completion of acquisition, the premises are owned by the Developer, with certain limitations.

I. Recitals:

- A. The following premises described as follows:
- (i) Lot numbered 2 of Sanchez Addition to Mesilla Park, City of Las Cruces, Dona Ana County, New Mexico, as the same is shown and designated on the plat of said Sanchez Addition to Mesilla Park, filed in the office of the County clerk of Dona Ana, New Mexico on July 8, 1968 in Plat Book 10, Folio 29.
 - (ii) Square footage of the property is approximately 12,300, and square footage of the buildings on the property is approximately 2,136.
- B. The Developer of that certain real estate (Real Property) in Dona Ana County, New Mexico, holds the property in fee simple.
- C. The City has advanced certain sums of money under the Housing and Economic Recovery Act of 2008 (HERA) to the Developer. Such funding benefits the real property of the Owner.
- D. In consideration for the assistance given by the City for the benefit of the Developer it has agreed to restrictions on the use of the real property in order to implement the policies and obligations of HERA and the CDBG program.

II. Restrictive Covenants:

During the term of this Agreement as set forth in Paragraph 4, below:

A. Use of Property:

In exchange for \$213,608.53 to acquire, rehabilitate and rent the premises. The premises are the property of the Developer and as stated herein owned by same and shall be maintained under this Covenant for use of the Developer in perpetuity, with the first priority usage as rentals for low to middle income persons and families as defined annually by HUD. The real property shall be used as lived-in habitation of record for the new renters.

B. This Agreement shall be and constitute Covenants running with the real property in perpetuity under the term of this agreement shall be enforceable by the City using legal and equitable action including injunctive relief.

C. This Agreement and Restrictive Covenant shall automatically terminate at such time the property may be sold by the Developer, its Successors or Assigns, with the Developer returning to the City its original total investment in the property.

D. Property Standards:

This project will meet all Housing Quality Standards or other physical property standards regulated by the U.S. Department of Housing and Urban Development and local building code requirements after rehabilitation by the developer.

III. Reporting Requirements

The Developer shall report in writing, at least annually to the City in perpetuity consistent with Section II, of this document. With this annual report the developer shall also submit a certification that the tenants of the premises are of low to moderate income with those of low and very low income the majority.

IV. Covenants Running with the Real Property

This Agreement shall be and constitute covenants running with the real property during the term of this agreement and shall be enforceable by the City by legal and equitable action, including an auction, for injunctive relief.

V. Binding Effect

Upon execution of this agreement by the developer, the terms, conditions and covenants of this Agreement shall be binding upon and inure to the benefit of all parties and of their representatives.

Signatures on the Next Page

I. GENERAL GRANT REQUIREMENTS:**A. Audits and Inspections**

The MVCH shall comply with the audit provisions contained in 24 CFR §85.26 and the Single Audit Act Amendments of 1996 (31 U.S.C. §§7501-7507) and OMB Circular A-133. Audits shall be conducted annually. The MVCH agrees to allow the City's Community Development Department, Financial Services Department, and Internal Auditor, or their successors or Assigns, to conduct any audits the City feels necessary at any time during the term of this Agreement or pursuant to any HUD request. The MVCH shall submit its annual audit to the Grantee within one hundred twenty (120) days of the end of the MVCH's fiscal year.

All MVCH records with respect to any matter covered by this Agreement shall be made available to the Grantee, their designees or the Federal government at any time during normal business hours, as often as the grantee deems necessary, to audit, examine and make excerpts or transcripts of all relevant data. One copy of the MVCH's reporting package shall be submitted to the Grantee 30 days after receipt of an auditors report or 120 days after the end of the audit period, whichever occurs first. The reporting package shall include:

- a. Financial statements,
- b. Schedule of prior year Audit findings,
- c. Auditors report, and
- d. Corrective action plan that addresses audit finding.

Any deficiencies noted in audit reports must be fully cleared by the MVCH or within 30 days after receipt. Failure of the MVCH to comply with the above audit requirements will constitute a violation of this Agreement and be subject to sanctions. The Sub-recipient and Owner hereby agree to have an annual agency audit conducted in accordance with current Grantee policy concerning MVCH audits at 24 CFR Part 570.502(b) and OMB Circular A-133 (Audits of States, Local Governments and non-Profit Organizations), as applicable. It also agrees to allow the City's Community Development Department, Financial Services Department, the Internal Auditor or HUD, upon request, to conduct any audits the City or HUD feels necessary at any time during the term of this Agreement or during the period of the covenants.

