City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 14 **Ordinance/Resolution#** 15-166

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of March 16, 2015 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY HABITAT FOR HUMANITY FOR THE ACQUISITION OF FIVE (5) VACANT LAND PARCELS IN THE AMOUNT OF $100,000.00 FOR AFFORDABLE HOUSING DEVELOPMENT IN RINCON MESA SUBDIVISION, PHASE 1.

PURPOSE(S) OF ACTION:

Approve a CDBG agreement for land acquisition.

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City has applied for and received funds from the United States Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) under Title I of the Housing and Community Development Act of 1974. The CDBG Program provides the City of Las Cruces the opportunity to administer a federally funded program in accordance with the goals of the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs.

On May 5, 2014, the Las Cruces City Council approved Resolution No. 14-176 adopting the City's 2014 Action Plan. The 2014 Action Plan outlines how the Home Investment Partnerships Act (HOME) and CDBG entitlement funds for Program Year 2014 will be spent in accordance with the strategic goals as outlined in the Consolidated Plan. The 2014 Action Plan allocated $100,000.00 in CDBG funding to Mesilla Valley Habitat for Humanity for the acquisition of vacant parcels for the development and construction of affordable housing units with the objective of increasing the supply of affordable, owner-occupied housing.

The project will expend $100,000.00 for the purchase of five parcels, identified as Lots 6, 7, 8, 9, and 10 of Rincon Mesa Subdivision Phase 1. Upon completion of construction, the units will be offered for sale to clients on Mesilla Valley Habitat for Humanity's waiting list with household incomes of less than 80% of area medium income. The amount of CDBG funds provided for the purchase of each parcel provides a direct reduction in the final sales price to each household. At closing, the City will file a Land Use Restriction Agreement (LURA) against each property to ensure the property remains affordable housing for the required affordability period.

In order to comply with CDBG regulations, a CDBG grant agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity, as shown in Exhibit "A," is required to be executed.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", CDBG Agreement.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☒	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the ____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: in the amount of $_____ for FY__.
	No	☒	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Community Development: (Fund 2000)	20184400-722190-10416	$100,000.00	$100,000.00	$0.00	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the CDBG agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity which will provide funding for land acquisition for affordable housing development.
2. Vote "No"; this will deny the approval of CDBG funding to Mesilla Valley Habitat for land acquisition.
3. Vote to "Amend"; further direction would come from City Council.
4. Vote to "Table"; further direction would come from City Council.

REFERENCE INFORMATION:

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

1. Resolution No. 14-176

RESOLUTION NO. 15-166

A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND MESILLA VALLEY HABITAT FOR HUMANITY FOR THE ACQUISITION OF FIVE (5) VACANT LAND PARCELS IN THE AMOUNT OF $100,000.00 FOR AFFORDABLE HOUSING DEVELOPMENT IN RINCON MESA SUBDIVISION, PHASE 1.

The City Council is informed that:

WHEREAS, the City of Las Cruces has applied for and received funds from the United States Department of Housing and Urban Development (HUD) for the Community Development Block Grant (CDBG) under Title I of the Housing and Community Development Act of 1974; and

WHEREAS, the CDBG Program provides the City of Las Cruces the opportunity to administer a federal funded program in accordance with the City's Consolidated Plan, a comprehensive planning document that outlines affordable housing and community development needs; and

WHEREAS, on May 5, 2014, the Las Cruces City Council approved Resolution No. 14-176 adopting the City's 2014 Action Plan; and

WHEREAS, the 2014 Action Plan outlines how the Home Investment Partnerships Act (HOME) and Community Development Block Grant (CDBG) entitlement funds for Program Year 2014 will be spent in accordance with the strategic goals as outlined in the Consolidated Plan; and

WHEREAS, the 2014 Action Plan allocated $100,000.00 in CDBG funds to Mesilla Valley Habitat for Humanity for the acquisition of vacant land for the development and construction of affordable housing units with the objective of increasing the supply of affordable, owner-occupied housing; and

WHEREAS, Habitat for Humanity will expend $100,000.00 of the total allocation

to purchase five vacant land parcels in the Rincon Mesa Subdivision Phase 1, for construction of owner-occupied affordable housing units; and

WHEREAS, in order to comply with CDBG regulations, the CDBG Grant agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity is required to be executed.

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

(I)

THAT the CDBG grant agreement between the City of Las Cruces and Mesilla Valley Habitat for Humanity, as shown in Exhibit "A," attached hereto and made a part of this Resolution, is hereby approved.