B. Suspension or Termination

Any of the parties 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 termination of the approved Scope of

Service may only be undertaken with the prior approval of the Grantee. In the event of any termination for convenience, all documents prepared by the MVCH under this Agreement shall become the property of the Grantee and the MVCH shall be entitled to receive just and equitable compensation for any satisfactory work completed on such construction and documents prior to the termination.

The Grantee may also suspend or terminate this Agreement in whole or in part if the MVCH materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the Grantee may declare the MVCH ineligible for further participation in the Grantee's Agreements, in addition to other remedies as provided by law. In the event there is probable cause to believe the MVCH is not in compliance with any applicable rules or regulations, the Grantee may withhold the one-time payment or such amount that the Grantee determines appropriate. Such suspension will last until such time as the MVCH is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

C. Insurance and Bonding

1. General:

The MVCH 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 the Board of Directors and all employees working on this project in an amount equal to cash advances from the Grantee.

2. Insurance Requirements:

The MVCH 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 Grantee thirty (30) days prior to commencement of construction and for each year during the period of the lease. The Grantee shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The Grantee, its officers and employees, shall be named as an additional named insured on all policies of liability insurance. The MVCH shall comply with the bonding and insurance requirements of 24 CFR Part 84, Subpart C, Financial and Program Management, Bonding and Insurance.

- (a) Such policy shall provide that the coverage shall be primary for losses arising out of the MVCHs performance of the Agreement. Neither the Grantee nor any of its insurers shall be required to contribute to any such loss.

- (b) The required certificate shall be furnished by the MVCH within 30 days of execution of this Agreement or it shall be automatically terminated.
- (c) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the MVCH shall provide the Grantee with evidence of the renewal of said insurance policies in a form satisfactory to the Grantee.
- (d) The Policies of Insurance which must be secured are:
 - (i) Commercial General Liability Insurance: The MVCH must secure commercial property liability insurance to include, but not be limited to, bodily injury and property damage coverage. The policy's limit of liability shall not be less than One Million Dollars (\$1,000,000) per person/per occurrence for bodily injury, or death to one or more than one person and not less than Two Hundred Thousand Dollars (\$200,000) per occurrence for property damage.
 - (ii) Worker's Compensation Coverage: All employees of the MVCH must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
 - (iii) Flood Insurance: The MVCH shall provide Flood Insurance as required under applicable HUD regulations, if necessary.

D. Close-Outs

The MVCH's obligations to the Grantee shall not end until all closeout requirements are completed.

- (1) Activities covered in all Annual reports.
- (2) disposition of program assets, if any.
- (3) determining custody of records.

E. Lead-Based Paint

The MVCH shall not use lead-based paint in the project or anywhere on the property and shall comply with 24 CFR Part 570.608 and the Lead Based Paint Poisoning Prevention Act (42 U.S.C. Section 5421-4846).

F. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the three parties. The MVCH shall at all times remain "independent contractors" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from

payment of all Unemployment Compensation, FICA, retirement, life and/or medical

insurance and Worker's Compensation Insurance, as the MVCH is an "independent contractor."

G. Hold Harmless

The MVCH agrees to defend, indemnify and save harmless the Grantee 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 MVCH 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 drawings, opinions, reports, change orders, designs and specifications by the Grantee, or its agents or employees, or
- 2) The giving of or failure to give directions or instructions by the Grantee, or its agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily harm to persons or damages to the property.

In the event the Grantee, or its officers, agents or employees, actively participates in such negligence (a) the MVCH is relieved of its obligation to defend the grantee, and (b) the MVCH's obligation to indemnify and save harmless is limited to the actual amount representing the MVCHs comparative share of negligence with the Grantee.

H. Grantee Recognition

The MVCH 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 MVCH will include a reference to the support, provided herein, in any publications made possible with funds made available under this Agreement,

I. Use of Real Property

The standards described in this section apply to real property within the MVCH's control which was acquired in whole or in part using CDBG funds in excess of \$25,000. The applicable standards are detailed in the Restrictive Covenants, Attachment "B".

J. Reversion of Assets

Upon its expiration, the MVCH shall transfer to the Grantee any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the MVCH's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 may remain in the possession of the MVCH subject to the Restrictive Covenants in Attachment "B".

In the event the property is not used in accordance with the national objective , I.A, page 1, above, the MVCH shall pay to the Grantee \$_____ or such other amount determined by the Grantee. Any such payment is program income to the Grantee.

K. Travel

Travel by the MVCH outside the metropolitan area of Las Cruces or south Dona County is not permitted with funds provided under this Agreement.

L. Religious Organizations

The MVCH 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, September 30, 2003.

II. Procurement

Procurement under this agreement is limited to the design and rehabilitation of the aforesaid property, subject to HUD rules and regulations and prior Grantee approval.

III. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights - Compliance

The MVCH agrees to comply with local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964, as amended; 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.

B. Section 504/Americans with Disabilities Act (ADA)

Section 504 and ADA

The MVCH 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) and with the Americans with Disabilities Act of 1990 which expands Section 504 nation and prohibits discrimination against the handicapped in employment, any Federally assisted program and states general architectural accessibility standards.

The MVCH agrees to comply with any Federal regulations issued pursuant to compliance by adding discrimination against the handicapped in any public areas, employment, state and local governmental areas and public and private transportation.

The MVCH shall also 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 MVCH shall make such postings available in alternate formats upon request. The MVCH shall adhere to the City of Las Cruces Communication Policy when publicizing events, activities, programs or services.

C. Affirmative Action (AAP):

1. Approved Plans

The MVCH shall prepare and provide to the Grantee an approved AAP and appropriate Tenant Selection plans to the Grantee.

2. Women/Minority Business Enterprise

The MVCH will use their best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the subsequent activities 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, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native American. The MVCH 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 MVCH are prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities except as provided for in accordance with Attachment F for lobbying; political patronage; and nepotism activities.

2. Assignability

The MVCH shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the MVCH from the Grantee 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 Grantee.

3. 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.

4. Hatch Act

The MVCH 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 Title V, United States Code.

5. Copeland "Anti-Kickback" Act

As applicable, the MVCH shall comply with the Copeland "Anti Kickback Act (18 U.S.C. Section 874), as supplemented by the Department of Labor Regulations contained at 29 CFR Part 3.

6. Conflict of Interest (COI)

The MVCH 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 MVCH further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Sub-recipient or Owner hereunder. This conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the MVCH, or of any designated public agencies, MVCH that receives funds under the NSP. The MVCH is required to keep records supporting requests of waivers of COI and submit COI statements to the Grantee, as so specified.

a. Applicability

In the procurement of supplies, equipment, construction, and services by MVCH and by contractors, if any, of the Sub-recipient and Owner 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 paragraph shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the MVCH or its contractors to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private property 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 III.D(7)(c) in its entirety 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 in any contract, subcontract, 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 III.D(7)(b) herein, apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the MVCH, or of any designated public agencies, or MVCH that is receiving funds under this part.

The MVCH shall provide to the Grantee a current list of Board of Director members with names, addresses, telephone numbers and positions and of staff who will work on this Agreement. The MVCH shall also provide signed COI statements dated no earlier than 180 days prior to the effective date of this Agreement for Board members and appropriate staff so identified.

ATTEST:

By: _____

_____ **Date**

By: _____

_____ **Date**

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 MVCH 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 MVCH will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION

1. **The MVCH 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 MVCH's workplaces 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 MVCH'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, 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 MVCH 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 MVCH 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 MVCH:

Program Name:

Date: _____

The MVCH 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):

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

ATTEST:

By: _____ Date _____

By: _____ Date _____

PLACE OF PERFORMANCE

FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Name of MVCH:

Program Name:

Date: _____

The MVCH 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):

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

ATTEST:

By: _____ Date _____

By: _____ Date _____

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

In carrying out this Agreement, the MVCH 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 preference, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The MVCH 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 MVCH 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 MVCH shall state in all solicitations or advertisements for employees placed by or on behalf of the MVCH that it is an Equal Opportunity or Affirmative Action employer.

ATTEST:

By:

_____ **Date**

_____ **By:**

_____ **Date**

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 Sub-recipient and Owner 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 ailure.

ATTEST:

By:

Date

By:

Date

SECTION 3 CLAUSE – SUBRECIPIENTS AND CONTRACTORS

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. 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; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

- G. In order for a Contractor to be given a "preference in bidding", per the regulations in 24 CFR part 135, they must achieve this certification no later than 4:30PM on last business day BEFORE the bid opening.