(II)

THAT the Assistant City Manager/COO, as the official representative of the City, is hereby authorized to sign the agreement on the City's behalf.

(III)

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

DONE AND APPROVED this _____ day of _____, 20__.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT "A"

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

THIS AGREEMENT is entered into this ____ day of _____, 2015, between the City of Las Cruces (herein called the "City") and Mesilla Valley Habitat for Humanity. (herein called the "Sub-recipient"), under CDBG Grant Number **B-14-MC-35-0002**.

WHEREAS, the City has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383, Title 24 of the Code of Federal Regulations (CFR) and Catalogue of Federal Domestic Assistance No. 14.218; Munis Project #20184400-722190-10416; CDBG/HOME Activity # .

WHEREAS, the City will have performed all of the steps necessary to obtain U.S. Department of Housing and Urban Development (HUD) approval of the City's 2011-2015 Consolidated Plan, including the 2014 Action Plan, which includes funding of $100,000.00 for FY 2014-15; and

WHEREAS, the City wishes to engage the Sub-recipient to assist the City in utilizing up to $100,000.00 of such funds;

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

I. SCOPE OF SERVICE

A. National Objectives

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

___ In accordance with 24 CFR Part 570.208 (a) (1) (i), Area benefit activities, an activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons.

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

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

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

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

B. Activities

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

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

1. Program Description:

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

- $100,000.00 will purchase Lots 6, 7, 8, 9, and 10, Block G of Rincon Mesa Subdivision Phase 1.

C. Levels of Accomplishment

In addition to the normal administrative services required as part of this Agreement, the Sub-recipient acknowledges that funds will be disbursed for each program lot identified after receipt by the City of a fully executed purchase contract and completion of satisfactory environmental assessment and identified replat on the identified properties. All units shall be constructed according to local building code, receiving a certificate of occupancy upon completion. Habitat for Humanity will use the funds to purchase 5 vacant lots for the development and construction of affordable housing units.

Activity

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

D. Performance Monitoring

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

II. TIME OF PERFORMANCE

A. Term of the Agreement

This Agreement shall start on the Effective date of this Agreement which is the date of the last person to sign or July 1, 2014, or after HUD releases the funds, whichever is later. The period of performance will continue for Twelve (12) months after the beginning date, but end no later than June 30, 2015.

B. Eligible Payment Period

All eligible expenses and purchases approved by this Agreement and incurred during the grant period from July 1, 2014, to June 30, 2015 are eligible for reimbursement. The term of this Agreement and the provisions herein shall not be extended unless a one-time extension for less than six (6) months is requested in writing by the Sub-recipient and approved by the City. Such an extension may be granted by the City's Neighborhood Services Administrator, provided that such an extension is for cause beyond the Sub-recipient's control, and in accordance with the same terms and conditions of the original agreement. All other extensions or changes in scope, performance, or approved responsibility to this Agreement shall be by the City's governing body and the Sub-recipient in writing.

III. BUDGET

Sub-recipient is required to expend funds in a timely manner. Sub-recipient should expend 100% of the funds within 12 months of the Agreement start date.

Funds that are not expended by the end of the term of the Agreement will be held by the City and will not be available to the Sub-recipient.

Payments will be made for the line items listed below:

DESCRIPTION OF ITEM	APPROVED BUDGET
Vacant Land Purchase	Up to $100,000.00
TOTAL	**$100,000.00**

A detailed description of each line item above may be requested of the Sub-recipient as a condition of contract execution and will be included as Attachment F.
Detailed description requested: __ Yes _X__ No

Indirect costs cannot be charged to this Agreement.

IV. AMENDMENTS

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

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

V. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed **$100,000.00**. The payment of eligible expenses shall be made for only the line item budgets specified in Section III herein and in accordance with the scope of service. Payments are contingent upon adherence to all administrative requirements as specified in Section VII of this Agreement.

VI. COMMUNICATIONS

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

CITY	SUB-RECIPIENT
Jan Lauterbach, Housing Development Coordinator-HOME Community Development Department City of Las Cruces P.O. Box 20000 Las Cruces, NM 88004 Phone: (575) 528-3134 E-mail: jlauterbach@las-cruces.org	Maria Vasquez, Executive Director Mesilla Valley Habitat for Humanity Mailing: 720 Santa Fe St. Las Cruces, NM 88001 Phone: (575) 525-0475 E-mail: mariahfh@qwestoffice.net

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

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

B. Documentation and Record-Keeping

1. Records to be Maintained

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

a. Records providing a full description of each activity undertaken and demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program;
b. Records necessary to determine the eligibility of activities;
c. Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973;
d. Financial records as required by 24 CFR Part 570.502 and 24 CFR Part 84, Subpart C, Financial and Program Management;
e. Other records necessary to document compliance with 24 CFR 570 Subpart K;

f. Records of the ethnicity, race, gender, disability status, and female head of household status of all eligible clients.
g. For those Sub-recipients not covered by 24 CFR part 570.208 (a) (2) (i) (A) or (D), disclosure of family income, individual income, annual income and as adjusted income.