ATTEST:

By: _____ **Date:** _____

By: _____ **Date:** _____

**EMPLOYMENT NEEDS FOR
SECTION 3 ELIGIBLE CONTRACTS
WITH THE
CITY OF LAS CRUCES**

Name of Business: _____

Type of Business: Corporation Partnership
 Sole Proprietorship Joint Venture

Procurement/Bid/Project
Number: _____

Procurement/Bid/Project
Name: _____

How many current employees are expected to work on this contract?
_____ Full-time (F/T) _____ Part-time (P/T)

How many additional full-time employees does the contractor plan on hiring for this contract? _____

No. of anticipated full-time positions:

Position Type	Number of Anticipated Positions to be Hired		
	Regular Full-time	Temp Full-time	Seasonal Full-time
Laborers			
Apprentices			
Journeyman			
Licensed Trade			
Professionals			
Administrative/ Clerical			

ATTEST:

By: _____

Date: _____

Name of Organization: _____

REQUIRED CITY AND FEDERAL CLAUSES AND CERTIFICATIONS

VENDOR COMPLIANCE WITH THE WORKERS' COMPENSATION ACT

Any potential contractor shall agree to comply with state laws and rules pertaining to worker's compensation insurance coverage for its employees. If contractor fails to comply with the Workers' Compensation Act and Applicable rules when required to do so, the contract may be canceled effective immediately.

VENDOR COMPLIANCE WITH ADA REQUIREMENTS

Any potential contractor shall insure all proposed products, services or activities contained as a part of the proposal 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.

BREACHES AND DISPUTE RESOLUTION

Applicability to Contracts

Any contract in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes

Disputes arising in the performance of any contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the contractor mails or otherwise furnishes a written appeal to the City. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the City shall be binding upon the contractor and the contractor shall abide by the decision.

Performance During Dispute

Unless otherwise directed by the City, contractor shall continue performance as stated herein while matters in dispute are being resolved.

Claims for Damages

Should any party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City is located.

Rights and Remedies

The duties and obligations imposed by this documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Mesilla Valley of Hope

Signature _____ Date _____

Company Name _____

Title _____

Signature _____ Date _____

Company Name _____

Title _____

CONFLICTS OF INTEREST

Based in part on federal regulations (24CFR 85.36(b)) and Contract agreement between the MVCH and the Grantee, or agent of the MVCH shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his or her immediate family,
- (iii) His or her partner, or

(iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The MVCHs officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Proposers, or parties to sub-agreements. MVCH may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the MVCH's, employees, or agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest. The MVCH shall not enter into any Contract, subcontract, or agreement, in connection with any Project or any property included or planned to be included in any Project, in which any member, officer, or employee of the MVCH, or any member of the governing body of the locality in which the Project is situated, or any member of the governing body of the locality in which the MVCH was activated, or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Project during his/her tenure or for one year thereafter has any interest, direct or indirect. If any such present or former member, officer, or employee of the MVCH, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of his/her tenure any such interest, and if such interest is immediately disclosed to the MVCH and such disclosure is entered upon the minutes of the MVCH, either, with the prior approval of the Government, may waive the prohibition contained in this subsection: Provided, That any such present member, officer, or employee of the MVCH shall not participate in any action relating to such contract, subcontract, or arrangement.

Date _____

Signature _____

Company Name _____

Title _____

Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms.

(1) The MVCH shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

Date _____

Signature _____

Title _____

Date _____

Signature _____

Title _____

CERTIFICATION OF ENERGY CONSERVATION,
AIR QUALITY, AND CLEAN WATER COMPLIANCE

Company/Organization Name:

The third party Contractor named above hereby certifies compliance with the requirements listed below and regulations issued by the Environmental Protection Agency (EPA), Federal Highway Administration, Federal Transit Administration (FTA) and other agencies of the Federal Government as well as future regulations, guidelines, standards, orders, directives or other requirements that may affect this procurement contract.

The above named Contractor will:

1. Comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C., 7401 et seq.
2. Comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Act, as amended, 33 U.S.C., 1251 et seq.
3. Comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
4. Report any violation of this requirements by a sub recipient or itself, resulting from completing the required manufacturing and delivery of vehicles included with this contract to HUD and the appropriate United States EPA Regional Office.
5. Agrees to include this requirements in each subcontract exceeding \$100,000 financed in whole or in part with assistance provided by HUD.

Date _____ Signature _____

Title _____

CERTIFICATION OF RESTRICTIONS ON LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

I, _____, hereby certify on behalf of _____, 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 Federal 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 Federal 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- "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 sub-grants, loans, and cooperative agreement) which exceed \$100,000, and that all such sub-recipients 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.C.

As required by 49 CFR part 20, "New Restrictions on Lobbying," I will disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on my behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. Any person who fails to file the 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.

_____ Executed this _____ day of _____, of 20____.

(Signature of Authorized Official)

(Title of Authorized Official)

RETENTION AND INSPECTION OF RECORDS

A. The City, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the MVCH's directly pertinent books, documents, papers or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

The MVCH agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above, "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

The periods of access and examination in paragraphs (a) and (b) above for records relating to appeals, litigation or settlement of claims arising from the performance of the contract to which the HA (the City), HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

ACCESS TO RECORDS

The Contractor agrees to provide the MVCH, the HUD Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the contract for the purposes of making audits, examinations, excerpts and transcriptions.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable HUD regulations, policies, procedures and directives, including without limitation those listed directly or by reference by the Master Agreement between the City and HUD, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to so comply shall constitute a material breach of this contract.

COPYRIGHTS AND RIGHTS IN DATA

The City shall have exclusive ownership of all proprietary interest in, and the right to full and exclusive possession of all information, materials, designs and documents discovered or produced by MVCH or contractors, as appropriate, pursuant to the terms of the contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of the Contract.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The City of Las Cruces and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City of Las Cruces, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

False or Fraudulent Statements or Claims.

The Contractor acknowledges and agrees that:

(1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by executing the Grant Agreement or Cooperative Agreement, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by the Grant Agreement or Cooperative Agreement. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.

(2) If the MVCH makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized for 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate

Name and Title of Authorized Representative

Signature Date

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ ATTACHED INSTRUCTIONS, FOLLOWING PAGE, WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

- (1) The MVCH submits that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the MVCH is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title of Authorized Representative

Signature

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this Agreement, the MVCH is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Housing and Urban Development (HUD) may pursue available remedies, including suspension and/or debarment.
3. The MVCH agrees, should the covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by HUD.
4. The MVCH further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligible and Voluntary Exclusion " in all solicitations for lower tier covered transactions.
5. A participant in a covered transaction may rely upon a certification of prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the List of Parties Excluded from Procurement or Non-procurement Programs.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except for transactions authorized under paragraph 3 of this instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in the transaction, in addition to other remedies available to the Federal Government, the DOT may pursue available remedies, including suspension and/or debarment.

PRIVACY ACT

The Proposer agrees to comply with all applicable terms in the Privacy Act of 1974; will notify the government when the Proposer anticipates operating a system of records on behalf of the government in order to implement the bid if such system contains information about individuals retrievable by the individual's name or other identifier; and will include in any subcontract the Privacy Act notifications above.

TERMINATION

Flow Down

The termination requirements of contracts partially or wholly funded by Federal funds flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning. The Proposer, by signing this form, acknowledges that this contract termination provisions will apply to this procurement.

a. Termination for Convenience (General Provision) The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.

b. Opportunity to Cure (General Provision) The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

c. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the City may terminate this contract for default. The City shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City.

Name and Title of Authorized Representative

Signature

Date

STATE AND LOCAL LAW DISCLAIMER

Flow Down

The Disclaimer has unlimited flow down.

State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

Name and Title of Authorized Representative

Signature

Date

CIVIL RIGHTS REQUIREMENTS**29 U.S.C. § 623, 42 U.S.C. § 2000****42 U.S.C. § 6102, 42 U.S.C. § 12112****42 U.S.C. § 12132, 49 U.S.C. § 5332****29 CFR Part 1630, 41 CFR Parts 60 et seq.****Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the MVCH agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the MVCH agrees to comply with applicable Federal implementing regulations and other implementing requirements of HUD.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the MVCH agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. , (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The MVCH agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the MVCH agrees to comply with any implementing requirements HUD may issue.

(b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the MVCH agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the MVCH agrees to comply with any implementing requirements HUD may issue.

(c) **Disabilities** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the MVCH agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the dMVCH agrees to comply with any implementing requirements HUD may issue.

(3) The MVCH also agrees to include this requirements in each subcontract financed in whole or in part with Federal assistance provided by HUD, modified only if necessary to identify the affected parties.

Name and Title of Authorized Representative

AGE DISCRIMINATION ACT

The MVCH shall comply with all the requirements of the Age Discrimination Act of 1975 42 U.S.C. 6101 et seq. Or with respect to otherwise qualified handicapped persons as provided in section 504 of The Rehabilitation Act of 1973 29 U.S. C. 794.

Name and Title of Authorized Representative

Signature

Date

COMMUNITY DEVELOPMENT BLOCK GRANT LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT, dated as of _____ 2013, is by and between Mesilla Valley Community of Hope (the Owner) and the City of Las Cruces, a New Mexico municipal corporation.