2. Data Collection

The Sub-recipient shall maintain client data demonstrating client eligibility for the program. Such data shall include, but not be limited to: client name, address, income (as applicable), assets, identity and verification of Las Cruces residency, verification in accordance with 24 CFR Part 5 or other City required documentation for determining eligibility, and description of service provided. Such information shall be maintained in a client file by the Sub-recipient and shall be submitted as part of the monthly report and also made available to the City monitors or their designees for review upon request. A Monthly Summary Progress Report of construction progress and client eligibility shall be submitted with each monthly billing (see chart of requirement, below).

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

REPORTS and/or DOCUMENTATION	SUBMITTED TO CITY	RETAINED N CLIENT FILES
Client Verification (intake) Forms	*	X (original)
Verification of Las Cruces residency	*	X (original)
Income and Asset documentation used to determine household eligibility	X	
Monthly Summary Progress Report	X	
Request for Payment w/back-up documentation	X	
Final (Annual) Report	X	

4. Retention

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

of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

5. Disclosure

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

C. Training

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

VIII. GOVERNANCE AND SEVERABILITY

A. This agreement shall be governed by the laws of the State of New Mexico.

B. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

C. All attachments are part of this Agreement have the same weight and importance as the initial Sections I through VIII.

D. All certifications in Attachments "B" through "E" shall be signed by the Sub-recipient as part of this Agreement.

SIGNATURES ON THE NEXT PAGE

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

MESILLA VALLEY HABITAT FOR HUMANITY.

_____
Signature

Maria Vasquez
Printed Name

Executive Director, Mesilla Valley Habitat for Humanity
Title

_____
Date

CITY OF LAS CRUCES

_____
Brian Denmark, Assistant City Manager/COO

APPROVED AS TO FORM:

_____
Date

_____
City Attorney

ATTACHMENT "A"

I. GENERAL ITEMS

A. Audits and Inspections

All Sub-recipient records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. One copy of the Sub-recipient's reporting package shall be submitted to the City 30 days after receipt of an auditor's report or 9 months after the end of the audit period, whichever occurs first. The reporting package shall include:

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

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

B. Suspension or Termination

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

In accordance with 24 CFR 85.43, the City may also suspend or terminate this Agreement, in whole or in part, if the Sub-recipient materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein; and the City may declare the Sub-recipient

ineligible for any further participation in the City's Agreements, in addition to other remedies as provided by law. In the event there is probable cause to believe the Sub-recipient is in noncompliance with any applicable rules or regulations, the City may withhold up to fifteen (15) percent of said Agreement's funds or such amount that the City may determine as appropriate. Such suspension will last until such time as the Sub-recipient is found to be in compliance by the City, or is otherwise adjudicated to be in compliance.

C. Workers' Compensation

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

D. Insurance and Bonding

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

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

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

E. Reporting and Payment Procedures

1. Payment Procedures and Monthly Reports

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

Payments will be made upon receipt of invoice and acceptable backup documentation from the sub-recipient. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Sub-recipient, and not to exceed actual cash requirements.

Payments will be adjusted by the City in accordance with advance funds and program income balances available (if any) in Sub-recipient accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Sub-recipient.

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

2. Final Report

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

F. Close-Outs

The Sub-recipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: Making final payments, submission of Final Report.

G. General Compliance

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

H. "Independent Contractor"

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

I. Hold Harmless

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

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

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

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

J. Grantor Recognition

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

K. Program Income

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

L. Reversion of Assets

Upon its expiration, the Sub-recipient shall transfer to the City any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. This Agreement authorizes the acquisition of real property; therefore, change in use or property standards/retention requirements in 570.504 are applicable.