WITNESSETH:

WHEREAS, the Owner acquired the property from the City of Las Cruces for use as an affordable housing primary residence. The property identified as 405 W College Avenue, is located on lands in the City of Las Cruces, County of Dona Ana, State of New Mexico, more particularly described in Exhibit A hereto; and

WHEREAS, with the City of Las Cruces for Community Development Block Grant (CDBG) NSP funds used for the purchase of the property and the rehabilitation of the property, the owner has made certain representations to the City about the Project Property, as to the nature of the Project, including the number of Low-Income clients to be served and what the Property shall be used for during the time period of the grant, which is five years after the closeout of the grant from which the assistance to the property was provided and upon which the City of Las Cruces relied in considering the Application and committing funds to the project; and

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

WHEREAS, the Owner, under this Agreement, intends, declares and covenants the use and occupancy of the Property shall be and are covenants running with the Property land for the term stated herein and shall be binding upon all subsequent owners of the Property for such term.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and the City of Las Cruces agree as follows:

Representations, Covenants and Warranties of the Owner

The home provided by this NSP grant will be returned to the City of Las Cruces or sold by the Owner for fair market value on the open real estate market at such time that the two parties agree in writing that the termination of the Master Agreement is to occur. All proceeds of said sale shall be returned to the City of Las Cruces upon closing of the transaction. Any funds in excess of \$213,608.53, the original amount of expenditure of NSP funds for the purchase and rehabilitation of the home, will be shared between the City of Las Cruces and MVCH on a pro rata basis as per the Grant Agreement between the City of Las Cruces and the Department of Finance and Administration. During the time period in which the project/facility is in compliant use by MVCH or its assignees, the following Land Use Restrictions apply:

- (a) The Owner may not change the use or planned use of any such property including beneficiaries of such use from that for which the acquisition or improvement was made unless the Owner provides, in conjunction with the City's Community Development Department, affected citizens with reasonable notice of, and opportunity to comment on, and proposed change, and either:
 - (1) The new use of such property qualifies as meeting one of the national objectives in §570.208 (formerly §570.901) and is not a building for the general conduct of government; or
 - (2) The requirements in paragraph (b) of this section are met.
- (b) If it is determined, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the City's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

- (c) If the change in use occurs after closeout, the provisions governing income from the disposition of the real property in §570.504 (b)(4) or (5), as applicable, shall apply to the use of the funds reimbursed.
- (d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of the section, the property no longer will be subject to any CDBG requirements.

Miscellaneous

- (a) All notices to be given pursuant to the Agreement shall be in writing and shall be deemed Given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the City of Las Cruces: City of Las Cruces
 Community Development Director
 700 N Main St.
 Las Cruces, NM 88001

To the Owner: Mesilla Valley Community of Hope
 Executive Director
 999 West Amador
 Las Cruces, NM 88005

The City and the Owner may, by notice given hereunder, designate any further or different, addresses to which subsequent notices, certificates or other communications shall be sent.

- (b) The Agreement shall be governed by the laws of the State of New Mexico and, where applicable, the laws of the United State of America.

SIGNATURES ON NEXT PAGE:

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

Mesilla Valley Community of Hope (SEAL)

By: _____
Nicole Martinez

Its: Executive Director

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

This instrument acknowledged before me this ____ day of _____, 2013 by _____,
as Executive Director of Mesilla Valley Community of Hope.

CITY OF LAS CRUCES (SEAL)

By: _____
Robert Garza

Its: City Manager

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

This instrument acknowledged before me this ____ day of _____, 2013 by
of _____
its _____.

Attachment A**Legal Description**

Lot numbered 2 of Sanchez Addition to Mesilla Park, Las Cruces, Dona Ana County, New Mexico, as the same is shown and designated on the plat of said Sanchez Addition to Mesilla Park, filed in the Office the County Clerk of Dona Ana County, New Mexico on July 8, 1968 in Plat Book 10, Folio 29.



City of Las Cruces
Community Development
Memorandum

To: Robert Garza, City Manager
From: Kevin Wilson, ^{KW by J.} Home Rehab Coordinator
Subject: Background Information for Neighborhood Stabilization Program (NSP)
Date: May 17, 2013 File No.: M-13-131

The information provided below is intended to provide background information on the City's Neighborhood Stabilization Program (NSP).

In July 2008, President Bush signed the Housing and Economic Recovery Act of 2008 (HERA). HERA was created to provide neighborhood stabilization to communities throughout the United States due to rising foreclosures and abandoned residential properties due to tough economic times. HERA appropriated \$3.92 billion in funding as part of a special allocation of Community Development Block Grant (CDBG) funds for distribution to States and Local governments. The State of New Mexico received a total allocation of \$19.6 million. The City of Las Cruces, received \$1.5 million from the State of New Mexico Department of Finance and Administration, Local Government Division.

In summary, the City's NSP Action Plan primarily focuses, through partnering agencies, in two areas. To (1) acquire, rehab, and resale abandoned or foreclosed properties or build new housing on acquired, vacant parcels for homeownership to serve persons between 50% and 120% of Area Median Income (AMI); and (2) acquire, rehab, and donate to qualified non-profit agencies as affordable rental housing for persons below 50% of AMI, primarily for those with special needs. All properties must be foreclosed or vacant, abandoned, blighted and unused, and available for sale.

The City, with the use of NSP funds, has partnered with La Casa, Tierra Del Sol, and Mesilla Valley Community of Hope (MVCH) to purchase and rehabilitate several eligible homes within Las Cruces city limits. Prior to any construction the homes are given to the partners by way of a recorded deed. These homes were then sold to low or moderate income first time homeowners or used by the non-profit organizations to provide ongoing safe and affordable rental housing to qualified individuals.

The City of Las Cruces NSP has received program income from the sale of previous homes and as per the program goals, actively plans to purchase additional homes that can then be rehabilitated and returned to the housing inventory. This use of program income is consistent with NSP regulations and guidelines. After extensive searching, the home at 405 W. College was selected to be purchased.

On June 17, 2013 staff will be presenting a Resolution to City Council requesting approval to transfer the property and execute a master agreement with MVCH. Once approved, the rehabilitation of the property will begin according to program guidelines.

This project will be serving single chronically homeless women. As defined by HUD, a chronically homeless individual must have a documented and diagnosable mental, cognitive or chronic physical disability. Therefore all of the individuals served through this program are persons with disabilities and members of a protected class. Federal law defines a person with a disability as "any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having an impairment."

Additionally, the project is in keeping with the City's 2011-2015 Consolidated Plan goals to; 1) increase affordability of rental housing to the City's lowest income renters 2) preserve affordable housing stock 3) assist special needs populations with social service and housing needs

For additional information regarding the City's responsibility pursuant to the Federal Fair Housing Act and how it is applicable to this project, please refer to the attached summary prepared by staff. The second page references notable cases that resulted in violations of the Fair Housing Act.

cc: Brian Denmark, Assistant City Manager/COO
David Weir, Community Development Director *DW*
VB Vincent Banegas, Community Development Deputy Director
Vera Zamora, Acting Senior Planner *VZ*
File

The City's Responsibility in regards to the Fair Housing Act:

The Fair Housing Act (FHA), 42 U.S.C. 3601-19 is intended to reverse the trends in residential segregation. Violations of the FHA can be intentional or unintentional. The FHA prohibits the refusal to sell or rent...or otherwise make unavailable or deny, a dwelling to any person/s because of race, color, religion, sex, familial status or national origin. Other violations in this situation could occur if the City seeks to set different terms, conditions, or privileges in the sale or rental of a dwelling or make discriminatory statements regarding the availability of a unit. In addition to prohibiting discrimination, The FHA requires local governments to waive or modify zoning and land use rules when necessary to afford equal housing opportunity for people with disabilities. **(Sec. 804. [42 U.S.C. 3604])**

It could be established that a violation has occurred under the FHA if the City's actions are motivated by intent to discriminate (discriminatory intent/disparate treatment) or; The City's otherwise neutral action has an unnecessarily discriminatory effect or disparate impact on a protected class. Discriminatory effect may be proven by showing either adverse impact on a particular group or harm to the community by the perpetuation of segregation.

Examples of potential violations could be:

- stopping the transfer of 405 College to MVCH
- changing the zoning of a parcel,
- refusal to issue a building permit,
- selective enforcement of building and zoning codes,
- or scheduling hearings when normally no such hearing are scheduled.

This project will be serving single chronically homeless women. As defined by HUD, a chronically homeless individual must have a documented and diagnosable mental, cognitive or chronic physical disability. Therefore **ALL** of the individuals served through this program are persons with disabilities and members of a protected class. Federal law defines a person with a disability as "any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having an impairment."

The City of Las Cruces **MUST** take steps to "affirmatively further Fair Housing" as a condition of receiving federal financial assistance (CDBG/HOME/NSP.) If we violate the FHA then we are non-compliant with federal regulations and any or all federal funding can be suspended or terminated.