M. Procurement

1. Compliance

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

2. Standards

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

N. Travel (*Check one*)

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

___X___ Travel is NOT included as part of this Agreement.

O. Sub-contract Provisions

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

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

The Sub-recipient shall furnish and cause each of its own sub-contractors to furnish all information and reports required hereunder and will permit access to

its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

1. Approvals

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

2. Monitoring

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

3. Content

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

4. Selection Process

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

P. Copyright

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

Q. Religious Organizations

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

II. PERSONNEL AND PARTICIPANT CONDITIONS

A. Drug-Free Workplace

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

B. Civil Rights

1. Compliance

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

2. Non-discrimination/EEO-AA Statement

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

3. Section 504

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

4. Americans with Disabilities Act.

a. Contracts to Conduct Programming

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

such requests received, granted and/or denied and the reason for any denials.

b. Operational Duties and Responsibilities

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

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

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

C. Affirmative Action

1. Approved Plan

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

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

2. Women/Minority Business Enterprises

The Sub-recipient will use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by

minority group members or women. For the purpose of this definition, a "minority group members" are African--Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native Americans. The Sub-recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

D. Employment Restrictions

1. Prohibited Activity

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

2. "Section 3" Clause

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

3. Notifications

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

4. Assignability

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

5. Debarment and Suspension

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

6. Hatch Act

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

7. Conflict of Interest (COI)

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

a. Applicability

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

In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its Sub-recipients to individuals,

businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to Sec. 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to Sec. 570.203, 570.204, 570.455, or 570.703 (i)).

b. Conflicts Prohibited

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

c. Persons Covered

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

The Sub-recipient shall provide to the City a current list of Board of Directors, with names, addresses, telephone numbers and positions held. The Sub-recipient shall also provide signed COI statements dated no earlier than 180 days prior to the effective date of this Agreement, within 30 days of signing this Agreement for all Board members and appropriate staff, so identified. COI statements must be renewed annually by all appropriate persons.

8. Lobbying

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

ATTACHMENT "B"

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

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

CERTIFICATION

1. The Sub-recipient certifies that it will provide a drug-free workplace by:

   A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Sub-recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

   B. Establishing an ongoing drug-free awareness program to inform employees about:

      1. The dangers of drug abuse in the workplace;
      2. The Sub-recipient's policy of maintaining a drug-free workplace;
      3. Any available drug counseling, rehabilitation and employee assistance programs; and
      4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

   C. Making it a requirement that each employee be engaged in the performance of the grant is given a copy of the statement required by Paragraph "A."

   D. Notifying the employee in the statement required by Paragraph "A" that, as a condition of employment under the Grant, the employee would:

      1. Abide by the terms of the statement; and
      2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.

E. Notify the City's Community Development Department and/or HUD in writing within ten (10) calendar days after receiving notice under Subparagraph (D) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification numbers(s) of each affected grant.

F. Taking one of the following actions, within 30 calendar days of receiving notice under Subparagraph (D) (2), with respect to any employee who is so convicted:

1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement or other appropriate agency.

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).

2. The Sub-recipient shall insert in the space provided on the attached "Place of Performance" form the site(s) for the performance of work to be carried out with the Grant funds (including street address, city, county, state, zip code and total estimated number of employees). The Sub-recipient further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the Agreement, it shall notify the City's Community Development Department and/or HUD immediately upon the decision to use such additional sites by submitting a revised "Place of Performance" form.

PLACE OF PERFORMANCE
FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Name of Sub-recipient: Mesilla Valley Habitat for Humanity

Program Name: Vacant Land Acquisition

Date: _____

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

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

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

4970, 4972, 4974, 4976, and 4978 Wendall Rd. Las Cruces, NM 88012

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

By: _____
Date: _____

ATTACHMENT "C"

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

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

By:_____
Date: _____

ATTACHMENT "D"

SECTION 3 CLAUSE

A. The work to be performed under this contract is on a project providing direct Federal financial assistance from the Department of Housing and Urban Development ("HUD") and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns that are located in or owned in substantial part by persons residing in the area of the Project.

B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this Agreement certify and agree that they are under no contractual agreement or other disability that would prevent them from complying with these requirements.

C. The Sub-recipient will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship, and training positions, the qualifications for each, the name and location of the persons taking applications for each of the positions, and the anticipated date the work shall begin.

D. The Sub-recipient will include this Section 3 Clause in every sub-contract for work in connection with the Program and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Sub-recipient is in violation of the regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Sub-recipient will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the agency has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there

under prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Sub-recipients, and its successors, and assigns to those sanctions specified by the CDBG Agreement or contract through which Federal assistance is provide, and to such sanctions as are specified by 24 CFR Part 135, which include termination of this Agreement for default and debarment and suspension from future HUD-assisted contracts.

By: _____

Date: _____

ATTACHMENT "E"

CERTIFICATION REGARDING LOBBYING

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement..

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant and contracts under grants, and cooperative agreements) and that the Sub-recipient shall certify and disclose accordingly.

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

By:_____
Date: _____