If the City chooses to impose additional requirements (i.e. impact studies, increased documentation) that are not imposed on other Single Family Rental Units or similar housing types the action could be considered illegal discrimination. The City must have compelling government interest to "override" the intended use of this property. If other similar housing is not viewed with the same exact scrutiny as this housing the City could also be violating the FHA.

Legal precedence has established that a government body or decision maker may not rest its decision on part or in whole on discriminatory ideas or opinions. Government Officials must be free to hear all opinions but cannot ACT in a discriminatory way, even when their constituents express opposition for discriminatory reasons as it relates to Fair Housing.

Character of the neighborhood is often a cited argument; however, if an affordable housing project can locate by right (as this project has) on a particular parcel the uneasiness of neighbors CANNOT be an obstacle to such use.

The City could also be violating Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in any program or activity that receives financial assistance from any federal agency, as well as in programs conducted by federal agencies including HUD. The project is expected to be a recipient of McKinney-Vento grant monies for project based rental assistance.

NOTABLE CASES

Buckeye Community Hope Foundation v. City of Cuyahoga Falls, 2001 U.S. App. LEXIS 19391, 2001 Fed App. 0299P (6th Cir. 2001)- Statements with discriminatory overtones (References to "Section 8," "different class of people," negative references toward low income housing considered as evidence of racial bias in community that was 98% white; made by Mayor and citizens); violation of the Fair Housing Act found.

Dews v. Town of Sunnydale, 109 F. Supp.2d 526 (N.D. TX 2000) – Decision makers can be held liable for decisions made that respond to community bias. Minimum lot size and ban on apartment development violated Fair Housing Act.

Hovsons Inc. v. Township of Brick, 89 F. 3d `096 (3rd Cir. 1996) – Fair Housing Act violated when township refused to grant a variance to permit construction of a nursing home for elderly people with disabilities in a primarily residential area.

Huntington Branch NAACP v. Town of Huntington, 844 F. 2nd 926 (2nd Cir. 1988), aff'd 488 U.S. 15 (1988)-zoning ordinance restricting multifamily development to a small area that was already 52% minority discriminated based on race.

Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F.2d 1283, 1287-90 (7th Cir. 1977)-Refusal to rezone property to permit development of low income housing which had a racially discriminatory effect and violated the Fair Housing Act.

Tsombanidis v. City of W. Haven, 129 F. Supp. 2d 136 (D. Conn. 2001) (*Tsombanidis I*); *Tsombanidis v. City of W. Haven*, 180 F. Supp. 2d 262 (D. Conn. 2001) (*Tsombanidis II*); *Tsombanidis v. City of W. Haven*, 208 F. Supp. 2d 263 (D. Conn. 2002). *Tsombanidis v. City of West Haven*, ___ F. 3rd. ___ (3rd Cir. 2003)-Group home denied reasonable waiver of zoning rule, evidence of community bias attributed to decision makers. A city must incur reasonable costs and take modest, affirmative steps to accommodate the handicapped as long as the accommodations sought do not pose an undue hardship or a substantial burden.

United States v. Borough of Audubon, 968 F. 2nd 14 (3rd Cir. 1992), aff'd without opinion 797 F. Supp. 353 (D. N.J. 1992)- Injunction granted on request of the Department of Justice on allegations that local officials intimidated and harassed developers of group home by enforcing an invalid zoning provision.

United States v. City of Philadelphia, 30 F. 3rd 1994 (aff'g without opinion 838 F. Supp. 223 (E.D. PA 1993)- Refusal to permit a variance that would have permitted a group home for people with mental illness to substitute a side yard for a back yard zoning requirement violated the Fair Housing Act.

Stewart B. McKinney Found, Inc. v. Town Plan & Zoning Com'n, 790 F. Supp. 1197, 1216-19 (D. Conn. 1992) The plaintiff "need prove no more than that the conduct of the defendant[s] actually or predictably results in . . . discrimination; in other words, that it has a discriminatory effect. The plaintiff need make no showing whatsoever that the action resulting in . . . discrimination in housing was . . . motivated [by a desire to discriminate against the handicapped]."

Community Housing Trust v. Department of Consumer and Regulatory Affairs, 2003 Westlaw 1887958 (D.D.C., April 16, 2003)- "[T]he law is quite clear that "even where individual members of government are found not to be biased themselves," plaintiffs may demonstrate a violation of the FHAA if they can show that "discriminatory governmental actions are taken in response to significant community bias." (Citations omitted.) Accordingly, "a decision made in the context of strong, discriminatory opposition becomes tainted with discriminatory intent even if the decision-makers personally have no strong views on the matter."